November 19, 2019

PRESENTATION (9:00 A. M.)
Chairwoman Bartlett will be presenting a resolution proclaiming November as “Adoption Awareness Month”

CONSENT
5. Continued to 12/10/19

DISCUSSION

35. Revised Title to read:
County Executive Office - Approve grant applications/awards submitted by Health Care Agency and District Attorney and retroactive grant applications/awards submitted by Sheriff-Coroner in 11/19/19 grant report and other actions as recommended; adopt resolution authorizing Sheriff-Coroner or designee to execute transfer agreement and related documents with California Office of Emergency Services for Purchase of Equipment/Services or Reimbursement of Training Costs for FY 2018 Urban Area Security Initiative; and to make related actions under certain conditions; adopt resolution authorizing District Attorney or designee to execute grant award agreement and amendments with California Office of Emergency Services for Victim/Witness Assistance Program, 10/1/19 - 9/30/20 ($3,244,661) which includes grant amount ($3,004,640) and in-kind match ($240,021) provided by Waymakers, Inc.; and making California Environmental Quality Act and other findings - All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 6 and 35

Supplemental Item(s)

S38A. Chairwoman Bartlett - Approve creation of Information Technology Investment Ad Hoc Committee

S38B. Supervisor Wagner - Orange County Human Relations Commission - Reappoint Richard Steinberg, Lake Forest, for term ending 11/18/21

S38C. County Executive Office - Approve and adopt 2019-2023 Memorandum of Understanding with American Federation of State, County and Municipal Employees for Eligibility Worker Unit - All Districts

S38D. County Executive Office - Approve contracts MA-017-20010511 with various law firms for Risk Management Workers’ Compensation Legal Defense Panel, five-year term through 10/31/24 (aggregate total $2,800,000); and authorize County Procurement Officer or authorized Deputy to execute contracts - All Districts

Revisions and Supplementals to November 19, 2019 Agenda - Page 1 of 2
S38E. County Executive Office - Approve technical adjustments to 2019 Contract Policy Manual - All Districts

S38F. OC Community Resources - Approve California Emergency Solutions and Housing contracts with Orange County United Way for rental assistance and housing relocation and stabilization services ($275,000) and flexible housing subsidy funds services ($400,500), 12/1/19 - 7/31/21; renewable for one additional one-year term; and authorize Director or designee to execute contracts - All Districts

S38G. Chairwoman Bartlett and Supervisor Chaffee - Direct Health Care Agency to allocate ($2,500,000) from Whole Person Care (WPC) and ($500,000) from Mental Health Services Act (MHSA) funds to establish a funding pool for supportive services for homeless clients with physical health conditions in permanent supportive housing; and direct Health Care Agency to engage CalOptima to contribute resources to the pool

SCS2. County Counsel - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION - Pursuant to Government Code Section 54956.9(d)(2): Number of Cases: One Case
Continuation or Deletion Request

Date: November 15, 2019
To: Clerk of the Board of Supervisors
From: Richard Sanchez, Agency Director, Health Care Agency
Re: ASR Control #: 19-001101, Meeting Date 11/19/19 Agenda Item No. # 5
Subject: First Amendment to Grant Agreement for Local Oral Health Program

Request to continue Agenda Item No. # 5 to the 12/10/19 Board Meeting.

Comments: The Health Care Agency would like to move the item to BOS 12/10, to allow HCA more time to provide additional program detail for the Board.

Request deletion of Agenda Item No. #

Comments:
Revision to ASR and/or Attachments

Date: November 5, 2019
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Shane L. Silsby, Director OC Public Works
Re: ASR Control #: 19-001140, Meeting Date 11/19/2019, Item No. # 6
Subject: Adopt Resolutions for the 2021 Federal Transportation Improvement Program

Explanation:
Update Recommended Action #2 to remove the word revised.

☐ Revised Recommended Action(s)

2. Adopt a revised Resolution to inform the Orange County Transportation Authority that the arterial highway portion of the County of Orange Circulation Element and Mitigation Fee Program is in conformance with Measure M2 Program.

☐ Make modifications to the:
  ☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))
MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777
Cynthia Shintaku (714) 834-7086

SUBJECT: Grant Applications/Awards Report

RECOMMENDED ACTION(S):
Approve grant applications/awards as proposed and other actions as recommended.


3. Approve Grant Award and Adopt Resolution – District Attorney – Victim Witness Assistance Program –$3,004,640.


SUMMARY:
See the attached Grants Report.
BACKGROUND INFORMATION:
See the attached Grants Report.

FINANCIAL IMPACT:
N/A

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A - Grants Report
Attachment B - OCSD Resolution
Attachment B - DA Resolution
County of Orange Report on Grant Applications/Awards

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants $50,000 or less is delegated to the County Executive Officer. Grant awards greater than $50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County’s grants activities. It also serves to inform Orange County’s Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On November 19, 2019 the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTIONS ITEMS


3. Approve Grant Award and Adopt Resolution – District Attorney – Victim Witness Assistance Program– $3,004,640.


If you or your staff have any questions or require additional information on any of the items in this report, please contact Cynthia Shintaku at 714-834-7086.
<table>
<thead>
<tr>
<th>GRANT APPLICATION /</th>
<th>GRANT AWARD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Today's Date:</strong></td>
<td>11/7/2019</td>
</tr>
<tr>
<td><strong>Requesting Agency/Department:</strong></td>
<td>HCA Public Health Laboratory</td>
</tr>
<tr>
<td><strong>Grant Name and Project Title:</strong></td>
<td>Legionella Outbreak Response Laboratory Testing Workshop and Funding for Establishing or Enhancing Legionella Testing</td>
</tr>
<tr>
<td><strong>Sponsoring Organization/Grant Source:</strong></td>
<td>Association of Public Health Laboratories (APHL), in cooperation with the US Centers for Disease Control and Prevention (CDC) Division of Bacterial Diseases (DBD)</td>
</tr>
<tr>
<td><strong>Application Amount Requested:</strong></td>
<td>$35,000</td>
</tr>
<tr>
<td><strong>Application Due Date:</strong></td>
<td>November 20, 2019</td>
</tr>
<tr>
<td><strong>Board Date when Board Approved this Application:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Awarded Funding Amount:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Notification Date of Funding Award:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Is this an Authorized Retroactive Grant Application/Award?</strong></td>
<td>(If yes, attach memo to CEO)</td>
</tr>
<tr>
<td><strong>Recurrence of Grant</strong></td>
<td>New ☑ Recurrent ☐ Other ☐ Explain: N/A</td>
</tr>
<tr>
<td><strong>If this is a recurring grant, please list the funding amount applied for and awarded in the past:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Does this grant require CEQA findings?</strong></td>
<td>Yes ☐ No ☑</td>
</tr>
<tr>
<td><strong>What Type of Grant is this?</strong></td>
<td>Competitive ☑ Other Type ☐ Explain:</td>
</tr>
<tr>
<td><strong>County Match?</strong></td>
<td>Yes ☑ Amount_____ or _____ % No ☑</td>
</tr>
<tr>
<td><strong>How will the County Match be Fulfilled?</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>(Please include the specific budget)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Will the grant/program create new part or full-time positions?</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Purpose of Grant Funds:</strong></td>
<td>Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.</td>
</tr>
</tbody>
</table>

Participation in this project will enable Public Health Laboratory to establish in-house Legionella testing capabilities for environmental samples by performing verification studies to implement these new methods. Additionally, the grant will fund one staff member to attend one of the Association of Public Health Laboratories / US Centers for Disease Control and Prevention-hosted Legionella training workshop being held in March, 2020.

Public Health Laboratory staff will work with HCA Environmental Health and Public Health Services, Communicable Disease Control partners to develop a sustainable plan for ongoing Legionella surveillance testing.

If awarded, the Public Health Laboratory will be able to use the knowledge gained to perform testing for Legionella using state of the art technology to enhance testing, surveillance, and outbreak response in Orange County.
### Board Resolution Required?
(Please attach document to eForm)

| Yes ☐ | No ☒ |

### Deputy County Counsel Name:
(Please list the Deputy County Counsel that approved the Resolution)

- No Deputy County Counsel Name specified.

### Recommended Action/Special Instructions
(Please specify below)

Authorize the Health Care Agency Director, or designee, to submit the application for the Legionella Outbreak Response Laboratory Testing Workshop and Funding for Establishing or Enhancing Legionella Testing and to accept up to $35,000 of funding from The Association of Public Health Laboratories (APHL), in cooperation with the US Centers for Disease Control and Prevention (CDC) Division of Bacterial Diseases (DBD) without further Board action, to the extent allowed by Board policy.

### Department Contact:
List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

- Megan Crumpler, 714-834-8379

### Name of the individual attending the Board Meeting:
List the name of the individual who will be attending the Board Meeting for this Grant Item:

- David Souleles
The U.S. Department of Homeland Security provides funding through UASI to enhance regional preparedness in major metropolitan areas. The UASI program directly supports the national priority of expanding regional collaboration identified in the National Preparedness Guidelines, and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response, and recovery. UASI program funds address the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and assist them in building an enhanced and sustainable capacity to prevent, protect against, respond to and recover from acts of terrorism. Eligible FY 2018 UASI candidates have been identified based on an analysis of relative risk of the 100 most populous Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The City of Santa Ana and the City of Anaheim were the two Orange County cities identified by the U.S. Department of Homeland Security as eligible Urban Areas. These two cities alternate functioning as primary recipients of UASI grant funding from year to year.

With UASI grant funding, the City of Anaheim awarded the Orange County Sheriff-Coroner Department (Sheriff) the amount of $4,825 to provide training instructor services for first responders within the Orange County Operational Area. Training included topics such as active shooter response, mobile field force and tactical emergency casualty care for law enforcement as well as Orange County Intelligence Assessment Center related training. The City of Anaheim, the City of Santa Ana, and the Sheriff work collaboratively to identify timely training topics for responders across Orange County. To keep costs low, the agencies leverage existing personnel with subject matter expertise. Because these duties are outside of the individual’s normal assignments, staff may incur overtime or backfill expenses related to their instructor activities. The UASI will reimburse the Sheriff’s Department the amount of $4,825 for any allowable UASI Training.

CEO approval is requested to include this item on the CEO Grants Report for November 19, 2019. Retroactive approval is requested as units have recently been re-aligned, and time was needed to identify the new staff to administer the grant. If you have any questions, please contact Rick Farfan at (714) 289-3969 or via email at RichFarf@oclac.ca.gov.

[Signature]
Department Head or Designee

Concur:

[Signature]
County Executive Officer or Designee

cc: Undersheriff Bob Peterson, Sheriff-Coroner Department
    Captain Andy Stephens, Investigations Division
    Lieutenant Chris Hays, Orange County Intelligence Assessment Center
    Lynn Yamada, Financial/Administrative Services Command
**CEO-Legislative Affairs Office**

**Grant Authorization eForm**

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Today's Date:</strong></td>
<td>November 11, 2019</td>
</tr>
<tr>
<td><strong>Requesting Agency/Department:</strong></td>
<td>Sheriff-Coroner Department</td>
</tr>
<tr>
<td><strong>Grant Name and Project Title:</strong></td>
<td>Urban Areas Security Initiative (UASI) Funds, Catalog of Federal Domestic Assistance #97.067</td>
</tr>
<tr>
<td><strong>Sponsoring Organization/Grant Source:</strong></td>
<td>U.S. Department of Homeland Security</td>
</tr>
<tr>
<td><strong>Application Amount Requested:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Application Due Date:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Board Date when Board Approved this Application:</strong></td>
<td>N/A – this is an allocation through UASI</td>
</tr>
<tr>
<td><strong>Awarded Funding Amount:</strong></td>
<td>$4,825</td>
</tr>
<tr>
<td><strong>Notification Date of Funding Award:</strong></td>
<td>7/10/2019</td>
</tr>
<tr>
<td><strong>Is this an Authorized Retroactive Grant Application/Award?</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Is this a recurring grant, please list the funding amount applied for and awarded in the past:</strong></td>
<td>Year</td>
</tr>
<tr>
<td></td>
<td>2012</td>
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<td>2013</td>
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<td>2016</td>
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<td>2017</td>
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<td><strong>Does this grant require CEQA findings?</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>What Type of Grant is this?</strong></td>
<td>Competitive</td>
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<tr>
<td><strong>County Match?</strong></td>
<td>Yes Amount_____ or ______%</td>
</tr>
<tr>
<td><strong>How will the County Match be Fulfilled?</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Will the grant/program create new part or full-time positions?</strong></td>
<td>N/A</td>
</tr>
</tbody>
</table>
Purpose of Grant Funds: Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

The U.S. Department of Homeland Security provides funding through Urban Areas Security Initiative (UASI) to enhance regional preparedness in major metropolitan areas. The UASI program directly supports the national priority of expanding regional collaboration identified in the National Preparedness Guidelines, and is intended to assist participating jurisdictions in developing integrated regional systems for prevention, protection, response, and recovery. UASI program funds address the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and assist them in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

Eligible FY 2018 UASI candidates have been identified based on an analysis of relative risk of the 100 most populous Metropolitan Statistical Areas, as defined by the Office of Management and Budget. The City of Santa Ana and the City of Anaheim were the two Orange County cities identified by the U.S. Department of Homeland Security as eligible Urban Areas. These two cities alternate functioning as primary recipients of UASI grant funding from year to year.

With UASI grant funding, the City of Anaheim awarded the Orange County Sheriff-Coroner Department (Sheriff) the amount of $4,825 to provide training instructor services for first responders within the Orange County Operational Area. Approval is requested to accept these UASI grant funds. Training included topics such as active shooter response, mobile field force and tactical emergency casualty care for law enforcement as well as Orange County Intelligence Assessment Center related training.

The City of Anaheim, the City of Santa Ana and Sheriff work collaboratively to identify timely training topics for responders across Orange County. To keep costs low, the agencies leverage existing personnel with subject matter expertise. Because these duties are outside of the individual's normal assignments, staff may incur overtime or backfill expenses related to their instructor activities. The UASI will reimburse Sheriff the amount of $4,825 for any allowable UASI Training.

The UASI Program was audited in 2015 and 2016. In the Audit Reports, there were no material weaknesses or significant deficiencies identified regarding internal control over financial reporting. Regarding internal control over federal programs, there were no material weaknesses identified.

Board of Supervisors approval is requested as this grant requires the approval of the FY 2018 Urban Areas Security Initiative Transfer Agreement and Board Resolution. The FY 2018 Urban Areas Security Initiative grant performance period is May 8, 2019 through March 31, 2021. Retroactive approval is being requested as units have recently been re-aligned, and time was needed to identify the new staff to administer the grant.

Board Resolution Required? (Please attach document to eForm)
Yes ☒ No ☐

Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)
Wendy Phillips, Deputy County Counsel, reviewed and approved the Transfer Agreement.
**Recommended Action/Special Instructions**

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<tbody>
<tr>
<td><strong>1.</strong></td>
<td>Accept $4,825 in FY 2018 Urban Areas Security Initiative funds, Catalog of Federal Domestic Assistance #97.067, from the City of Anaheim.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>Authorize the Sheriff-Coroner or authorized designee to execute Transfer Agreement and sign all related documents to accept the FY 2018 Urban Areas Security Initiative funds.</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Approve the FY 2018 Urban Areas Security Initiative Resolution.</td>
</tr>
</tbody>
</table>

**Department Contact:**

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Rick Farfan, Administrative Manager  
(714) 289-3969; RichFarf@ociac.ca.gov

**Name of the individual attending the Board Meeting:**

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Rick Farfan, Administrative Manager;  
(714) 289-3969; RichFarf@ociac.ca.gov
RESOLUTION OF THE BOARD OF SUPERVISORS OF

ORANGE COUNTY, CALIFORNIA

November 19, 2019

WHEREAS, the United States Department of Homeland Security, through the California Office of Emergency Services, is providing FY18 Urban Area Security Initiative (UASI) funding to address the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density urban areas, and assist them in building an enhanced and sustainable capacity to prevent, protect against, mitigate, respond to, and recover from acts of terrorism; and

WHEREAS, the City of Anaheim has received a FY18 UASI award and wishes the County of Orange to be a sub-recipient.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Authorize the Sheriff-Coroner, or designee to complete the blanks and execute the “Agreement for Transfer or Purchase of Equipment/Services or for Reimbursement of Training Costs for FY2018 Urban Area Security Initiative (UASI).”

2. Assure that the County of Orange will abide by the statutes governing the UASI Grant Program, as detailed within the Agreement.

3. Assure that the County of Orange will not use grant funds to supplant expenditures controlled by the Board of Supervisors.

BE IT FURTHER RESOLVED that this Board will not provide specific matching funds if the grant application is approved.
**CEO-Legislative Affairs Office**  
**Grant Authorization eForm**

- **Today's Date:** November 12, 2019
- **Requesting Agency/Department:** District Attorney
- **Grant Name and Project Title:** Victim Witness Assistance Program
- **Sponsoring Organization/Grant Source:** California Governor’s Office of Emergency Services
- **Application Amount Requested:** $3,004,640
- **Application Due Date:** September 30, 2019
- **Board Date when Board Approved this Application:** February 26, 2019
- **Awarded Funding Amount:** $3,004,640
- **Notification Date of Funding Award:** November 7, 2019
- **Is this an Authorized Retroactive Grant Application/Award?** No
- **Recurrence of Grant:** Recurrent
- **If this is a recurring grant, please list the funding amount applied for and awarded in the past:** FY 18-19; Applied for $2,897,154; Awarded $2,897,154
- **Does this grant require CEQA findings?** Yes
- **What Type of Grant is this?** Competitive
- **County Match?** Yes
- **How will the County Match be Fulfilled?** N/A
- **Will the grant/program create new part or full-time positions?** No new position is required.
- **Purpose of Grant Funds:** Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.

The Victim Witness Assistance Program is supported by the Federal Victim of Crime Act. The program is designed to provide high quality, comprehensive services that address the individual needs of crime witnesses. The District Attorney was awarded $3,004,640 to continue the program.

These grant funds will be utilized to support a specialized team within Waymakers, Inc. to provide coordination for the appearance of all subpoenaed witnesses in misdemeanor trials, preliminary trials, preliminary felony hearings and felony trials at the request of the OCDA. Service requirements include placing witnesses “on-call”, making case status and disposition available to the witness, notification and intervention with the witness’ employer, arranging transport of the witness to court, and “call-off” of witnesses. The team consists of program directors, victim advocates and coordinators to assist victims.

**Board Resolution Required?** Yes

**Deputy County Counsel Name:** James Harman, Deputy County Counsel
**Recommended Action/Special Instructions**

Cal OES requires the District Attorney to submit a Board Resolution. County Counsel has reviewed and approved the attached Board Resolution.

1. Authorize the District Attorney or his designee, to sign and execute, on behalf of the County of Orange, the Grant Agreement with CalOES accepting the grant award of $3,004,600 to continue the Victim Witness Assistance Program for fiscal years 2019-20 and 2020-21.
2. Authorize the District Attorney, or his designee, to execute, on behalf of the County of Orange, any extensions or amendments that reflect the actual grant award but do not materially alter the terms of the grant award.
3. Adopt the Resolution to receive funds for the Victim Witness Assistance Program.

<table>
<thead>
<tr>
<th>Department Contact :</th>
<th>List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenn Robison</td>
<td>(714) 347-8778 <a href="mailto:glenn.robison@da.ocgov.com">glenn.robison@da.ocgov.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the individual attending the Board Meeting:</th>
<th>List the name of the individual who will be attending the Board Meeting for this Grant Item:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenn Robison</td>
<td></td>
</tr>
</tbody>
</table>
RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA

WHEREAS, the County of Orange, California (the “County”) desires to undertake its project designated “The Victim/Witness Assistance Program” to be funded from funds available through the Federal Victims of Crime Act administered by the State of California, Office of Emergency Services (hereafter referred to as CalOES).

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Find that the proposed project is exempt from CEQA pursuant to 14 C.C.R 15061(b)(3) because it does not impose a significant effect on the environment.

2. Find that pursuant to Section 711.4 of the California Fish and Game Code, the proposed project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.

3. Authorize the District Attorney, or his designee, to sign and execute, on behalf of the County of Orange, a Grant Award Agreement with CalOES for the Victim/Witness Assistance Program, effective from October 1, 2019 through September 30, 2020. The total project amount for this program $3,244,661, which includes the grant amount not to exceed 3,004,640 and an in-kind match of $240,021 to be provided by Waymakers, Inc.

4. Authorize the District Attorney, or his designee, to execute, on behalf of the County of Orange, any extensions or amendments that reflect the actual grant award but do not materially alter the terms of the grant award.

5. Assure that the County of Orange assumes any liability arising out of the County's performance of this Grant Award Agreement, including civil court actions for damages. The State of California and CalOES disclaim responsibility for any such liability.

6. Assure that the County of Orange will not use grant funds to supplant expenditures controlled by the Board of Supervisors.

Resolution No. 19-, Item No.
Victim Witness Assistance (VW) Program-FY 2019/20
To: Clerk of the Board

From: Chairwoman Lisa A. Bartlett, Supervisor 5th District

Subject: Creation of Information Technology Investment Ad-Hoc Committee

November 6, 2019

At the request of Vice-Chair Steel and Supervisor Wagner, please add the following supplemental item to the November 19th Board of Supervisors meeting.

• Creation of Information Technology Investment Ad-Hoc Committee.

Attachment: Nov 5, 2019 Memorandum from Vice-Chair Steel & Supervisor Wagner
MEMORANDUM

November 5, 2019

TO: Chairwoman Lisa Bartlett
FROM: Vice Chair Michelle Steel
Supervisor Donald P. Wagner

SUBJECT: Creation of Information Technology Investment Ad-Hoc Committee

Chairwoman Bartlett,

We write to you today to request the creation of an Information Technology Investment Ad-Hoc Committee composed of the second and third district supervisors. The purpose of this committee is to engage community, business, and academic stakeholders in a discussion about how to make Orange County an attractive base of business and investment for the IT industry. We plan to report back to the Board within 180 days with our findings.
MEMORANDUM

To: Clerk of the Board

From: Donald P. Wagner

Date: Friday November 8, 2019

RE: Supplemental Item for November 19, 2019

I would like to add a supplemental agenda item for the November 19, 2019 Board of Supervisors meeting. I would like to reappoint Richard Steinberg to the Orange County Human Relations Commission with the term dates of November 19, 2019 through November 18, 2021.
APPLICATION FOR COUNTY OF ORANGE
BOARD, COMMISSION OR COMMITTEE

Return to:
Clerk of the Board of Supervisors
333 West Santa Ana Blvd., Suite 465
Santa Ana, California 92701
Website: www.ocgov.com/gov/cob/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration. For information or assistance, please contact the Clerk of the Board of Supervisor’s Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP
(SEE LIST AT HTTP://WWW.OCGOV.COM/GOV/COB/BCC/CONTACT):

OC Human Relations Commission

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: □ First □ Second □ Third □ Fourth □ Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Richard Steinberg

First Name Middle Name Last Name

Street Address City State Zip Code

Home Phone Number Cell Phone Number

Email Address

CURRENT EMPLOYER: Congregation Shir Ha-Ma’alot

OCCUPATION/JOB TITLE: Senior Rabbi

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

EMPLOYMENT HISTORY: Please attach a resume to this application and provide any information that would be helpful in evaluating your application.

ARE YOU A CITIZEN OF THE UNITED STATES: □ YES □ NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP:

ARE YOU A REGISTERED VOTER? □ YES □ NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN: Orange
LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH
YOU ARE A MEMBER.

ORGANIZATION/SOCIETY                      FROM (MO/yr)          TO (MO/yr)
OC Human Relations Commission             2014                  present
BeWell OC                                 2018                  present

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT
AGENCY(IES)?  □ YES  □ NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT
PRESENT A POTENTIAL CONFLICT OF INTEREST? □ YES  □ NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDemeanor CRIME SINCE YOUR 18TH
BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR
DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIAILY
DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND
PARTICIPATION IN ANY PRETRIAL OR POSTTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG
RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR
CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS
11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

□ YES  □ NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

________________________________________

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR
COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

It is an honor to serve the county by fighting against hate,
and working to resolve conflict.

DATE: 9/24/2019         APPLICANTS SIGNATURE:  

________________________________________

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received:_________________________                Received by: ___________________________

Date referred:_________________________                Deputy Clerk of the Board of Supervisors

To:  □ BOS District 1  □ BOS District 2  □ BOS District 3  □ BOS District 4  □ BOS District 5

□ All BOS  □ BCC Contact Person Name_________________________

Revised Date 02/07/19
Transformative leader in nationally prominent congregation as well as change agent in California synagogue that is now thriving. Strong manager through guidance and mentoring of staff while building consensus. Trusted partner with laity in transitioning from one generation of leadership to another. Credentialed rabbi experienced and comfortable in civic and national settings. Empathic counselor skilled in courageous and compassionate pastoral care. Committed Zionist with bold congregational vision for engagement with Israel.

Powerful Agent for Change with deep appreciation of complex congregational culture and group processes; respect for history and able to lead toward the future; keen ability to guide communities peaceably in times of significant transition.

Collaborative Team Builder known for cultivating relationships of trust with families, colleagues, staff and lay leaders; emotionally self-aware; appreciative of differences of opinion; champion of coherence/excellence among team/members.

Articulate and inspiring public speaker. Skilled in motivating congregational involvement and participation. Sermons lift the spirit and move the soul.

Dedicated community leader with proven success impacting education, social action, and community service initiatives at synagogue as well as in the county, state and nation. Strong management acumen with experience leading programs from concept to implementation.

<table>
<thead>
<tr>
<th>Professional Experience</th>
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</thead>
<tbody>
<tr>
<td>CONGREGATION SHIR HA-MA’ALOT; Irvine, CA</td>
</tr>
<tr>
<td>2001-Present</td>
</tr>
</tbody>
</table>

Senior Rabbi
Set vision, develop strategic plans, and administer pastoral care for synagogue serving 650 families, Orange County’s largest religious school (520 students), and strong creative high school program. Teach, preach, counsel, and conduct life cycle events with love, sacredness and humor. Provide leadership and direction for 12 full-time and 30 part-time staff members. Liaise with Board of Trustees, supervise senior staff, and spearhead all fundraising initiatives.

- Propelled membership from 280 families to 650 families by transforming worship, educational and social moments into meaningful and community building experiences.
- Generated 10-fold increase in fundraising through three separate capital campaigns. Led $11.5 million project to create a new Temple campus. Developed financial sponsorship endowment program for each of the senior staff positions.
- Impacted community of Orange County through Board and non-profit leadership/involvement including buying a home for young adults with special needs as President of Jewish Association for Special Needs. Raised $600K+ to purchase home and secured all necessary licenses, with residents moving in August 2014.
- Inspired involvement among senior population by creating “Chai Society” that fully engaged senior adults and became temple’s most active program second only to youth program.
- Maintained cultural relevancy in this digital age by revamping website several times, maintaining effective online presence and emailing/posting weekly Thought for Shabbat on social media.
- Master Teacher with youth as well as adults by making each moment in the classroom and on the pulpit an opportunity for growth and exploration (regularly teaching Torah Study, 10th-12th grade, adult learning).
- Devoted Zionist by leading eight congregational trips to Israel (65 participants with seven B’nai Mitzvah in summer 2014), active participation in Israel advocacy groups and dedicated to raise funds for Israel’s success and survival. Partner with the City of Ma’alot and pilot congregation with Yad v’Shem Names Project.
- Marriage and Family Therapist working in and outside of synagogue life, helping to transform the mental health system in Orange County.
Associate Rabbi

- Performed all rabbinical functions for 1,400-household temple; the birthplace of Reform Judaism.
- Revitalized Wise-Up social action program by revamping program that engaged more than 600 congregants in 50+ community service projects annually.
- A staff liaison to congregational self-evaluation project (Experiment in Congregational Education).

Education and Ordination

<table>
<thead>
<tr>
<th>Institution</th>
<th>Year</th>
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</thead>
<tbody>
<tr>
<td>Alliant International University, California School of Professional Psychology</td>
<td>2011</td>
</tr>
<tr>
<td>Master of Arts in Marital Family Therapy</td>
<td>2014</td>
</tr>
<tr>
<td>Licensed Marriage and Family Therapist</td>
<td></td>
</tr>
<tr>
<td>Hebrew Union College - Jewish Institute of Religion</td>
<td></td>
</tr>
<tr>
<td>Ordained Rabbi</td>
<td>1995</td>
</tr>
<tr>
<td>Master of Arts in Hebrew Letters</td>
<td>1993</td>
</tr>
<tr>
<td>Faculty Award for Academic Achievement</td>
<td></td>
</tr>
<tr>
<td>California State University, Hayward</td>
<td>1990</td>
</tr>
<tr>
<td>Bachelor of Science in Criminal Justice Administration, Minor in Sociology</td>
<td></td>
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</table>

Community Service and Leadership

<table>
<thead>
<tr>
<th>Role / Position</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member, CCAR Placement and Employment Survey Project Evaluation Team</td>
<td>2019-present</td>
</tr>
<tr>
<td>Member, Mind OC (Board to distribute $100 million toward mental health system in Orange County)</td>
<td>2019-present</td>
</tr>
<tr>
<td>Member, Member Services Committee</td>
<td>2017-present</td>
</tr>
<tr>
<td>Member, Executive Committee of Orange County Sheriff’s Interfaith Advisory Council</td>
<td>2016-present</td>
</tr>
<tr>
<td>Member, Children’s Hospital of Orange County Mental Health Advisory Board</td>
<td>2015-present</td>
</tr>
<tr>
<td>Member, CCAR/URJ Placement Commission</td>
<td>2014-present</td>
</tr>
<tr>
<td>Commissioner, Orange County Human Relations Commission</td>
<td>2013-present</td>
</tr>
<tr>
<td>Chair of the Commission</td>
<td>2018-present</td>
</tr>
<tr>
<td>Chaplain, Irvine Police Department</td>
<td>2014-present</td>
</tr>
<tr>
<td>Mentor to rabbinic students, Aronoff Program at HUC-JIR, Los Angeles</td>
<td>2003-2016</td>
</tr>
<tr>
<td>President, Jewish Association of Special Needs</td>
<td>2009-2014</td>
</tr>
<tr>
<td>Member, Rabbinic Vision Initiative</td>
<td>2011-2013</td>
</tr>
<tr>
<td>President, Orange County Board of Rabbis</td>
<td>2008-2011</td>
</tr>
<tr>
<td>Board Member, Jewish Federation and Family Services</td>
<td>2002-2010</td>
</tr>
<tr>
<td>President, Greater Cincinnati Board of Rabbis</td>
<td>1999-2001</td>
</tr>
<tr>
<td>Adjunct Faculty, Xavier University</td>
<td>1996-2001</td>
</tr>
</tbody>
</table>

Honors and Awards

<table>
<thead>
<tr>
<th>Award</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange County Business Journal designation of Top 500 in Orange County</td>
<td>2016, 2017, 2018</td>
</tr>
<tr>
<td>Orange County Register designation as one of the 100 most influential people in Orange County</td>
<td>2014</td>
</tr>
<tr>
<td>Outstanding Devotion to Orange County Jewish Community Center</td>
<td>2006</td>
</tr>
<tr>
<td>Westin Avodah Award for Outstanding Professional Service to the Cincinnati Jewish Community</td>
<td>2000</td>
</tr>
</tbody>
</table>

Publications

- Contributing Writer – JlfeOC (Jewish monthly magazine with a distribution of 20,000 people). 2019-present
- “Abundance Isn’t Bad.” URJ Reform Voices of Torah - Naso, May 2011
Written Concurrence for Out-of-District Appointment to Board, Commission, or Committee

Supervisor Proposing Appointment: Donald Wagner, Third District  Date: 11/12/2019

Board, Commission, or Committee: OC Human Relations Commission

Proposed Appointee's Name: Richard Steinberg

Proposed Appointee's City of Residence: Lake Forest

Concurring Supervisor's Signature: Lisa Bartlett, Fifth District
The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 19, 2019, Board Hearing.

Agency: County Executive Office
Subject: Approve 2019-2023 Memorandum of Understanding with the American Federation of State, County and Municipal Employees
Districts: All Districts

Reason for supplemental: In order to avoid any delay in ratifying the terms and conditions of the successor MOUs, Human Resource Services respectfully requests to have this item placed on the Board agenda for November 19, 2019. The County and the American Federation of State, County and Municipal Employees has reached a tentative agreement for a successor Memorandum of Understanding (MOU). This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: Chairwoman Lisa A. Bartlett, Supervisor, Fifth District

cc: Board of Supervisors
    County Executive Office
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT HEAD REVIEW: 
DEPARTMENT CONTACT PERSON(S): Tom Hatch (714) 834-2836
Colette Farnes (714) 834-2247

SUBJECT: Approve 2019-2023 Memorandum of Understanding with the American Federation of State, County and Municipal Employees

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A
Current Year Cost: See Financial Impact Section
Annual Cost: See Financial Impact Section

Staffing Impact: No
# of Positions: N/A

Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section
Sole Source: N/A

County Audit in last 3 years: No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve and adopt the attached 2019-2023 Memorandum of Understanding between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit.

SUMMARY:

Approval and adoption of the 2019-2023 Memorandum of Understanding between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit will ratify the terms and conditions of employment.
BACKGROUND INFORMATION:

American Federation of State, County and Municipal Employees (AFSCME) represents approximately 1,500 positions in 2 different classifications within the County of Orange.

On May 9, 2019, representatives from the County and AFSCME commenced the meet and confer process to negotiate a successor agreement to the 2016-2019 Memorandum of Understanding (MOU). Over the next six months, the parties met on multiple occasions and collaboratively arrived at a tentative agreement on October 28, 2019, on the proposal under consideration by your Honorable Board of Supervisors (Board).

This agreement reflects the Board’s desire to maintain a competitive standing among comparable Southern California counties and cities for recruitment and retention purposes.

A summary of the more significant deal points in the 2019-2023 MOU include:

**Term**

June 24, 2019, through June 29, 2023.

**Wages**

- Effective the first day of the first full pay period following Board adoption (effective November 22, 2019), the salary schedules will be increased by 3.5 percent.
- Effective July 3, 2020, the salary schedules will be increased by 3.4 percent.
- Effective July 2, 2021, the salary schedules will be increased by 3.4 percent.
- Effective July 1, 2022, the salary schedules will be increased by 3.4 percent.

**Education and Professional Reimbursement**

Effective the first day of the first full pay period following Board adoption, increase the Education and Professional Reimbursement Program from $3,000 to $10,000 per fiscal year.

**Bereavement Leave**

Effective the first day of the first full pay period following Board adoption, eligible employees may use paid bereavement leave related to the death of a family member. Generally, the time off shall be taken in whole shift increments, may be taken nonconsecutively and must be used within six months of the loss.

**Miscellaneous**

The proposed MOU includes minor modifications to other areas of the contract including clarification of Intra-Agency Transfers, call-back pay, pay for work on holidays, establishing workgroups to revise existing leave language, workload management forums, discussing child/dependent care and work-life balance.
Updates also reflect administrative clean-up to reflect long-term past practices, correct clerical errors and remove obsolete language due to legislative changes.

FINANCIAL IMPACT:

The estimated total cost incurred over the term of the MOU is $31.0 million, $27.4 million of which is Net County Cost (NCC). $1.9 million ($1.7 million NCC) will occur in FY 2019-20; $6.3 million ($5.5 million NCC) will occur in FY 2020-21; $9.7 million ($8.6 million NCC) will occur in FY 2021-22; $13.1 million ($11.6 million NCC) will occur in FY 2022-23.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – 2019-2023 ASFCME Eligibility Worker Unit MOU
Attachment B – 2019-2023 AFSCME Eligibility Worker Unit MOU (red line version)
Attachment C – October 28, 2019, Signed Deal Points (Tentative Agreement)
MEMORANDUM
OF
UNDERSTANDING

ELIGIBILITY WORKER UNIT

2019-2023

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
COUNCIL 36, LOCAL 2076, AFL-CIO
MEMORANDUM OF UNDERSTANDING

2019 – 2023

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
COUNCIL 36, LOCAL 2076, AFL-CIO

FOR THE

ELIGIBILITY WORKER UNIT
PREAMBLE

Section 1. Recognition

Pursuant to the provisions of the Employee Relations Resolution of the County of Orange and applicable State Law, American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO, hereinafter referred to as the Union, was certified on June 23, 1977 as the Recognized Employee Organization for employees in the Eligibility Worker Representation Unit as listed in Appendix A. The County hereby recognizes the Union as the exclusive representative of employees in this unit; however, employees in the unit shall have the right to represent themselves individually in their employment relations with the County pursuant to Section 3502 of the Government Code (Meyers-Milias-Brown Act). If an employee does not wish to be represented by the Union and wishes to represent himself or herself in matters pertaining to grievances and/or disciplinary appeals, the employee shall be required to provide the Union and the County with a signed statement waiving the right to Union representation in such matters.

Section 2. Implementation and Term

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit for the period beginning June 2, 2019 through June 29, 2023. All provisions shall become effective November 19, 2019 unless otherwise provided herein.

Section 3. Renegotiation

In the event the Union desires to negotiate a successor agreement, the Union shall submit, no later than on the one hundred fiftieth (150th) calendar day before expiration of this Agreement, its written request for changes in fringe benefits and other terms and conditions of employment. If the Union desires to negotiate a change in wages, that request shall be submitted no later than the ninetieth (90th) calendar day before expiration of this Agreement. Negotiations shall conclude thirty (30) calendar days before expiration of this Agreement unless extended beyond that date by mutual agreement of both parties.
DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

AFSCME STAFF REPRESENTATIVE – is an employee of AFSCME District Council 36 and not a County employee. A staff representative provides assistance to unit members in such areas as contract negotiations, contract administration, representation and internal organizing. Notwithstanding the above, the Union may designate a County employee to serve temporarily as a staff representative. Upon notice to the County, the County will grant the employee an unpaid leave of absence, not to exceed one year.

BOARD shall mean Board of Supervisors of the County of Orange.

CHIEF HUMAN RESOURCES OFFICER shall mean the Human Resource Services Department Head or his or her designee.

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge or retirement. Leaves without pay shall not be considered a break in continuous service. Leaves without pay will not be credited toward continuous service except as required by law (e.g., FMLA/CFRA).

COUNTY shall mean the County of Orange.

DISABILITY RETIREMENT shall mean a service or non-service connected disability retirement pension under the Orange County Employees Retirement System.

EMERGENCY shall mean an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, a pressing necessity.

EMPLOYEE shall mean a person employed by the County and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

EXTRA HELP EMPLOYEE shall mean an employee employed in an extra help position. An extra help employee may be removed from an extra help position at any time without notice, cause or right of appeal.

EXTRA HELP POSITION shall mean a position which is intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; emergency extra workloads of limited duration; necessary vacation relief, paid Sick Leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized.
for a period exceeding six (6) months. In unusual circumstances, and at the
discretion of the Agency Head and the Chief Human Resources Officer a full-
time extra help position may be authorized for a period longer than six (6)
months, provided such period shall not exceed one (1) year.

**FLEX TIME** shall mean a 4/10 or 9/80 schedule.

**FULL-TIME EMPLOYEE** shall mean an employee employed in one (1) or more
regular or limited-term positions whose normally assigned work hours equal those
of a full workweek or work period as described hereinafter.

**LIMITED-TERM EMPLOYEE** shall mean an employee employed in a limited-
term position except where a regular position is converted to a limited-term
position, the incumbent shall retain his or her former status. As an exception to
this definition, a limited-term employee may also be used to fill a regular position
when the incumbent employee is on Official Leave of Absence Without Pay.

**LIMITED-TERM POSITION** shall mean a position which the County has
determined has no anticipated long-range funding or has uncertain future
funding.

**NEGOTIATE** shall mean the process by which representatives of a recognized
employee organization and the Chief Human Resources Officer or his or her
representative meet a reasonable number of times and confer in good faith in an
effort to agree upon joint recommendations for presentation to the Board
regarding wages, hours and other terms and conditions of employment. When
appropriate, proposals and counter proposals may be used to resolve differences
in an effort to avoid an impasse. The negotiation process does not obligate either
party to accept a proposal or make a compromise.

**OFFICIAL PERSONNEL FILE** shall mean those official individual personnel files
maintained by the Human Resource Services Department's Personnel Records
Section.

**PART-TIME EMPLOYEE** shall mean an employee employed in one (1) or more
regular or limited-term positions whose normally assigned work hours do not
equal those required of a full-time employee.

**PERSONAL BUSINESS** shall mean a foreseeable personal event or circumstance
which necessitates the employee's absence from County duty. Personal Business
leave must be requested in advance by the employee and be preapproved by
supervision or management.

**PERSONAL EMERGENCY** shall mean an event or circumstance of a serious
nature which is beyond an employee's control and which necessitates the
employee's absence from County duty, including, but not limited to, those events
and circumstances which require the employee's prompt attention to avoid
possible financial loss to, or damage to the health of, either the employee or a
member of his or her household.

**PRACTICABLE** shall mean feasible; reasonably able to accomplish.

**PROBATIONARY EMPLOYEE** shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

**PROMOTION** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

**REASSIGNMENT** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

**RECRUITING STEP** shall be the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Chief Human Resources Officer.

**REDUCTION** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step of the new salary range is at least one (1) full step lower than the maximum step of the old salary range.

**REGULAR EMPLOYEE** shall mean an employee who is not on probation and is employed in a regular or limited-term position.

**REGULAR POSITION** shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

**SENIORITY** shall mean total continuous full-time equivalent service as a regular employee.

**UNION** shall mean the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO.

**Y-RATE** shall mean a pay rate outside of the assigned salary range of a class.
ARTICLE I  WORKWEEK, OVERTIME AND PREMIUM PAY

Section 1. Workweek

A. The official workweek or work period for employees in the bargaining unit shall be as follows:

1. Except as otherwise provided below, the official workweek for full-time employees shall be forty (40) hours and shall begin on each Friday at 12:01 a.m. and end with the following Thursday at 12:00 midnight. Except in circumstances where this MOU specifically also requires the County to pay overtime, overtime shall be paid for hours actually worked in excess of forty (40) in a designated workweek.

2. Part-time
   a. Employees may request to be placed in twenty (20) hour part-time positions if their performance is rated standard or above at the time of the request.
   b. The number and assignment of positions subject to part-time shall be determined by the County.
   c. An employee placed in a twenty (20) hour position shall remain in that position until:
      1. the employee requests a return to an available full-time position as determined by the County;
      2. the County assigns the employee to a full-time position with a fourteen (14) calendar day advance notice whenever practicable. The County will not order an employee out of a part-time position until there is no one left on the AGENCY/DEPARTMENT REINSTATEMENT LIST as established per Article XI of this Agreement who is eligible and willing to accept the full-time position.

B. The County agrees to give employees a fourteen (14) calendar day advance notice of a shift change whenever practicable.

C. No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.

D. The County shall discuss with the Union any proposed changes in existing scheduled hours of work before such changes are put into effect.
E. Employees may request modified work hour schedules, such as a 4/10 or 9/80 flex schedule in accordance with established Agency procedures and subject to the grievance/appeal limitations described in said procedure. For employees permitted to work a 9/80 schedule, the start of their designated workweek shall be the mid-point of their eight (8) hour day.

SSA shall continue to use an annual schedule request procedure in which employees may submit requests for preferred work schedules. SSA will endeavor to provide work schedules of varying starting/ending times, flex days and days off, while recognizing that programmatic and business needs of the Agency are paramount. SSA will notify employees of an opportunity to submit schedule requests in May of each year. The notification to employees will include an overview of starting/ending times, flex days and days off at each region. If the Union has not yet received the most recent list required by Article XIV, Section 1.D.4, the County will send the list to the Union at the same time it sends out its schedule notification to employees. SSA employee schedule requests shall be submitted within three (3) weeks of the date the notification has been sent to employees.

If more than one employee requests the same schedule and assuming the requested schedule is available (e.g., based on program, function, language skills and client demand), the more senior employee (or the most senior employee, if more than two employees have requested the same schedule), will receive the requested schedule. For purposes of this schedule process seniority shall be determined by length of continuous service with the County. SSA will notify employees generally four (4) weeks prior to the implementation of the new work schedule. If an employee does not receive one of his/her preferred schedules, he/she will be notified of the reason(s) for the determination. The new 12 month schedule will take effect on the first day of the first full pay period in August of each year.

Whenever practicable, employees will receive at least two (2) consecutive days off from work.

F. Except as otherwise provided, no employee may be employed in one (1) or more positions, full or part-time, more than the total number of hours for the employee's work period as defined in A., above, except on authorized overtime.

G. If an employee is ordered by the County to attend a meeting, such time spent in the meeting shall be considered hours worked.

H. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election provided that such election work does
not unduly interfere with the employee's regular assignment. Election work shall be compensated at the rate authorized for such work.

Section 2. Rest and Lunch Periods

A. Rest Periods

1. Employees shall be allowed rest periods of fifteen (15) minutes during each four (4) consecutive hours of work.

2. Such rest periods shall be scheduled in accordance with the requirements of the agency, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. When employees take rest periods at a County facility, the County may designate location(s) within the facility for the rest periods.

3. Rest periods shall be considered hours worked. An employee shall not be required to perform duties during a rest period unless the need is urgent.

B. Lunch Periods

Each employee shall be allowed a meal period of one (1) hour unless otherwise mutually agreed upon by the employee and agency management. Such meal period shall be generally scheduled in the middle of the work shift and shall not be considered hours worked.

Section 3. Overtime

A. Notification of Employees

If in the judgment of the agency, work beyond the normal workday, workweek or work period is required, the agency will notify any employee who may be asked to perform such overtime of the apparent need for such overtime as soon as practicable prior to when the overtime is expected to begin.

B. Distribution of Overtime

If overtime work is required, opportunities to work such overtime shall be made available as follows:

1. first, to the worker(s) to whom the affected cases are assigned, if practicable;

2. second, to other qualified workers at the same location who are assigned to the same program and function, in order of seniority;
3. third, if an insufficient number of workers volunteer to perform such
overtime work under B.1. and B.2., above, the County may assign
such overtime work as needed.

C. Payment for Overtime

1. Overtime, as defined in Article I, Section 1.A., shall be
compensated at one and one-half (1 1/2) times the regular rate.

2. For all regular, limited-term and probationary employees, the
employee may receive either payment or compensatory time off
for overtime. The County shall have discretion whether to provide
payment or compensatory time off; however, if practicable, the
County shall duly consider an employee’s preferred form of
compensation.

3. Employees may not accumulate in excess of eighty (80) hours of
compensatory time. Employees who have accumulated eighty (80)
hours of compensatory time shall receive payment for overtime
worked.

4. Overtime hours worked by extra help employees shall be paid.

5. Compensatory time earned and accrued by an employee may be
scheduled off for an employee by his or her agency; however,
consideration shall be given to effectuating the wishes of those
employees requesting specific compensatory time off periods.

6. Unless waived by the employee and management, in no case may
an employee's work schedule be changed during the workweek or
work period in progress when the purpose of such change is to
avoid overtime compensation.

7. Time worked as overtime shall not be used to earn fringe benefits
or to serve out probation or merit increase periods, provided that
compensatory time off may be used as part of the established
workweek to earn fringe benefits and to serve out probationary and
merit increase periods.

8. An employee separating from the County service shall be paid for
accumulated compensatory time in a lump sum payment. Money
owed to the County as a result of County employment by the
separating employee may be deducted from such lump sum
payment.

Section 4. Premium Pay
A. **Night Shift Differential**

1. An employee who works an assigned night shift shall, in addition to his/her regular salary, be paid a night shift differential for each hour actually worked on the assigned night shift.

2. For purposes of this Section, night shift shall mean an assigned work shift of seven (7) consecutive hours or more which includes at least four (4) hours of work between the hours of 4 p.m. and 8 a.m. Overtime which is worked as an extension of an assigned day shift shall not qualify an employee for night shift differential.

3. The rate of night shift differential shall be fifty (50) cents per hour.

B. **On-Call Pay**

1. When an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) of his/her basic hourly rate for the entire period of such assignment.

2. On-call duty requires the employee so assigned to: (1) be reachable by telephone or other communications device; (2) be able to report to work in a reasonable time; and (3) to refrain from activities which might impair his or her ability to perform assigned duties.

C. **Call-Back Pay**

1. When an employee returns to work because of an agency request made after the employee has completed his or her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he or she was called back.

   Call-back pay shall apply only when an employee is required to physically return to work (e.g. leave home or another off-duty location) in order to perform required duties.

2. Call-back shall be paid at one and one-half (1 1/2) times the regular rate.

3. Notwithstanding the above, if an employee is called back to work within four (4) hours of the beginning of the regular shift, the employee will only be paid at time and-one-half for the time the employee begins to work until the beginning of the employee’s
4. There shall not be any duplication or pyramiding of rates paid under this Section.

5. An employee shall be credited with not more than one (1) minimum four (4) hour guarantee for work performed during any four (4) consecutive hour period.

6. An employee credited with four (4) hours pursuant to this Section may be assigned other work until the guaranteed time has elapsed.

D. **Bilingual Pay**

1. Qualified employees who meet the criteria in 4.D.2., below, and who are assigned by Agency management to perform exceptional bilingual duties that are essential to the performance of their technical duties and responsibilities shall receive an additional one dollar and fifteen cents ($1.15) per hour [approximately one hundred ninety-nine dollars ($199) per month] for all hours actually paid.

2. To be eligible to receive bilingual pay, the following criteria must be met:
   a. An employee must be assigned by agency management to speak or translate a language in addition to English. This may include such specialized communication skills as sign language.
   b. An employee must regularly and frequently speak and/or translate a second language, i.e., once daily.
   c. To become qualified, an employee must be certified as qualified by the Chief Human Resources Officer.

3. Bilingual pay shall not apply to workers' compensation supplement pay or other premium pays effective upon Board adoption.
ARTICLE II  PAY PRACTICES

Section 1.  Compensation for Employees

Employees shall receive compensation at the biweekly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

Section 2.  Pay for New Employees

A.  A new employee shall be paid at the recruiting step of the salary range in effect for the class in which the new employee is hired, except as provided in Sections 2.B. and C., below.

B.  Upon recommendation of the Chief Human Resources Officer, the Board may, by minute order, authorize that a particular position be filled at any step within the range. When the Board authorizes the filling of the position at a step which is higher than the recruiting step of the salary range, it may, by minute order, advance the salary of incumbents of positions in that class or related classes in order to retain equitable relationships.

C.  The Agency or Department Head may authorize the appointment of employees at any of the first seven (7) steps of the salary range. Such appointments shall be made only when the Agency or Department Head makes a determination that there is a direct and measurable benefit to the County from such appointments and makes a determination that the applicant’s previous training and experience enables him or her to make a greater contribution than a less experienced employee.

D.  Upon recommendation of the Agency or Department Head, the County Executive Officer may authorize the appointment of employees beyond step seven (7) of the salary range when there is a direct and measurable benefit to the County for such appointment.

Section 3.  Merit Increase Within Range

A.  Extra Help employees shall not be eligible for merit increases within range.

B.  Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the Agency Head.

C.  A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence, other than a Military Leave or the imposition of a suspension shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave or suspension. The extended merit increase eligibility

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date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence or suspensions.

D. An employee in a part-time regular or limited-term position who has not completed one thousand forty (1040) paid hours exclusive of overtime by his or her first merit increase date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular or limited-term position who has not completed two thousand eighty (2080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his or her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.

E. 1. Merit increases may be granted for one (1), two (2), three (3) or four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase.

2. For any employee hired on or after December 6, 1977, the determination as to whether or not to grant merit increases beyond Step 10 and, if granted, in what amounts, shall be solely within the discretion of the Agency Head and shall be based on merit. This provision shall be grievable in accordance with Article X, Grievance Procedure, of this Agreement.

F. If, in the agency's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be productive, the agency shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of fewer than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit eligibility date. The employee may be reevaluated at any time and may be granted a merit increase earlier than thirteen (13) pay periods, but in any event shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.
G. Should an employee's merit increase eligibility date be overlooked through an error and upon discovery of the error the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. Salary on Promotion

A. Except as modified by B., below, a regular, limited-term or probationary employee who is promoted to a position in a class with a higher salary range shall receive the recruiting salary for the higher class or such higher amount as would be the closest to a two (2) step increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.

B. Any employee who is promoted to a class from which the employee was previously reduced without a salary decrease shall be placed at a salary step no higher than the step which the employee would have achieved if the employee had remained in the class to which he or she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.

Section 5. Salary on Reassignment

A. When a regular, limited-term or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

B. When a regular, limited-term or probationary employee is reassigned to a class with a higher recruiting step, such employee's salary shall be advanced the number of steps difference between the classes' recruiting steps and the employee shall retain his or her former merit increase eligibility date, except as provided in E., below. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

C. When a regular or limited-term employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
D. When a probationary or probationary limited-term employee is reassigned to a class with a lower recruiting step, such employee shall have the same salary, step status, probation status and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

E. When a regular, limited-term or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps or a series of reassignments among classes on different salary ranges, his or her salary and merit increase eligibility date shall be determined by the Chief Human Resources Officer.

Section 6. Salary on Reduction

A. 1. When a probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3.C., above, or the employee's salary and merit increase eligibility date may be determined by the Chief Human Resources Officer.

2. When a promotional probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee occupied in good standing, the employee shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.

B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to a step on the salary range which would be the closest amount to a two (2) step reduction, or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless the employee thereby is placed at the recruiting step of the new salary range, in which case the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new class.

C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for reasons other than unsatisfactory performance, the employee shall receive the highest salary in
the new salary range that does not exceed the employee’s rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

D. When a regular, limited-term or probationary employee is reduced because the position the employee occupied is reclassified, the applicable salary shall be determined as follows:

1. If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.

2. If the salary of the employee is greater than the maximum of the new range, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If, at the end of the calendar period indicated below, the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the maximum salary for the new class.

Y-RATE SCHEDULE

<table>
<thead>
<tr>
<th>Years of Full-Time Continuous Service</th>
<th>Duration of Y-Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5 years</td>
<td>Two years from the date of reclassification</td>
</tr>
<tr>
<td>5 years but fewer than 10 years</td>
<td>Three years from the date of reclassification</td>
</tr>
<tr>
<td>10 years but fewer than 15 years</td>
<td>Four years from the date of reclassification</td>
</tr>
<tr>
<td>15 years but fewer than 20 years</td>
<td>Five years from the date of reclassification</td>
</tr>
<tr>
<td>20 years but fewer than 25 years</td>
<td>Six years from the date of reclassification</td>
</tr>
<tr>
<td>25 years or more</td>
<td>Seven years from the date of reclassification</td>
</tr>
</tbody>
</table>

3. When an employee on Y-Rate accepts a voluntary reduction, his or her salary shall be reduced by the amount of the difference between
the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. Salary on Reclassification

The salary of a regular, limited-term or probationary employee whose position is reclassified shall be determined as follows:

A. If the position is reclassified to a class with the same salary range, the salary and merit increase eligibility date of the employee shall be governed by Article II, Section 5.A., B., or C.

B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article II, Section 4.A. or B.

C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article II, Section 6.D.

Section 8. Salary on Reemployment

A. A person who is reemployed in the Eligibility Worker Representation Unit may, upon approval of the Chief Human Resources Officer, be appointed at a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Article II, Section 2.C.

B. A former County employee on paid County retirement may be reemployed for the maximum allowable time, pursuant to Government Code provisions, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

If a class is reassigned to a different salary range on the same salary schedule, each employee in the class shall be compensated at the same step in the new salary range as the employee was receiving in the range to which the class was previously assigned. However, if a class is reassigned to a lower salary range on the same salary schedule, the salary of each employee shall be determined in accordance with Article II, Section 6.D., above.

Section 10. Pay Check Deposit

Employees hired after January 1, 1994 will be required to authorize automatic deposit of his or her pay check to a financial institution of the employee's choice.
ARTICLE III  EDUCATIONAL AND PROFESSIONAL REIMBURSEMENT

Section 1. Objective

The Educational and Professional Reimbursement Program is designed to encourage employees to continue their professional development through a variety of opportunities. In order to qualify for the program, one or more of the following criteria must be met:

- Related to the work of the employee’s position or occupation
- Prepares the employee to transition to an alternate County occupation
- Prepares the employee for advancement to positions of greater responsibility in the County

In addition, items eligible for reimbursement must have the reasonable potential for contributing to achieving County business objectives.

Section 2. Eligible Employees

All regular full-time, part-time, limited term, and probationary employees performing their jobs satisfactorily are eligible for reimbursement.

Section 3. Reimbursement Eligibility

A. The following are eligible for reimbursement

1. Courses related to obtaining a degree (AA, BA, BS, Masters, Ph.D.)
2. Accredited certificate programs
3. Vocational skills programs
4. Courses related to obtaining or maintaining a business-related certification, license, or accreditation
5. Courses related to preparing to take tests to obtain business –related certifications, licenses, or accreditation
6. Professional conferences, conventions, and seminars that are related to business objectives
7. Fees related to obtaining and/or renewing a license, including special drivers’ licenses
8. Fees related to certifications or accreditations
9. Fees related to taking professional examinations
10. Professional association membership fees

B. In general, any courses taken through the program must be taken on employee time. However, at the discretion of the Agency Head, a course may be taken on County time when it specifically meets a business need, and is not available during the employee’s non-work hours.
C. Courses are not eligible for reimbursement if they:
   1. Are taken to bring unsatisfactory performance up to an acceptable level;
   2. Are taken to acquire skills or knowledge which the employee was deemed to have when appointed;
   3. Duplicate available in-service training; and/or
   4. Duplicate training which the employee has already had.

Section 4. Nature of Reimbursement

A. Reimbursement may be made for all required fees, registration, and other costs related directly to the approved educational or professional expense. This may include, but is not limited to books, class materials, lab fees, testing fees, parking, and processing fees.

B. Expenses for travel, meals, and lodging are not reimbursable; however, the Agency Head may authorize payment for these items when it meets their business needs and is budgeted in their travel expense budget.

C. For degree programs, reimbursement shall be made to the employee upon completion of the course with a minimum final grade of C or its equivalent in an undergraduate course, or B or its equivalent in a graduate level course.

D. Reimbursement for non-graded courses shall be made upon completion of an approved course and proof of payment.

E. Public Service Institute (PSI) courses are not eligible for reimbursement.

F. If an employee is receiving reimbursement from another source that covers a portion of the costs, the County will only pay the remaining amount, after other reimbursements are exhausted.

G. The maximum reimbursement that may be received by eligible employees in one fiscal year shall be $10,000.
ARTICLE IV  GENERAL PERSONNEL PROVISIONS

Section 1.  Probation

A.  New Probation

1.  Full-Time Employee

A new or reemployed employee employed in a full-time regular or limited-term position shall be placed on new probation for fifty-two (52) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

2.  Part-Time Employee

A new or reemployed employee employed in a part-time regular or limited-term position shall be placed on new probation for two thousand eighty (2080) paid hours exclusive of overtime or for fifty-two (52) weeks, whichever is longer, from the date of appointment and ending with the first day of the pay period following completion of said period.

B.  Promotional Probation

1.  Any regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation except as provided in B.2., below.

   a.  A full-time employee shall serve a probation period equal to the time period of the initial probation ending with the first day of the pay period following completion of said period. However, an employee who promotes to a class in the same or closely related occupational series, shall serve a promotional probation period of twenty-six (26) weeks from the date of promotion ending with the first day of the pay period following completion of said period.

   b.  A part-time employee shall be placed on promotional probation for two thousand eighty (2080) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period except that for promotion to a class in the same or closely related occupational series, the promotional probation period shall be one thousand forty (1040) paid hours exclusive of overtime.
2. When a regular or regular limited-term employee is promoted as a result of the employee’s position being reclassified to a higher class and the class from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.

3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee’s Agency Head is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that class.

4. Except as provided in B.2., above, when a regular, limited-term or probationary employee voluntarily reduces or reassigns to a class in this Unit in which he or she has never passed probation, such employee shall be placed on promotional probation for a period equal to the new probation periods set forth in Sections 1.A.1. and 1.A.2., above.

C. Failure of Probation

1. New Probation
   a. An employee on new probation may be released from employment at any time without right of appeal or hearing, except as provided in C.3., below.
   b. An employee who is released from new probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of new probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

2. Promotional Probation
   a. An employee on promotional probation may be failed at any time without right of appeal or hearing, except as provided in C.3., below.
   b. An employee who fails promotional probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of promotional probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.
c. When an employee fails his or her promotional probation, the employee shall have the right to return to his or her former class provided the employee was not in the previous class for the purpose of training for a promotion to the higher class.

When an employee is returned to his or her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position other than at the direction of the employee’s Agency Head shall not have the right to return to his or her former class.

d. If the employee's former class has been deleted or abolished, the employee shall have the right to return to a class in his or her former occupational series closest to, but no higher than, the salary range of the class which the employee occupied immediately prior to promotion and shall serve the remainder of any probationary period not completed in the former class.

3. An employee who alleges that his or her probationary release was based on discrimination by the County in violation of Article XV, NONDISCRIMINATION, may submit a grievance at Step 3 of the grievance procedure within ten (10) days after receipt of notice of failure of new probation.

D. General Provisions

1. When an employee’s record consists of a combination of full-time and part-time service in regular or limited-term positions, except as provided in Section 4.E., below, part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements.

2. When an Agency Head or his or her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and shall be discussed with the employee. A probation period may not be extended, except as provided in Section 1.E. of this Article, below.

If upon conclusion of the probationary period the employee does not receive in writing a confirmation that he/she has passed probation, that employee may request, in writing, such written confirmation. If the agency does not, within thirty (30) days of such request, provide written notice confirming whether or not the employee passed probation, it shall be presumed that the employee passed his/her probation at the normal conclusion of the probation period.
3. An employee who is subject to more than one (1) type of probation at a given time shall have the probation periods combined into one (1) probation period which will extend to the latest completion date of any of the probation periods involved.

4. An employee who is on probation may not transfer from one (1) agency to another in the same class without the approval of the Chief Human Resources Officer.

E. Extension of Probation Periods

1. The granting of an Official or Military Leave of Absence shall cause the employee's probation period to be extended by the length of the Official Leave or by the length of the Military Leave in excess of fifteen (15) calendar days. The extended probation period resulting from the Official or Military Leave of Absence shall end with the first day of the pay period after said extended date. An employee who is suspended shall have his or her probation extended by the length of the suspension, with the extended probation period ending with the first day of the pay period after said extended date.

2. The Chief Human Resources Officer shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure which is appealed. Such probationary periods shall be extended no longer than sixty (60) calendar days from the date on which the County receives the Appeals Officer’s findings and decision. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee has served a probationary period which is longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Supervisors.

3. Upon the recommendation of the agency or the request of the employee with the concurrence of the agency, the probation period of an employee may be extended at the sole discretion of the Chief Human Resources Officer for a period not to exceed ninety (90) calendar days provided such action is approved by the Chief Human Resources Officer before the normal probation period is completed.

Denial of a request to extend a probation period shall not be subject to appeal or hearing.

4. The Chief Human Resources Officer shall extend the probationary period of employees with an employment authorization document which has an expiration date which would occur after the end of the probation period. Such probation periods shall be extended to
coincide with the expiration date of the employment authorization document. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee serves a probationary period which is longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.

5. Employees subject to extended probationary periods under the provisions of E.2. and E.4., above, shall be considered regular employees during the extended probationary period for all purposes other than those described in E.2. and E.4., above.

Section 2. Performance Evaluation

A. The County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term full and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.

B. The County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.

C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

Section 3. Contents of Personnel File

A. Adverse statements prepared by the County shall not be included in an employee's official personnel file unless a copy is provided to the employee.

B. Except for those materials designated as confidential by law, an employee shall have the right to inspect and review, on County time, at reasonable intervals and at reasonable times, the contents of his or her official personnel files and may also review, on County time, at reasonable intervals and at reasonable times, the file maintained by his or her District Manager and/or supervisors regarding his or her performance. With the written permission of the employee, authorized Union representatives may inspect, at reasonable intervals, the same files which the employee may inspect and review as provided herein.
C. In addition, an employee shall have the right to inspect and review the contents of his or her official personnel file, on County time, in any case where the employee has a grievance related to performance, to a performance evaluation, or is contesting his or her suspension or discharge from County service.

D. An employee shall have the right to respond in writing or personal interview to any information contained in his or her official personnel files, such reply to become a permanent part of such employee's personnel file.

E. Pursuant to an agreement between the Chief Human Resources Officer and the employee concerned or by an order of an arbitrator, court or impartial hearing officer, any negative contents of an employee’s official personnel file shall be removed within fourteen (14) calendar days. In addition, documents related to performance shall be removed from the unofficial file maintained by the employee’s District Manager and/or supervisor within six (6) months of completion of the Final Review of Performance covering the period related to the document.

F. Letters of Commendation shall be included in the employee’s official personnel file at the employee’s request.

G. An employee's official personnel file shall only be open to inspection by authorized persons who have established a legitimate need to know or if such files are required to be disclosed by the court.

Section 4. Status of Limited-Term Employees

A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article XI, LAYOFF PROCEDURE, which accrue to employees in regular positions.

B. A regular employee who transfers, promotes or reduces to a limited-term position on a voluntary basis and not at the direction of the Agency Head shall become a limited-term regular employee.

C. All limited-term employees who transfer to permanent funded positions shall serve a new probation period. Limited-term regular employees who transfer to permanent positions shall maintain their original hire date for purposes of vacation and Sick Leave accrual, retirement and layoff. Such limited-term regular employees who are serving a new probationary period in permanent positions when a layoff occurs shall be considered to have the same employment status as regular and promotional probationary employees for purposes of determining order of layoff.

D. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the
incumbent shall be removed from the payroll except as provided in E., below.

E. Regular employees who transfer, promote or reduce to limited-term positions at the direction of the Agency Head shall retain their former status and retain their layoff benefits in their former layoff unit. The Agency Head shall make such an order in writing prior to the date of transfer or promotion.

Section 5. Temporary Promotion

A. A regular, probationary or limited-term employee who is assigned on a temporary basis to a higher level vacant regular or limited-term position shall be promoted on a temporary basis to that class when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours of work and the employee has been performing all of the significant duties and responsibilities of the higher class, unless the employee requests to be reassigned to his or her former class. In such a case, the employee shall be reassigned within five (5) working days.

B. An agency may, at its option, waive the one hundred twenty (120) hour requirement when it is necessary to utilize a regular, probationary or limited-term employee in a higher level vacant regular or limited-term position for a period that is expected to be at least one hundred twenty (120) regularly scheduled hours but fewer than eighteen (18) months.

C. An employee on temporary promotion shall not be placed on promotional probation. Upon return from temporary promotion, an employee shall serve the remainder of any uncompleted probationary period in the employee's former class and shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.

D. At the end of the employee's assignment to the higher class, the employee shall have the right to return to his or her former class and agency. A temporary promotion shall not exceed a period of eighteen (18) months.

Section 6. Reemployment of Employees on Disability Retirement

A. The County will advise employees retired for physical disability to contact the Orange County Employees Retirement System (OCERS) to determine the impact of reemployment on their disability retirement benefits prior to accepting reemployment.

B. Employees retired for physical disability who have contacted OCERS for advice and counsel under Section A above, within two (2) years from their
date of retirement or date their disability retirement is discontinued, request and have been counseled as required above and qualify for positions in the County service shall be placed on the County Preferred Eligible List with respect to such positions. They will be placed on such list in chronological order of retirement but following the last person on layoff status. They will remain on such list for a period of two (2) years from date of retirement or date their disability retirement is discontinued, except that:

1. a person appointed to a regular position in the County service shall be removed from the list;

2. a person who, on two (2) separate occasions, rejects or fails to respond within three (3) calendar days to offers of employment in a class for which he or she is qualified shall be removed from the list;

3. a person who on three (3) separate occasions, declines referral for interviews in a class for which he or she is qualified shall be removed from the list.

Section 7. Reemployment of Regular Employee

A regular employee who leaves County employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Agency Leave for such period of time.

Section 8. Time Off for Selection Procedures

A regular, limited-term or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations and interviews required by the Chief Human Resources Officer during working hours for the purpose of determining eligibility for movement to another class in the County service or transfer from one (1) agency to another.

Section 9. Intra-agency Transfer

Intra-agency Transfer shall pertain only to Social Services Agency employees.

A. Intra-agency transfer shall apply to movement to a different aid category or facility. The County will look into creating a posting process to enable employees to determine available transfer opportunities.

B. Employees shall have the right to request intra-agency transfers. SSA will consider employee requests for intra-agency transfer in view of program needs. An employee’s written transfer request will remain in effect unless/until the employee receives the requested transfer or the employee withdraws the request.

C. SSA shall establish the procedure by which employees may submit such
transfer requests for consideration. Transfer requests will be considered in the order they are received. If two requests are received on the same day, and with everything else being equal, County seniority will prevail.

D. Probationary employees will generally be exempted from consideration for transfers.

E. Nothing in this provision shall limit management's right to initiate the internal transfer of employees; however, consideration shall be given to effectuating the wishes of those employees requesting transfer.

F. A grievance concerning the misapplication or misinterpretation of this provision may be appealed through the second step of the grievance procedure. The decision of the Agency Head or his or her representative shall be final and binding.

G. Employees will be given a fourteen (14) calendar day advance notice of involuntary assignment changes whenever practicable.

H. Management shall not, whenever practicable, reassign a Union steward who objects to reassignment provided:
   1. There is another employee in the same classification who meets the specific qualifications of the vacancy; and
   2. AFSCME has notified the District Manager of the employee's status as a steward prior to the Agency issuing written notice to individual employees of impending transfers from areas which include the employee's work assignment.

Section 10. Bilingual Transfer

An employee in a bilingual assignment may request assignment to a position which does not require bilingual certification. The request shall be made in writing to the Agency Head, who will consider it according to:

A. agency need;

B. availability of a qualified replacement; and

C. availability of another suitable assignment for the requesting employee.
ARTICLE V LEAVE PROVISIONS

Section 1. Sick Leave

A. Accumulation of Sick Leave

1. During the first three (3) years of employment, an employee shall earn .0347 hours of sick leave with pay for each paid hour in a regularly scheduled workweek or period to a maximum of eighty (80) hours in a pay period.

2. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn .0462 hours of sick leave with pay for each paid hour in a regularly scheduled work period to a maximum of eighty (80) hours in a pay period.

3. Sick leave earned shall be added to the employee's sick leave accumulation account upon the completion of the pay period, with no credit to be applied during the progress of the pay period or for a portion of the pay period during which the employee terminates County service.

4. Except as required by law, Extra Help employees shall not earn sick leave.

B. Permitted Uses of Sick Leave

Sick leave may be applied to:

1. An absence necessitated by an employee's personal illness, injury or disability due to pregnancy or childbirth.

2. Medical and dental office appointments when absence during working hours for this purpose is authorized by the agency.

3. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the County that the presence of the employee on duty would endanger the health of others.

4. Absence from duty because the employee's presence is needed to attend to the serious illness of a member of his or her immediate family. The amount of sick time used to attend to the illness of a family member shall be limited by applicable laws. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband,
registered domestic partner, child, grandparent, grandchild or legal guardian.

5. Absence from duty because: (1) the employee's presence is needed to attend to the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member; or (2) an employee is a victim of domestic violence, sexual assault, or stalking and the employee uses the leave time for the purposes described in Labor Code sections 230(c) and 230.1(a). Use of this leave is limited to the time period specified in Labor Code section 233. For purposes of this Subsection “family member” means child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling as those terms are defined by Labor Code section 245.5(c).

6. If an employee is a parent, legal guardian, or grandparent who has custody of a child enrolled in a California public or private school, kindergarten through grade twelve (12), or in a licensed child day care facility, the employee may use up to ten (10) hours per fiscal year, to attend school conferences and events. Any activity that is sponsored, supervised, or approved by the school, school board, or child care facility is acceptable. Examples include participating in parent-teacher conferences, Open House, or a child's school related disciplinary issue. Time off requests to attend such events are non-discretionary, but shall be requested in advance to the extent possible.

7. Illness while on paid vacation will be charged to sick leave rather than vacation only under the following conditions:

   a. The illness or injury of the employee was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his or her normal duties.

   b. The employee must notify his or her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his or her vacation leave, whichever is sooner, to request that his or her illness on vacation be charged to sick leave.

   c. The agency shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.

   d. Upon the employee's return to work, the employee must furnish the agency with a certificate signed by a licensed physician or registered nurse stating the nature of the illness or injury and the period of disablement.

8. Absence from duty because of personal emergencies or personal
business not to exceed forty (40) working hours during the fiscal year.

9. An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.

10. An absence, not to exceed twenty-four (24) consecutive working hours in any one instance, to arrange for or attend a funeral for a member of the employee's household who is not a member of the employee's immediate family as described in Section 2. (Bereavement Leave), below.

C. Prohibited Uses of Sick Leave

Sick leave shall not be applied to:

1. Absence caused by illness or injury to a member of the employee's family except as provided in B.4., B.5 or B.7., above.

2. Absences which occur on a County holiday.

D. General Provisions

1. In any use of sick leave, an employee's account shall be charged to the nearest quarter hour.

2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury, medical condition or medical or dental office calls when the employee has been under the care of a physician or absent three (3) consecutive days due to illness, provided such notification is made no later than the day of the absence for which the certificate or evidence is required.

3. a. Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Percent of Unused Sick Leave Paid For</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5 years</td>
<td>None</td>
</tr>
<tr>
<td>5 but fewer than 10</td>
<td>25%</td>
</tr>
<tr>
<td>10 but fewer than 15</td>
<td>50%</td>
</tr>
<tr>
<td>15 but fewer than 20</td>
<td>75%</td>
</tr>
</tbody>
</table>

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Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits provided by this paragraph.

b. An employee hired prior to December 6, 1977 who, as of the date of request, is eligible for Tier I paid retirement and who has given irrevocable written notice of his or her intent to retire, may request that a payoff of his or her accumulated sick leave be made to his or her deferred compensation account with the County to the maximum amount permitted under the regulations that govern deferred compensation programs and to the extent permitted under the provisions of 3.a., above, provided that such request is made at least thirty (30) calendar days but no more than sixty (60) calendar days prior to the effective date of his or her retirement. Such payoff shall be made prior to the effective date of the employee's retirement.

4. Employees hired on or after December 6, 1977, shall not be eligible for any benefits provided by Paragraph D.3., above.

5. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining sick leave earning rates. Notwithstanding the above, if an employee separates from the County and is rehired within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated to the extent required by law. The employee will also be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring to the extent required by law.

Section 2. Bereavement Leave

Bereavement leave is paid leave which is available to an employee related to the death of a family member of the employee's immediate family as defined below.

A. For purposes of this Section, immediately family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, spouse, registered domestic partner, child, step-child, grandparent, grandchild or person with whom the employee has/had a legal guardian relationship.

B. Upon request, regular, limited-term and probationary employees who are in full-time paid status shall receive time off with pay, not to exceed five (5) regularly scheduled shifts for each death, and
employees who are in part-time status shall receive time off with pay, not to exceed the number of hours scheduled in a part-time employee's normal workweek for each death.

C. Generally, time off shall be taken in whole day increments and may be taken nonconsecutively. If requested, partial day absences may be approved if operationally feasible. Use of this leave must be completed within six (6) months of the loss.

D. An employee may request additional time off for bereavement. Additional time off shall be charged to the employee’s accrued balances and must meet eligibility requirements and conditions set forth in Article V, Section 1 or Article VI.

Section 3. Authorized Leave Without Pay

A. Agency Leave

Upon request, a regular, limited-term or probationary employee may be granted an Agency Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the agency, except in cases where Official Leave has been authorized pursuant to B.4., B.5. and Section 11.A., below. The Agency Head may require that all accumulated compensatory time be used prior to granting of Agency Leave. The use of earned vacation prior to the obtaining of Agency Leave shall be at the option of the employee. If the leave qualifies as Family Leave pursuant to applicable law, the Agency Head may require that all sick leave, compensatory and vacation time be used prior to granting an Agency Leave except that the use of sick leave shall be subject to the provisions of Article IV, Section 1.B. and C., above.

B. Official Leave

1. Upon request, a regular, limited-term or probationary employee may be granted an Official Leave of Absence Without Pay. Such Leave, if granted, shall not exceed one (1) year except as provided in subsections 2. and 3., below. Such Leave may be authorized only after an employee’s completion of an Agency Leave and after all compensatory time and vacation accruals have been applied toward payment of the absence.

2. An Official Leave of Absence may be extended for up to an additional year at the discretion of the Agency except that requests for Official Leave which qualify as Family Leave pursuant to applicable law shall be granted to the extent required by such law. If the Agency denies the extension of such Leave, the provisions of
subsections 5. and 6., below, shall not apply.

3. Upon request, an employee who has requested and identified a valid need for Family Leave pursuant to Section 14 and applicable law, shall be granted Official Leave to the extent required by such law. Such Leave shall be authorized only after an employee's completion of an Agency Leave and after all accumulated compensatory time and vacation accruals have been applied toward payment of the absence. In addition, where appropriate under the provisions of Article V, Section 1.B., above, the employee may be required to apply all sick leave accruals toward payment of the absence before an Official Leave will be authorized.

4. An employee shall give notice two (2) weeks prior to the date he or she wants to return to work, except that an employee returning from Family Leave shall give the lesser of two (2) weeks notice or the maximum notice allowable under applicable law. If the employee does not give the required notice prior to the date he or she wants to return to work, the Agency shall not be required to return the employee to work until the employee gives such notice; however, the Agency may waive the notice or reduce the notice period at its discretion.

5. The agency shall indicate on the request its recommendations as to whether the request should be granted, modified or denied and shall promptly transmit the request to the Chief Human Resources Officer. If the Chief Human Resources Officer approves the request, he or she shall deliver a copy to the Auditor-Controller and the employee.

6. If the agency modifies or does not approve a request for Official Leave, the employee may, within fourteen (14) calendar days of said action, file a request for review with the Chief Human Resources Officer. The decision of the Chief Human Resources Officer on such appeals shall be final.

7. An Official Leave shall not be credited toward continuous service.

C. General Provisions

1. A request for a Leave of Absence shall be made upon forms prescribed by the Chief Human Resources Officer and shall state specifically the reason for the request, the date when it is desired to begin the Leave of Absence and the probable date of return.

2. A request for Leave of Absence Without Pay shall normally be initiated by the employee, but may be initiated by the employee's agency only where the employee is unable to initiate such action, except in cases where the provisions of Section 11.A. apply.

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3. An employee who has completed an absence without pay due to a Leave granted pursuant to Sections 3, 4, 10 and/or 14 of this Article shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., below, unless he or she returns to work at the end of the approved Leave or receives approval for an extension of his or her Leave.

Section 4. Official Leave for Nonoccupational Disability

A. A regular, limited-term or probationary employee shall be granted upon request an Official Leave of Absence Without Pay for up to six (6) months for a nonoccupational disability, including disabilities related to pregnancy and childbirth, provided that the employee meets the following conditions:

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of the condition.

2. Such Leave shall begin after all accrued sick leave, compensatory time and vacation time have been applied toward the absence, in accordance with law.

3. Unless otherwise required by law, the employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours or more. (This provision does not apply to pregnancy disability leave.)

4. For employees who are disabled because of pregnancy, as defined by state law, the County will maintain and pay for an eligible employee’s coverage under the County’s group health plan for the duration of the leave, not to exceed four (4) months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

B. If additional Leave is desired, the employee shall request additional Leave in accordance with Official Leave, Section 3.B., above.

C. Unless otherwise required by law, an employee shall not be entitled to more than one (1) such Leave per twelve (12) month period.
Section 5. **Absences Caused by Medical Conditions**

An employee who is absent from work for a period of more than fourteen (14) consecutive calendar days due to a medical condition shall not be permitted to resume work until and unless the employee obtains a medical clearance from a physician designated by the County.

Section 6. **Jury Duty Leave**

A regular, limited-term or probationary employee who is called for jury duty or for examination for jury duty shall be compensated at the employee’s regular rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the County Treasurer. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions (Article I). An employee may request a change in regularly scheduled working hours to a Monday through Friday day shift for the duration of such jury duty. Such requests shall be granted if practicable.

Section 7. **Witness Leave**

A regular, limited-term or probationary employee who is called to answer a subpoena as a witness for court appearances during the employee's work hours, except where the employee is a litigant, shall be compensated at his or her regular rate of pay for all hours of absence from work due to answering the subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the County Treasurer. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 8. **Leave for Union Business**

The County shall allow a regular, limited-term or probationary employee up to six (6) working days absence without pay during each payroll year for the term of this Agreement to perform official Union business, provided that:

1. The Union shall make a request to the employee’s Agency Head at least ten (10) days in advance.

2. The Union shall not request that such Leave be effective for more than three (3) employees on any workday.

3. The services of such an employee are not immediately required by the County, and other competent employees are available to do the work.
employee's usual work.

Section 9. Absence Without Authorization

A. Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days shall be considered an automatic resignation from County employment as of the last date on which the employee worked or the last date the employee was to return to work from an authorized absence.

B. If an employee does not have prior authorization to be absent from work, such employee may request specific authorization from the Agency Head prior to the expiration of the time limit specified in A., above.

C. When an employee has been absent without authorization and the County plans to invoke the provisions of 9.A., above, at least ten (10) calendar days prior to accepting and entering an automatic resignation, the County shall send written notice to the employee's last known address by certified mail with return receipt requested, and shall deposit such notice in the United States mail with postage fully prepaid. Notice is complete upon mailing. Such written notice shall contain:

1. a statement of the County's intention to implement the employee's automatic resignation and its effective date;

2. a statement of the reasons for considering the employee to have automatically resigned;

3. a statement of the employee's right to respond, either orally or in writing, prior to the date the County plans to accept and enter the resignation.

4. a statement of the employee's right to representation;

5. a copy of the automatic resignation provisions which apply to the employee;

6. a statement that if the employee fails to respond to the written notice before the effective date of the automatic resignation, the employee has waived any right to appeal the automatic resignation.

D. An automatic resignation shall not be accepted and entered if the employee 1) responds to the notice before the effective date, 2) provides an explanation satisfactory to the Agency as to the cause of the unauthorized absence, and the reason for failing to obtain an authorized leave, and submits any pertinent documentation to substantiate such reasons, and 3) is found by the Agency to be ready, able and willing to resume the full duties of his or her position.
E. An employee who is permitted to continue his or her employment pursuant to C. and/or D., above, shall not be paid for the period of his or her unauthorized absence and shall be treated as if on a Leave of Absence for purposes of continuity of employment and other appropriate benefits, unless the Agency determines it is appropriate to use sick leave, compensatory time, vacation or other paid leave to cover the absence.

F. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.

G. Automatic resignations shall not be considered a discharge under the provisions of Article IX, DISCIPLINARY ACTION.

Section 10. Parenthood Leave

A. A regular, limited-term or probationary employee shall be granted, upon request, a Parenthood Leave Without Pay of up to six (6) months in connection with the birth or placement for legal adoption of a child provided the employee meets the following conditions:

1. The requested Leave is commenced within six (6) months before or after the expected date of birth or placement for legal adoption of the child.

2. Sufficient documentation of such birth or placement for legal adoption is submitted with the request for Leave.

3. Such employee has completed new probation.

4. All accrued vacation and compensatory time has been applied toward the absence.

B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.

C. Sick leave must be applied toward any portion of the absence which qualifies under Section 1.B.1. of this Article provided the employee has furnished the agency with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.

D. Pregnant employees may also apply for a Nonoccupational Disability Leave for the term of disability as provided in Section 4. of this Article.

E. Parenthood Leave shall not be credited toward continuous service.

F. For employees on Parenthood Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the
employee were on Official Leave.

Section 11. Workers' Compensation Leave

A. When an injury is determined to be job-related in accordance with Article XII, a regular, limited-term or probationary employee shall be placed on Workers’ Compensation Leave. If such determination cannot readily be made or there is a subsequent disagreement regarding the termination of Workers’ Compensation Leave and all sick leave has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made, notwithstanding the provisions of Section 3.B., above.

B. Workers' Compensation Leave shall continue until any of the following occur:

1. the employee is determined to be physically able to return to work by a County-designated physician; or
2. the employee is determined to be physically able to return to work with medical restrictions which the agency can accept; or
3. the employee accepts employment outside the County; or
4. the employee accepts employment in another County position; or
5. the employee is permanently disabled; or
6. the employee elects retirement as provided by law.

An employee who does not return to work within two (2) weeks of the end of his or her Workers' Compensation Leave pursuant to this provision shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., above.

C. If practicable, an employee on Workers' Compensation Leave will give notice two (2) weeks prior to the date he or she wants to return to work. If an employee does not give two (2) weeks notice prior to the date he or she wants to return to work, the agency shall not be required to return the employee to work until such notice is given; however, the agency may waive the notice or reduce the notice period at its discretion.

D. If an employee's Workers' Compensation Leave expires and the employee is absent without authorization, the provisions of Section 9. of this Article shall apply.

E. For employees on Workers' Compensation Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if
the employee were on Official Leave.

Section 12. AFSCME Union Officer Leave

A. The County agrees to grant, if requested, Union Officer Leave with pay and without loss of any benefits provided by this Memorandum of Understanding except as provided below to one or more (upon mutual agreement) specified Union Officers designated by AFSCME for the term of this Memorandum of Understanding provided that:

1. The Union Officer Leave shall be for a minimum of eight (8) hours.

2. The Union Officer Leave is requested ten (10) calendar days in advance. Said notice may be waived by mutual consent.

3. AFSCME promptly reimburses the County for all the Union Officer salary and benefit expenses* incurred during the Union Officer Leave.

   *Expenses include only those which the County would have to pay out-of-pocket for payroll-related wages and benefits and do not include administrative overhead expenses.

4. The employee shall continue to conform to department rules, regulations and standards that are not inconsistent with Union Officer Leave.

5. The employee is a standard or better performer.

6. The County will not reassign or transfer the individual to any position in his or her class at the discretion of the agency unless significant business or operational concerns occur.

B. Vacation and Sick Leave accrual rates will apply to the employee as though he or she were on duty status.

C. Vacation and Sick Leave accrued during Union Officer Leave and unused at the conclusion of the Leave must either be paid off by AFSCME or lost.

D. The merit increase eligibility date, if applicable, shall be extended a number of calendar days equal to the Union Officer Leave. This extended merit increase eligibility date will be effective the first day of the pay period after said date.

E. The probation period, if applicable, shall be extended by the length of the Union Officer Leave. The extended probation period shall end on the first day of the pay period following said extended date.

F. The employee's eligibility for promotional examinations shall not be
affected by Union Officer Leave.

G. Layoff points shall not be affected by Union Officer Leave.

H. In the event emergency recall of the employee becomes necessary, Union Officer Leave may be suspended or cancelled during the course of the emergency. AFSCME shall not be obligated for reimbursement costs listed in A.1. and 2. for the period that Union Officer Leave is suspended or cancelled. Provisions of A.1. and 2., above, shall be suspended during said emergency recall.

I. Not more than one (1) employee in the Eligibility Worker Unit shall be eligible for Union Officer Leave at any one (1) time.

Section 13. Catastrophic Leave

The County will administer a catastrophic leave procedure designed to permit limited donations of vacation and/or compensatory time to an employee who is required to be on an extended unpaid leave due to a catastrophic medical condition or other serious circumstances.

Section 14. Family Leave

A. General Provisions

1. Family Leave shall be granted to the extent required by law. The following provisions set forth certain of the rights and obligations with respect to this leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the Department of Fair Employment and Housing implementing the California Family Rights Act (CFRA). Unless otherwise provided by this Section “family leave” under this agreement shall mean leave pursuant to the FMLA and CFRA.

2. Family Leave may be used in the following situations:

a. An employee's serious health condition which makes the employee unable to perform the functions of his/her job;

b. The birth of a child, and in order to care for the newborn child within one year of birth;

c. Placement of a child for adoption or foster care within one year of the placement;

d. Employee’s presence is needed to attend to a serious health
condition of the employee’s child, spouse, parent or a child of an employee standing in "Loco Parentis" who is either under eighteen (18) years old or adult dependent child incapable of self-care because of mental or physical disability;

e. Leave for a qualifying exigency arising out of the fact that the employee’s spouse, registered domestic partner, child or parent is on covered active duty or called to active duty status in the Armed Forces;

f. Leave to care for a spouse, registered domestic partner, child, parent, or "next of kin" who is a covered servicemember of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or that existed before beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.

3. Employees must request and identify their need for Family Leave. Requests for Family Leave may also fall under the provisions of Sections 3, 4, and 10, above.

4. The County shall determine if a request for Family Leave is valid within the parameters of applicable law.

5. Family leave shall not exceed twelve (12) work weeks for situations covered by subsection A(2)(a) – (d) above or twenty-six weeks to care for a covered service member (subsection A(2)(e) and (f) above) during any calendar year. Where Family Leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

6. The twelve (12) month period for calculating leave entitlement will be based on the calendar year (January 1 to December 31).

7. When a request for Family Leave is approved, the agency shall determine if sick leave, compensatory, and/or vacation time is to be applied and shall determine the order in which such time is applied. The use of sick leave shall be restricted to those circumstances which qualify under the provisions of Article V., Section 1.B.

B. Notification Requirements

1. If the Family Leave is foreseeable, the employee must provide the agency with thirty (30) calendar days notice of his or her intent to take Family Leave.

2. If the event necessitating the Family Leave becomes known
to the employee fewer than thirty (30) calendar days prior to the employee's need for Family Leave, the employee must provide as much notice as possible. In no case shall the employee provide notice later than five (5) calendar days after he or she learns of the need for Family Leave.

3. When the Family Leave is for the purpose of the scheduled medical treatment or planned medical care of a child, parent, spouse or registered domestic partner, the employee shall, to the extent practicable, schedule treatment and/or care in a way that minimizes disruption to agency operations.

C. Verification

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of condition (if leave is for own serious health condition) or that care is needed (if leave is for child, spouse or parent).

2. Employees who request leave to care for a covered servicemember who is a child, spouse, registered domestic partner, parent or “next of kin” of the employee must provide written certification from a health care provider regarding the injured service member’s injury or illness.

3. The first time an employee requests leave because of a qualifying exigency, the employee is required to provide the County with a copy of the covered military member’s active duty orders or other documentation issued by the military which indicates that the covered military member is on active or called to active duty in a foreign country with the dates of active duty service. New active duty orders or similar documentation shall be provided to the County if the need for qualifying exigency leave arises out of a different active or call to active duty status of the same or a different covered military member.

4. Failure to provide satisfactory verification of the necessity for Family Leave is grounds for denial of the Family Leave.

Section 15. Employees with Annual Leave Balances

A. If an employee transfers, promotes, reduces, or otherwise joins the Eligibility Worker unit with an Annual Leave balance, the employee shall exhaust all Annual Leave balances prior to utilizing any accrued Vacation or Sick Leave hours.
B. Annual Leave shall be used in accordance with the Vacation and Sick Leave Articles of this MOU, with the exception of any payoff provisions.

C. During each fiscal year, an employee with Annual Leave balances may request to be paid for accrued Annual Leave in either two (2) separate increments of up to twenty (20) hours each or one (1) increment of up to forty (40) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such a case, payment shall be made as soon as feasible.

D. Except as outlined in D.1, D.2 and D.3 below, an employee with Annual Leave balances may not cash-out Vacation hours until all Annual Leave balances have been exhausted. An employee with Annual Leave balances may cash-out Vacation hours under the following limited circumstances:

   1. The employee’s accrued Vacation bank is such that she/he will reach the applicable cap (as set forth in Article VI, Section 1.D) sometime during the fiscal year.

   2. (If subsection “1” is satisfied) when the employee reaches the applicable Vacation accrual cap set forth in Article VI, Section 1.D, the employee may cash out a maximum of sixty (60) hours of Vacation time once per fiscal year.

   3. Notwithstanding subsection D.2 above, an employee with less than sixty (60) hours of accrued Annual Leave may cash-out their remaining Annual Leave balance and accrued Vacation time necessary to reach the combined annual cash-out cap of sixty (60) hours, irrespective of an employee reaching their maximum Vacation accrual cap during the same fiscal year.

E. An employee may not cash-out Annual Leave and Vacation in the same fiscal year except as noted in D.3 above.

F. An employee separating from County service, whether by way of retirement, discharge, or voluntary resignation, shall be paid in a lump sum payment for any unused Annual Leave balance as provided below:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Maximum Payoff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 years</td>
<td>160 hours maximum paid at 100%</td>
</tr>
<tr>
<td>3 years but less than 10</td>
<td>240 hours maximum paid at 100%</td>
</tr>
</tbody>
</table>
10 or more years

A maximum of 1600 hours of accrued Annual Leave balance has cash value. 320 hours are paid at 100%; remaining balance obtains cash value of 2% for each year of service, to a maximum of 50% i.e., 10 years of service equals 20% cash value for remaining balance; 25 or more years of service equals 50% of the remaining balance after deducted from 1600 hours maximum.

G. An employee who is separating from County service by way of paid County retirement may elect either to take Annual Leave as time off, or be paid for his or her Annual Leave in a lump sum payment under the following conditions:

1. The amount of Annual Leave which can be taken as time off shall be limited to the amount of hours the employee is eligible to receive at 100% (i.e., 160 hours for employees with less than three (3) years of service, 240 hours for employees with at least three (3) years of service but less than ten (10) years of service, 320 hours for employees with at least ten (10) years of service). If the employee does not take time off or the amount of leave taken as time off does not exceed the amount of hours the employee is eligible to be paid at 100%, the remaining balance, to a maximum of 1600 hours (less maximum number of the hours paid at 100%), shall be paid in accordance with payoff provisions set forth in Section F of this Article.

H. Notwithstanding the above, any Annual Leave taken as time off during the final two (2) pay periods of employment with the County will be deducted from the Annual Leave payoff provisions set forth above. This provision shall not apply to the use of family leave, workers’ compensation leave, or other statutorily protected leave during the final two (2) pay periods of employment.

I. Notwithstanding the above, no employee may receive payoff paid at 100% that exceeds 320 hours for combined accrued Vacation and Annual Leave. If the payout of accrued Vacation reaches or exceeds the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any Annual Leave balance shall be paid out in accordance with Section F of this Article. If the payoff of accrued Vacation does not reach the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any remaining Annual Leave balance will be paid at 100% up to the applicable Annual Leave payoff rate. Once the combined Vacation and Annual Leave payoff reaches the applicable 100% Annual Leave payoff rate, the employee shall be paid the remaining Annual Leave balances at the percentages referenced in Section F of this Article.
ARTICLE VI VACATION

Section 1. Accumulation of Vacation

A. During the first three (3) years of employment, a full-time employee in a regular or limited-term position shall earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately two [2] weeks per year). Part-time employees will earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek.

B. After an employee in a regular or limited-term position has been paid for six thousand two hundred forty (6240) regularly scheduled hours, the employee shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek, but not to exceed credit for more than eighty (80) regularly scheduled hours in any pay period. Such credit shall be applied to the employee’s vacation accumulation account only upon completion of each pay period. No credit shall be applied during the progress of any pay period or for any portion of a pay period during which the employee terminates County service.

C. Commencing with the pay period following that in which the employee completed ten (10) years of continuous full-time County service, an employee in a regular or limited-term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek, under the same terms and conditions as under B., above.

D. The maximum allowable vacation credit at any one (1) time for a full-time employee with fewer than ten (10) years of full-time continuous service shall be two hundred forty (240) hours or a prorated amount equal to six (6) weeks of vacation for part-time employees. The maximum allowable vacation credit at any one (1) time for a full-time employee with ten (10) or more years of full-time continuous service shall be three hundred twenty (320) hours and a prorated amount equal to eight (8) weeks of vacation for part-time employees.

Section 2. General Provisions

A. Not more than eighty (80) hours of paid time may be credited toward accumulation of vacation credit in any pay period.

B. An Official Leave of Absence shall cause the aforementioned ten (10) years (Article VI, Section 1.C. and E.) of full-time County service to be postponed a number of calendar days equal to the Official Leave.

C. When an employee's County service consists of part-time regular service or a combination of full-time regular and part-time regular service, both periods of service shall apply towards the required ten (10) years (Article
VI, Section 1.C. and E.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.

D. Additional vacation earned during the period of vacation may be taken consecutively.

E. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.

F. Vacations shall be scheduled for employees by their agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific vacation periods.

G. No scheduled vacation will be cancelled, except in cases of emergency.

H. Illness while on paid vacation will be charged to Sick Leave rather than vacation only under the conditions specified in Article V, Section 1.B.5.

I. No employee shall be permitted to work for compensation for the County in any capacity during the time of his or her paid vacation from the County service except as a Fire Suppression Volunteer, Deputy Sheriff - Emergency Service, Election Board Officer or Election Night Help.

J. An employee separating from County service for reasons other than paid County retirement shall be paid for all accrued vacation in a lump sum payment. An employee who is separating from County service by way of paid County retirement may elect either to take time off for his or her vacation or to be paid for his or her vacation in a lump sum payment.

K. Not more than once in each fiscal year, an employee may request to be paid for up to forty (40) hours of accrued vacation. Such requests will be granted whenever practicable.

L. Employees shall be permitted to use accrued vacation balances when off work in accordance with Article V, Section 1.B (Permitted uses of Sick Leave) if sick leave balances are exhausted.

M. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining vacation earning rates.
ARTICLE VII  HOLIDAYS

Section 1.  Holidays Observed

A.  County employees shall observe the following holidays:

2019  Thanksgiving Day, November 28
      Day After Thanksgiving, November 29
      Christmas Day, December 25

2020  New Year’s Day, January 1
      Martin Luther King, Jr.’s Birthday, January 20
      Lincoln’s Birthday, February 12
      Washington’s Birthday, February 17
      Memorial Day, May 25
      Independence Day, July 4
      Labor Day, September 7
      Columbus Day, October 12
      Veteran’s Day, November 11
      Thanksgiving Day, November 26
      Day After Thanksgiving, November 27
      Christmas Day, December 25

2021  New Year’s Day, January 1
      Martin Luther King, Jr.’s Birthday, January 18
      Lincoln’s Birthday, February 12
      Washington’s Birthday, February 15
      Memorial Day, May 31
      Independence Day, July 4
      Labor Day, September 6
      Columbus Day, October 11
      Veteran’s Day, November 11
      Thanksgiving Day, November 25
      Day After Thanksgiving, November 26
      Christmas Day, December 24 (Observed)
      New Year’s Day (Observed)

2022  Martin Luther King, Jr.’s Birthday, January 17
      Lincoln’s Birthday, February 12
      Washington’s Birthday, February 21
      Memorial Day, May 30
      Independence Day, July 4
      Labor Day, September 5
      Columbus Day, October 10
      Veteran’s Day, November 11
      Thanksgiving Day, November 24
      Day After Thanksgiving, November 25
      Christmas Day, December 26 (Observed)
2023  New Year’s Day, January 2 (Observed)
      Martin Luther King, Jr.’s Birthday, January 16
      Lincoln’s Birthday, February 12
      Washington’s Birthday, February 20
      Memorial Day, May 29

B. When a holiday falls on a Sunday, the next day shall be observed as the holiday.

C. When Christmas Day or New Year’s Day falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.

Section 2. Eligibility for Holiday Pay

A. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay. With County approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.

B. A new employee whose first working day is the day after a holiday shall not be paid for that holiday.

C. An employee who elects paid County retirement on a holiday shall be paid for the holiday.

D. An employee who is terminating employment for reasons other than paid County retirement and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.

E. Only regular, limited-term and probationary employees shall be eligible for holiday pay.

Section 3. Holiday Pay

A. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee’s basic hourly rate for the number of hours the employee was regularly scheduled to work.

B. On each of the holidays designated above, each part-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee’s basic hourly rate for the number of hours the
employee was regularly scheduled to work.

C. Compensation for Holidays Falling on Scheduled Days Off

1. When a holiday falls on a full-time employee's regularly scheduled day off, the employee shall receive eight (8) hours of compensatory time.

2. A part-time employee shall receive compensatory time at the rate of one (1) hour for each five (5) hours of regularly scheduled work in the workweek to a maximum of eight (8) hours of compensatory time. Employees may request an alternate flex day within the same workweek in lieu of compensatory time off. Such alternate flex day will be equal to the employees' regular work hours.

D. Compensation for Work on Holidays

1. An employee who is required to work on Columbus Day, Veteran's Day, Day after Thanksgiving, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday and/or Washington's Birthday and who meets the eligibility requirements contained herein shall receive his or her regular pay for each hour worked. Work performed on a holiday which is overtime as defined in Article I, Section 1., shall be compensated as provided in Article I, Section 3.

2. An employee who is required to work on Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day or Thanksgiving Day shall receive pay computed at one and one-half (1 1/2) times the employee's basic hourly rate for the number of hours actually worked.

3. An employee who is required to work on a holiday and who meets the eligibility requirements contained herein shall receive, in addition to pay as provided in D.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

There shall not be any duplication or pyramiding of rates paid under this Section. The total amount of holiday pay received under Section 3.A above and holiday compensatory time received under Section 3.C above, shall not exceed the total number of hours that the employee is regularly scheduled to work on a shift.

E. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.

F. Full-time employees who are on a pay status during the pay period which includes March 1 each fiscal year during the term of this Agreement shall be credited with two (2) hours of compensatory time at the end of the pay period which includes that date. Part-time employees whose regularly assigned work schedule is at least twenty (20) hours per week shall, in like
manner, earn and be credited with one (1) hour of compensatory time.

G. Compensatory time earned under the provisions of this Section may be granted as compensatory time off or paid for at the discretion of the County, as provided in Article I, Section 3.C.2. of this Agreement.
ARTICLE VIII  REIMBURSEMENT PROGRAMS

Section 1.  Mileage Reimbursement

A. Subject to the current Vehicle Rules and Regulations established by the Board, an employee who is authorized to use a private automobile in the performance of duties shall be paid for each mile driven in the performance of his or her duties during each monthly period, as provided below:

1. Effective June 29, 2001, the reimbursement rate shall be the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.

B. An employee who is required by the County to furnish a privately owned vehicle for the performance of his or her duties shall receive a minimum of ten (10) dollars in any month in which the actual mileage reimbursement would otherwise be fewer than ten (10) dollars. The minimum shall not apply in any month:

   1. in which the employee has not actually worked eighty (80) hours;

   2. unless the employee claims the ten (10) dollar minimum and the agency certifies that the employee was required to furnish a privately owned vehicle for County business.

Section 2.  Personal Property Reimbursement

Employees shall, in proper cases, be reimbursed for the repair or replacement of personal property damaged in the line of duty without fault of the employee. The amount of reimbursement for articles of clothing shall be the depreciated value based on the age and condition of the article. Reimbursement for a watch shall be limited to the functional value of the watch.
ARTICLE IX  DISCIPLINARY ACTION

Section 1.  Reprimand and Substandard Performance Evaluation

A.  No regular, limited-term or probationary employee shall receive a written reprimand or a substandard performance evaluation except for reasonable cause.

B.  A written reprimand or substandard performance evaluation given to a regular, limited-term or probationary employee may be appealed through the grievance/appeal procedure. Such appeal shall be initiated at Step 1 of the grievance/appeal procedure.

Section 2.  Disciplinary Hearing for Suspension, Reduction or Discharge

A.  In suspending a regular, limited-term regular or promotional probationary employee for more than five (5) days, or in reducing a regular or limited-term regular employee for reasons of unsatisfactory performance or in discharging a regular or limited-term regular employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:

1.  a description of the proposed action and its effective date(s);

2.  a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;

3.  copies of material on which the proposed action is based;

4.  a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;

5.  a statement of the employee's right to representation;

6.  a statement of the employee's right to appeal should such proposed action become final.

B.  In suspending a regular, limited-term regular or promotional probationary employee for five (5) days or fewer, the above notice requirements shall be complied with not more than ten (10) days after the effective date of the suspension. However, if an employee is notified of a suspension which will be effective before the above notice is given, the employee shall:

1.  whenever practicable, be given an opportunity to respond to the proposed suspension to a designated agency representative with the
authority to make an effective recommendation on the proposed suspension prior to the suspension becoming effective;

2. be informed of the employee's right to representation in the response;

3. be informed of the employee's right to appeal should the proposed suspension become final.

C. Prior to the effective date of such suspension of more than five (5) days, or reduction or discharge, an employee will be given an opportunity to respond either orally or in writing, at the employee's option, to a designated agency representative with the authority to make an effective recommendation on the proposed disciplinary action.

D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.

E. An employee may represent himself or herself or may be represented in the disciplinary hearing by AFSCME.

F. An employee shall receive written notice either sustaining, modifying or cancelling the proposed disciplinary action prior to the effective date of such action except that such written notice may be given after the response period in C., above, for suspension of five (5) days or fewer.

G. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 3. and 4. of this Article.

H. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 5. of this Article.

Section 3. Suspension

A. No regular, limited-term regular or promotional probationary employee shall be suspended except for reasonable cause. A suspension shall not exceed a period of two hundred forty (240) working hours.

B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.

C. In accordance with the provisions of Article X, an appeal of suspension shall be initiated at Step 3 of the grievance/appeal procedure, except for suspensions imposed by the County Executive Officer, which may be referred directly to arbitration.
Section 4. Reduction

A. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance except for reasonable cause.

B. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.

C. In accordance with the provisions of Article X, an appeal of reduction for reasons of unsatisfactory performance shall be initiated at Step 3 of the grievance/appeal procedure; except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 5. Discharge and Right of Appeal

A. No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Chief Human Resources Officer except for discharges imposed by the County Executive Officer.

B. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.

C. In accordance with the provisions of Article X, a discharge may be appealed directly to arbitration.

Section 6. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take, refusal to take, or the results of a polygraph examination be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

Section 7. Investigatory Meetings

A. When the County requires an employee to attend an investigatory meeting which could lead to discipline for him or her, prior to the investigatory meeting the employee shall be advised of:

1. the date, time and place of the meeting,

2. the reason for the meeting and,
3. the fact that the meeting could lead to discipline for the employee.

B. An employee required to attend an investigatory meeting pursuant to A., above, has the right to be represented by a Union Steward or an AFSCME staff representative at the investigatory meeting.

C. The County shall notify the employee within four (4) weeks from the date of the investigatory meeting, the results or the status of the investigation.
ARTICLE X  GRIEVANCE PROCEDURE AND DISCIPLINARY APPEALS

Section 1.  Scope of Grievances

A.  A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours or conditions of employment.

B.  Specifically excluded from the scope of grievances are:

1.  subjects involving the amendment or change of Board of Supervisors resolutions, ordinances or minute orders, which do not incorporate the provisions of this Memorandum of Understanding;

2.  matters which have other means of appeal including, but not limited to matters which may be appealed through the Orange County Merit System Recruitment Rules and Appeals Procedure or the Worker's Compensation Appeals Board;

3.  position classification;

4.  standard or better performance evaluations.

Section 2.  Basic Rules

A.  If an employee does not present a grievance/appeal or does not appeal the decision rendered regarding his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.

B.  If a County representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure.

C.  If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, the employee shall be informed in writing and the employee may file the grievance at the next step in the procedure. By mutual agreement of the County and AFSCME, Steps 1 and 2 of the grievance procedure may be waived.

D.  The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, agency-wide or County-wide basis in an emergency situation. AFSCME may appeal this decision to the Board of Supervisors.

E.  Upon written consent of the parties, (i.e., the representatives of the County and the employee or his or her representative) the time limits at any step in the procedure may be extended.
F. Every reasonable effort shall be made by the employee and the County to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.

G. No claim shall be granted for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance at Step 1.

H. The County and AFSCME agree that their respective grievance files shall be confidential.

I. A grievance alleging discrimination shall first be referred to the County Equal Employment Opportunity (EEO) Office for intake, review, and if applicable, investigation. The grievant/appellant and, if applicable, the AFSCME representative shall be notified in writing of the grievance being referred to the EEO Office. The timelines for a grievance alleging discrimination shall automatically be held in abeyance until the EEO Office has completed its intake, review, and if applicable, investigation. Once the EEO Office has completed the intake, review, and if applicable, investigation, the grievant/appellant and, if applicable, the AFSCME representative shall be notified in writing the time limits for processing the grievance shall resume.

Section 3. Submission of Grievances

A. Any employee, group of employees, or the Union shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right. Grievances shall identify any employee(s) impacted by the alleged violation of this MOU. However, in situations in which the grievance involves common issues and there are so many affected employees that naming them all would be impractical, the grievance need only identify one employee as the representative of the group of employees affected by the alleged violation of the MOU.

B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the County must, collectively present and pursue their grievance if they report to the same immediate supervisor. If the employees report to different supervisors, such grievances may be initiated at Step 2.

C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the County, appoint one (1) or two (2) employees to speak for the collective group. To be considered a grievant in a group grievance, employees must affirmatively identify themselves as grievants when the grievance is initially filed.

Section 4. Employee Representation
A. An employee may represent himself or herself or may be represented by AFSCME in the formal grievance/appeal procedure, or alternatively, by an attorney in appealing a discharge.

B. Authorized grievance/appeal representatives shall be regular employees in the same agency or Representation Unit as the grievant/appellant who are members of and are designated by AFSCME to represent employees for purposes of the grievance/appeal procedure. AFSCME shall notify Agency Heads of the names and titles of such representatives and send a copy of such notice to the Personnel Department quarterly.

C. Representation at Step one (1) of the grievance procedure shall be limited to authorized employee grievance representatives employed in the agency in which the grievance is filed. AFSCME staff representatives may represent the employee at Steps two (2) and three (3) of the internal grievance/appeal procedure and in arbitration. The Union may request that AFSCME staff be present at step one (1) under mutually agreed conditions.

D. If an employee chooses not to be represented by the Union, the Union may have a Union staff representative present at the applicable final step of the grievance procedure and, if necessary, shall have the right to present the Union's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance.

Section 5. Time Off for Processing Grievances/Appeals

A. Reasonable time off without loss of pay shall be given to:

1. an employee who has a grievance/appeal in order to attend a meeting with his or her supervisor or other person with authority to resolve the matter, as prescribed herein, or to meet with his or her grievance/appeal representative;

2. an authorized grievance/appeal representative, in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority to resolve the grievance/appeal, as prescribed herein, or to investigate the action grieved/appealed through discussion with the grievant/appellant or other employees, or through review of appropriate County records relating to the grievance/appeal.

B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., above:

1. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the
grievance/appeal work is completed.

2. Neither the grievant/appellant nor the grievance/appeal representative shall interrupt or leave his or her job to perform grievance/appeal work unless his or her supervisor determines that such interruption or absence will not unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.

3. When an authorized grievance/appeal representative must go into another section or unit to investigate a grievance/appeal, the representative shall be permitted to do so provided that:

   a. the representative checks in and checks out with the supervisor of the unit; and

   b. such investigation does not unduly interfere with the work of the unit.

Section 6. Informal Discussion

If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his or her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards settlement.

Section 7. Internal Grievance/Appeal Steps

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

For grievances alleging discrimination, the timelines set forth below shall be tolled as provided in Section 2.l.

Step 1: Immediate Supervisor

If an employee has a problem relating to an interpretation or application of this Memorandum of Understanding, the employee may formally submit a grievance to the immediate supervisor within fourteen (14) calendar days from the occurrence which gives rise to the problem. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within fourteen (14) calendar days after receipt of the written grievance, the immediate supervisor shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.
Step 2: Agency Head

If the grievance is not settled under Step 1, it may be presented to the Agency Head. The grievance shall be submitted within fourteen (14) calendar days after the receipt of the written decision from Step 1. Within fourteen (14) calendar days after the receipt of the written grievance, the Agency Head or his or her representative shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 3: Chief Human Resources Officer

If the grievance/appeal is not settled under Step 2 and it concerns:

A. an interpretation or an application of this Memorandum of Understanding;

B. a substandard performance evaluation;

C. a deferment or denial of a merit increase, or a disputed merit increase;

D. a written reprimand; or

E. a probationary release alleging discrimination, it may be appealed in writing to the Chief Human Resources Officer within fourteen (14) calendar days after receipt of the written decision from Step 2. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the Chief Human Resources Officer in B., C. and D. above, shall be final and binding and shall not be referable to arbitration.

Appeal of a suspension and/or a reduction ordered by an Agency Head or his or her designated representative may be submitted in writing at Step 3 within fourteen (14) calendar days after receipt of the notice of suspension and/or reduction. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant.

Section 8. Referrals to Arbitration

A. Grievances
1. If a grievance is not resolved under Step 3, an arbitration appeal may be presented in writing to the Chief Human Resources Officer within twenty-one (21) calendar days from the date a decision was rendered at Step 3. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.

2. The parties shall either sign a joint issue submission statement or else execute and sign separate alternative issue statements after discussing the issue(s). In either case, the parties shall send copies of their joint or separate submission statement(s) to the agreed upon arbitrator and to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

B. Disciplinary Appeals

1. Submission Procedure
   
   a. If an appeal from suspension or reduction is not settled at Step 3, it may be presented to the Chief Human Resources Officer within seven (7) calendar days from the date the decision was rendered.

   b. An appeal from any discharge or from a suspension or reduction imposed by the County Executive Officer may be presented to the Chief Human Resources Officer within ten (10) calendar days from the date the action becomes final.

   c. All disciplinary appeals shall be signed by the employee and by a representative of the Union if represented by the Union and shall be submitted in writing as follows:

   Was (employee’s name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article X, Section 8. of this Memorandum.

   d. As soon as practicable after a suspension, reduction or discharge appeal is presented to the Chief Human Resources Officer, an arbitrator shall hear the appeal.

2. Findings of Facts and Remedies

   An arbitrator may sustain, modify or rescind an appealed disciplinary action as follows and subject to the following restrictions:

   a. Discharges/Suspensions/Reductions

   If the arbitrator finds that the action was taken for reasonable cause, he or she shall sustain the action.
b. Suspensions/Reductions

If the action is modified or rescinded, the appellant shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

c. Discharges

1. If the arbitrator finds that the order of discharge should be modified, the appellant shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty as determined by the arbitrator.

2. If the arbitrator finds that the order of discharge should be rescinded, the appellant shall be reinstated in a position in his or her former class and shall receive pay and fringe benefits for all of the period of time he or she was removed from duty.

d. Restriction on Remedies

1. The County shall not be liable for restoring pay and fringe benefits for any period(s) of time the appellant was reduced or removed from duty, which results from the appealing party's request for written briefs and/or a transcript of the arbitration proceedings.

2. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance (if not deducted by Employment Development Department) and outside earnings which the appellant received after the date of discharge.

C. Probationary Releases Alleging Discrimination

1. The issues to be submitted to the arbitrator in grievances filed pursuant to Article IV, Section 1.C.3. shall be as follows and shall be submitted consistent with Section 8.A., above.

   a. Was the probationary release of (employee's name) in whole or in part the result of discrimination in violation of Article XV, NONDISCRIMINATION, of the Memorandum of Understanding between the County and AFSCME?

   b. If so, what shall the remedy be under the provisions of Article X, Section 8.C.2., Findings of Facts and Remedies, of the Memorandum of Understanding between the County and AFSCME?
2. Findings of Facts and Remedies

a. In the event the arbitrator finds no violation of Article XV, NONDISCRIMINATION, the grievance shall be denied and the issue of remedy becomes moot.

b. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, but also finds such violation was not a substantial cause of the employee's probationary release, the grievance shall be denied and the issue of remedy becomes moot.

c. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, and also finds that the violation was a substantial cause of the probationary release of the employee, the arbitrator's award shall depend upon the significance of the violation and shall be in keeping with the following alternatives:

1. The probationary release may be sustained.

2. The employee may be reinstated in a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.

3. The employee may be reinstated in a position in his or her former class with full back pay and benefits for all of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.

D. General Provisions

1. If the grievance/appeal is decided by an arbitrator, the grievant/appellant and AFSCME relinquish any current or future claim to seek or obtain remedy through any other County appeal procedure.

2. The cost of an arbitrator shall be shared equally in all cases by the County and the appealing party except when the appealing party solely alleges discrimination under Article XV, in which case the County shall bear the full cost. When the grievance involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator.

3. Grievance/Appeal hearings by an arbitrator shall be private.
4. Arbitration appeal hearings of suspensions of fewer than forty (40) hours shall be limited to two (2) days unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The arbitrator shall be advised of the two (2) day limitation at the beginning of the hearing. The two (2) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.

5. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association or some other agreed upon source and each party shall alternately strike one (1) name from the list until only one (1) name remains.

6. Upon written request by the opposing party in a pending hearing given at least twenty (20) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such a request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.

7. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.

8. At the hearing, both the appealing employee and the County shall have the right to be heard and to present evidence. The following rules shall apply:

a. Oral evidence shall be taken only on oath or affirmation.

b. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify.
and to rebut the evidence against the witness. If the employee does not testify in his or her own behalf, the employee may be called and examined as if under cross-examination.

9. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

10. The County and the Union shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times. By the mutual agreement of the parties, the County and the Union shall be allowed to have more than one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.

11. The parties agree to forego the use of briefs whenever practicable.

12. If a court reporter is requested, the requesting party shall pay the cost of the reporter and the cost of any transcripts provided for itself and the arbitrator. If the other party wishes to purchase a copy of the transcript and is unable to reach agreement with the requesting party for such a purchase, purchase arrangements may be made directly with the court reporter.

13. The decision of the arbitrator shall be final and binding on all parties.
ARTICLE XI  LAYOFF PROCEDURE

Section 1.  General Provisions

A. This procedure shall not apply to a temporary layoff of fewer than four (4) consecutive weeks.

B. This procedure shall not apply to employees who have special or unique knowledge or skills which are of special value in the operation of the County business.

C. When two (2) or more agencies are consolidated or when one (1) or more functions of one agency are transferred to another agency, employees in all involved agencies shall be subject to layoff if one is necessary.

D. Section 7., Reemployment Lists, and Section 8., Status on Reemployment, of this Article, shall not apply if the County has a written agreement with an employer, public or private, which guarantees the County employee an offer of reasonably comparable employment with the new employer who is taking over a function formerly performed by County employees and the new employer does make such an offer in writing to the employee.

Section 2.  Order of Layoff

A. When a reduction in the work force is implemented, employees in regular positions and those occupying limited-term positions at the direction of their Agency Head shall be laid off in an order based on consideration of:

1. employment status;

2. past performance;

3. length of continuous employment with the County.

B. Layoffs shall be made by class within an agency except that:

1. Where a class has a dual or multiple concept, the Chief Human Resources Officer may authorize a layoff by specialty within the class.

2. Where appropriate, the Chief Human Resources Officer may authorize a layoff by division or smaller unit of an agency.
C. Within a class, employees shall be subject to layoff in the following order:

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>Layoff Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>First - Temporary Promotion</td>
<td>Determined by Agency</td>
</tr>
<tr>
<td>Second - New Probationary</td>
<td>Determined by Agency</td>
</tr>
<tr>
<td>Third - Regular/Promotional</td>
<td>Layoff Points Probationary</td>
</tr>
</tbody>
</table>

After all new probationary employees and employees on temporary promotion have been removed from a class within a layoff unit, the employee with the lowest number of layoff points shall be subject to layoff first. When two (2) or more employees have the same number of layoff points, the agency shall determine the order of layoff for these employees.

D. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his or her former class and shall be subject to layoff in accordance with this procedure.

Section 3. Computation of Layoff Points

Seniority Points:

The equivalent of each year of full-time continuous service with the County shall earn two hundred sixty (260) seniority points.

The equivalent of each regularly scheduled full day of continuous service of a partial year shall earn one (1) seniority point.

Demerit Points:

For a rating of “does not meet performance objectives” on the last "Performance Evaluation Report", for the class currently held by the employee, the employee shall earn one-hundred thirty (130) demerit points. Demerit points shall only be used in the currently held class of an employee. Demerit points shall not be applied to an employee seeking to enter a lower class through voluntary reduction in lieu of layoff.

The County will provide to AFSCME:

- verification of proper application of demerit points provided the employee authorizes the release of their most current performance evaluation to AFSCME
- one copy of the layoff list and
- one copy of the seniority list
Layoff Points:

Layoff points shall be computed by subtracting demerit points, if any, from seniority points.

Section 4. Notification of Employees

A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective date of the layoff. Notices of layoff shall be served on employees personally at work whenever practicable.

B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the work force is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 5.

C. The notice of layoff shall include the reason for the layoff, the proposed effective date of the layoff, the employee's hire date, the employee's layoff points, a list of classes in the employee's occupational series within the layoff unit, the employee's rights under Sections 5. and 6. and the right of the employee to advise the County of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 5. Voluntary Reduction in Lieu of Layoff

A. A promotional probationary or regular employee who is subject to layoff may request a reduction to a lower class within the same occupational series in the layoff unit provided the employee possesses the minimum qualifications for the class and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer layoff points than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of layoff points shall be subject to layoff.

B. 1. Employees who receive notice of layoff by personal service at work shall have until the end of their third regularly scheduled day of work following actual receipt of the notice to notify their agency in writing of their intent to exercise rights under this Section. Employees whose third regularly scheduled day of work is more than three (3) calendar days after receipt of the notice shall have three (3) calendar days, excluding weekends and holidays, to notify their agency of their intent to exercise rights under this Section; and where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.
2. Employees who receive notice other than by personal service at work shall have five (5) calendar days, excluding weekends and holidays, following the date the person is personally served, or if service is made by mail, five (5) calendar days, excluding weekends and holidays, following the date of proof of service by mail to notify their agency of their intent to exercise rights under this Section. Where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.

3. Failure by an employee to respond to his or her agency pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class and that the employee’s hire date stated in the layoff notice was correct.

4. No employee action or inaction referred to in this Section shall be considered a waiver of an employee’s right to file grievances concerning any matter within the scope of the grievance procedure.

Section 6. Voluntary Reduction from Classes Designated as Vulnerable to Layoff

An employee in a class designated by the County as vulnerable to layoff may request a voluntary reduction to any class provided the employee possesses the minimum qualifications and has passed any required performance tests for the class to which reduction is requested. Such employees shall be eligible for consideration for available positions in the class to which reduction is requested. If appointed, such an employee shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS pursuant to Section 7.A.3., below.

Section 7. Reemployment Lists

A. The following persons shall be placed on AGENCY REINSTATEMENT LISTS as provided in 1., 2. and 3., below, in the order of their respective layoff points with the person having the largest number of layoff points listed first:

1. Persons Laid Off

   The names of persons laid off shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which laid off.

2. Persons Who Exercise Their Rights Under Section 5.

   The names of persons who exercise their rights under Section 5. shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which
reduced, excluding any classes at or below the level of the class currently held.

3. **Persons Who Voluntarily Reduced Under the Provisions of Section 6.**

The names of persons who were voluntarily reduced under the provisions of Section 6. shall be placed on an AGENCY REINSTATEMENT LIST for the class from which reduced and for each class in the occupational series below the level of the class from which they voluntarily reduced, provided they request to be placed on such lists.

Positions to be filled shall be offered first to persons on the AGENCY REINSTATEMENT LIST for that class, starting at the top of the list. If reinstatement is offered to a class other than that from which the person was laid off or reduced, such person must first meet the minimum qualifications and pass any required performance tests for that class.

B. The names of persons laid off shall be placed on the COUNTY PREFERRED ELIGIBLE LIST for the class from which they were laid off and for any class from which they previously voluntarily reduced pursuant to Section 5., in the order of their layoff scores, going from highest to lowest. When one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, ten (10) names shall be certified from the COUNTY PREFERRED ELIGIBLE LIST, starting at the top. When more than one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, the number of names certified, starting at the top of the COUNTY PREFERRED ELIGIBLE LIST, shall be equal to twice the number of vacancies plus seven (7). If there is a tie among layoff points at the last name to be certified, all tied eligibles shall be certified. Eligible employees certified from COUNTY PREFERRED ELIGIBLE LISTS shall be considered prior to eligible employees certified from lower-ranking eligible lists. Appointments shall be made only from eligible employee lists certified pursuant to Section 7.B. Appointments need not be made in the order of layoff points; any eligible certified in accordance with this provision may be appointed to a vacant position.

C. Names of persons placed on the AGENCY REINSTATEMENT LIST and the COUNTY PREFERRED ELIGIBLE LIST shall remain on the lists for two (2) years, except that:

1. A person who on two (2) separate occasions rejects or fails to respond within five (5) calendar days to offers of employment in a particular class shall be removed from the lists for that class.
2. A person who on three (3) separate occasions declines referral for interviews in a particular class shall be removed from the lists for that class.

3. An employee who upon retirement signs a statement electing not to be eligible for reemployment under this provision shall have his or her name excluded from the aforementioned lists.

D. In the event two (2) or more agencies are consolidated while AGENCY REINSTATEMENT LISTS are in effect, such lists shall be combined and treated as one (1) list in accordance with the preceding provisions of this Section. When a transfer of one (1) or more functions of one (1) agency to another agency occurs, employees previously laid off from such function(s) who are on an AGENCY REINSTATEMENT LIST for the agency losing such function(s), shall be removed from such list and shall be placed on a reinstatement list for the agency acquiring such function(s) and treated in accordance with the preceding provisions of this Section.

E. Reemployment lists shall be available to AFSCME and affected employees upon reasonable request.

Section 8. Status on Reemployment

A. An employee who has been laid off under the provisions of this Article and subsequently reemployed in a regular or limited term position within a two (2) year period from the date of his or her layoff shall receive the following considerations and benefits:

1. All Sick Leave credited to the employee's account when laid off shall be restored.

2. All seniority points held upon layoff shall be restored.

3. All prior service shall be credited for the purpose of determining Sick Leave and vacation earning rates and service awards.

4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.

5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay except that a probation period shall be established as determined by Article IV B. if reemployment is in a higher class or occupational series different from that employed in at the time of layoff.

B. An employee who has voluntarily reduced under the provisions of this Article and subsequently is reemployed in a regular or limited term position
in a class from which the employee reduced within a two (2) year period from the date of reduction shall receive the following considerations:

The employee shall be placed in the salary range either as if the employee had been on a Leave of Absence Without Pay or at the step on the salary range closest to but which does not exceed the employee's salary in the lower class, whichever is higher. The merit increase eligibility date shall be reestablished as determined by the Chief Human Resources Officer. The probationary status of the employee shall be as if the employee had been on a leave of absence.

C. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one from which the employee was reduced, the employee shall first be returned to the class from which the employee had been reduced as provided above. The employee will then be promoted from that class under the provisions of Article II, Section 4., and the employee shall serve a promotional probation period appropriate for the new class as determined by Article IV, Section 1.B.

Section 9. Seniority for Union Stewards and Officers

A. The Union may designate stewards and officers to receive super-seniority solely for purposes of layoffs. The number of stewards and officers receiving super-seniority shall not exceed two (2) percent of the number of employees in the Eligibility Worker Representation Unit.

B. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed in Section 3.

Section 10. Job Sharing

When Eligibility Worker Unit employees have been designated as vulnerable to layoff, employees in Eligibility Worker Unit classifications may volunteer to be placed in a twenty (20) hour job sharing position. Employees who are placed in twenty (20) hour job sharing positions shall, upon request, be added to the AGENCY REINSTATEMENT LIST and be eligible for reinstatement to full-time status. An employee placed in a twenty (20) hour job sharing position may not return to full-time position until the employee requests reinstatement to a vacant forty (40) hour position and is eligible according to his/her layoff score on the AGENCY REINSTATEMENT LIST; or the County assigns the employee to a vacant full-time Eligibility Worker Unit position, following thirty (30) days written notice unless the employee is enrolled as a student in which case the employee will be allowed to complete the semester or quarter in which he or she is currently enrolled. The County will not order an employee out of a job sharing position until there is no one remaining on the reinstatement list who will accept a full-time position. The number and assignment of positions subject to job sharing shall be determined by the County. The County will make every reasonable
effort to lessen the impact of layoffs by permitting employees to take part-time work in accordance with these provisions. Employees occupying part-time positions prior to the effective date of a layoff shall be excluded from the provisions of this section.
ARTICLE XII  ON-THE-JOB INJURY, WORKERS’ COMPENSATION SUPPLEMENT PAY

Section 1.  On-the-Job Injury

A.  Treatment of Industrial Injuries

Whenever an employee sustains an injury or disability arising out of and in the course of County employment and requires medical care, the employee shall obtain treatment according to the provisions of the California Labor Code Section 4600 et seq.

B.  Workers’ Compensation Supplement Pay

1.  Whenever an employee is compelled to be absent from duty by reason of injury or disease arising out of and in the course of County employment, the employee shall receive workers’ compensation supplement pay which, when added to the workers’ compensation temporary disability benefit, shall equal eighty (80) percent of the employee’s base salary for a period not to exceed one (1) year including holidays.

2.  Workers’ compensation supplement pay shall begin the same day as the workers’ compensation temporary disability benefits. Prior to qualifying for workers’ compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time and/or vacation, in that order.

3.  While an employee receives workers’ compensation supplement pay, no deductions nor payments shall be made from any sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue sick leave or vacation credit during the period in which the employee receives workers’ compensation temporary disability benefits.

4.  When an injury is determined to be job-related by the County or by the Workers’ Compensation Appeals Board, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the fourth day of disability shall be restored to the employee’s account(s), except that if the injury required the employee’s hospitalization or caused disability of more than fourteen (14) days, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee’s account(s).

5.  The merit increase eligibility date and probation period of any employee who receives workers’ compensation benefits shall be extended by the length of time the employee receives such benefits,
except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for merit increase eligibility and completion of the probation period.

6. When an employee is no longer entitled to receive workers' compensation supplement pay, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in Paragraph B.1., above.

7. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of County seniority and determination of sick leave and vacation earning rates.

C. Exposure to Contagious Diseases

Whenever an employee is compelled by direction of a County-designated physician to be absent from duty due to an on-the-job exposure to a contagious disease, the employee shall receive full compensation for a period not to exceed eighty (80) working hours for a full-time employee or fourteen (14) calendar days for a part-time employee. If the absence extends beyond the applicable period, sick leave, compensatory time and vacation may be used, at the employee's option, in that order.
ARTICLE XIII  SAFETY

Section 1.  General Provisions

Recognizing that a safe work environment is of substantial benefit to both the County and employees, the County and the Union mutually agree to the following safety program:

A.  No employee shall be required to work under conditions dangerous to the employee’s health or safety.

B.  The County shall make reasonable efforts to provide and maintain a safe place of employment.  AFSCME shall urge all employees to perform their work in a safe manner.  Employees shall be alert to unsafe practices, equipment or conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors.  Employees shall follow safe practices.

C.  Any employee who either does not receive an answer to a safety-related question from his or her supervisor within three (3) days or receives an answer which the employee deems unsatisfactory may directly contact the County Safety Officer.

D.  Any employee who is directed to perform a task which the employee feels is unsafe may request an immediate investigation from the Safety Officer. During the period that the Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Officer concludes the task complained of is safe, the employee shall perform the work as instructed.

E.  The County shall furnish all equipment which is necessary for employees to perform their job in a safe manner.

F.  The County shall provide the necessary first aid kits at all work locations. First aid kits shall be checked periodically and replenished when needed. Emergency telephone numbers shall be posted near telephones in reception areas. Names and telephone numbers of employees qualified to give first aid cardio-pulmonary resuscitation (CPR) also shall be posted.

G.  Wherever practicable, the County shall provide first aid training and CPR training to at least two (2) employees at each work location.

H.  Emergency evacuation drills shall be held at each work location at least once every six (6) months.

I.  The County shall maintain at each work site a "Log and Summary of Occupational Injuries and Illnesses". The log shall be made available to the Health and Safety Steward.
Section 2. Safety Inspection

During inspection of County facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, a Union designated employee shall be allowed to accompany the inspector while the inspector is in the employee's agency. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Meetings

One Union steward from each district office may be assigned by the Union to meet once per month with the District Manager or his or her designee, at the request of either party, to discuss matters affecting employee health and safety. The District Manager shall respond within ten (10) working days unless the time limit is extended by mutual agreement. Either party may request additional meetings in response to emergency situations.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Department Safety Officer. The Department Safety Officer shall respond within ten (10) working days.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Director of Social Services.
ARTICLE XIV  UNION AND EMPLOYEE RIGHTS

Section 1.  Employee Rights

The County shall not hinder or discipline an employee for exercising any rights or benefits provided in this Memorandum of Understanding.

Section 2.  Payroll Deduction

A.  Membership dues of AFSCME members in this Representation Unit and insurance premiums for such AFSCME sponsored insurance programs as may be approved by the Board of Supervisors shall be deducted by the County from the pay warrants of such members. The County shall promptly transmit the dues and insurance premiums so deducted to AFSCME.

B.  AFSCME shall notify the County, in writing, as to the amount of dues uniformly required of all members of AFSCME and also the amount of insurance premiums required of employees who choose to participate in such programs.

Section 3.  Employee Information Listing

Upon request, to a maximum of four (4) times per fiscal year during the term of this Agreement, the County shall provide AFSCME with a complete and current listing of all employees in this Unit. Such listings shall include employee name, job classification, agency, timekeeping location, salary range and step. AFSCME agrees to pay one dollar and fifty cents ($1.50) per page to offset the cost of providing such listings.

Section 4.  Use of Bulletin Boards

Space shall be made available to the Union on agency bulletin boards within the Representation Unit provided such use does not interfere with the needs of the agency and material posted is not so opprobrious, flagrant, insulting, defamatory, insubordinate or fraught with malice as to cause disruption of, or material interference with, the operations of the County, County employees or other employee organizations as PERB and the Courts interpret this standard and the rights of union speech. Notice shall be dated and signed by the authorized representative of the Union responsible for its issuance.

Section 5.  Use of County Facilities

The Union may, with the approval of the Chief Human Resources Officer, hold meetings of their members on County property during nonworking hours provided request is made to the Chief Human Resources Officer as to the specific location and dates of the meeting prior to such meeting.

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Section 6. Notification of New Employees

The County agrees to inform new employees in writing of the Union’s status as the exclusive representative of employees in the Bargaining Unit.

Section 7. Release Time for Union Officers

The following designated Union officers will be given the following amount of release time per week in order to perform lawful Union business:

1) The Chief Shop Steward of AFSCME will be 16 hours per week of release time;

2) President – 16 hours per week of release time;

3) Vice-President – 8 hours per week of release time;

4) Secretary – 4 hours per week of release time;

5) Treasurer – 4 hours per week of release time.

Workloads will be reduced in a corresponding manner.

The County and AFSCME will meet each June to determine an appropriate work schedule that will allow these designated Union officers to engage in their Union activities. Work schedules will take effect the first full pay period of August, provided however, that for the time period between the adoption of this MOU and August 2017, the parties will meet within 30 days of the adoption of the MOU to determine an appropriate work schedule for each of these Union officers. If no agreement can be reached between the parties, the Divisional Deputy Director or designee will make the final determination.

Section 8. Steward Training

A maximum of fourteen (14) AFSCME stewards will be allowed to attend two (2) eight-hour training classes conducted by Council 36 during each year of this contract without loss of pay. AFSCME representatives will provide the County with a ten (10) working day advanced notice of the date of the training and a list of those who will be attending the classes, as well as a sign-in sheet of those who did attend.
ARTICLE XV  NONDISCRIMINATION

Section 1.  County and AFSCME Responsibilities

The County and AFSCME agree that the provisions of this Memorandum of Understanding shall be applied to employees without discrimination as required by state and federal law.

Section 2.  AFSCME Responsibilities

The Union shall not discriminate in membership or representation on any basis cited in Section 1. of this Article.
ARTICLE XVI INSURANCE

Section 1. Health Plans and Premium Contributions

A. Full Time Employees

1. Except as modified in Section 1.B., C., D., E., and F., below, the County will offer health plans to all full-time regular, limited term and probationary employees and their eligible dependents.

2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:

   a. Employee Only Coverage – eighty-five (85) percent of the employee’s premium or ninety (90) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program;

   b. Employee and Dependent Coverage - seventy (70) percent of the total health plan premium for each employee and such employee’s eligible dependents or seventy-five (75) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program.

   c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.

3. Employees who elect the Sharewell Choice PPO plan will not only have their insurance premium fully paid by the County but will also receive a payroll credit per plan guidelines. In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.

4. The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

B. Part-time Employees

1. Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all part-time regular, limited term, and probationary employees. Enrollment of part-time employees shall be restricted to employees whose normal workweek consists of at least twenty (20) hours.
2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:

   a. Employee Only Coverage – forty-five (45) percent of the employee’s premium or fifty (50) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program;

   b. Employee and Dependent Coverage – thirty two and one-half (32.5) percent of the total health plan premium for each employee and such employee’s eligible dependents or thirty-seven and one-half (37.5) percent of the total health plan premium for each employee and such employee’s eligible dependents if the employee completes the Healthy Steps (wellness incentive program).

   c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.

3. The County will pay the following percentage of the premium for employees electing the Sharewell Choice PPO plan:

   a. Employee Only Coverage – one hundred (100) percent of the premium;

   b. Employee and Dependent Coverage – per subsection B.2.b above

In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.

4. Coverage shall be terminated for any employee whose normal assigned hours are reduced to less than twenty (20) hours in a full workweek.

5. The health plans and their premium are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS.Employee Benefits.

C. Two married full-time employees who are enrolled in the same health plan must be enrolled as Employee Married to Employee (EME). While enrolled as EME, the County will pay the full cost of employee and dependent coverage for each EME. Employees must report any subsequent changes in marital status such as legal separation or divorce, within 30 days of the event. Failure to report legal separation or divorce
from a covered spouse shall require repayment of all premiums paid by the County under this program during the period in which the employees were ineligible due to legal separation or divorce.

D. Dual Coverage: If two married employees are enrolled in separate health plans neither employee may be covered as a dependent on their employee spouse’s health plan. Eligible employees may choose to enroll in different health plans and choose to cover eligible dependent children on one or both health plans, subject to employee contributions for coverage.

E. For employees who are on approved Family Leave pursuant to Article V, Section 14. and applicable law, the County shall continue to pay health insurance premiums as provided in A., B. and C., above, to the extent required by applicable law.

F. For employees who are on approved leave which meets the requirements of Pregnancy Disability Leave pursuant to Government Code section 12945, the County shall continue to pay health insurance premiums as provided in A. and B., above, to the extent required by applicable law.

G. Effective January 1, 2007, active employees are pooled separately from retirees for purposes of setting premiums for participation in County offered health plans.

Section 2. Health Plan Enrollment

A. New eligible employees will be enrolled in the health plans of their selection effective the first day of the month following the first thirty (30) days of employment. Eligible full-time employees failing to elect a plan will be enrolled in the Wellwise Choice PPO Health Plan, employee only. Eligible part-time employees failing to elect a plan will be enrolled in the Sharewell Choice PPO Health Plan, employee only. Employees who go out on leave of absence prior to satisfying the waiting period for coverage shall not be eligible for coverage until returning to work unless required by state/federal law. Upon return to work, coverage will become effective the first day of the month following thirty (30) days from the date of return unless otherwise required by state/federal law.

B. Terminated employees will be continued with coverage in all health plans until the last day of the calendar month in which they terminate employment. Terminated employees may be eligible for continuation of health insurance as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) and/or by other state/federal law.

C. Employees who are enrolled in a County health plan at the time of retirement will be given the opportunity to elect and enroll in a Retiree health plan.
D. The County shall provide for an open enrollment period once each calendar year for employees, employees’ eligible dependents, and retirees to change their enrollment in a County health plan.

Section 3. Premium Only Plan

The County shall administer a Premium Only Plan that will allow an employee to pay for health insurance premiums as permitted by state and federal law, regulations and guidelines. Under the plan, an employee’s gross taxable salary will be reduced by an amount of his or her share of the premium costs of County-provided health plan coverage as permitted by state and federal law, regulations and guidelines.

Section 4. Other Insurance Coverage

A. AFSCME shall maintain a trust fund, approved by the State of California, for the sole purpose of providing group insurance benefits such as, but not limited to, disability, vision, dental, and life insurance for employees in the Eligibility Worker Unit.

B. The County shall, on a biweekly basis, forward $23.70 per pay period for all regular hours paid for all regular, limited-term and probationary employees in the Eligibility Worker Unit for all employees who have any paid hours in the pay period for deposit in said State approved trust fund.

C. Insurance coverages provided through the trust fund with monies contributed by the County shall be made available to all employees in the Eligibility Worker Unit on an equal basis regardless of membership status.

D. AFSCME shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.

E. AFSCME shall provide the County with a copy of the annual report to the Insurance Commission and shall provide a full accounting of the status of the fund upon request of the County.

Section 5. Employee Contribution Subsidy Program

A. Effective with the pay period beginning September 30, 2005, the one percent (1%) employee subsidy contribution for current health insurance for all regular, limited-term and probationary employees was terminated.

B. Current employees who separate from County service effective on or after the pay period beginning September 30, 2005 are not eligible to receive a lump sum payment. Such employees are not members of an Eligible Classification under the Plan.
C. Current employees who retire or take deferred retirement on or after September 30, 2005 are not eligible for the retiree medical grant, including survivor benefits. Such employees are not members of an Eligible Classification under the Plan.

D. Current employees who are granted a disability retirement by Orange County Employees Retirement System based on an application submitted to OCERS before September 30, 2005 will be eligible to receive a grant under the terms and conditions of the Plan.

Section 6. Retiree Medical Participation

A. Current employees who retire from County Service effective on or after the pay period beginning September 30, 2005 are eligible to participate in County sponsored health plans at their own cost if enrolled at the time of their retirement.

Section 7. Working Group and Reopener

A. Working Group

The parties agree to establish a Working Group to review insurance issues. The Union may have up to five (5) members as representatives on the working group. Other bargaining groups and stakeholders (e.g., OCEA, Teamsters, IUOE, OCMA, unrepresented employees) will be invited to participate in the working group. Among the issues to be examined by the working group are the following:

- Plan design (e.g., benefits, wellness and other incentive programs);
- Cost containment ideas;
- Impact of the ACA on County insurance plans/programs;
- Establishment of wellness and/or fitness centers;
- Gym memberships;
- Continued use of Healthy Steps as a component of the County’s wellness program; and
- Other issues the parties agree to discuss.

The Working Group will strive to complete its work, including making recommendations to the parties, no later than December 31, 2017. The Working Group may continue to work on insurance issues after December 31, 2017 upon agreement of the parties.

B. Reopener as a Result of ACA

The County may reopen negotiations on this Article and other provisions of the MOU (e.g., Flexible Spending Accounts), for purposes of addressing issues resulting from the implementation of the Patient Protection and Affordable Care Act (ACA), including but not limited to, the potential impact of the Excise Tax (commonly known as the “Cadillac Tax”) on
high cost employer-sponsored health coverage. Federal administrative agencies have not yet issued definitive guidance regarding the Excise Tax which is expected to begin in 2022. The parties acknowledge that some of the benefits provided in the MOU may be included in the coverage to which the Excise Tax liability may apply. As a result, the issues that likely need to be addressed are: which health group plan coverages must be taken into consideration for the purposes of this tax, how to calculate this tax, and what steps, if any, can be taken to avoid payment of the Excise Tax (eg., modification of benefits).

The County will not be responsible for the payment of any Excise Tax on health coverage from unit members’ enrollment in County-sponsored health plans.
ARTICLE XVII  POSITION CLASSIFICATION

Section 1.  New Job Classes

If the County creates a new job class within the Bargaining Unit, the County shall notify the Union prior to adoption. If the Union wishes to negotiate with the County regarding the impact of the new classification on employees' wages, hours and other terms and conditions of employment, the Union shall notify the County within ten (10) working days from receipt of such notice.

Section 2.  Procedure for Requesting Reclassification of a Position

Step 1:  An employee may submit a written request to his or her supervisor that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate based on the employee's present duties. The Agency will promptly provide the Union with a copy of the employee's request.

Step 2:  Appropriate Agency response to an employee's request for reclassification shall include, but not be limited to, (a) denial of the request, or (b) forwarding of the request to the Human Resource Services Department with a recommendation that a classification study be conducted. If the request is denied, the employee shall be given a written statement of the reasons for the denial. If management denies the request or fails to respond within thirty (30) calendar days, the employee may submit the request to the Union for consideration.

Step 3:  Within thirty (30) calendar days thereafter, the Union may request in writing that the Human Resource Services Department conduct a classification study of the position.

Step 4:  Within fifteen (15) calendar days of the receipt of a written request from the Union to study the classification of a position, the Human Resource Services Department will provide the employee with a Position Description Form. The employee shall complete the form and submit a copy to the employee's supervisor and a copy to the Human Resource Services Department.

Step 5:  Within one hundred twenty (120) calendar days after the Human Resource Services Department receives the completed Position Description Form, the Human Resource Services Department shall notify the Union of the appropriate classification of the position.
Section 3.  **Limitations on Concurrent Studies**

The County shall not be required to respond within one hundred twenty (120) calendar days if the total number of pending requests by the Union for reclassification studies (at Step 4 of this procedure) exceeds ten (10) positions.

Section 4.  **Maintenance Classification Reviews**

Maintenance Classification Reviews of occupational series shall not be covered by this procedure.

Section 5.  **Review of Disputed Position Classification Decisions**

A.  If the Union does not agree with a position classification decision of the County, after the steps in Section 2. have been followed, the issue may be presented to a classification consultant for advisory review.

B.  The consultant's review shall be documented on forms supplied by the County and used by the County for documenting its classification decisions.

C.  The consultant shall have access to the organizational and classification files of the Human Resource Services Department and shall have the right to conduct the classification study in the manner the consultant deems most appropriate.

D.  Any salary change for any employee resulting from a consultant's advisory recommendation shall be effective no sooner than the beginning of the pay period following the decision of the County at Step 5 of the procedure described in Section 2., above.

E.  A consultant shall be chosen who has experience in conducting position classification analyses for local governmental agencies. The consultant will be chosen by a committee with an equal number of County and Union members. The cost of the consultant shall be shared equally by the County and the Union.

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ARTICLE XVIII  DEFINED CONTRIBUTION

An employee in a regular position may, at his or her request, participate in the County's 457(b) Defined Contribution Plan.
ARTICLE XIX  WORKLOAD

Section 1.  General Provisions

A.  The right to determine workload levels and the method of organizing and assigning work shall be retained by the County.

B.  Whenever practicable prior to implementation, the County shall notify and discuss with the Union the establishment of a workload level for a particular type of assignment or significant decreases or increases in the existing workload levels of employees. If it is not practicable to notify the Union before such workload decisions are implemented, the County shall notify and discuss such workload levels with the Union as soon as practicable thereafter.

C.  When practicable, the County shall consider projected turnover and anticipated workload levels when staffing for each program and function, but shall not be required to fill positions in excess of any of the fiscal constraints as described in Section 2., below.

D.  Workload statistics shall be furnished to the Union on a monthly basis.

Section 2.  Fiscal Constraints

The County shall not be required by the provisions of this Article to take any action which may reasonably be expected to result in incurring costs in excess of any of the fiscal constraints set forth below:

A.  Incurring salary and/or benefit costs which could exceed the applicable State or Federal reimbursement level for any aid category, as set forth in State Cost Control Plans.

B.  Requiring positions to be filled in excess of those authorized to be filled by the Board of Supervisors.

C.  Requiring overtime expenditures in excess of overtime funding budgeted and authorized for expenditure by the County Executive Office and the Board of Supervisors and approved by the Agency for employees in this Unit.

Section 3.  Workload Distribution

A.  To the extent practicable, the County will make reasonable efforts to equitably distribute workload among employees with the same assignment. However, nothing in this Article shall limit the County's ability to establish specialized assignments when the County determines it is appropriate to do so.
Section 4. Performance Ratings

A. Each case-carrying employee's caseload size and error rate shall be considered when the employee's Performance Review is prepared. An employee's overall performance rating shall be based on ratings received in all performance factors in the Performance Review.

B. When an employee carries a caseload five (5) percent above the County assigned workload level for that assignment, it shall be considered and noted in the employee's Performance Review.

C. When an employee maintains an error rate which is below the error rate for that program, it shall be considered and noted in the employee's Performance Review.

D. In any month(s), when an employee's caseload/applications exceed the County assigned workload level for that assignment by five (5) percent or more to a maximum of ten (10) cases, errors which are a direct result of the higher caseload/application levels shall not be a basis for a negative reference in the Performance Review.

E. When it is the judgment of the supervisor that an error is a direct result of an employee's inability to communicate with a client in a common language, that error shall not be a basis for a negative reference in the Performance Review.

Section 5. Uncovered Caseload Assignments

A. Except as provided below, any caseload assignment that is uncovered for two (2) weeks or more shall be distributed among existing workers within the function, within the District in a manner consistent with the provisions of this Article.

B. If a caseload assignment is uncovered for two (2) weeks and it reasonably appears that a worker will be available to cover the caseload within the third week, the supervisor may continue to keep the caseload temporarily distributed among the workers of that function within the District.

C. If a caseload assignment is to be uncovered for two (2) weeks or more due to sick leave or vacation, the employees in the unit/section may request through the Union steward that the caseload be distributed on a temporary basis within the unit or function within the District.

D. When a worker whose caseload has been distributed among remaining workers returns from Sick Leave or vacation, upon the request of the employee, the County shall return that worker to his/her prior assignment (unit/caseload) whenever practicable.

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ARTICLE XX WORKLOAD MANAGEMENT FORUMS

Section 1. Intent

The County and AFSCME encourage responsible workload levels for employees, effective flow of information within the Agency and efficient use of available staff. An intended objective of the management forum shall be that, when possible, cases be equitably distributed within the various programs.

Section 2. Workload Management Forums

A. SSA shall implement a Workload Management Forum as follows:

1. A forum shall be implemented in the Social Services Agency consisting of up to seven (7) employee representatives and up to an equal number of management representatives.

2. Based on the item for discussion at any particular Workload Management Forum, additional employee or management staff may attend at the mutual agreement of the Agency and AFSCME.

3. A forum shall be implemented in the Health Care Agency and shall consist of up to two (2) employee representatives and an equal number of management representatives.

B. Employee representatives shall be selected by AFSCME. Management representatives shall be selected by the Agency Head or designee.

Section 3. Objectives

A. Each Workload Management Forum shall meet once each month for the purpose of reviewing current workload management practices, identifying problem areas and exploring potential improvements.

B. Pursuant to this Article, each Workload Management Forum will develop specific recommendations including, but not limited to, the following:

1. improved management information systems;

2. relationships between workload and performance expectations;

3. manageable workload levels within budgetary limitations;

4. methods for achieving equitable distribution of work when possible.
C. Agency management shall review the recommendations of each Workload Management Forum and where practicable, adopt procedures addressing the area(s) of concern.

Section 4. Operating Procedures

A. Each Workload Management Forum shall establish its own operating procedures.

B. Employee representatives shall be allowed reasonable time off without loss of pay to attend meetings.
ARTICLE XXI TRANSFER OF FUNCTIONS

In the event the County plans to enter into any agreement with another public employer or private entity which involves the transfer of functions now being performed by employees in this Representation Unit, or the law or governmental regulations provides for the transfer or substantial modification of functions now being performed by employees in this Unit to another public or private agency, the County will advise such public or private entity of the existence and terms of this Memorandum of Understanding and will immediately advise the Union of such plans or law or regulation.

The County will consult with the Union in a timely manner to review possibilities for the absorption of affected employees in the Representation Unit into other jobs in the County service or the new agency.

In the event of any such transfer of functions, it is the intention of the County to make every reasonable effort to absorb affected County employees in the Representation Unit who desire to remain employed by the County into comparable employment in the County service. In addition, the County intends to consult with any agency which is absorbing a County function in order to provide for suitable placements within that agency for County employees whose function is being transferred.
ARTICLE XXII  SEPARABILITY

In the event that any provision of this Memorandum of Understanding is declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Memorandum, it being the express understanding of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.
ARTICLE XXIII  MANAGEMENT RIGHTS

Any of the rights, powers or authority the County had prior to the adoption of this Memorandum of Understanding are retained by the County, except those specifically abridged, delegated or modified by this Memorandum of Understanding provided that such management rights do not restrict employees from filing grievances.
ARTICLE XXIV  MODIFICATION AND WAIVER

This Memorandum sets forth the full and entire understanding of the County and Union regarding the matters set forth herein. Except as specifically provided herein, it is agreed and understood that the parties hereto reserve the right, only upon mutual agreement, to meet and confer in good faith with respect to any subject or matters covered herein or with respect to any other matter within the scope of representation during the term of this Memorandum of Understanding.
ARTICLE XXV  UNION - MANAGEMENT COUNCIL

Section 1.  Participants

The Union - Management Council shall be composed of eight (8) employee representatives chosen by the Union, an AFSCME staff representative, the Director of Financial Assistance and seven (7) additional management representatives.

Section 2.  Purpose

The purpose of the Council shall be to discuss issues as identified by the Union or management. The Council shall share information regarding issues of concern that may impact SSA and the bargaining unit and shall seek means of resolving problems.

Current problems can include, but not be limited to, working conditions, discussions and suggestions on work simplification, elimination of non-mandated tasks or discussion of impending changes.

Section 3.  General Provisions

A.  The Council shall meet once each quarter, unless additional meetings are scheduled by mutual agreement.

B.  The Council shall establish such operating procedures as it deems necessary.

C.  Council members will be given time off without loss of pay or benefits to attend Council meetings.

D.  Impacted site stewards will be given time off without loss of pay or benefits to attend Council meetings; they will return to their work sites when work on their agenda item is completed.

E.  Prior to submitting any issue/concern for discussion at a Union-Management Council Meeting, AFSCME representatives will discuss the matter with district level management in an effort to resolve the issue/concern at the lowest possible level.

F.  Nothing shall be agreed upon in these meetings which would have the effect of altering or amending this Memorandum of Understanding.
ARTICLE XXVI  RETIREMENT CONTRIBUTION RATES AND BENEFIT LEVELS

Section 1. Retirement Benefit Levels

A. For employees hired on or before September 20, 1979:
   1. Such employees are provided a one-fiftieth (1/50) retirement benefit formula per Section 31676.12 of the Government Code for general members. (This retirement formula is commonly known as the “2% at 57” benefit formula.)
   2. The retirement allowance will be computed on the highest one (1) year of final compensation per Government Code Section 31462.1.

B. For Employees Hired on or after September 21, 1979 and Before January 1, 2013, or If Hired on or After January 1, 2013, are Not Considered “New Members” within the Meaning of the Public Employees Pension Reform Act of 2013 (PEPRA).
   1. Employees will be provided a one-sixtieth (1/60) retirement benefit allowance as provided in Section 31676.1 of the Government Code. (This retirement formula is commonly known as the “1.67 at 57.5” formula.)
   2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 31462.

C. For Employees Hired on or After January 1, 2013 who are Considered “New Members” within the Meaning of PEPRA.
   1. Employees will be provided with the retirement benefit allowance set forth in Section 7522.20 of the Government Code. (This retirement formula is commonly known as the “2% at 62” formula.)
   2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 7522.32.

The 1.67@57.5 benefit formula provides the following percentages at these ages: 1.92% at age 60; 2.09% at age 62, and 2.43% at age 65.

Section 2  Retirement Contributions
A. Members' normal contribution rates shall be as provided by Government Code sections 31621.5, 31621 or 7522.30, as applicable, for general members.

B. The County will adopt employee contribution rates equal to County contributions for full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the OCERS actuary. Effective September 19, 2014, employees will pay the full member contribution for each of the benefit plans provided by the County.

Section 3. Adjustment of Rates

A. Members' normal and cost-of-living contribution rates shall be adjusted subsequent to and in conformance with actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.
ARTICLE XXVII  JOB ACTIONS

During the life of this Agreement, no job actions shall be caused or sanctioned by AFSCME.
ARTICLE XXVIII FLEXIBLE SPENDING ACCOUNTS

Section 1. Dependent Care Reimbursement Account (DCRA)

The County will administer a Dependent Care Reimbursement Account (DCRA) that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee’s dependent care reimbursement account to pay for dependent care expenses as permitted by state and federal law, regulations and guidelines and as permitted by the County’s Section 125 Plan document.

Section 2. Health Care Reimbursement Account (HCRA)

The County will administer a Health Care Reimbursement Account that will allow employees the opportunity to allocate a specified amount of bi-weekly pre-tax salary into the employee’s health care reimbursement account to pay for health care expenses as permitted by state and federal law, regulations, and guidelines and as permitted by the County’s Section 125 document.
ARTICLE XXIX COMPENSATION

Section 1.

Effective October 1, 2005, the PIP program/award ceased. The annual evaluation-only component of the program remains. All evaluations that were completed through December 31, 2005 received the time off award. PIP time that was on the books at that time must have been used by June 26, 2008.

Section 2.

Effective the first day of the payroll period after adoption of this MOU by the Board of Supervisors, the salary schedule will be increased by 3.5% across-the-board.

Section 3.

Effective July 3, 2020, the salary schedule will be increased by 3.4% across-the-board.

Section 4.

Effective July 2, 2021, the salary schedule will be increased by 3.4% across-the-board.

Section 5.

Effective July 1, 2022 the salary schedule will be increased by 3.4% across-the-board.
Article XXX               PERFORMANCE EVALUATION WORKGROUP

SECTION 1. Intent

The County and AFSCME agree that employees are to be evaluated through a fair evaluation system. The County and AFSCME agree to work collaboratively to review the current evaluation process to determine areas of recommended improvement in the documents, forms and implementation of the evaluation system.

Section 2. Establishment of the Performance Evaluation Workgroup

A. Within ninety (90) days of the adoption of this Memorandum, the County shall establish a Performance Evaluation Workgroup as follows:

1. A Working Group will be established consisting of up to five (5) AFSCME representatives and up to an equal number of County representatives.

2. Based on the topic of discussion at any particular Working Group, additional AFSCME or County representatives may attend at the mutual agreement of AFSCME and the County.

3. The length of each meeting will be mutually agreed upon by the County and AFSCME.

4. The group will conclude within six (6) months of its first meeting. By mutual agreement, the workgroup may be extended up to an additional six (6) months if reasonable progress has been made regarding the objectives of the Working Group.

Section 3. Objectives

The Working Group shall meet once a month, or more than once a month by mutual agreement, for the purpose of reviewing the forms and documents of the current evaluation process, as well as the methods in which the evaluation process is implemented. The Working Group will develop specific recommendations including, but not limited to:

1. Evaluation processes for new hire probationary employees
2. Evaluating performance standards
3. Methods to assist an employee if performance standards are not being met
4. The implementation of the performance evaluation process

A. The County may provide information regarding new evaluation systems and/or processes that may be considered to replace the current evaluation process.

B. County management shall review the recommendations of the Working Group and where practicable, adopt documents, forms, and/or procedures proposed by the Working Group.

Section 4. Operating Procedures

A. The Working Group shall establish its own operating procedures.

B. The Working Group will endeavor to meet on dates in which AFSCME Union Officers are provided release time in accordance with Article XIV, Section 7., Release Time for Union Officers. For other County employees who serve as AFSCME representatives in the Working Group during paid work time, AFSCME will reimburse the County for all compensation costs in accordance with Senate Bill 1085.
APPENDIX A

Classes included in the Eligibility Worker Unit as of June 24, 2016.

7005    Eligibility Technician
7009    Employment and Eligibility Specialist
MEMORANDUM OF UNDERSTANDING

ELIGIBILITY WORKER UNIT

20196-202319

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 2076, AFL-CIO
MEMORANDUM OF UNDERSTANDING

2019 – 2023

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES

COUNCIL 36, LOCAL 2076, AFL-CIO

FOR THE

ELIGIBILITY WORKER UNIT
PREAMBLE

Section 1. Recognition

Pursuant to the provisions of the Employee Relations Resolution of the County of Orange and applicable State Law, American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO, hereinafter referred to as the Union, was certified on June 23, 1977 as the Recognized Employee Organization for employees in the Eligibility Worker Representation Unit as listed in Appendix A. The County hereby recognizes the Union as the exclusive representative of employees in this unit; however, employees in the unit shall have the right to represent themselves individually in their employment relations with the County pursuant to Section 3502 of the Government Code (Meyers-Milias-Brown Act). If an employee does not wish to be represented by the Union and wishes to represent himself or herself in matters pertaining to grievances and/or disciplinary appeals, the employee shall be required to provide the Union and the County with a signed statement waiving the right to Union representation in such matters.

Section 2. Implementation and Term

This Memorandum of Understanding sets forth the terms of agreement reached between the County of Orange and the American Federation of State, County and Municipal Employees for the Eligibility Worker Unit for the period beginning June 24, 1996 through June 29, 2023. All provisions shall become effective November 19, 2019 unless otherwise provided herein.

Section 3. Renegotiation

In the event the Union desires to negotiate a successor agreement, the Union shall submit, no later than on the one hundred fiftieth (150th) calendar day before expiration of this Agreement, its written request for changes in fringe benefits and other terms and conditions of employment. If the Union desires to negotiate a change in wages, that request shall be submitted no later than the ninetieth (90th) calendar day before expiration of this Agreement. Negotiations shall conclude thirty (30) calendar days before expiration of this Agreement unless extended beyond that date by mutual agreement of both parties.
DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

AFSCME STAFF REPRESENTATIVE – is an employee of AFSCME District Council 36 and not a County employee. A staff representative provides assistance to unit members in such areas as contract negotiations, contract administration, representation and internal organizing. Notwithstanding the above, the Union may designate a County employee to serve temporarily as a staff representative. Upon notice to the County, the County will grant the employee an unpaid leave of absence, not to exceed one year.

BOARD shall mean Board of Supervisors of the County of Orange.

CHIEF HUMAN RESOURCES OFFICER shall mean the Human Resource Services Department Head or his or her designee.

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge or retirement. Leaves without pay shall not be considered a break in continuous service. Leaves without pay will not be credited toward continuous service except as required by law (e.g., FMLA/CFRA).

COUNTY shall mean the County of Orange.

DISABILITY RETIREMENT shall mean a service or non-service connected disability retirement pension under the Orange County Employees Retirement System.

EMERGENCY shall mean an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, a pressing necessity.

EMPLOYEE shall mean a person employed by the County and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

EXTRA HELP EMPLOYEE shall mean an employee employed in an extra help position. An extra help employee may be removed from an extra help position at any time without notice, cause or right of appeal.

EXTRA HELP POSITION shall mean a position which is intended to be occupied on less than a year-round basis including, but not limited to, the following: to cover seasonal peak workloads; emergency extra workloads of limited duration; necessary vacation relief, paid Sick Leave and other situations involving a fluctuating staff. Ordinarily, a full-time extra help position will not be authorized.
for a period exceeding six (6) months. In unusual circumstances, and at the discretion of the Agency Head and the Chief Human Resources Officer a full-time extra help position may be authorized for a period longer than six (6) months, provided such period shall not exceed one (1) year.

**FLEX TIME** shall mean a 4/10 or 9/80 schedule.

**FULL-TIME EMPLOYEE** shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter.

**LIMITED-TERM EMPLOYEE** shall mean an employee employed in a limited-term position except where a regular position is converted to a limited-term position, the incumbent shall retain his or her former status. As an exception to this definition, a limited-term employee may also be used to fill a regular position when the incumbent employee is on Official Leave of Absence Without Pay.

**LIMITED-TERM POSITION** shall mean a position which the County has determined has no anticipated long-range funding or has uncertain future funding.

**NEGOTIATE** shall mean the process by which representatives of a recognized employee organization and the Chief Human Resources Officer or his or her representative meet a reasonable number of times and confer in good faith in an effort to agree upon joint recommendations for presentation to the Board regarding wages, hours and other terms and conditions of employment. When appropriate, proposals and counter proposals may be used to resolve differences in an effort to avoid an impasse. The negotiation process does not obligate either party to accept a proposal or make a compromise.

**OFFICIAL PERSONNEL FILE** shall mean those official individual personnel files maintained by 1) the Human Resource Services Department’s Personnel Records Section and 2) the Agency’s Personnel Section which contain employment history information regarding an employee.

**PART-TIME EMPLOYEE** shall mean an employee employed in one (1) or more regular or limited-term positions whose normally assigned work hours do not equal those required of a full-time employee.

**PERSONAL BUSINESS** shall mean a foreseeable personal event or circumstance which necessitates the employee’s absence from County duty. Personal Business leave must be requested in advance by the employee and be preapproved by supervision or management.

**PERSONAL EMERGENCY** shall mean an event or circumstance of a serious nature which is beyond an employee’s control and which necessitates the employee’s absence from County duty, including, but not limited to, those events
and circumstances which require the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a member of his or her household.

**PRACTICABLE** shall mean feasible; reasonably able to accomplish.

**PROBATIONARY EMPLOYEE** shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

**PROMOTION** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least one (1) full step higher than the maximum step of the old salary range.

**REASSIGNMENT** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class on the same salary range or to a class where the maximum step on the new salary range is less than one (1) full step higher or lower than the maximum step of the old salary range.

**RECRUITING STEP** shall be the first step of the salary range allocated to a class unless otherwise authorized by the Board or the Chief Human Resources Officer.

**REDUCTION** shall mean the movement of a regular, limited-term or probationary employee from one (1) class to another class where the maximum step of the new salary range is at least one (1) full step lower than the maximum step of the old salary range.

**REGULAR EMPLOYEE** shall mean an employee who is not on probation and is employed in a regular or limited-term position.

**REGULAR POSITION** shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

**SENIORITY** shall mean total continuous full-time equivalent service as a regular employee.

**UNION** shall mean the American Federation of State, County and Municipal Employees, Council 36, Local 2076, AFL-CIO.

**Y-RATE** shall mean a pay rate outside of the assigned salary range of a class.
ARTICLE I  WORKWEEK, OVERTIME AND PREMIUM PAY

Section 1.  Workweek

A.  The official workweek or work period for employees in the bargaining unit shall be as follows:

1.  Except as otherwise provided below, the official workweek for full-time employees shall be forty (40) hours and shall begin on each Friday at 12:01 a.m. and end with the following Thursday at 12:00 midnight. Except in circumstances where this MOU specifically also requires the County to pay overtime, overtime shall be paid for hours actually worked in excess of forty (40) in a designated workweek.

2.  Part-time

   a.  Employees may request to be placed in twenty (20) hour part-time positions if their performance is rated standard or above at the time of the request.

   b.  The number and assignment of positions subject to part-time shall be determined by the County.

   c.  An employee placed in a twenty (20) hour position shall remain in that position until:

      1.  the employee requests a return to an available full-time position as determined by the County;

      2.  the County assigns the employee to a full-time position with a fourteen (14) calendar day advance notice whenever practicable. The County will not order an employee out of a part-time position until there is no one left on the AGENCY/DEPARTMENT REINSTATEMENT LIST as established per Article XI of this Agreement who is eligible and willing to accept the full-time position.

B.  The County agrees to give employees a fourteen (14) calendar day advance notice of a shift change whenever practicable.

C.  No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.

D.  The County shall discuss with the Union any proposed changes in existing scheduled hours of work before such changes are put into effect.
E. Employees may request modified work hour schedules, such as a 4/10 or 9/80 flex schedule in accordance with established Agency procedures and subject to the grievance/appeal limitations described in said procedure. For employees permitted to work a 9/80 schedule, the start of their designated workweek shall be the mid-point of their eight (8) hour day.

SSA shall continue to use an annual schedule request procedure in which employees may submit requests for preferred work schedules. SSA will endeavor to provide work schedules of varying starting/ending times, flex days and days off, while recognizing that programmatic and business needs of the Agency are paramount. SSA will notify employees of an opportunity to submit schedule requests in May of each year. The notification to employees will include an overview of starting/ending times, flex days and days off at each region. If the Union has not yet received the most recent list required by Article XIV, Section 1.D.4, the County will send the list to the Union at the same time it sends out its schedule notification to employees. SSA employee schedule requests shall be submitted within three (3) weeks of the date the notification has been sent to employees.

If more than one employee requests the same schedule and assuming the requested schedule is available (e.g., based on program, function, language skills and client demand), the more senior employee (or the most senior employee, if more than two employees have requested the same schedule), will receive the requested schedule. For purposes of this schedule process seniority shall be determined by length of continuous service with the County. SSA will notify employees generally four (4) weeks prior to the implementation of the new work schedule. If an employee does not receive one of his/her preferred schedules, he/she will be notified of the reason(s) for the determination. The new 12 month schedule will take effect on the first day of the first full pay period in August of each year.

Whenever practicable, employees will receive at least two (2) consecutive days off from work.

F. Except as otherwise provided, no employee may be employed in one (1) or more positions, full or part-time, more than the total number of hours for the employee's work period as defined in A., above, except on authorized overtime.

G. If an employee is ordered by the County to attend a meeting, such time spent in the meeting shall be considered hours worked.

H. In addition to any other position or positions that are held, an employee may also voluntarily work in a capacity authorized for the Registrar of Voters in the course of an election provided that such election work does
not unduly interfere with the employee's regular assignment. Election work shall be compensated at the rate authorized for such work.

Section 2. Rest and Lunch Periods

A. Rest Periods

1. Employees shall be allowed rest periods of fifteen (15) minutes during each four (4) consecutive hours of work.

2. Such rest periods shall be scheduled in accordance with the requirements of the agency, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. When employees take rest periods at a County facility, the County may designate location(s) within the facility for the rest periods.

3. Rest periods shall be considered hours worked. An employee shall not be required to perform duties during a rest period unless the need is urgent.

B. Lunch Periods

Each employee shall be allowed a meal period of one (1) hour unless otherwise mutually agreed upon by the employee and agency management. Such meal period shall be generally scheduled in the middle of the work shift and shall not be considered hours worked.

Section 3. Overtime

A. Notification of Employees

If in the judgment of the agency, work beyond the normal workday, workweek or work period is required, the agency will notify any employee who may be asked to perform such overtime of the apparent need for such overtime as soon as practicable prior to when the overtime is expected to begin.

B. Distribution of Overtime

If overtime work is required, opportunities to work such overtime shall be made available as follows:

1. first, to the worker(s) to whom the affected cases are assigned, if practicable;

2. second, to other qualified workers at the same location who are assigned to the same program and function, in order of seniority;
3. third, if an insufficient number of workers volunteer to perform such overtime work under B.1. and B.2., above, the County may assign such overtime work as needed.

C. Payment for Overtime

1. Overtime, as defined in Article I, Section 1.A., shall be compensated at one and one-half (1 1/2) times the regular rate.

2. For all regular, limited-term and probationary employees, the employee may receive either payment or compensatory time off for overtime. The County shall have discretion whether to provide payment or compensatory time off; however, if practicable, the County shall duly consider an employee’s preferred form of compensation.

3. Employees may not accumulate in excess of eighty (80) hours of compensatory time. Employees who have accumulated eighty (80) hours of compensatory time shall receive payment for overtime worked.

4. Overtime hours worked by extra help employees shall be paid.

5. Compensatory time earned and accrued by an employee may be scheduled off for an employee by his or her agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific compensatory time off periods.

6. Unless waived by the employee and management, in no case may an employee's work schedule be changed during the workweek or work period in progress when the purpose of such change is to avoid overtime compensation.

7. Time worked as overtime shall not be used to earn fringe benefits or to serve out probation or merit increase periods, provided that compensatory time off may be used as part of the established workweek to earn fringe benefits and to serve out probationary and merit increase periods.

8. An employee separating from the County service shall be paid for accumulated compensatory time in a lump sum payment. Money owed to the County as a result of County employment by the separating employee may be deducted from such lump sum payment.

Section 4. Premium Pay
A. Night Shift Differential

1. An employee who works an assigned night shift shall, in addition to his/her regular salary, be paid a night shift differential for each hour actually worked on the assigned night shift.

2. For purposes of this Section, night shift shall mean an assigned work shift of seven (7) consecutive hours or more which includes at least four (4) hours of work between the hours of 4 p.m. and 8 a.m. Overtime which is worked as an extension of an assigned day shift shall not qualify an employee for night shift differential.

3. The rate of night shift differential shall be fifty (50) cents per hour.

B. On-Call Pay

1. When an employee is assigned on-call duty by the County, the employee shall be informed in writing, in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) of his/her basic hourly rate for the entire period of such assignment.

2. On-call duty requires the employee so assigned to: (1) be reachable by telephone or other communications device; (2) be able to report to work in a reasonable time; and (3) to refrain from activities which might impair his or her ability to perform assigned duties.

C. Call-Back Pay

1. When an employee returns to work because of an agency request made after the employee has completed his or her normal work shift and left the work station, the employee shall be credited with four (4) hours work plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he or she was called back.

   Call-back pay shall apply only when an employee is required to physically return to work (e.g. leave home or another off-duty location) in order to perform required duties.

2. Call-back shall be paid at one and one-half (1 1/2) times the regular rate.

3. Notwithstanding the above, if an employee is called back to work within four (4) hours of the beginning of the regular shift, the employee will only be paid at time and-one-half for the time the
employee begins to work until the beginning of the employee’s regular shift.

1.4. There shall not be any duplication or pyramiding of rates paid under this Section.

2.5. An employee shall be credited with not more than one (1) minimum four (4) hour guarantee for work performed during any four (4) consecutive hour period.

6. An employee credited with four (4) hours pursuant to this Section may be assigned other work until the guaranteed time has elapsed.

D. Bilingual Pay

1. Qualified employees who meet the criteria in 4.D.2., below, and who are assigned by Agency management to perform exceptional bilingual duties that are essential to the performance of their technical duties and responsibilities shall receive an additional one dollar and fifteen cents ($1.15) per hour [approximately one hundred ninety-nine dollars ($199) per month] for all hours actually paid.

2. To be eligible to receive bilingual pay, the following criteria must be met:

   a. An employee must be assigned by agency management to speak or translate a language in addition to English. This may include such specialized communication skills as sign language.

   b. An employee must regularly and frequently speak and/or translate a second language, i.e., once daily.

   c. To become qualified, an employee must be certified as qualified by the Chief Human Resources Officer.

3. Bilingual pay shall not apply to workers' compensation supplement pay or other premium pays effective upon Board adoption.
ARTICLE II  PAY PRACTICES

Section 1.  Compensation for Employees

Employees shall receive compensation at the biweekly or hourly rate for the range and step or flat rate assigned to the class in which they are employed.

Section 2.  Pay for New Employees

A. A new employee shall be paid at the recruiting step of the salary range in effect for the class in which the new employee is hired, except as provided in Sections 2.B. and C., below.

B. Upon recommendation of the Chief Human Resources Officer, the Board may, by minute order, authorize that a particular position be filled at any step within the range. When the Board authorizes the filling of the position at a step which is higher than the recruiting step of the salary range, it may, by minute order, advance the salary of incumbents of positions in that class or related classes in order to retain equitable relationships.

C. The Agency or Department Head may authorize the appointment of employees at any of the first seven (7) steps of the salary range. Such appointments shall be made only when the Agency or Department Head makes a determination that there is a direct and measurable benefit to the County from such appointments and makes a determination that the applicant’s previous training and experience enables him or her to make a greater contribution than a less experienced employee.

D. Upon recommendation of the Agency or Department Head, the County Executive Officer may authorize the appointment of employees beyond step seven (7) of the salary range when there is a direct and measurable benefit to the County for such appointment.

Section 3.  Merit Increase Within Range

A. Extra Help employees shall not be eligible for merit increases within range.

B. Salary increases within a range shall not be automatic. They shall be based upon merit and granted only upon the affirmative recommendation of the Agency Head.

C. A new or reemployed employee in a regular or limited-term position shall have a merit increase eligibility date which shall be the first day of the pay period following the completion of the first twenty-six (26) weeks of service within that class. The granting of an Official Leave of Absence, other than a Military Leave or the imposition of a suspension shall cause the merit increase eligibility date to be extended a number of calendar days equal to the Official Leave or suspension. The extended merit increase eligibility...
date will be effective the first day of the pay period after said date. Subsequent merit increase eligibility dates shall be the first day of the pay period following the completion of fifty-two (52) week intervals subject to the same postponement for Official Leaves of Absence or suspensions.

D. An employee in a part-time regular or limited-term position who has not completed one thousand forty (1040) paid hours exclusive of overtime by his or her first merit increase date shall have the merit increase eligibility date postponed until the first day of the pay period following completion of one thousand forty (1040) paid hours exclusive of overtime. Likewise, an employee in a part-time regular or limited-term position who has not completed two thousand eighty (2080) paid hours exclusive of overtime between subsequent merit increase eligibility dates shall have his or her merit increase eligibility date postponed until the first day of the pay period following completion of two thousand eighty (2080) paid hours exclusive of overtime. Where an employee's record consists of a combination of full-time and part-time service, both periods of service shall apply towards merit increase eligibility with the part-time service being applied proportionately to the appropriate full-time interval.

E. 1. Merit increases may be granted for one (1), two (2), three (3) or four (4) steps within the salary range based upon the employee's performance. Standard performance shall earn a two (2) step increase.

2. For any employee hired on or after December 6, 1977, the determination as to whether or not to grant merit increases beyond Step 10 and, if granted, in what amounts, shall be solely within the discretion of the Agency Head and shall be based on merit. This provision shall be grievable in accordance with Article X, Grievance Procedure, of this Agreement.

F. If, in the agency's judgment, the employee's performance does not merit a salary increase on the merit increase eligibility date and a deferral of decision accompanied by an intensive effort at improved performance might be productive, the agency shall complete the structured merit rating and defer a decision regarding the merit increase any number of pay periods, but not to exceed thirteen (13) pay periods. A deferral of fewer than thirteen (13) pay periods may be further extended not to exceed thirteen (13) pay periods from the original merit eligibility date. The employee may be reevaluated at any time and may be granted a merit increase earlier than thirteen (13) pay periods, but in any event shall be reevaluated on the structured merit rating prior to the end of the thirteenth pay period. The employee's merit increase eligibility date shall not be changed by such deferral.
G. Should an employee's merit increase eligibility date be overlooked through an error and upon discovery of the error the employee is granted a merit increase, the employee shall be compensated for the additional salary the employee would have received dating from the employee's merit increase eligibility date.

Section 4. Salary on Promotion

A. Except as modified by B., below, a regular, limited-term or probationary employee who is promoted to a position in a class with a higher salary range shall receive the recruiting salary for the higher class or such higher amount as would be the closest to a two (2) step increase on the range over the salary received prior to the promotion not to exceed the top step of the range. A new merit increase eligibility date shall be established which shall be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.

B. Any employee who is promoted to a class from which the employee was previously reduced without a salary decrease shall be placed at a salary step no higher than the step which the employee would have achieved if the employee had remained in the class to which he or she is promoted and had demonstrated at least standard performance. The employee's merit increase eligibility date shall be reestablished in order to credit the employee with any time formerly served in the higher class.

Section 5. Salary on Reassignment

A. When a regular, limited-term or probationary employee is reassigned to a class with the same recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

B. When a regular, limited-term or probationary employee is reassigned to a class with a higher recruiting step, such employee's salary shall be advanced the number of steps difference between the classes' recruiting steps and the employee shall retain his or her former merit increase eligibility date, except as provided in E., below. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

C. When a regular or limited-term employee is reassigned to a class with a lower recruiting step, such employee's salary and merit increase eligibility date shall not change. Such employee shall have the same probation status which would have been achieved if the employee had been in the new class throughout the period of such service in the old class.
D. When a probationary or probationary limited-term employee is reassigned to a class with a lower recruiting step, such employee shall have the same salary, step status, probation status and merit increase eligibility date as would have been achieved if the employee had been in the new class throughout the period of such service in the old class.

E. When a regular, limited-term or probationary employee is involved in a series of reassignments among classes with the same salary range but different recruiting steps or a series of reassignments among classes on different salary ranges, his or her salary and merit increase eligibility date shall be determined by the Chief Human Resources Officer.

Section 6. Salary on Reduction

A. 1. When a probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class not previously occupied by the employee, the employee shall receive the recruiting step for the lower class and shall receive a new merit increase eligibility date as provided in Section 3.C., above, or the employee's salary and merit increase eligibility date may be determined by the Chief Human Resources Officer.

2. When a promotional probationary employee, an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee occupied in good standing, the employee shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.

B. When a regular or limited-term regular employee is reduced to a position in a lower class by demotion for reasons of unsatisfactory performance, the employee's salary shall be reduced to a step on the salary range which would be the closest amount to a two (2) step reduction, or the employee shall receive the maximum step of the salary range of the new class, whichever is lower. The employee's merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless the employee thereby is placed at the recruiting step of the new salary range, in which case the employee's merit increase eligibility date shall be the first day of the pay period following the completion of twenty-six (26) weeks of service in the new class.

C. When a regular or limited-term employee in good standing is reduced to a position in a lower class for physical disability or reasons other than unsatisfactory performance, the employee shall receive the highest salary in
the new salary range that does not exceed the employee's rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

D. When a regular, limited-term or probationary employee is reduced because the position the employee occupied is reclassified, the applicable salary shall be determined as follows:

1. If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.

2. If the salary of the employee is greater than the maximum of the new range, the salary of the employee shall be designated as a Y-Rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee or until the period of calendar time indicated in the schedule below has elapsed, whichever is sooner. If, at the end of the calendar period indicated below, the salary of the employee still exceeds the maximum of the new salary range, the salary of the employee shall be reduced to the maximum salary for the new class.

Y-RATE SCHEDULE

<table>
<thead>
<tr>
<th>Years of Full-Time Continuous Service</th>
<th>Duration of Y-Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5 years</td>
<td>Two years from the date of reclassification</td>
</tr>
<tr>
<td>5 years but fewer than 10 years</td>
<td>Three years from the date of reclassification</td>
</tr>
<tr>
<td>10 years but fewer than 15 years</td>
<td>Four years from the date of reclassification</td>
</tr>
<tr>
<td>15 years but fewer than 20 years</td>
<td>Five years from the date of reclassification</td>
</tr>
<tr>
<td>20 years but fewer than 25 years</td>
<td>Six years from the date of reclassification</td>
</tr>
<tr>
<td>25 years or more</td>
<td>Seven years from the date of reclassification</td>
</tr>
</tbody>
</table>

3. When an employee on Y-Rate accepts a voluntary reduction, his or her salary shall be reduced by the amount of the difference between
the maximum salary of the class from which the employee is being reduced and the maximum salary of the new class.

Section 7. Salary on Reclassification

The salary of a regular, limited-term or probationary employee whose position is reclassified shall be determined as follows:

A. If the position is reclassified to a class with the same salary range, the salary and merit increase eligibility date of the employee shall be governed by Article II, Section 5.A., B., or C.

B. If the position is reclassified to a class with a higher salary range, the salary of the employee shall be governed by Article II, Section 4.A. or B.

C. If the position is reclassified to a class with a lower salary range, the salary of the employee shall be governed by Article II, Section 6.D.

Section 8. Salary on Reemployment

A. A person who is reemployed in the Eligibility Worker Representation Unit may, upon approval of the Chief Human Resources Officer, be appointed at a step higher than the recruiting step, but no higher than the step the person received at the time of separation unless appointment is at an advanced step or rate pursuant to Article II, Section 2.C.

B. A former County employee on paid County retirement may be reemployed for the maximum allowable time, pursuant to Government Code provisions, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

Section 9. Changes in Salary Allocation

If a class is reassigned to a different salary range on the same salary schedule, each employee in the class shall be compensated at the same step in the new salary range as the employee was receiving in the range to which the class was previously assigned. However, if a class is reassigned to a lower salary range on the same salary schedule, the salary of each employee shall be determined in accordance with Article II, Section 6.D., above.

Section 10. Pay Check Deposit

Employees hired after January 1, 1994 will be required to authorize automatic deposit of his or her pay check to a financial institution of the employee's choice.
ARTICLE III   EDUCATIONAL AND PROFESSIONAL REIMBURSEMENT

Section 1. Objective

The Educational and Professional Reimbursement Program is designed to encourage employees to continue their professional development through a variety of opportunities. In order to qualify for the program, one or more of the following criteria must be met:

- Related to the work of the employee’s position or occupation
- Prepares the employee to transition to an alternate County occupation
- Prepares the employee for advancement to positions of greater responsibility in the County

In addition, items eligible for reimbursement must have the reasonable potential for contributing to achieving County business objectives.

Section 2. Eligible Employees

All regular full-time, part-time, limited term, and probationary employees performing their jobs satisfactorily are eligible for reimbursement.

Section 3. Reimbursement Eligibility

A. The following are eligible for reimbursement

1. Courses related to obtaining a degree (AA, BA, BS, Masters, Ph.D.)
2. Accredited certificate programs
3. Vocational skills programs
4. Courses related to obtaining or maintaining a business-related certification, license, or accreditation
5. Courses related to preparing to take tests to obtain business-related certifications, licenses, or accreditation
6. Professional conferences, conventions, and seminars that are related to business objectives
7. Fees related to obtaining and/or renewing a license, including special drivers’ licenses
8. Fees related to certifications or accreditations
9. Fees related to taking professional examinations
10. Professional association membership fees

B. In general, any courses taken through the program must be taken on employee time. However, at the discretion of the Agency Head, a course may be taken on County time when it specifically meets a business need, and is not available during the employee’s non-work hours.
C. Courses are not eligible for reimbursement if they:

1. Are taken to bring unsatisfactory performance up to an acceptable level;
2. Are taken to acquire skills or knowledge which the employee was deemed to have when appointed;
3. Duplicate available in-service training; and/or
4. Duplicate training which the employee has already had.

Section 4. Nature of Reimbursement

A. Reimbursement may be made for all required fees, registration, and other costs related directly to the approved educational or professional expense. This may include, but is not limited to books, class materials, lab fees, testing fees, parking, and processing fees.

B. Expenses for travel, meals, and lodging are not reimbursable; however, the Agency Head may authorize payment for these items when it meets their business needs and is budgeted in their travel expense budget.

C. For degree programs, reimbursement shall be made to the employee upon completion of the course with a minimum final grade of C or its equivalent in an undergraduate course, or B or its equivalent in a graduate level course.

D. Reimbursement for non-graded courses shall be made upon completion of an approved course and proof of payment.

E. Public Service Institute (PSI) courses are not eligible for reimbursement.

F. If an employee is receiving reimbursement from another source that covers a portion of the costs, the County will only pay the remaining amount, after other reimbursements are exhausted.

G. The maximum reimbursement that may be received by eligible employees in one fiscal year shall be $103,000.
ARTICLE IV    GENERAL PERSONNEL PROVISIONS

Section 1. Probation

A. New Probation

1. Full-Time Employee

A new or reemployed employee employed in a full-time regular or limited-term position shall be placed on new probation for fifty-two (52) weeks from the date of appointment ending with the first day of the pay period following completion of said period.

2. Part-Time Employee

A new or reemployed employee employed in a part-time regular or limited-term position shall be placed on new probation for two thousand eighty (2080) paid hours exclusive of overtime or for fifty-two (52) weeks, whichever is longer, from the date of appointment and ending with the first day of the pay period following completion of said period.

B. Promotional Probation

1. Any regular or limited-term employee who is promoted, excluding a temporary promotion, shall be placed on promotional probation except as provided in B.2., below.

   a. A full-time employee shall serve a probation period equal to the time period of the initial probation ending with the first day of the pay period following completion of said period. However, an employee who promotes to a class in the same or closely related occupational series, shall serve a promotional probation period of twenty-six (26) weeks from the date of promotion ending with the first day of the pay period following completion of said period.

   b. A part-time employee shall be placed on promotional probation for two thousand eighty (2080) paid hours exclusive of overtime, ending with the first day of the pay period following completion of said period except that for promotion to a class in the same or closely related occupational series, the promotional probation period shall be one thousand forty (1040) paid hours exclusive of overtime.
2. When a regular or regular limited-term employee is promoted as a result of the employee's position being reclassified to a higher class and the class from which the employee is promoted is subsequently deleted or abolished, the incumbent employee shall not serve a promotional probation period.

3. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the employee's Agency Head is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that class.

4. Except as provided in B.2., above, when a regular, limited-term or probationary employee voluntarily reduces or reassigns to a class in this Unit in which he or she has never passed probation, such employee shall be placed on promotional probation for a period equal to the new probation periods set forth in Sections 1.A.1. and 1.A.2., above.

C. Failure of Probation

1. New Probation
   a. An employee on new probation may be released from employment at any time without right of appeal or hearing, except as provided in C.3., below.
   b. An employee who is released from new probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of new probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.

2. Promotional Probation
   a. An employee on promotional probation may be failed at any time without right of appeal or hearing, except as provided in C.3., below.
   b. An employee who fails promotional probation shall, upon request, be scheduled to meet with the District Manager or his or her designee to discuss the reason(s) for failure of promotional probation. If such a meeting is scheduled, the employee may choose to be represented by an authorized grievance/appeal representative.
c. When an employee fails his or her promotional probation, the employee shall have the right to return to his or her former class provided the employee was not in the previous class for the purpose of training for a promotion to the higher class.

When an employee is returned to his or her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class. A regular employee who accepts promotion to a limited-term position other than at the direction of the employee's Agency Head shall not have the right to return to his or her former class.

d. If the employee's former class has been deleted or abolished, the employee shall have the right to return to a class in his or her former occupational series closest to, but no higher than, the salary range of the class which the employee occupied immediately prior to promotion and shall serve the remainder of any probationary period not completed in the former class.

3. An employee who alleges that his or her probationary release was based on discrimination by the County in violation of Article XV, NONDISCRIMINATION, may submit a grievance at Step 3 of the grievance procedure within ten (10) days after receipt of notice of failure of new probation.

D. General Provisions

1. When an employee's record consists of a combination of full-time and part-time service in regular or limited-term positions, except as provided in Section 4.E., below, part-time service shall be applied proportionately by using total hours worked to appropriate full-time requirements.

2. When an Agency Head or his or her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and shall be discussed with the employee. A probation period may not be extended, except as provided in Section 1.E. of this Article, below.

If upon conclusion of the probationary period the employee does not receive in writing a confirmation that he/she has passed probation, that employee may request, in writing, such written confirmation. If the agency does not, within thirty (30) days of such request, provide written notice confirming whether or not the employee passed probation, it shall be presumed that the employee passed his/her probation at the normal conclusion of the probation period.
3. An employee who is subject to more than one (1) type of probation at a given time shall have the probation periods combined into one (1) probation period which will extend to the latest completion date of any of the probation periods involved.

4. An employee who is on probation may not transfer from one (1) agency to another in the same class without the approval of the Chief Human Resources Officer.

E. Extension of Probation Periods

1. The granting of an Official or Military Leave of Absence shall cause the employee's probation period to be extended by the length of the Official Leave or by the length of the Military Leave in excess of fifteen (15) calendar days. The extended probation period resulting from the Official or Military Leave of Absence shall end with the first day of the pay period after said extended date. An employee who is suspended shall have his or her probation extended by the length of the suspension, with the extended probation period ending with the first day of the pay period after said extended date.

2. The Chief Human Resources Officer shall extend the new or promotional probationary periods of incumbents appointed as a result of a selection procedure which is appealed. Such probationary periods shall be extended no longer than sixty (60) calendar days from the date on which the County receives the Appeals Officer's findings and decision. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee has served a probationary period which is longer than the probationary period normally prescribed for new or promotional probation, such an employee may fail probation during the extended period only upon recommendation of the Appeals Officer and final determination of the Board of Supervisors.

3. Upon the recommendation of the agency or the request of the employee with the concurrence of the agency, the probation period of an employee may be extended at the sole discretion of the Chief Human Resources Officer for a period not to exceed ninety (90) calendar days provided such action is approved by the Chief Human Resources Officer before the normal probation period is completed.

Denial of a request to extend a probation period shall not be subject to appeal or hearing.

4. The Chief Human Resources Officer shall extend the probationary period of employees with an employment authorization document which has an expiration date which would occur after the end of the probation period. Such probation periods shall be extended to
coincide with the expiration date of the employment authorization document. In the event an employee's probationary period is extended by the provisions of this Section, and such an employee serves a probationary period which is longer than the normal probation period, such an employee may fail probation during the extended period only for failure to obtain a new, valid employment authorization document by the expiration date of the expiring employment authorization document.

5. Employees subject to extended probationary periods under the provisions of E.2. and E.4., above, shall be considered regular employees during the extended probationary period for all purposes other than those described in E.2. and E.4., above.

Section 2. Performance Evaluation

A. The County shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular and limited-term full and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.

B. The County shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.

C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee.

Section 3. Contents of Personnel File

A. Adverse statements prepared by the County shall not be included in an employee's official personnel file unless a copy is provided to the employee.

B. Except for those materials designated as confidential by law, an employee shall have the right to inspect and review, on County time, at reasonable intervals and at reasonable times, the contents of his or her official personnel files and may also review, on County time, at reasonable intervals and at reasonable times, the file maintained by his or her District Manager and/or supervisors regarding his or her performance. With the written permission of the employee, authorized Union representatives may inspect, at reasonable intervals, the same files which the employee may inspect and review as provided herein.
C. In addition, an employee shall have the right to inspect and review the contents of his or her official personnel file, on County time, in any case where the employee has a grievance related to performance, to a performance evaluation, or is contesting his or her suspension or discharge from County service.

D. An employee shall have the right to respond in writing or personal interview to any information contained in his or her official personnel files, such reply to become a permanent part of such employee's personnel file.

E. Pursuant to an agreement between the Chief Human Resources Officer and the employee concerned or by an order of an arbitrator, court or impartial hearing officer, any negative contents of an employee's official personnel file shall be removed within fourteen (14) calendar days. In addition, documents related to performance shall be removed from the unofficial file maintained by the employee's District Manager and/or supervisor within six (6) months of completion of the Final Review of Performance covering the period related to the document.

F. Letters of Commendation shall be included in the employee's official personnel file at the employee’s request.

G. An employee’s official personnel file shall only be open to inspection by authorized persons who have established a legitimate need to know or if such files are required to be disclosed by the court.

Section 4. Status of Limited-Term Employees

A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except Article XI, LAYOFF PROCEDURE, which accrue to employees in regular positions.

B. A regular employee who transfers, promotes or reduces to a limited-term position on a voluntary basis and not at the direction of the Agency Head shall become a limited-term regular employee.

C. All limited-term employees who transfer to permanent funded positions shall serve a new probation period. Limited-term regular employees who transfer to permanent positions shall maintain their original hire date for purposes of vacation and Sick Leave accrual, retirement and layoff. Such limited-term regular employees who are serving a new probationary period in permanent positions when a layoff occurs shall be considered to have the same employment status as regular and promotional probationary employees for purposes of determining order of layoff.

D. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the
incumbent shall be removed from the payroll except as provided in E., below.

E. Regular employees who transfer, promote or reduce to limited-term positions at the direction of the Agency Head shall retain their former status and retain their layoff benefits in their former layoff -unit. The Agency Head shall make such an order in writing prior to the date of transfer or promotion.

Section 5. Temporary Promotion

A. A regular, probationary or limited-term employee who is assigned on a temporary basis to a higher level vacant regular or limited-term position shall be promoted on a temporary basis to that class when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours of work and the employee has been performing all of the significant duties and responsibilities of the higher class, unless the employee requests to be reassigned to his or her former class. In such a case, the employee shall be reassigned within five (5) working days.

B. An agency may, at its option, waive the one hundred twenty (120) hour requirement when it is necessary to utilize a regular, probationary or limited-term employee in a higher level vacant regular or limited-term position for a period that is expected to be at least one hundred twenty (120) regularly scheduled hours but fewer than eighteen (18) months.

C. An employee on temporary promotion shall not be placed on promotional probation. Upon return from temporary promotion, an employee shall serve the remainder of any uncompleted probationary period in the employee's former class and shall have the step status and merit increase eligibility date he or she would have achieved if the employee had remained in the lower class throughout the period of his or her service in the higher class.

D. At the end of the employee's assignment to the higher class, the employee shall have the right to return to his or her former class and agency. A temporary promotion shall not exceed a period of eighteen (18) months.

Section 6. Reemployment of Employees on Disability Retirement

A. The County will advise employees retired for physical disability to contact the Orange County Employees Retirement System (OCERS) to determine the impact of reemployment on their disability retirement benefits prior to accepting reemployment.

B. Employees retired for physical disability who have contacted OCERS for advice and counsel under Section A above, within two (2) years from their

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date of retirement or date their disability retirement is discontinued, request and have been counseled as required above and qualify for positions in the County service shall be placed on the County Preferred Eligible List with respect to such positions. They will be placed on such list in chronological order of retirement but following the last person on layoff status. They will remain on such list for a period of two (2) years from date of retirement or date their disability retirement is discontinued, except that:

1. a person appointed to a regular position in the County service shall be removed from the list;

2. a person who, on two (2) separate occasions, rejects or fails to respond within three (3) calendar days to offers of employment in a class for which he or she is qualified shall be removed from the list;

3. a person who on three (3) separate occasions, declines referral for interviews in a class for which he or she is qualified shall be removed from the list.

Section 7. Reemployment of Regular Employee

A regular employee who leaves County employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Agency Leave for such period of time.

Section 8. Time Off for Selection Procedures

A regular, limited-term or probationary employee shall be entitled to necessary time off with pay to participate in tests of fitness, examinations and interviews required by the Chief Human Resources Officer during working hours for the purpose of determining eligibility for movement to another class in the County service or transfer from one (1) agency to another.

Section 9. Intra-agency Transfer

Intra-agency Transfer shall pertain only to Social Services Agency employees.

A. Intra-agency transfer shall apply to movement to a different aid category or facility. The County will look into creating a posting process to enable employees to determine available transfer opportunities.

B. Employees shall have the right to request intra-agency transfers. The agency-SSA will consider employee requests for intra-agency transfer in view of program needs. An employee’s written transfer request will remain in effect unless/until the employee receives the requested transfer or the employee withdraws the request.

C. The agency-SSA shall establish the procedure by which employees may
submit such transfer requests for consideration. Transfer requests will be considered in the order they are received. If two requests are received on the same day, and with everything else being equal, County seniority will prevail.

D. Probationary employees will generally be exempted from consideration for transfers.

E. Nothing in this provision shall limit management's right to initiate the internal transfer of employees; however, consideration shall be given to effectuating the wishes of those employees requesting transfer.

F. A grievance concerning the misapplication or misinterpretation of this provision may be appealed through the second step of the grievance procedure. The decision of the Agency Head or his or her representative shall be final and binding.

G. Employees will be given a fourteen (14) calendar day advance notice of involuntary assignment changes whenever practicable.

H. Management shall not, whenever practicable, reassign a Union steward who objects to reassignment provided:

1. There is another employee in the same classification who meets the specific qualifications of the vacancy; and

2. AFSCME has notified the District Manager of the employee's status as a steward prior to the Agency issuing written notice to individual employees of impending transfers from areas which include the employee's work assignment.

Section 10. Bilingual Transfer

An employee in a bilingual assignment may request assignment to a position which does not require bilingual certification. The request shall be made in writing to the Agency Head, who will consider it according to:

A. agency need;

B. availability of a qualified replacement; and

C. availability of another suitable assignment for the requesting employee.
ARTICLE V       LEAVE PROVISIONS

Section 1.   Sick Leave

A.  Accumulation of Sick Leave

1. During the first three (3) years of employment, an employee shall earn .0347 hours of sick leave with pay for each paid hour in a regularly scheduled workweek or period to a maximum of eighty (80) hours in a pay period.

2. After an employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours, approximately three (3) years, the employee shall earn .0462 hours of sick leave with pay for each paid hour in a regularly scheduled work period to a maximum of eighty (80) hours in a pay period.

3. Sick leave earned shall be added to the employee's sick leave accumulation account upon the completion of the pay period, with no credit to be applied during the progress of the pay period or for a portion of the pay period during which the employee terminates County service.

4. Except as required by law, Extra Help employees shall not earn sick leave. (See Section B.5 below).

B.  Permitted Uses of Sick Leave

Sick leave may be applied to:

1. An absence necessitated by an employee's personal illness, injury or disability due to pregnancy or childbirth.

2. Medical and dental office appointments when absence during working hours for this purpose is authorized by the agency.

3. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the County that the presence of the employee on duty would endanger the health of others.

4. Absence from duty because the employee's presence is needed to attend to the serious illness of a member of his or her immediate family. The amount of sick time used to attend to the illness of a family member shall be limited by applicable laws. For purposes of this Subsection, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband,
5. Absence from duty because: (1) the employee’s presence is needed to attend to the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member; or (2) an employee is a victim of domestic violence, sexual assault, or stalking and the employee uses the leave time for the purposes described in Labor Code sections 230(c) and 230.1(a). Use of this leave is limited to the time period specified in Labor Code section 233, except as to extra help employees, who will be limited to three (3) days provided they meet the requirements set forth in the Healthy Workplaces, Healthy Families Act of 2014 (Labor Code sections 245-249). For purposes of this Subsection “family member” means child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling as those terms are defined by Labor Code section 245.5(c).

6. If an employee is a parent, legal guardian, or grandparent who has custody of a child enrolled in a California public or private school, kindergarten through grade twelve (12), or in a licensed child day care facility, the employee may use up to ten (10) hours per fiscal year, to attend school conferences and events. Any activity that is sponsored, supervised, or approved by the school, school board, or child care facility is acceptable. Examples include participating in parent-teacher conferences, Open House, or a child’s school related disciplinary issue. Time off requests to attend such events are non-discretionary, but shall be requested in advance to the extent possible.

5.7. Illness while on paid vacation will be charged to sick leave rather than vacation only under the following conditions:

a. The illness or injury of the employee was of a nature that would preclude the effective use of vacation and would prevent the employee from performing his or her normal duties.

b. The employee must notify his or her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his or her vacation leave, whichever is sooner, to request that his or her illness on vacation be charged to sick leave.

c. The agency shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.

d. Upon the employee’s return to work, the employee must furnish the agency with a certificate signed by a licensed physician or registered nurse stating the nature of the illness or injury and the
period of disablement.

<table>
<thead>
<tr>
<th>6.8.</th>
<th>Absence from duty because of personal emergencies or personal business not to exceed <strong>forty thirty (430)</strong> working hours during the fiscal year.</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.9.</td>
<td>An absence due to an air pollution alert which prevents the employee from traveling to his or her work location.</td>
</tr>
<tr>
<td>8.10.</td>
<td>An absence, not to exceed twenty-four (24) consecutive working hours in any one instance, to arrange for or attend a funeral for a member of the employee's household who is not a member of the employee's immediate family as described in Section 2. (Bereavement Leave), below.</td>
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C. **Prohibited Uses of Sick Leave**

Sick leave shall not be applied to:

1. Absence caused by illness or injury to a member of the employee's family except as provided in B.4., B.5 or B.7., above.

2. Absences which occur on a County holiday.

D. **General Provisions**

1. In any use of sick leave, an employee's account shall be charged to the nearest quarter hour.

2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other satisfactory evidence of illness, injury, medical condition or medical or dental office calls when the employee has been under the care of a physician or absent three (3) consecutive days due to illness, provided such notification is made no later than the day of the absence for which the certificate or evidence is required.

3. a. Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Percent of Unused Sick Leave Paid For</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5 years</td>
<td>None</td>
</tr>
<tr>
<td>5 but fewer than 10</td>
<td>25%</td>
</tr>
</tbody>
</table>

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Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits provided by this paragraph.

b. An employee hired prior to December 6, 1977 who, as of the date of request, is eligible for Tier I paid retirement and who has given irrevocable written notice of his or her intent to retire, may request that a payoff of his or her accumulated sick leave be made to his or her deferred compensation account with the County to the maximum amount permitted under the regulations that govern deferred compensation programs and to the extent permitted under the provisions of 3.a., above, provided that such request is made at least thirty (30) calendar days but no more than sixty (60) calendar days prior to the effective date of his or her retirement. Such payoff shall be made prior to the effective date of the employee's retirement.

4. Employees hired on or after December 6, 1977, shall not be eligible for any benefits provided by Paragraph D.3., above.

5. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining sick leave earning rates. Notwithstanding the above, if an employee separates from the County and is rehired within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated to the extent required by law. The employee will also be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring to the extent required by law.

Section 2. Bereavement Leave

Bereavement leave is paid leave which is available to an employee related to the death of a family member of the employee’s immediate family as defined below.

A. For purposes of this Section, immediately family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, spouse, registered domestic partner, child, step-child, grandparent, grandchild or person with whom the employee has/had a legal guardian relationship.
B. Upon request, regular, limited-term and probationary employees who are in full-time paid status shall receive necessary time off with pay, not to exceed five (5) regularly scheduled shifts consecutive working days in any one (1) instance for each death, to arrange for or attend a funeral of a member of their immediate family and employees who are in part-time status shall receive time off with pay, not to exceed the number of hours scheduled in a part-time employee’s normal workweek for each death. For purposes of this Section, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband, child, step-child, grandparent, grandchild, legal guardian, parent of minor ward or registered domestic partner.

C. Generally, time off shall be taken in whole day increments and may be taken nonconsecutively. If requested, partial day absences may be approved if operationally feasible. Use of this leave must be completed within six (6) months of the loss.

D. An employee may request additional time off for bereavement. Additional time off shall be charged to the employee’s accrued balances and must meet eligibility requirements and conditions set forth in Article V, Section 1 or Article VI.

Section 3. Authorized Leave Without Pay

A. Agency Leave

Upon request, a regular, limited-term or probationary employee may be granted an Agency Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the agency, except in cases where Official Leave has been authorized pursuant to B.4., B.5. and Section 11.A., below. The Agency Head may require that all accumulated compensatory time be used prior to granting of Agency Leave. The use of earned vacation prior to the
obtaining of Agency Leave shall be at the option of the employee. If the leave qualifies as Family Leave pursuant to applicable law, the Agency Head may require that all sick leave, compensatory and vacation time be used prior to granting an Agency Leave except that the use of sick leave shall be subject to the provisions of Article IV, Section 1.B. and C., above.

B. Official Leave

1. Upon request, a regular, limited-term or probationary employee may be granted an Official Leave of Absence Without Pay. Such Leave, if granted, shall not exceed one (1) year except as provided in subsections 2. and 3., below. Such Leave may be authorized only after an employee's completion of an Agency Leave and after all compensatory time and vacation accruals have been applied toward payment of the absence.

2. An Official Leave of Absence may be extended for up to an additional year at the discretion of the Agency except that requests for Official Leave which qualify as Family Leave pursuant to applicable law shall be granted to the extent required by such law. If the Agency denies the extension of such Leave, the provisions of subsections 5. and 6., below, shall not apply.

3. Upon request, an employee who has requested and identified a valid need for Family Leave pursuant to Section 14 and applicable law, shall be granted Official Leave to the extent required by such law. Such Leave shall be authorized only after an employee's completion of an Agency Leave and after all accumulated compensatory time and vacation accruals have been applied toward payment of the absence. In addition, where appropriate under the provisions of Article V, Section 1.B., above, the employee may be required to apply all sick leave accruals toward payment of the absence before an Official Leave will be authorized.

4. An employee shall give notice two (2) weeks prior to the date he or she wants to return to work, except that an employee returning from Family Leave shall give the lesser of two (2) weeks notice or the maximum notice allowable under applicable law. If the employee does not give the required notice prior to the date he or she wants to return to work, the Agency shall not be required to return the employee to work until the employee gives such notice; however, the Agency may waive the notice or reduce the notice period at its discretion.

5. The agency shall indicate on the request its recommendations as to whether the request should be granted, modified or denied and shall promptly transmit the request to the Chief Human Resources Officer.
If the Chief Human Resources Officer approves the request, he or she shall deliver a copy to the Auditor-Controller and the employee.

6. If the agency modifies or does not approve a request for Official Leave, the employee may, within fourteen (14) calendar days of said action, file a request for review with the Chief Human Resources Officer. The decision of the Chief Human Resources Officer on such appeals shall be final.

7. An Official Leave shall not be credited toward continuous service.

C. General Provisions

1. A request for a Leave of Absence shall be made upon forms prescribed by the Chief Human Resources Officer and shall state specifically the reason for the request, the date when it is desired to begin the Leave of Absence and the probable date of return.

2. A request for Leave of Absence Without Pay shall normally be initiated by the employee, but may be initiated by the employee's agency only where the employee is unable to initiate such action, except in cases where the provisions of Section 11.A. apply.

3. An employee who has completed an absence without pay due to a Leave granted pursuant to Sections 3, 4, 10 and/or 14 of this Article shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., below, unless he or she returns to work at the end of the approved Leave or receives approval for an extension of his or her Leave.

Section 4. Official Leave for Nonoccupational Disability

A. A regular, limited-term or probationary employee shall be granted upon request an Official Leave of Absence Without Pay for up to six (6) months for a nonoccupational disability, including disabilities related to pregnancy and childbirth, provided that the employee meets the following conditions:

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of the condition.

2. Such Leave shall begin after all accrued sick leave, compensatory time and vacation time have been applied toward the absence, in accordance with law.
3. Unless otherwise required by law, the employee has been paid for six thousand two hundred forty (6240) regularly scheduled hours or more. (This provision does not apply to pregnancy disability leave.)

4. For employees who are disabled because of pregnancy, as defined by state law, the County will maintain and pay for an eligible employee’s coverage under the County’s group health plan for the duration of the leave, not to exceed four (4) months over the course of a 12-month period, at the level and under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.

B. If additional Leave is desired, the employee shall request additional Leave in accordance with Official Leave, Section 3.B., above.

C. Unless otherwise required by law, an employee shall not be entitled to more than one (1) such Leave per twelve (12) month period.

Section 5. Absences Caused by Medical Conditions

An employee who is absent from work for a period of more than fourteen (14) consecutive calendar days due to a medical condition shall not be permitted to resume work until and unless the employee obtains a medical clearance from a physician designated by the County.

Section 6. Jury Duty Leave

A regular, limited-term or probationary employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's regular rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the County Treasurer. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions (Article I). An employee may request a change in regularly scheduled working hours to a Monday through Friday day shift for the duration of such jury duty. Such requests shall be granted if practicable.

Section 7. Witness Leave

A regular, limited-term or probationary employee who is called to answer a subpoena as a witness for court appearances during the employee's work hours, except where the employee is a litigant, shall be compensated at his or her regular rate of pay for all hours of absence from work due to answering the
subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the County Treasurer. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 8. Leave for Union Business

The County shall allow a regular, limited-term or probationary employee up to six (6) working days absence without pay during each payroll year for the term of this Agreement to perform official Union business, provided that:

1. The Union shall make a request to the employee's Agency Head at least ten (10) days in advance.

2. The Union shall not request that such Leave be effective for more than three (3) employees on any workday.

3. The services of such an employee are not immediately required by the County, and other competent employees are available to do the employee's usual work.

Section 9. Absence Without Authorization

A. Absence without authorization, whether voluntary or involuntary, for three (3) consecutive working days shall be considered an automatic resignation from County employment as of the last date on which the employee worked or the last date the employee was to return to work from an authorized absence.

B. If an employee does not have prior authorization to be absent from work, such employee may request specific authorization from the Agency Head prior to the expiration of the time limit specified in A., above.

C. When an employee has been absent without authorization and the County plans to invoke the provisions of 9.A., above, at least ten (10) calendar days prior to accepting and entering an automatic resignation, the County shall send written notice to the employee's last known address by certified mail with return receipt requested, and shall deposit such notice in the United States mail with postage fully prepaid. Notice is complete upon mailing. Such written notice shall contain:

1. a statement of the County's intention to implement the employee's automatic resignation and its effective date;

2. a statement of the reasons for considering the employee to have automatically resigned;
3. a statement of the employee's right to respond, either orally or in writing, prior to the date the County plans to accept and enter the resignation.

4. a statement of the employee's right to representation;

5. a copy of the automatic resignation provisions which apply to the employee;

6. a statement that if the employee fails to respond to the written notice before the effective date of the automatic resignation, the employee has waived any right to appeal the automatic resignation.

D. An automatic resignation shall not be accepted and entered if the employee 1) responds to the notice before the effective date, 2) provides an explanation satisfactory to the Agency as to the cause of the unauthorized absence, and the reason for failing to obtain an authorized leave, and submits any pertinent documentation to substantiate such reasons, and 3) is found by the Agency to be ready, able and willing to resume the full duties of his or her position.

E. An employee who is permitted to continue his or her employment pursuant to C. and/or D., above, shall not be paid for the period of his or her unauthorized absence and shall be treated as if on a Leave of Absence for purposes of continuity of employment and other appropriate benefits, unless the Agency determines it is appropriate to use sick leave, compensatory time, vacation or other paid leave to cover the absence.

F. Notwithstanding any other provision of this Section, the County may rescind an automatic resignation.

G. Automatic resignations shall not be considered a discharge under the provisions of Article IX, DISCIPLINARY ACTION.

Section 10. Parenthood Leave

A. A regular, limited-term or probationary employee shall be granted, upon request, a Parenthood Leave Without Pay of up to six (6) months in connection with the birth or placement for legal adoption of a child provided the employee meets the following conditions:

1. The requested Leave is commenced within six (6) months before or after the expected date of birth or placement for legal adoption of the child.

2. Sufficient documentation of such birth or placement for legal adoption is submitted with the request for Leave.
3. Such employee has completed new probation.

4. All accrued vacation and compensatory time has been applied toward the absence.

B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.

C. Sick leave must be applied toward any portion of the absence which qualifies under Section 1.B.1. of this Article provided the employee has furnished the agency with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.

D. Pregnant employees may also apply for a Nonoccupational Disability Leave for the term of disability as provided in Section 4. of this Article.

E. Parenthood Leave shall not be credited toward continuous service.

F. For employees on Parenthood Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 11. Workers' Compensation Leave

A. When an injury is determined to be job-related in accordance with Article XII, a regular, limited-term or probationary employee shall be placed on Workers’ Compensation Leave. If such determination cannot readily be made or there is a subsequent disagreement regarding the termination of Workers’ Compensation Leave and all sick leave has been applied to the absence, the employee shall be placed on Official Leave until a final determination is made, notwithstanding the provisions of Section 3.B., above.

B. Workers’ Compensation Leave shall continue until any of the following occur:

1. the employee is determined to be physically able to return to work by a County-designated physician; or

2. the employee is determined to be physically able to return to work with medical restrictions which the agency can accept; or

3. the employee accepts employment outside the County; or

4. the employee accepts employment in another County position; or

5. the employee is permanently disabled; or
6. the employee elects retirement as provided by law.

An employee who does not return to work within two (2) weeks of the end of his or her Workers' Compensation Leave pursuant to this provision shall be considered to have automatically resigned his or her employment with the County under the provisions of Section 9., above.

C. If practicable, an employee on Workers' Compensation Leave will give notice two (2) weeks prior to the date he or she wants to return to work. If an employee does not give two (2) weeks notice prior to the date he or she wants to return to work, the agency shall not be required to return the employee to work until such notice is given; however, the agency may waive the notice or reduce the notice period at its discretion.

D. If an employee's Workers' Compensation Leave expires and the employee is absent without authorization, the provisions of Section 9. of this Article shall apply.

E. For employees on Workers' Compensation Leave, merit increase dates, probation periods and performance evaluation dates shall be treated as if the employee were on Official Leave.

Section 12. AFSCME Union Officer Leave

A. The County agrees to grant, if requested, Union Officer Leave with pay and without loss of any benefits provided by this Memorandum of Understanding except as provided below to one or more (upon mutual agreement) specified Union Officers designated by AFSCME for the term of this Memorandum of Understanding provided that:

1. The Union Officer Leave shall be for a minimum of eight (8) hours.

2. The Union Officer Leave is requested ten (10) calendar days in advance. Said notice may be waived by mutual consent.

3. AFSCME promptly reimburses the County for all the Union Officer salary and benefit expenses* incurred during the Union Officer Leave.

   *Expenses include only those which the County would have to pay out-of-pocket for payroll-related wages and benefits and do not include administrative overhead expenses.

4. The employee shall continue to conform to department rules, regulations and standards that are not inconsistent with Union Officer Leave.

5. The employee is a standard or better performer.
6. The County will not reassign or transfer the individual to any position in his or her class at the discretion of the agency unless significant business or operational concerns occur.

B. Vacation and Sick Leave accrual rates will apply to the employee as though he or she were on duty status.

C. Vacation and Sick Leave accrued during Union Officer Leave and unused at the conclusion of the Leave must either be paid off by AFSCME or lost.

D. The merit increase eligibility date, if applicable, shall be extended a number of calendar days equal to the Union Officer Leave. This extended merit increase eligibility date will be effective the first day of the pay period after said date.

E. The probation period, if applicable, shall be extended by the length of the Union Officer Leave. The extended probation period shall end on the first day of the pay period following said extended date.

F. The employee's eligibility for promotional examinations shall not be affected by Union Officer Leave.

G. Layoff points shall not be affected by Union Officer Leave.

H. In the event emergency recall of the employee becomes necessary, Union Officer Leave may be suspended or cancelled during the course of the emergency. AFSCME shall not be obligated for reimbursement costs listed in A.1 and 2. for the period that Union Officer Leave is suspended or cancelled. Provisions of A.1 and 2., above, shall be suspended during said emergency recall.

I. Not more than one (1) employee in the Eligibility Worker Unit shall be eligible for Union Officer Leave at any one (1) time.

Section 13. Catastrophic Leave

The County will administer a catastrophic leave procedure designed to permit limited donations of vacation and/or compensatory time to an employee who is required to be on an extended unpaid leave due to a catastrophic medical condition or other serious circumstances.

Section 14. Family Leave

A. General Provisions
1. Family Leave shall be granted to the extent required by law. The following provisions set forth certain of the rights and obligations with respect to this leave. Rights and obligations which are not specifically set forth below are set forth in the U.S. Department of Labor regulations implementing the federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the Department of Fair Employment and Housing implementing the California Family Rights Act (CFRA). Unless otherwise provided by this Section “family leave” under this agreement shall mean leave pursuant to the FMLA and CFRA.

2. Family Leave may be used in the following situations:
   
   a. An employee's serious health condition which makes the employee unable to perform the functions of his/her job;
   
   b. The birth of a child, and in order to care for the newborn child within one year of birth;
   
   c. Placement of a child for adoption or foster care within one year of the placement;
   
   d. Employee's presence is needed to attend to a serious health condition of the employee’s child, spouse, parent or a child of an employee standing in "Loco Parentis" who is either under eighteen (18) years old or adult dependent child incapable of self-care because of mental or physical disability;
   
   e. Leave for a qualifying exigency arising out of the fact that the employee’s spouse, registered domestic partner, child or parent is on covered active duty or called to active duty status in the Armed Forces;
   
   f. Leave to care for a spouse, registered domestic partner, child, parent, or “next of kin” who is a covered servicemember of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or that existed before beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.

3. Employees must request and identify their need for Family Leave. Requests for Family Leave may also fall under the provisions of Sections 3, 4, and 10, above.

4. The County shall determine if a request for Family Leave is valid within the parameters of applicable law.
5. Family leave shall not exceed twelve (12) work weeks for situations covered by subsection A(2)(a) – (d) above or twenty-six weeks to care for a covered service member (subsection A(2)(e) and (f) above) during any calendar year. Where Family Leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

6. The twelve (12) month period for calculating leave entitlement will be based on the calendar year (January 1 to December 31).

7. When a request for Family Leave is approved, the agency shall determine if sick leave, compensatory, and/or vacation time is to be applied and shall determine the order in which such time is applied. The use of sick leave shall be restricted to those circumstances which qualify under the provisions of Article V., Section 1.B.

B. Notification Requirements

1. If the Family Leave is foreseeable, the employee must provide the agency with thirty (30) calendar days notice of his or her intent to take Family Leave.

2. If the event necessitating the Family Leave becomes known to the employee fewer than thirty (30) calendar days prior to the employee's need for Family Leave, the employee must provide as much notice as possible. In no case shall the employee provide notice later than five (5) calendar days after he or she learns of the need for Family Leave.

3. When the Family Leave is for the purpose of the scheduled medical treatment or planned medical care of a child, parent, spouse or registered domestic partner, the employee shall, to the extent practicable, schedule treatment and/or care in a way that minimizes disruption to agency operations.

C. Verification

1. The County may require certification from the health care provider which states: (1) the date on which the condition commenced; (2) the probable duration of the condition; (3) an estimate of time that the employee needs to be off; (4) that the employee cannot perform his/her duties because of condition (if leave is for own serious health condition) or that care is needed (if leave is for child, spouse or parent).

2. Employees who request leave to care for a covered servicemember who is a child, spouse, registered domestic partner, parent or “next of kin” of the employee must provide written certification from a health care provider regarding the injured service member’s injury or illness.
3. The first time an employee requests leave because of a qualifying exigency, the employee is required to provide the County with a copy of the covered military member’s active duty orders or other documentation issued by the military which indicates that the covered military member is on active or called to active duty in a foreign country with the dates of active duty service. New active duty orders or similar documentation shall be provided to the County if the need for qualifying exigency leave arises out of a different active or call to active duty status of the same or a different covered military member.

4. Failure to provide satisfactory verification of the necessity for Family Leave is grounds for denial of the Family Leave.

Section 15. Employees with Annual Leave Balances

A. If an employee transfers, promotes, reduces, or otherwise joins the Eligibility Worker unit with an Annual Leave balance, the employee shall exhaust all Annual Leave balances prior to utilizing any accrued Vacation or Sick Leave hours.

B. Annual Leave shall be used in accordance with the Vacation and Sick Leave Articles of this MOU, with the exception of any payoff provisions.

C. During each fiscal year, an employee with Annual Leave balances may request to be paid for accrued Annual Leave in either two (2) separate increments of up to twenty (20) hours each or one (1) increment of up to forty (40) hours. Such payment shall be made upon request unless the agency/department determines it is not economically or operationally feasible. In such a case, payment shall be made as soon as feasible.

D. Except as outlined in D.1, D.2 and D.3 below, an employee with Annual Leave balances may not cash-out Vacation hours until all Annual Leave balances have been exhausted. An employee with Annual Leave balances may cash-out Vacation hours under the following limited circumstances:

1. The employee’s accrued Vacation bank is such that she/he will reach the applicable cap (as set forth in Article VI, Section 1.D) sometime during the fiscal year.

2. (If subsection “1” is satisfied) when the employee reaches the applicable Vacation accrual cap set forth in Article VI, Section 1.D, the employee may cash out a maximum of sixty (60) hours of Vacation time once per fiscal year.

3. Notwithstanding subsection D.2 above, an employee with less than sixty (60) hours of accrued Annual Leave may cash-out their remaining Annual Leave balance and accrued Vacation time necessary to reach the combined annual cash-out cap of sixty (60) hours, irrespective of an
employee reaching their maximum Vacation accrual cap during the same fiscal year.

E. An employee may not cash-out Annual Leave and Vacation in the same fiscal year except as noted in D.3 above.

F. An employee separating from County service, whether by way of retirement, discharge, or voluntary resignation, shall be paid in a lump sum payment for any unused Annual Leave balance as provided below:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Maximum Payoff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 years</td>
<td>160 hours maximum paid at 100%</td>
</tr>
<tr>
<td>3 years but less than 10</td>
<td>240 hours maximum paid at 100%</td>
</tr>
<tr>
<td>10 or more years</td>
<td>A maximum of 1600 hours of accrued Annual Leave balance has cash value. 320 hours are paid at 100%; remaining balance obtains cash value of 2% for each year of service, to a maximum of 50% i.e., 10 years of service equals 20% cash value for remaining balance; 25 or more years of service equals 50% of the remaining balance after deducted from 1600 hours maximum.</td>
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</tbody>
</table>

G. An employee who is separating from County service by way of paid County retirement may elect either to take Annual Leave as time off, or be paid for his or her Annual Leave in a lump sum payment under the following conditions:

1. The amount of Annual Leave which can be taken as time off shall be limited to the amount of hours the employee is eligible to receive at 100% (i.e., 160 hours for employees with less than three (3) years of service, 240 hours for employees with at least three (3) years of service but less than ten (10) years of service, 320 hours for employees with at least ten (10) years of service). If the employee does not take time off or the amount of leave taken as time off does not exceed the amount of hours the employee is eligible to be paid at 100%, the remaining balance, to a maximum of 1600 hours (less maximum number of the hours paid at 100%), shall be paid in accordance with payoff provisions set forth in Section F of this Article.

H. Notwithstanding the above, any Annual Leave taken as time off during the final two (2) pay periods of employment with the County will be deducted from the Annual Leave payoff provisions set forth above. This provision
shall not apply to the use of family leave, workers’ compensation leave, or other statutorily protected leave during the final two (2) pay periods of employment.

I. Notwithstanding the above, no employee may receive payoff paid at 100% that exceeds 320 hours for combined accrued Vacation and Annual Leave. If the payout of accrued Vacation reaches or exceeds the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any Annual Leave balance shall be paid out in accordance with Section F of this Article. If the payoff of accrued Vacation does not reach the applicable 100% Annual Leave payoff rate as indicated in Section F of this Article, any remaining Annual Leave balance will be paid at 100% up to the applicable Annual Leave payoff rate. Once the combined Vacation and Annual Leave payoff reaches the applicable 100% Annual Leave payoff rate, the employee shall be paid the remaining Annual Leave balances at the percentages referenced in Section F of this Article.
ARTICLE VI VACATION

Section 1. Accumulation of Vacation

A. During the first three (3) years of employment, a full-time employee in a regular or limited-term position shall earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek (approximately two [2] weeks per year). Part-time employees will earn .0385 hours of vacation for each hour of pay during his or her regularly scheduled workweek.

B. After an employee in a regular or limited-term position has been paid for six thousand two hundred forty (6240) regularly scheduled hours, the employee shall earn .0577 hours of vacation for each hour of pay during his or her regularly scheduled workweek, but not to exceed credit for more than eighty (80) regularly scheduled hours in any pay period. Such credit shall be applied to the employee’s vacation accumulation account only upon completion of each pay period. No credit shall be applied during the progress of any pay period or for any portion of a pay period during which the employee terminates County service.

C. Commencing with the pay period following that in which the employee completed ten (10) years of continuous full-time County service, an employee in a regular or limited-term position shall earn .077 hours of vacation for each hour of pay during his or her regularly scheduled workweek, under the same terms and conditions as under B., above.

D. The maximum allowable vacation credit at any one (1) time for a full-time employee with fewer than ten (10) years of full-time continuous service shall be two hundred forty (240) hours or a prorated amount equal to six (6) weeks of vacation for part-time employees. The maximum allowable vacation credit at any one (1) time for a full-time employee with ten (10) or more years of full-time continuous service shall be three hundred twenty (320) hours and a prorated amount equal to eight (8) weeks of vacation for part-time employees.

Section 2. General Provisions

A. Not more than eighty (80) hours of paid time may be credited toward accumulation of vacation credit in any pay period.

B. An Official Leave of Absence shall cause the aforementioned ten (10) years (Article VI, Section 1.C. and E.) of full-time County service to be postponed a number of calendar days equal to the Official Leave.

C. When an employee’s County service consists of part-time regular service or a combination of full-time regular and part-time regular service, both periods of service shall apply towards the required ten (10) years (Article
VI, Section 1.C. and E.) of County service, with the part-time service being applied proportionately to the appropriate full-time interval.

D. Additional vacation earned during the period of vacation may be taken consecutively.

E. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.

F. Vacations shall be scheduled for employees by their agency; however, consideration shall be given to effectuating the wishes of those employees requesting specific vacation periods.

G. No scheduled vacation will be cancelled, except in cases of emergency.

H. Illness while on paid vacation will be charged to Sick Leave rather than vacation only under the conditions specified in Article V, Section 1.B.5.

I. No employee shall be permitted to work for compensation for the County in any capacity during the time of his or her paid vacation from the County service except as a Fire Suppression Volunteer, Deputy Sheriff - Emergency Service, Election Board Officer or Election Night Help.

J. An employee separating from County service for reasons other than paid County retirement shall be paid for all accrued vacation in a lump sum payment. An employee who is separating from County service by way of paid County retirement may elect either to take time off for his or her vacation or to be paid for his or her vacation in a lump sum payment.

K. Not more than once in each fiscal year, an employee may request to be paid for up to forty (40) hours of accrued vacation. Such requests will be granted whenever practicable.

L. Employees shall be permitted to use accrued vacation balances when off work in accordance with Article V, Section 1.B (Permitted uses of Sick Leave) if sick leave balances are exhausted.

M. When a person is reemployed in a regular or limited-term position, the Chief Human Resources Officer may, upon the request of the agency, apply the period of previous County continuous service for the purpose of determining vacation earning rates.
ARTICLE VII  HOLIDAYS

Section 1. Holidays Observed

A. County employees shall observe the following holidays:

<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
<th>Holiday</th>
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</thead>
<tbody>
<tr>
<td>2016</td>
<td>New Year's Day, January 1</td>
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<tr>
<td></td>
<td>Martin Luther King, Jr.'s Birthday, January 18</td>
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<td></td>
<td>Lincoln's Birthday, February 12</td>
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<td></td>
<td>Washington's Birthday, February 15</td>
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<td></td>
<td>Memorial Day, May 30</td>
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<tr>
<td></td>
<td>Independence Day, July 4</td>
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<td>Labor Day, September 5</td>
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<td>Columbus Day, October 10</td>
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<td>Veteran's Day, November 11</td>
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<td>Thanksgiving Day, November 24</td>
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<td>Day after Thanksgiving, November 25</td>
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<td>Christmas Day, December 25</td>
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<td>2017</td>
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<td>Martin Luther King, Jr.'s Birthday, January 16</td>
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<td>Lincoln's Birthday, February 12</td>
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<td>Washington's Birthday, February 20</td>
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<td>Independence Day, July 4</td>
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<td>Columbus Day, October 9</td>
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<td>Thanksgiving Day, November 23</td>
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<td>Day after Thanksgiving, November 24</td>
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<td>Christmas Day, December 25</td>
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<td>2018</td>
<td>New Year's Day, January 1</td>
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<td>Martin Luther King, Jr.'s Birthday, January 15</td>
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<td>Washington's Birthday, February 19</td>
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<td>Memorial Day, May 28</td>
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<td>Columbus Day, October 8</td>
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<tr>
<td>2019</td>
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<td></td>
<td>Martin Luther King, Jr.'s Birthday, January 21</td>
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<td>Lincoln's Birthday, February 12</td>
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</tbody>
</table>
Washington’s Birthday, February 18
Memorial Day, May 27

2019
Thanksgiving Day, November 28
Day After Thanksgiving, November 29
Christmas Day, December 25

2020
New Year’s Day, January 1
Martin Luther King, Jr.’s Birthday, January 20
Lincoln’s Birthday, February 12
Washington’s Birthday, February 17
Memorial Day, May 25
Independence Day, July 4
Labor Day, September 7
Columbus Day, October 12
Veteran’s Day, November 11
Thanksgiving Day, November 26
Day After Thanksgiving, November 27
Christmas Day, December 25

2021
New Year’s Day, January 1
Martin Luther King, Jr.’s Birthday, January 18
Lincoln’s Birthday, February 12
Washington’s Birthday, February 15
Memorial Day, May 31
Independence Day, July 4
Labor Day, September 6
Columbus Day, October 11
Veteran’s Day, November 11
Thanksgiving Day, November 25
Day After Thanksgiving, November 26
Christmas Day, December 24 (Observed)
New Year’s Day (Observed)

2022
Martin Luther King, Jr.’s Birthday, January 17
Lincoln’s Birthday, February 12
Washington’s Birthday, February 21
Memorial Day, May 30
Independence Day, July 4
Labor Day, September 5
Columbus Day, October 10
Veteran’s Day, November 11
Thanksgiving Day, November 24
Day After Thanksgiving, November 25
Christmas Day, December 26 (Observed)

2023
New Year’s Day, January 2 (Observed)
Martin Luther King, Jr.’s Birthday, January 16
Lincoln’s Birthday, February 12
Washington’s Birthday, February 20
Memorial Day, May 29
B. When a holiday falls on a Sunday, the next day shall be observed as the holiday.

C. When Christmas Day or New Year's Day falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.

Section 2. Eligibility for Holiday Pay

A. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay. With County approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.

B. A new employee whose first working day is the day after a holiday shall not be paid for that holiday.

C. An employee who elects paid County retirement on a holiday shall be paid for the holiday.

D. An employee who is terminating employment for reasons other than paid County retirement and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.

E. Only regular, limited-term and probationary employees shall be eligible for holiday pay.

Section 3. Holiday Pay

A. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee’s basic hourly rate for the number of hours the employee was regularly scheduled to work.

B. On each of the holidays designated above, each part-time employee scheduled to work but permitted to take the day off shall receive pay computed at the employee’s basic hourly rate for the number of hours the employee was regularly scheduled to work.

C. Compensation for Holidays Falling on Scheduled Days Off

1. When a holiday falls on a full-time employee’s regularly scheduled day off, the employee shall receive eight (8) hours of compensatory time.
2. A part-time employee shall receive compensatory time at the rate of one (1) hour for each five (5) hours of regularly scheduled work in the workweek to a maximum of eight (8) hours of compensatory time. Employees may request an alternate flex day within the same workweek in lieu of compensatory time off. Such alternate flex day will be equal to the employees' regular work hours.

D. Compensation for Work on Holidays

1. An employee who is required to work on Columbus Day, Veteran's Day, Day after Thanksgiving, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday and/or Washington's Birthday and who meets the eligibility requirements contained herein shall receive his or her regular pay for each hour worked. Work performed on a holiday which is overtime as defined in Article I, Section 1., shall be compensated as provided in Article I, Section 3.

2. An employee who is required to work on Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day or Thanksgiving Day shall receive pay computed at one and one-half (1 1/2) times the employee's basic hourly rate for the number of hours actually worked.

3. An employee who is required to work on a holiday and who meets the eligibility requirements contained herein shall receive, in addition to pay as provided in D.1. or 2. of this Section, compensatory time for each hour worked to a maximum of eight (8) hours.

There shall not be any duplication or pyramiding of rates paid under this Section. The total amount of holiday pay received under Section 3.A above and holiday compensatory time received under Section 3.C above, shall not exceed the total number of hours that the employee is regularly scheduled to work on a shift.

E. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.

F. Full-time employees who are on a pay status during the pay period which includes March 1 each fiscal year during the term of this Agreement shall be credited with two (2) hours of compensatory time at the end of the pay period which includes that date. Part-time employees whose regularly assigned work schedule is at least twenty (20) hours per week shall, in like manner, earn and be credited with one (1) hour of compensatory time.

G. Compensatory time earned under the provisions of this Section may be granted as compensatory time off or paid for at the discretion of the County, as provided in Article I, Section 3.C.2. of this Agreement.
ARTICLE VIII  REIMBURSEMENT PROGRAMS

Section 1.  Mileage Reimbursement

A.  Subject to the current Vehicle Rules and Regulations established by the Board, an employee who is authorized to use a private automobile in the performance of duties shall be paid for each mile driven in the performance of his or her duties during each monthly period, as provided below:

1.  Effective June 29, 2001, the reimbursement rate shall be the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.

B.  An employee who is required by the County to furnish a privately owned vehicle for the performance of his or her duties shall receive a minimum of ten (10) dollars in any month in which the actual mileage reimbursement would otherwise be fewer than ten (10) dollars. The minimum shall not apply in any month:

   1.  in which the employee has not actually worked eighty (80) hours;

   2.  unless the employee claims the ten (10) dollar minimum and the agency certifies that the employee was required to furnish a privately owned vehicle for County business.

Section 2.  Personal Property Reimbursement

Employees shall, in proper cases, be reimbursed for the repair or replacement of personal property damaged in the line of duty without fault of the employee. The amount of reimbursement for articles of clothing shall be the depreciated value based on the age and condition of the article. Reimbursement for a watch shall be limited to the functional value of the watch.
ARTICLE IX  DISCIPLINARY ACTION

Section 1.  Reprimand and Substandard Performance Evaluation

A.  No regular, limited-term or probationary employee shall receive a written reprimand or a substandard performance evaluation except for reasonable cause.

B.  A written reprimand or substandard performance evaluation given to a regular, limited-term or probationary employee may be appealed through the grievance/appeal procedure. Such appeal shall be initiated at Step 1 of the grievance/appeal procedure.

Section 2.  Disciplinary Hearing for Suspension, Reduction or Discharge

A.  In suspending a regular, limited-term regular or promotional probationary employee for more than five (5) days, or in reducing a regular or limited-term regular employee for reasons of unsatisfactory performance— or physical disability, or in discharging a regular or limited-term regular employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:

1.  a description of the proposed action and its effective date(s);

2.  a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;

3.  copies of material on which the proposed action is based;

4.  a statement of the employee’s right to respond, either orally or in writing, prior to the effective date of such proposed action;

5.  a statement of the employee’s right to representation;

6.  a statement of the employee’s right to appeal should such proposed action become final.

B.  In suspending a regular, limited-term regular or promotional probationary employee for five (5) days or fewer, the above notice requirements shall be complied with not more than ten (10) days after the effective date of the suspension. However, if an employee is notified of a suspension which will be effective before the above notice is given, the employee shall:

1.  whenever practicable, be given an opportunity to respond to the proposed suspension to a designated agency representative with the
authority to make an effective recommendation on the proposed suspension prior to the suspension becoming effective;

2. be informed of the employee's right to representation in the response;

3. be informed of the employee's right to appeal should the proposed suspension become final.

C. Prior to the effective date of such suspension of more than five (5) days, or reduction or discharge, an employee will be given an opportunity to respond either orally or in writing, at the employee's option, to a designated agency representative with the authority to make an effective recommendation on the proposed disciplinary action.

D. An employee shall be given reasonable time off without loss of pay to attend a disciplinary hearing.

E. An employee may represent himself or herself or may be represented in the disciplinary hearing by AFSCME.

F. An employee shall receive written notice either sustaining, modifying or cancelling the proposed disciplinary action prior to the effective date of such action except that such written notice may be given after the response period in C., above, for suspension of five (5) days or fewer.

G. Should a proposed reduction or suspension become final, an employee shall have the right to appeal such action pursuant to Sections 3. and 4. of this Article.

H. Should a proposed discharge become final, an employee shall have the right to appeal such action pursuant to Section 5. of this Article.

Section 3. Suspension

A. No regular, limited-term regular or promotional probationary employee shall be suspended except for reasonable cause. A suspension shall not exceed a period of two hundred forty (240) working hours.

B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.

C. In accordance with the provisions of Article X, an appeal of suspension shall be initiated at Step 3 of the grievance/appeal procedure, except for suspensions imposed by the County Executive Officer, which may be referred directly to arbitration.
Section 4. Reduction

A. No regular employee or limited-term regular employee shall be reduced to a position in a lower class for reasons of unsatisfactory performance or physical disability except for reasonable cause.

B. A written notice of such reduction stating specifically the cause of the reduction shall be given to the employee.

C. In accordance with the provisions of Article X, an appeal of reduction for reasons of unsatisfactory performance or physical disability shall be initiated at Step 3 of the grievance/appeal procedure; except for reductions imposed by the County Executive Officer which may be referred directly to arbitration.

Section 5. Discharge and Right of Appeal

A. No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Chief Human Resources Officer except for discharges imposed by the County Executive Officer.

B. A written notice of such discharge stating specifically the cause of the discharge shall be given to the employee.

C. In accordance with the provisions of Article X, a discharge may be appealed directly to arbitration.

Section 6. Polygraph Examination

No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take, refusal to take, or the results of a polygraph examination be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

Section 7. Investigatory Meetings

A. When the County requires an employee to attend an investigatory meeting which could lead to discipline for him or her, prior to the investigatory meeting the employee shall be advised of:

1. the date, time and place of the meeting,

2. the reason for the meeting and,
3. the fact that the meeting could lead to discipline for the employee.

B. An employee required to attend an investigatory meeting pursuant to A., above, has the right to be represented by a Union Steward or an AFSCME staff representative at the investigatory meeting.

C. The County shall notify the employee within four (4) weeks from the date of the investigatory meeting, the results or the status of the investigation.
ARTICLE X GRIEVANCE PROCEDURE AND DISCIPLINARY APPEALS

Section 1. Scope of Grievances

A. A grievance may be filed if a management interpretation or application of the provisions of this Memorandum of Understanding adversely affects an employee's wages, hours or conditions of employment.

B. Specifically excluded from the scope of grievances are:

1. subjects involving the amendment or change of Board of Supervisors resolutions, ordinances or minute orders, which do not incorporate the provisions of this Memorandum of Understanding;

2. matters which have other means of appeal including, but not limited to matters which may be appealed through the Orange County Merit System Recruitment Rules and Appeals Procedure or the Worker's Compensation Appeals Board;

3. position classification;

4. standard or better performance evaluations.

Section 2. Basic Rules

A. If an employee does not present a grievance/appeal or does not appeal the decision rendered regarding his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.

B. If a County representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure.

C. If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, the employee shall be informed in writing and the employee may file the grievance at the next step in the procedure. By mutual agreement of the County and AFSCME, Steps 1 and 2 of the grievance procedure may be waived.

D. The Chief Human Resources Officer may temporarily suspend grievance/appeal processing on a section-wide, unit-wide, division-wide, agency-wide or County-wide basis in an emergency situation. AFSCME may appeal this decision to the Board of Supervisors.

E. Upon written consent of the parties, (i.e., the representatives of the County and the employee or his or her representative) the time limits at any step in the procedure may be extended.
F. Every reasonable effort shall be made by the employee and the County to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.

G. No claim shall be granted for retroactive adjustment of any grievance prior to sixty (60) calendar days from the date of filing the written grievance at Step 1.

H. The County and AFSCME agree that their respective grievance files shall be confidential.

I. A grievance alleging discrimination shall first be referred to the County Equal Employment Opportunity (EEO) Office for intake, review, and if applicable, investigation. The grievant/appellant and, if applicable, the AFSCME representative shall be notified in writing of the grievance being referred to the EEO Office. The timelines for a grievance alleging discrimination shall automatically be held in abeyance until the EEO Office has completed its intake, review, and if applicable, investigation. Once the EEO Office has completed the intake, review, and if applicable, investigation, the grievant/appellant and, if applicable, the AFSCME representative shall be notified in writing the time limits for processing the grievance shall resume.

Section 3. Submission of Grievances

A. Any employee, group of employees, or the Union shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right. Grievances shall identify any employee(s) impacted by the alleged violation of this MOU. However, in situations in which the grievance involves common issues and there are so many affected employees that naming them all would be impractical, the grievance need only identify one employee as the representative of the group of employees affected by the alleged violation of the MOU.

B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the County must, collectively present and pursue their grievance if they report to the same immediate supervisor. If the employees report to different supervisors, such grievances may be initiated at Step 2.

C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the County, appoint one (1) or two (2) employees to speak for the collective group. To be considered a grievant in a group grievance, employees must affirmatively identify themselves as grievances when the grievance is initially filed.

Section 4. Employee Representation
A. An employee may represent himself or herself or may be represented by AFSCME in the formal grievance/appeal procedure, or alternatively, by an attorney in appealing a discharge.

B. Authorized grievance/appeal representatives shall be regular employees in the same agency or Representation Unit as the grievant/appellant who are members of and are designated by AFSCME to represent employees for purposes of the grievance/appeal procedure. AFSCME shall notify Agency Heads of the names and titles of such representatives and send a copy of such notice to the Personnel Department quarterly.

C. Representation at Step one (1) of the grievance procedure shall be limited to authorized employee grievance representatives employed in the agency in which the grievance is filed. AFSCME staff representatives may represent the employee at Steps two (2) and three (3) of the internal grievance/appeal procedure and in arbitration. The Union may request that AFSCME staff be present at step one (1) under mutually agreed conditions.

D. If an employee chooses not to be represented by the Union, the Union may have a Union staff representative present at the applicable final step of the grievance procedure and, if necessary, shall have the right to present the Union's interpretation of provisions of this Agreement at issue. Such presentation shall not include comments regarding the merits of the grievance.

Section 5. Time Off for Processing Grievances/Appeals

A. Reasonable time off without loss of pay shall be given to:

1. an employee who has a grievance/appeal in order to attend a meeting with his or her supervisor or other person with authority to resolve the matter, as prescribed herein, or to meet with his or her grievance/appeal representative;

2. an authorized grievance/appeal representative, in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority to resolve the grievance/appeal, as prescribed herein, or to investigate the action grieved/appealed through discussion with the grievant/appellant or other employees, or through review of appropriate County records relating to the grievance/appeal.

B. The following restrictions shall apply in all cases to activity authorized in Section 5.A., above:

1. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the
grievance/appeal work is completed.

2. Neither the grievant/appellant nor the grievance/appeal representative shall interrupt or leave his or her job to perform grievance/appeal work unless his or her supervisor determines that such interruption or absence will not unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.

3. When an authorized grievance/appeal representative must go into another section or unit to investigate a grievance/appeal, the representative shall be permitted to do so provided that:
   a. the representative checks in and checks out with the supervisor of the unit; and
   b. such investigation does not unduly interfere with the work of the unit.

Section 6. Informal Discussion

If an employee has a problem relating to a work situation, the employee is encouraged to request a meeting with his or her immediate supervisor to discuss the problem in an effort to clarify the issue and to work cooperatively towards settlement.

Section 7. Internal Grievance/Appeal Steps

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

For grievances alleging discrimination, the timelines set forth below shall be tolled as provided in Section 2.I.

Step 1: Immediate Supervisor

If an employee has a problem relating to an interpretation or application of this Memorandum of Understanding, the employee may formally submit a grievance to the immediate supervisor within fourteen (14) calendar days from the occurrence which gives rise to the problem. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution. Within fourteen (14) calendar days after receipt of the written grievance, the immediate supervisor shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.
Step 2: **Agency Head**

If the grievance is not settled under Step 1, it may be presented to the Agency Head. The grievance shall be submitted within fourteen (14) calendar days after the receipt of the written decision from Step 1. Within fourteen (14) calendar days after the receipt of the written grievance, the Agency Head or his or her representative shall meet with the grievant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

Step 3: **Chief Human Resources Officer**

If the grievance/appeal is not settled under Step 2 and it concerns:

A. an interpretation or an application of this Memorandum of Understanding;

B. a substandard performance evaluation;

C. a deferment or denial of a merit increase, or a disputed merit increase;

D. a written reprimand; or

E. a probationary release alleging discrimination, it may be appealed in writing to the Chief Human Resources Officer within fourteen (14) calendar days after receipt of the written decision from Step 2. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the Chief Human Resources Officer in B., C. and D. above, shall be final and binding and shall not be referable to arbitration.

Appeal of a suspension and/or a reduction ordered by an Agency Head or his or her designated representative may be submitted in writing at Step 3 within fourteen (14) calendar days after receipt of the notice of suspension and/or reduction. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the Chief Human Resources Officer or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant.

Section 8. **Referrals to Arbitration**

A. **Grievances**
1. If a grievance is not resolved under Step 3, an arbitration appeal may be presented in writing to the Chief Human Resources Officer within twenty-one (21) calendar days from the date a decision was rendered at Step 3. As soon as practicable thereafter, or as otherwise agreed to by the parties, an arbitrator shall hear the grievance.

2. The parties shall either sign a joint issue submission statement or else execute and sign separate alternative issue statements after discussing the issue(s). In either case, the parties shall send copies of their joint or separate submission statement(s) to the agreed upon arbitrator and to each other within fourteen (14) calendar days before the first scheduled date of the arbitration hearing.

B. Disciplinary Appeals

1. Submission Procedure
   a. If an appeal from suspension or reduction is not settled at Step 3, it may be presented to the Chief Human Resources Officer within seven (7) calendar days from the date the decision was rendered.
   b. An appeal from any discharge or from a suspension or reduction imposed by the County Executive Officer may be presented to the Chief Human Resources Officer within ten (10) calendar days from the date the action becomes final.
   c. All disciplinary appeals shall be signed by the employee and by a representative of the Union if represented by the Union and shall be submitted in writing as follows:

   Was (employee’s name) suspended/reduced/discharged for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article X, Section 8. of this Memorandum.

   d. As soon as practicable after a suspension, reduction or discharge appeal is presented to the Chief Human Resources Officer, an arbitrator shall hear the appeal.

2. Findings of Facts and Remedies

   An arbitrator may sustain, modify or rescind an appealed disciplinary action as follows and subject to the following restrictions:

   a. Discharges/Suspensions/Reductions

   If the arbitrator finds that the action was taken for reasonable cause, he or she shall sustain the action.
b. Suspensions/Reductions

If the action is modified or rescinded, the appellant shall be entitled restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision.

c. Discharges

1. If the arbitrator finds that the order of discharge should be modified, the appellant shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty as determined by the arbitrator.

2. If the arbitrator finds that the order of discharge should be rescinded, the appellant shall be reinstated in a position in his or her former class and shall receive pay and fringe benefits for all of the period of time he or she was removed from duty.

d. Restriction on Remedies

1. The County shall not be liable for restoring pay and fringe benefits for any period(s) of time the appellant was reduced or removed from duty, which results from the appealing party's request for written briefs and/or a transcript of the arbitration proceedings.

2. Restoration of pay and benefits shall be subject to deduction of all unemployment insurance (if not deducted by Employment Development Department) and outside earnings which the appellant received after the date of discharge.

C. Probationary Releases Alleging Discrimination

1. The issues to be submitted to the arbitrator in grievances filed pursuant to Article IV, Section 1.C.3. shall be as follows and shall be submitted consistent with Section 8.A., above.

   a. Was the probationary release of (employee's name) in whole or in part the result of discrimination in violation of Article XV, NONDISCRIMINATION, of the Memorandum of Understanding between the County and AFSCME?

   b. If so, what shall the remedy be under the provisions of Article X, Section 8.C.2., Findings of Facts and Remedies, of the Memorandum of Understanding between the County and AFSCME?
2. Findings of Facts and Remedies

   a. In the event the arbitrator finds no violation of Article XV, NONDISCRIMINATION, the grievance shall be denied and the issue of remedy becomes moot.

   b. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, but also finds such violation was not a substantial cause of the employee's probationary release, the grievance shall be denied and the issue of remedy becomes moot.

   c. In the event the arbitrator finds a violation of Article XV, NONDISCRIMINATION, and also finds that the violation was a substantial cause of the probationary release of the employee, the arbitrator's award shall depend upon the significance of the violation and shall be in keeping with the following alternatives:

   1. The probationary release may be sustained.

   2. The employee may be reinstated in a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.

   3. The employee may be reinstated in a position in his or her former class with full back pay and benefits for all of the period of time the employee was removed from duty. The employee may be required to serve the remainder of any outstanding probation period.

D. General Provisions

1. If the grievance/appeal is decided by an arbitrator, the grievant/appellant and AFSCME relinquish any current or future claim to seek or obtain remedy through any other County appeal procedure.

2. The cost of an arbitrator shall be shared equally in all cases by the County and the appealing party except when the appealing party solely alleges discrimination under Article XV, in which case the County shall bear the full cost. When the grievance involves both discrimination and other arbitrable issues, the proper division of costs shall be determined by the arbitrator.

3. Grievance/Appeal hearings by an arbitrator shall be private.
4. Arbitration appeal hearings of suspensions of fewer than forty (40) hours shall be limited to two (2) days unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. The arbitrator shall be advised of the two (2) day limitation at the beginning of the hearing. The two (2) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the County Executive Officer.

5. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Conciliation Service, the American Arbitration Association or some other agreed upon source and each party shall alternately strike one (1) name from the list until only one (1) name remains.

6. Upon written request by the opposing party in a pending hearing given at least twenty (20) calendar days prior to the scheduled hearing date, the party requested shall supply to the party submitting the request copies of all documentary evidence to be used by that party at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such a request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practicable after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.

7. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.

8. At the hearing, both the appealing employee and the County shall have the right to be heard and to present evidence. The following rules shall apply:

   a. Oral evidence shall be taken only on oath or affirmation.

   b. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify
and to rebut the evidence against the witness. If the employee does not testify in his or her own behalf, the employee may be called and examined as if under cross-examination.

9. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

10. The County and the Union shall be allowed to have one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times. By the mutual agreement of the parties, the County and the Union shall be allowed to have more than one (1) employee, who may be called upon to testify as a witness, present at the arbitration hearing at all times.

11. The parties agree to forego the use of briefs whenever practicable.

12. If a court reporter is requested, the requesting party shall pay the cost of the reporter and the cost of any transcripts provided for itself and the arbitrator. If the other party wishes to purchase a copy of the transcript and is unable to reach agreement with the requesting party for such a purchase, purchase arrangements may be made directly with the court reporter.

13. The decision of the arbitrator shall be final and binding on all parties.
ARTICLE XI  LAYOFF PROCEDURE

Section 1.  General Provisions

A.  This procedure shall not apply to a temporary layoff of fewer than four (4) consecutive weeks.

B.  This procedure shall not apply to employees who have special or unique knowledge or skills which are of special value in the operation of the County business.

C.  When two (2) or more agencies are consolidated or when one (1) or more functions of one agency are transferred to another agency, employees in all involved agencies shall be subject to layoff if one is necessary.

D.  Section 7., Reemployment Lists, and Section 8., Status on Reemployment, of this Article, shall not apply if the County has a written agreement with an employer, public or private, which guarantees the County employee an offer of reasonably comparable employment with the new employer who is taking over a function formerly performed by County employees and the new employer does make such an offer in writing to the employee.

Section 2.  Order of Layoff

A.  When a reduction in the work force is implemented, employees in regular positions and those occupying limited-term positions at the direction of their Agency Head shall be laid off in an order based on consideration of:

   1.  employment status;

   2.  past performance;

   3.  length of continuous employment with the County.

B.  Layoffs shall be made by class within an agency except that:

   1.  Where a class has a dual or multiple concept, the Chief Human Resources Officer may authorize a layoff by specialty within the class.

   2.  Where appropriate, the Chief Human Resources Officer may authorize a layoff by division or smaller unit of an agency.
C. Within a class, employees shall be subject to layoff in the following order:

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>Layoff Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>First - Temporary Promotion</td>
<td>Determined by Agency</td>
</tr>
<tr>
<td>Second - New Probationary</td>
<td>Determined by Agency</td>
</tr>
<tr>
<td>Third - Regular/Promotional</td>
<td>Layoff Points Probationary</td>
</tr>
</tbody>
</table>

After all new probationary employees and employees on temporary promotion have been removed from a class within a layoff unit, the employee with the lowest number of layoff points shall be subject to layoff first. When two (2) or more employees have the same number of layoff points, the agency shall determine the order of layoff for these employees.

D. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his or her former class and shall be subject to layoff in accordance with this procedure.

Section 3. Computation of Layoff Points

Seniority Points:

The equivalent of each year of full-time continuous service with the County shall earn two hundred sixty (260) seniority points.

The equivalent of each regularly scheduled full day of continuous service of a partial year shall earn one (1) seniority point.

Demerit Points:

For a rating of “does not meet performance objectives” on the last “Performance Evaluation Report”, for the class currently held by the employee, the employee shall earn one-hundred thirty (130) demerit points. Demerit points shall only be used in the currently held class of an employee. Demerit points shall not be applied to an employee seeking to enter a lower class through voluntary reduction in lieu of layoff.

The County will provide to AFSCME:

- verification of proper application of demerit points provided the employee authorizes the release of their most current performance evaluation to AFSCME
- one copy of the layoff list and
- one copy of the seniority list
Layoff Points:

Layoff points shall be computed by subtracting demerit points, if any, from seniority points.

Section 4. Notification of Employees

A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective date of the layoff. Notices of layoff shall be served on employees personally at work whenever practicable.

B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the work force is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 5.

C. The notice of layoff shall include the reason for the layoff, the proposed effective date of the layoff, the employee's hire date, the employee's layoff points, a list of classes in the employee's occupational series within the layoff unit, the employee's rights under Sections 5. and 6. and the right of the employee to advise the County of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 5. Voluntary Reduction in Lieu of Layoff

A. A promotional probationary or regular employee who is subject to layoff may request a reduction to a lower class within the same occupational series in the layoff unit provided the employee possesses the minimum qualifications for the class and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer layoff points than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of layoff points shall be subject to layoff.

B. 1. Employees who receive notice of layoff by personal service at work shall have until the end of their third regularly scheduled day of work following actual receipt of the notice to notify their agency in writing of their intent to exercise rights under this Section. Employees whose third regularly scheduled day of work is more than three (3) calendar days after receipt of the notice shall have three (3) calendar days, excluding weekends and holidays, to notify their agency of their intent to exercise rights under this Section; and where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.
2. Employees who receive notice other than by personal service at work shall have five (5) calendar days, excluding weekends and holidays, following the date the person is personally served, or if service is made by mail, five (5) calendar days, excluding weekends and holidays, following the date of proof of service by mail to notify their agency of their intent to exercise rights under this Section. Where such notification is not in writing, the employee shall confirm the notification in writing as soon as practicable.

3. Failure by an employee to respond to his or her agency pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class and that the employee’s hire date stated in the layoff notice was correct.

4. No employee action or inaction referred to in this Section shall be considered a waiver of an employee’s right to file grievances concerning any matter within the scope of the grievance procedure.

Section 6. Voluntary Reduction from Classes Designated as Vulnerable to Layoff

An employee in a class designated by the County as vulnerable to layoff may request a voluntary reduction to any class provided the employee possesses the minimum qualifications and has passed any required performance tests for the class to which reduction is requested. Such employees shall be eligible for consideration for available positions in the class to which reduction is requested. If appointed, such an employee shall be placed on AGENCY/DEPARTMENTAL REINSTATEMENT LISTS pursuant to Section 7.A.3., below.

Section 7. Reemployment Lists

A. The following persons shall be placed on AGENCY REINSTATEMENT LISTS as provided in 1., 2. and 3., below, in the order of their respective layoff points with the person having the largest number of layoff points listed first:

1. Persons Laid Off

The names of persons laid off shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which laid off.

2. Persons Who Exercise Their Rights Under Section 5.

The names of persons who exercise their rights under Section 5. shall be placed on an AGENCY REINSTATEMENT LIST for each class in the occupational series at or below the level of the class from which
reduced, excluding any classes at or below the level of the class currently held.


The names of persons who were voluntarily reduced under the provisions of Section 6 shall be placed on an AGENCY REINSTATEMENT LIST for the class from which reduced and for each class in the occupational series below the level of the class from which they voluntarily reduced, provided they request to be placed on such lists.

Positions to be filled shall be offered first to persons on the AGENCY REINSTATEMENT LIST for that class, starting at the top of the list. If reinstatement is offered to a class other than that from which the person was laid off or reduced, such person must first meet the minimum qualifications and pass any required performance tests for that class.

B. The names of persons laid off shall be placed on the COUNTY PREFERRED ELIGIBLE LIST for the class from which they were laid off and for any class from which they previously voluntarily reduced pursuant to Section 5., in the order of their layoff scores, going from highest to lowest. When one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, ten (10) names shall be certified from the COUNTY PREFERRED ELIGIBLE LIST, starting at the top. When more than one (1) vacant position in an agency, other than the agency from which the employee was laid off, is to be filled in that class, the number of names certified, starting at the top of the COUNTY PREFERRED ELIGIBLE LIST, shall be equal to twice the number of vacancies plus seven (7). If there is a tie among layoff points at the last name to be certified, all tied eligibles shall be certified. Eligible employees certified from COUNTY PREFERRED ELIGIBLE LISTS shall be considered prior to eligible employees certified from lower-ranking eligible lists. Appointments shall be made only from eligible employee lists certified pursuant to Section 7.B. Appointments need not be made in the order of layoff points; any eligible certified in accordance with this provision may be appointed to a vacant position.

C. Names of persons placed on the AGENCY REINSTATEMENT LIST and the COUNTY PREFERRED ELIGIBLE LIST shall remain on the lists for two (2) years, except that:

1. A person who on two (2) separate occasions rejects or fails to respond within five (5) calendar days to offers of employment in a particular class shall be removed from the lists for that class.
2. A person who on three (3) separate occasions declines referral for interviews in a particular class shall be removed from the lists for that class.

3. An employee who upon retirement signs a statement electing not to be eligible for reemployment under this provision shall have his or her name excluded from the aforementioned lists.

D. In the event two (2) or more agencies are consolidated while AGENCY REINSTATEMENT LISTS are in effect, such lists shall be combined and treated as one (1) list in accordance with the preceding provisions of this Section. When a transfer of one (1) or more functions of one (1) agency to another agency occurs, employees previously laid off from such function(s) who are on an AGENCY REINSTATEMENT LIST for the agency losing such function(s), shall be removed from such list and shall be placed on a reinstatement list for the agency acquiring such function(s) and treated in accordance with the preceding provisions of this Section.

E. Reemployment lists shall be available to AFSCME and affected employees upon reasonable request.

Section 8. Status on Reemployment

A. An employee who has been laid off under the provisions of this Article and subsequently reemployed in a regular or limited term position within a two (2) year period from the date of his or her layoff shall receive the following considerations and benefits:

1. All Sick Leave credited to the employee's account when laid off shall be restored.

2. All seniority points held upon layoff shall be restored.

3. All prior service shall be credited for the purpose of determining Sick Leave and vacation earning rates and service awards.

4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.

5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay except that a probation period shall be established as determined by Article IV B. if reemployment is in a higher class or occupational series different from that employed in at the time of layoff.

B. An employee who has voluntarily reduced under the provisions of this Article and subsequently is reemployed in a regular or limited term position
in a class from which the employee reduced within a two (2) year period from the date of reduction shall receive the following considerations:

The employee shall be placed in the salary range either as if the employee had been on a Leave of Absence Without Pay or at the step on the salary range closest to but which does not exceed the employee's salary in the lower class, whichever is higher. The merit increase eligibility date shall be reestablished as determined by the Chief Human Resources Officer. The probationary status of the employee shall be as if the employee had been on a leave of absence.

C. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one from which the employee was reduced, the employee shall first be returned to the class from which the employee had been reduced as provided above. The employee will then be promoted from that class under the provisions of Article II, Section 4., and the employee shall serve a promotional probation period appropriate for the new class as determined by Article IV, Section 1.B.

Section 9. Seniority for Union Stewards and Officers

A. The Union may designate stewards and officers to receive super-seniority solely for purposes of layoffs. The number of stewards and officers receiving super-seniority shall not exceed two (2) percent of the number of employees in the Eligibility Worker Representation Unit.

B. Employees so designated shall receive two hundred sixty (260) layoff points in addition to layoff points computed in Section 3.

Section 10. Job Sharing

When Eligibility Worker Unit employees have been designated as vulnerable to layoff, employees in Eligibility Worker Unit classifications may volunteer to be placed in a twenty (20) hour job sharing position. Employees who are placed in twenty (20) hour job sharing positions shall, upon request, be added to the AGENCY REINSTATEMENT LIST and be eligible for reinstatement to full-time status. An employee placed in a twenty (20) hour job sharing position may not return to full-time position until the employee requests reinstatement to a vacant forty (40) hour position and is eligible according to his/her layoff score on the AGENCY REINSTATEMENT LIST; or the County assigns the employee to a vacant full-time Eligibility Worker Unit position, following thirty (30) days written notice unless the employee is enrolled as a student in which case the employee will be allowed to complete the semester or quarter in which he or she is currently enrolled. The County will not order an employee out of a job sharing position until there is no one remaining on the reinstatement list who will accept a full-time position. The number and assignment of positions subject to job sharing shall be determined by the County. The County will make every
reasonable effort to lessen the impact of layoffs by permitting employees to take part-time work in accordance with these provisions. Employees occupying part-time positions prior to the effective date of a layoff shall be excluded from the provisions of this section.
ARTICLE XII  ON-THE-JOB INJURY, WORKERS’ COMPENSATION SUPPLEMENT PAY

Section 1  On-the-Job Injury

A.  Treatment of Industrial Injuries

Whenever an employee sustains an injury or disability arising out of and in the course of County employment and requires medical care, the employee shall obtain treatment according to the provisions of the California Labor Code Section 4600 et seq.

B.  Workers’ Compensation Supplement Pay

1. Whenever an employee is compelled to be absent from duty by reason of injury or disease arising out of and in the course of County employment, the employee shall receive workers' compensation supplement pay which, when added to the workers' compensation temporary disability benefit, shall equal eighty (80) percent of the employee's base salary for a period not to exceed one (1) year including holidays.

2. Workers' compensation supplement pay shall begin the same day as the workers' compensation temporary disability benefits. Prior to qualifying for workers' compensation temporary disability benefits, an injured employee may, at his or her option, use any accrued sick leave, compensatory time and/or vacation, in that order.

3. While an employee receives workers' compensation supplement pay, no deductions nor payments shall be made from any sick leave, compensatory time or vacation time previously accumulated by the employee. The employee shall not accrue sick leave or vacation credit during the period in which the employee receives workers' compensation temporary disability benefits.

4. When an injury is determined to be job-related by the County or by the Workers’ Compensation Appeals Board, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the fourth day of disability shall be restored to the employee's account(s), except that if the injury required the employee's hospitalization or caused disability of more than fourteen (14) days, eighty (80) percent of all sick leave, compensatory time and/or vacation expended since the first day of disability shall be restored to the employee's account(s).

5. The merit increase eligibility date and probation period of any employee who receives workers' compensation benefits shall be extended by the length of time the employee receives such benefits,
except that the first fifteen (15) consecutive calendar days from the date of the injury shall be considered County service for merit increase eligibility and completion of the probation period.

6. When an employee is no longer entitled to receive workers' compensation supplement pay, the employee may, at his or her option, use sick leave, compensatory time, and vacation, in that order, if the employee is compelled to be absent from duty as set forth in Paragraph B.1., above.

7. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of County seniority and determination of sick leave and vacation earning rates.

C. Exposure to Contagious Diseases

Whenever an employee is compelled by direction of a County-designated physician to be absent from duty due to an on-the-job exposure to a contagious disease, the employee shall receive full compensation for a period not to exceed eighty (80) working hours for a full-time employee or fourteen (14) calendar days for a part-time employee. If the absence extends beyond the applicable period, sick leave, compensatory time and vacation may be used, at the employee's option, in that order.
ARTICLE XIII  SAFETY

Section 1.  General Provisions

Recognizing that a safe work environment is of substantial benefit to both the County and employees, the County and the Union mutually agree to the following safety program:

A. No employee shall be required to work under conditions dangerous to the employee’s health or safety.

B. The County shall make reasonable efforts to provide and maintain a safe place of employment. AFSCME shall urge all employees to perform their work in a safe manner. Employees shall be alert to unsafe practices, equipment or conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors. Employees shall follow safe practices.

C. Any employee who either does not receive an answer to a safety-related question from his or her supervisor within three (3) days or receives an answer which the employee deems unsatisfactory may directly contact the County Safety Officer.

D. Any employee who is directed to perform a task which the employee feels is unsafe may request an immediate investigation from the Safety Officer. During the period that the Safety Officer is conducting an investigation, the employee will be assigned to other work at no loss of earnings. If the Safety Officer concludes the task complained of is safe, the employee shall perform the work as instructed.

E. The County shall furnish all equipment which is necessary for employees to perform their job in a safe manner.

F. The County shall provide the necessary first aid kits at all work locations. First aid kits shall be checked periodically and replenished when needed. Emergency telephone numbers shall be posted near telephones in reception areas. Names and telephone numbers of employees qualified to give first aid cardio-pulmonary resuscitation (CPR) also shall be posted.

G. Wherever practicable, the County shall provide first aid training and CPR training to at least two (2) employees at each work location.

H. Emergency evacuation drills shall be held at each work location at least once every six (6) months.

I. The County shall maintain at each work site a "Log and Summary of Occupational Injuries and Illnesses". The log shall be made available to the Health and Safety Steward.
Section 2. Safety Inspection

During inspection of County facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, a Union designated employee shall be allowed to accompany the inspector while the inspector is in the employee's agency. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Meetings

One Union steward from each district office may be assigned by the Union to meet once per month with the District Manager or his or her designee, at the request of either party, to discuss matters affecting employee health and safety. The District Manager shall respond within ten (10) working days unless the time limit is extended by mutual agreement. Either party may request additional meetings in response to emergency situations.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Department Safety Officer. The Department Safety Officer shall respond within ten (10) working days.

If the matter is not satisfactorily resolved, the Union steward may, at his or her request, meet with the Director of Social Services.
ARTICLE XIV  UNION AND EMPLOYEE RIGHTS

Section 1.  Employee Rights

The County shall not hinder or discipline an employee for exercising any rights or benefits provided in this Memorandum of Understanding.

Section 2.  Agency Shop

It is mutually agreed by the parties that this Unit is an agency shop Unit. It is the intent of the parties that agency shop provisions in the Memorandum of Understanding comply with applicable state law (Government Code Section 3502.5).

A.  Agency Shop Defined

It is mutually agreed by the parties that the term “Agency Shop” means that every employee within this Bargaining Unit shall, as a condition of continued employment, either join AFSCME or pay the organization an agency fee not to exceed normal Union dues except as provided in Section 2.B., below.

B.  Religious Objections

An employee who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or to financially support the Union. Such employee shall in lieu of periodic dues or Agency Fee, pay sums equal to Agency Fees to a non-religious, non-labor charitable fund exempt from taxation under Section 501C(3) of the Internal Revenue Code. Such funds shall be paid through payroll deductions to one of the eligible charitable agencies identified below:

American Cancer Society
American Red Cross
United Way
Orangewood Children’s Foundation
Ronald McDonald House

C.  Union Responsibilities

1.  Hudson Notice

The Union agrees to provide notice and maintain constitutionally acceptable procedures to enable non-member Agency Fee payers to meaningfully challenge the propriety of the use of Agency Fees as provided for in Chicago Teachers Union, Local No. 1, AFT, AFL-CIO et al. v Hudson, 106 S. Ct. 1066 (1986). Such notice and procedures
shall be provided to non-member Agency Fee payers in each year that the Agency Shop agreement is in effect.

AFSCME shall notify the County, in writing, as to the amount of dues or fees uniformly required of members or Agency Fee payers of AFSCME.

D. Management Responsibilities

1. The County shall notify all members of the Bargaining Unit that they are required to pay dues or Agency Fee as a condition of continued employment and that such amounts will be automatically deducted from their paychecks. The notification shall also explain the existence, terms and conditions of the religious exception described in Section 2.B. above.

2. The County shall deduct the dues or Agency Fee from the bi-weekly pay of each covered employee in the Eligibility Worker Unit. All dues and service fees deducted hereunder shall be promptly transmitted by the County to AFSCME.

3. The County shall promptly transmit the union dues or Agency Fees so deducted to AFSCME.

4. The County shall provide the Union on a monthly basis with a list of employees in the Bargaining Unit. The employee list shall contain the name, employee number, classification title, work location, home address, and phone number for each employee. This list shall be provided electronically.

5. The County shall provide AFSCME, at least monthly, a report showing all changes in the employment status of employees in this unit that affect the applicability of the provisions of this Article to those employees.

E. Rescission

It is mutually agreed by the parties that the agency shop provision in this Memorandum of Understanding may be rescinded by a majority vote of all the employees represented by this Bargaining Unit under procedures established by the Public Employment Relations Board. In the event such agency shop provisions are rescinded, all other Articles of the MOU shall remain in full force and the prior agreement, rules, regulations and past practices relating to organizational dues deductions shall be reinstated until an amendment or a successor MOU is approved.

F. Payroll Deduction for Insurance Premiums
Insurance premiums for members in this Representation Unit for such AFSCME-sponsored insurance programs shall be deducted by the County from the pay of such members. The County shall promptly transmit the insurance premiums so deducted to AFSCME. AFSCME shall notify the County in writing as to the amount of insurance premiums required of employees who choose to participate in such programs.

G. Indemnification

The Union agrees to indemnify and hold the County of Orange and its agents/employees harmless from any liability of any nature which may arise as a result of the application of the provisions of this Article.

H. Union Dues Cancellation

Any employee in this Unit who has previously authorized Union dues deductions as of the effective date of this Agreement or at any time subsequent to the effective date of this Agreement shall continue to have such dues deduction made by the County during the term of this Agreement; provided that any employee choosing to discontinue such Union dues may do so by submitting a completed and signed payroll deduction cancellation form to the Auditor/Controller during the period January 1 through January 15, 2019. Any person who exercises their right to discontinue membership of the Union will then be subject to Agency Shop Fees.

Section 2. Payroll Deduction

A. Membership dues of AFSCME members in this Representation Unit and insurance premiums for such AFSCME sponsored insurance programs as may be approved by the Board of Supervisors shall be deducted by the County from the pay warrants of such members. The County shall promptly transmit the dues and insurance premiums so deducted to AFSCME.

B. AFSCME shall notify the County, in writing, as to the amount of dues uniformly required of all members of AFSCME and also the amount of insurance premiums required of employees who choose to participate in such programs.

Section 3. Employee Information Listing

Upon request, to a maximum of four (4) times per fiscal year during the term of this Agreement, the County shall provide AFSCME with a complete and current listing of all employees in this Unit. Such listings shall include employee name, job classification, agency, timekeeping location, salary range and step. AFSCME agrees to pay one dollar and fifty cents ($1.50) per page to offset the cost of providing such listings.
Section 4. **Use of Bulletin Boards**

Space shall be made available to the Union on agency bulletin boards within the Representation Unit provided such use does not interfere with the needs of the agency and material posted is not so opprobrious, flagrant, insulting, defamatory, insubordinate or fraught with malice as to cause disruption of, or material interference with, the operations of the County, County employees or other employee organizations as PERB and the Courts interpret this standard and the rights of union speech. Notice shall be dated and signed by the authorized representative of the Union responsible for its issuance.

Section 5. **Use of County Facilities**

The Union may, with the approval of the Chief Human Resources Officer, hold meetings of their members on County property during nonworking hours provided request is made to the Chief Human Resources Officer as to the specific location and dates of the meeting prior to such meeting.

Section 6. **Notification of New Employees**

The County agrees to inform new employees in writing of the Union’s status as the exclusive representative of employees in the Bargaining Unit.

Section 7. **Release Time for Union Officers**

The following designated Union officers will be given the following amount of release time per week in order to perform lawful Union business:

1) The Chief Shop Steward of AFSCME will be 16 hours per week of release time;

2) President – 16 hours per week of release time;

3) Vice-President – 8 hours per week of release time;

4) Secretary – 4 hours per week of release time;

5) Treasurer – 4 hours per week of release time.

Workloads will be reduced in a corresponding manner.

The County and AFSCME will meet each June to determine an appropriate work schedule that will allow these designated Union officers to engage in their Union activities. Work schedules will take effect the first full pay period of August, provided however, that for the time period between the adoption of this MOU and August 2017, the parties will meet within 30 days of the adoption of the MOU to determine an appropriate work schedule for each of these Union officers. If no agreement can be reached between the parties, the Divisional Deputy Director or
designee will make the final determination.

Section 8. Steward Training

A maximum of fourteen (14) AFSCME stewards will be allowed to attend two (2) eight-hour training classes conducted by Council 36 during each year of this contract without loss of pay. AFSCME representatives will provide the County with a ten (10) working day advanced notice of the date of the training and a list of those who will be attending the classes, as well as a sign-in sheet of those who did attend.
ARTICLE XV  

NONDISCRIMINATION

Section 1.  County and AFSCME Responsibilities

The County and AFSCME agree that the provisions of this Memorandum of Understanding shall be applied to employees without discrimination as required by state and federal law.

Section 2.  AFSCME Responsibilities

The Union shall not discriminate in membership or representation on any basis cited in Section 1. of this Article.
ARTICLE XVI  INSURANCE

Section 1.  Health Plans and Premium Contributions

A.  Full Time Employees

1.  Except as modified in Section 1.B., C., D., E., and F., below, the County will offer health plans to all full-time regular, limited term and probationary employees and their eligible dependents.

2.  The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:

   a.  Employee Only Coverage – eighty-five (85) percent of the employee’s premium or ninety (90) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program;

   b.  Employee and Dependent Coverage - seventy (70) percent of the total health plan premium for each employee and such employee’s eligible dependents or seventy-five (75) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program.

   c.  Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.

3.  Employees who elect the Sharewell Choice PPO plan will not only have their insurance premium fully paid by the County but will also receive a payroll credit per plan guidelines. In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.

4.  The health plans and their premiums are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

B.  Part-time Employees

1.  Except as modified in Section 1.C., D., E., and F., below, the County will offer health plans to all part-time regular, limited term, and probationary employees. Enrollment of part-time employees shall be restricted to employees whose normal workweek consists of at least twenty (20) hours.
2. The County will pay the following percentage of the premium for employees electing any health insurance plan other than the Sharewell Choice PPO plan:

a. Employee Only Coverage – forty-five (45) percent of the employee’s premium or fifty (50) percent of the employee’s premium if the employee completes the Healthy Steps (wellness incentive) program;

b. Employee and Dependent Coverage – thirty two and one-half (32.5) percent of the total health plan premium for each employee and such employee’s eligible dependents or thirty-seven and one-half (37.5) percent of the total health plan premium for each employee and such employee’s eligible dependents if the employee completes the Healthy Steps (wellness incentive program).

c. Employees will pay the remaining portion of the total plan premium and consent to have their portion deducted from their County regular or supplemental payroll checks.

3. The County will pay the following percentage of the premium for employees electing the Sharewell Choice PPO plan:

a. Employee Only Coverage – one hundred (100) percent of the premium;

b. Employee and Dependent Coverage – per subsection B.2.b above

In addition, those employees who elect the Sharewell Choice PPO plan are not required to participate in the Healthy Steps program.

4. Coverage shall be terminated for any employee whose normal assigned hours are reduced to less than twenty (20) hours in a full workweek.

5. The health plans and their premium are adopted by, and may be modified by, the Board of Supervisors. Plan descriptions are contained in the plan documents available through HRS/Employee Benefits.

C. Two married full-time employees who are enrolled in the same health plan must be enrolled as Employee Married to Employee (EME). While enrolled as EME, the County will pay the full cost of employee and dependent coverage for each EME. Employees must report any subsequent changes in marital status such as legal separation or divorce, within 30 days of the event. Failure to report legal separation or divorce
from a covered spouse shall require repayment of all premiums paid by the County under this program during the period in which the employees were ineligible due to legal separation or divorce.

D. Dual Coverage: If two married employees are enrolled in separate health plans neither employee may be covered as a dependent on their employee spouse’s health plan. Eligible employees may choose to enroll in different health plans and choose to cover eligible dependent children on one or both health plans, subject to employee contributions for coverage.

E. For employees who are on approved Family Leave pursuant to Article V, Section 14. and applicable law, the County shall continue to pay health insurance premiums as provided in A., B. and C., above, to the extent required by applicable law.

F. For employees who are on approved leave which meets the requirements of Pregnancy Disability Leave pursuant to Government Code section 12945, the County shall continue to pay health insurance premiums as provided in A. and B., above, to the extent required by applicable law.

G. Effective January 1, 2007, active employees are pooled separately from retirees for purposes of setting premiums for participation in County offered health plans.

Section 2. Health Plan Enrollment

A. New eligible employees will be enrolled in the health plans of their selection effective the first day of the month following the first thirty (30) days of employment. Eligible full-time employees failing to elect a plan will be enrolled in the Wellwise Choice PPO Health Plan, employee only. Eligible part-time employees failing to elect a plan will be enrolled in the Sharewell Choice PPO Health Plan, employee only. Employees who go out on leave of absence prior to satisfying the waiting period for coverage shall not be eligible for coverage until returning to work unless required by state/federal law. Upon return to work, coverage will become effective the first day of the month following thirty (30) days from the date of return unless otherwise required by state/federal law.

B. Terminated employees will be continued with coverage in all health plans until the last day of the calendar month in which they terminate employment. Terminated employees may be eligible for continuation of health insurance as required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) and/or by other state/federal law.

C. Employees who are enrolled in a County health plan at the time of retirement will be given the opportunity to elect and enroll in a Retiree health plan.
D. The County shall provide for an open enrollment period once each calendar year for employees, employees’ eligible dependents, and retirees to change their enrollment in a County health plan.

Section 3. **Premium Only Plan**

The County shall administer a Premium Only Plan that will allow an employee to pay for health insurance premiums as permitted by state and federal law, regulations and guidelines. Under the plan, an employee’s gross taxable salary will be reduced by an amount of his or her share of the premium costs of County-provided health plan coverage as permitted by state and federal law, regulations and guidelines.

Section 4. **Other Insurance Coverage**

A. AFSCME shall maintain a trust fund, approved by the State of California, for the sole purpose of providing group insurance benefits such as, but not limited to, disability, vision, dental, and life insurance for employees in the Eligibility Worker Unit.

B. The County shall, on a biweekly basis, forward $23.70 per pay period for all regular hours paid for all regular, limited-term and probationary employees in the Eligibility Worker Unit for all employees who have any paid hours in the pay period for deposit in said State approved trust fund.

C. Insurance coverages provided through the trust fund with monies contributed by the County shall be made available to all employees in the Eligibility Worker Unit on an equal basis regardless of membership status.

D. AFSCME shall indemnify and hold the County harmless from any claims or legal actions brought under this Section.

E. AFSCME shall provide the County with a copy of the annual report to the Insurance Commission and shall provide a full accounting of the status of the fund upon request of the County.

Section 5. **Employee Contribution Subsidy Program**

A. Effective with the pay period beginning September 30, 2005, the one percent (1%) employee subsidy contribution for current health insurance for all regular, limited-term and probationary employees was terminated.

B. Current employees who separate from County service effective on or after the pay period beginning September 30, 2005 are not eligible to receive a lump sum payment. Such employees are not members of an Eligible Classification under the Plan.
C. Current employees who retire or take deferred retirement on or after September 30, 2005 are not eligible for the retiree medical grant, including survivor benefits. Such employees are not members of an Eligible Classification under the Plan.

D. Current employees who are granted a disability retirement by Orange County Employees Retirement System based on an application submitted to OCERS before September 30, 2005 will be eligible to receive a grant under the terms and conditions of the Plan.

Section 6. Retiree Medical Participation

A. Current employees who retire from County Service effective on or after the pay period beginning September 30, 2005 are eligible to participate in County sponsored health plans at their own cost if enrolled at the time of their retirement.

Section 7. Working Group and Reopener

A. Working Group

The parties agree to establish a Working Group to review insurance issues. The Union may have up to five (5) members as representatives on the working group. Other bargaining groups and stakeholders (eg., OCEA, Teamsters, IUOE, OCMA, unrepresented employees) will be invited to participate in the working group. Among the issues to be examined by the working group are the following:

- Plan design (eg., benefits, wellness and other incentive programs);
- Cost containment ideas;
- Impact of the ACA on County insurance plans/programs;
- Establishment of wellness and/or fitness centers;
- Gym memberships;
- Continued use of Healthy Steps as a component of the County’s wellness program; and
- Other issues the parties agree to discuss.

The Working Group will strive to complete its work, including making recommendations to the parties, no later than December 31, 2017. The Working Group may continue to work on insurance issues after December 31, 2017 upon agreement of the parties.

B. Reopener as a Result of ACA

The County may reopen negotiations on this Article and other provisions of the MOU (eg., Flexible Spending Accounts) for purposes of addressing issues resulting from the implementation of the Patient Protection and Affordable Care Act (ACA), including but not limited to, the potential impact of the Excise Tax (commonly known as the “Cadillac Tax”) on
high cost employer-sponsored health coverage. Federal administrative agencies have not yet issued definitive guidance regarding the Excise Tax which is expected to begin in 2022. The parties acknowledge that some of the benefits provided in the MOU may be included in the coverage to which the Excise Tax liability may apply. As a result, the issues that likely need to be addressed are: which health group plan coverages must be taken into consideration for the purposes of this tax, how to calculate this tax, and what steps, if any, can be taken to avoid payment of the Excise Tax (e.g., modification of benefits).

The County will not be responsible for the payment of any Excise Tax on health coverage from unit members’ enrollment in County-sponsored health plans.

The County may reopen negotiations on this Article and other provisions of the MOU to address issues related to the implementation of the Patient Protection and Affordable Care Act (ACA).
ARTICLE XVII  POSITION CLASSIFICATION

Section 1.  New Job Classes

If the County creates a new job class within the Bargaining Unit, the County shall notify the Union prior to adoption. If the Union wishes to negotiate with the County regarding the impact of the new classification on employees' wages, hours and other terms and conditions of employment, the Union shall notify the County within ten (10) working days from receipt of such notice.

Section 2.  Procedure for Requesting Reclassification of a Position

Step 1:  An employee may submit a written request to his or her supervisor that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate based on the employee's present duties. The Agency will promptly provide the Union with a copy of the employee's request.

Step 2:  Appropriate Agency response to an employee's request for reclassification shall include, but not be limited to, (a) denial of the request, or (b) forwarding of the request to the Human Resource Services Department with a recommendation that a classification study be conducted. If the request is denied, the employee shall be given a written statement of the reasons for the denial. If management denies the request or fails to respond within thirty (30) calendar days, the employee may submit the request to the Union for consideration.

Step 3: Within thirty (30) calendar days thereafter, the Union may request in writing that the Human Resource Services Department conduct a classification study of the position.

Step 4: Within fifteen (15) calendar days of the receipt of a written request from the Union to study the classification of a position, the Human Resource Services Department will provide the employee with a Position Description Form. The employee shall complete the form and submit a copy to the employee's supervisor and a copy to the Human Resource Services Department.

Step 5: Within one hundred twenty (120) calendar days after the Human Resource Services Department receives the completed Position Description Form, the Human Resource Services Department shall notify the Union of the appropriate classification of the position.
Section 3. **Limitations on Concurrent Studies**

The County shall not be required to respond within one hundred twenty (120) calendar days if the total number of pending requests by the Union for reclassification studies (at Step 4 of this procedure) exceeds ten (10) positions.

Section 4. **Maintenance Classification Reviews**

Maintenance Classification Reviews of occupational series shall not be covered by this procedure.

Section 5. **Review of Disputed Position Classification Decisions**

A. If the Union does not agree with a position classification decision of the County, after the steps in Section 2. have been followed, the issue may be presented to a classification consultant for advisory review.

B. The consultant's review shall be documented on forms supplied by the County and used by the County for documenting its classification decisions.

C. The consultant shall have access to the organizational and classification files of the Human Resource Services Department and shall have the right to conduct the classification study in the manner the consultant deems most appropriate.

D. Any salary change for any employee resulting from a consultant's advisory recommendation shall be effective no sooner than the beginning of the pay period following the decision of the County at Step 5 of the procedure described in Section 2., above.

E. A consultant shall be chosen who has experience in conducting position classification analyses for local governmental agencies. The consultant will be chosen by a committee with an equal number of County and Union members. The cost of the consultant shall be shared equally by the County and the Union.
ARTICLE XVIII DEFINED CONTRIBUTION

An employee in a regular position may, at his or her request, participate in the County's 457(b) Defined Contribution Plan.
ARTICLE XIX  WORKLOAD

Section 1.  General Provisions

A.  The right to determine workload levels and the method of organizing and assigning work shall be retained by the County.

B.  Whenever practicable prior to implementation, the County shall notify and discuss with the Union the establishment of a workload level for a particular type of assignment or significant decreases or increases in the existing workload levels of employees. If it is not practicable to notify the Union before such workload decisions are implemented, the County shall notify and discuss such workload levels with the Union as soon as practicable thereafter.

C.  When practicable, the County shall consider projected turnover and anticipated workload levels when staffing for each program and function, but shall not be required to fill positions in excess of any of the fiscal constraints as described in Section 2., below.

D.  Workload statistics shall be furnished to the Union on a monthly basis.

Section 2.  Fiscal Constraints

The County shall not be required by the provisions of this Article to take any action which may reasonably be expected to result in incurring costs in excess of any of the fiscal constraints set forth below:

A.  Incurring salary and/or benefit costs which could exceed the applicable State or Federal reimbursement level for any aid category, as set forth in State Cost Control Plans.

B.  Requiring positions to be filled in excess of those authorized to be filled by the Board of Supervisors.

C.  Requiring overtime expenditures in excess of overtime funding budgeted and authorized for expenditure by the County Executive Office and the Board of Supervisors and approved by the Agency for employees in this Unit.

Section 3.  Workload Distribution

A.  To the extent practicable, the County will make reasonable efforts to equitably distribute workload among employees with the same assignment. However, nothing in this Article shall limit the County's ability to establish specialized assignments when the County determines it is appropriate to do so.
Section 4. Performance Ratings

A. Each case-carrying employee's caseload size and error rate shall be considered when the employee's Performance Review is prepared. An employee's overall performance rating shall be based on ratings received in all performance factors in the Performance Review.

B. When an employee carries a caseload five (5) percent above the County assigned workload level for that assignment, it shall be considered and noted in the employee's Performance Review.

C. When an employee maintains an error rate which is below the error rate for that program, it shall be considered and noted in the employee's Performance Review.

D. In any month(s), when an employee's caseload/applications exceed the County assigned workload level for that assignment by five (5) percent or more to a maximum of ten (10) cases, errors which are a direct result of the higher caseload/application levels shall not be a basis for a negative reference in the Performance Review.

E. When it is the judgment of the supervisor that an error is a direct result of an employee's inability to communicate with a client in a common language, that error shall not be a basis for a negative reference in the Performance Review.

Section 5. Uncovered Caseload Assignments

A. Except as provided below, any caseload assignment that is uncovered for two (2) weeks or more shall be distributed among existing workers within the function, within the District in a manner consistent with the provisions of this Article.

B. If a caseload assignment is uncovered for two (2) weeks and it reasonably appears that a worker will be available to cover the caseload within the third week, the supervisor may continue to keep the caseload temporarily distributed among the workers of that function within the District.

C. If a caseload assignment is to be uncovered for two (2) weeks or more due to sick leave or vacation, the employees in the unit/section may request through the Union steward that the caseload be distributed on a temporary basis within the unit or function within the District.

D. When a worker whose caseload has been distributed among remaining workers returns from Sick Leave or vacation, upon the request of the employee, the County shall return that worker to his/her prior assignment (unit/caseload) whenever practicable.
ARTICLE XX WORKLOAD MANAGEMENT FORUMS

Section 1. Intent

The County and AFSCME encourage responsible workload levels for employees, effective flow of information within the Agency and efficient use of available staff. An intended objective of the management forum shall be that, when possible, cases be equitably distributed within the various programs.

Section 2. Establishment of Workload Management Forums

A. SSA Within thirty (30) days of the effective date of this Memorandum, the Agency shall implement a Workload Management Forum as follows:

1. A forum shall be implemented in the Social Services Agency consisting of up to seven (7) employee representatives and up to an equal number of management representatives.

2. Based on the item for discussion at any particular Workload Management Forum, additional employee or management staff may attend at the mutual agreement of the Agency and AFSCME.

3. A forum shall be established in the Health Care Agency and shall consist of up to two (2) employee representatives and an equal number of management representatives.

B. Employee representatives shall be selected by AFSCME. Management representatives shall be selected by the Agency Head or designee.

Section 3. Objectives

A. Each Workload Management Forum shall meet once each month for the purpose of reviewing current workload management practices, identifying problem areas and exploring potential improvements.

B. Pursuant to this Article, each Workload Management Forum will develop specific recommendations including, but not limited to, the following:

1. improved management information systems;

2. relationships between workload and performance expectations;

3. manageable workload levels within budgetary limitations;

4. methods for achieving equitable distribution of work when possible.
C. Agency management shall review the recommendations of each Workload Management Forum and where practicable, adopt procedures addressing the area(s) of concern.

Section 4. Operating Procedures

A. Each Workload Management Forum shall establish its own operating procedures.

B. Employee representatives shall be allowed reasonable time off without loss of pay to attend meetings.
ARTICLE XXI TRANSFER OF FUNCTIONS

In the event the County plans to enter into any agreement with another public employer or private entity which involves the transfer of functions now being performed by employees in this Representation Unit, or the law or governmental regulations provides for the transfer or substantial modification of functions now being performed by employees in this Unit to another public or private agency, the County will advise such public or private entity of the existence and terms of this Memorandum of Understanding and will immediately advise the Union of such plans or law or regulation.

The County will consult with the Union in a timely manner to review possibilities for the absorption of affected employees in the Representation Unit into other jobs in the County service or the new agency.

In the event of any such transfer of functions, it is the intention of the County to make every reasonable effort to absorb affected County employees in the Representation Unit who desire to remain employed by the County into comparable employment in the County service. In addition, the County intends to consult with any agency which is absorbing a County function in order to provide for suitable placements within that agency for County employees whose function is being transferred.
ARTICLE XXII  SEPARABILITY

In the event that any provision of this Memorandum of Understanding is declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire Memorandum, it being the express understanding of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.
ARTICLE XXIII  MANAGEMENT RIGHTS

Any of the rights, powers or authority the County had prior to the adoption of this Memorandum of Understanding are retained by the County, except those specifically abridged, delegated or modified by this Memorandum of Understanding provided that such management rights do not restrict employees from filing grievances.
ARTICLE XXIV  MODIFICATION AND WAIVER

This Memorandum sets forth the full and entire understanding of the County and Union regarding the matters set forth herein. Except as specifically provided herein, it is agreed and understood that the parties hereto reserve the right, only upon mutual agreement, to meet and confer in good faith with respect to any subject or matters covered herein or with respect to any other matter within the scope of representation during the term of this Memorandum of Understanding.
ARTICLE XXV UNION - MANAGEMENT COUNCIL

Section 1. Participants

The Union - Management Council shall be composed of eight (8) employee representatives chosen by the Union, an AFSCME staff representative, the Director of Financial Assistance and seven (7) additional management representatives.

Section 2. Purpose

The purpose of the Council shall be to discuss issues as identified by the Union or management. The Council shall share information regarding issues of concern that may impact SSA and the bargaining unit and shall seek means of resolving problems.

Current problems can include, but not be limited to, working conditions, discussions and suggestions on work simplification, elimination of non-mandated tasks or discussion of impending changes.

Section 3. General Provisions

A. The Council shall meet once each quarter, unless additional meetings are scheduled by mutual agreement.

B. The Council shall establish such operating procedures as it deems necessary.

C. Council members will be given time off without loss of pay or benefits to attend Council meetings.

D. Impacted site stewards will be given time off without loss of pay or benefits to attend Council meetings; they will return to their work sites when work on their agenda item is completed.

E. Prior to submitting any issue/concern for discussion at a Union-Management Council Meeting, AFSCME representatives will discuss the matter with district level management in an effort to resolve the issue/concern at the lowest possible level.

F. Nothing shall be agreed upon in these meetings which would have the effect of altering or amending this Memorandum of Understanding.
ARTICLE XXVI  RETIREMENT CONTRIBUTION RATES AND BENEFIT LEVELS

Section 1. Retirement Benefit Levels

A. For employees hired on or before September 20, 1979:
   1. Such employees are provided a one-fiftieth (1/50) retirement benefit formula per Section 31676.12 of the Government Code for general members. (This retirement formula is commonly known as the “2% at 57” benefit formula.)
   2. The retirement allowance will be computed on the highest one (1) year of final compensation per Government Code Section 31462.1.

B. For Employees Hired on or after September 21, 1979 and Before January 1, 2013, or If Hired on or After January 1, 2013, are Not Considered “New Members” within the Meaning of the Public Employees Pension Reform Act of 2013 (PEPRA).
   1. Employees will be provided a one-sixtieth (1/60) retirement benefit allowance as provided in Section 31676.1 of the Government Code. (This retirement formula is commonly known as the “1.67 at 57.5” formula.1)
   2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 31462.

C. For Employees Hired on or After January 1, 2013 who are Considered “New Members” within the Meaning of PEPRA.
   1. Employees will be provided with the retirement benefit allowance set forth in Section 7522.20 of the Government Code. (This retirement formula is commonly known as the “2% at 62” formula.)
   2. The retirement allowance of employees will be computed upon the employee's highest three (3) years of compensation per Government Code Section 7522.32.

1The 1.67@57.5 benefit formula provides the following percentages at these ages: 1.92% at age 60; 2.09% at age 62, and 2.43% at age 65.

Section 2 Retirement Contributions
A. Members' normal contribution rates shall be as provide by Government Code sections 31621.5, 31621 or 7522.30, as applicable, for general members.

B. The County will adopt employee contribution rates equal to County contributions for full reserve funding of cost-of-living increases to retirees for all active members of the retirement system as recommended by the OCERS actuary. Effective September 19, 2014, employees will pay the full member contribution for each of the benefit plans provided by the County.

Section 3. Adjustment of Rates

A. Members' normal and cost-of-living contribution rates shall be adjusted subsequent to and in conformance with actuarial recommendations adopted by the Retirement Board and the Board of Supervisors.
ARTICLE XXVII  JOB ACTIONS

During the life of this Agreement, no job actions shall be caused or sanctioned by AFSCME.
ARTICLE XXVIII FLEXIBLE SPENDING ACCOUNTS

Section 1.  Dependent Care Reimbursement Account (DCRA)

The County will administer a Dependent Care Reimbursement Account (DCRA) that will allow eligible employees the opportunity to allocate a specified amount of biweekly pre-tax salary into the employee’s dependent care reimbursement account to pay for dependent care expenses as permitted by state and federal law, regulations and guidelines and as permitted by the County’s Section 125 Plan document.

Section 2.  Health Care Reimbursement Account (HCRA)

The County will administer a Health Care Reimbursement Account that will allow employees the opportunity to allocate a specified amount of bi-weekly pre-tax salary into the employee’s health care reimbursement account to pay for health care expenses as permitted by state and federal law, regulations, and guidelines and as permitted by the County’s Section 125 document.
ARTICLE XXIX   COMPENSATION

Section 1.

Effective October 1, 2005, the PIP program/award ceased. The annual evaluation-only component of the program remains. All evaluations that were completed through December 31, 2005 received the time off award. PIP time that was on the books at that time must have been used by June 26, 2008.

Section 2.

Effective the first day of the payroll period after adoption of this MOU by the Board of Supervisors, the salary schedule will be increased by 34.50% across-the-board. In addition, full-time employees on the payroll as of the date of adoption of this 2016-19 MOU will receive a one-time, off-schedule lump sum payment of $500. Part-time employees on the payroll as of the date of adoption of this 2016-19 MOU will receive a pro-rated amount of the lump sum payment set forth above.

Section 3.

Effective July 37, 2017, the salary schedule will be increased by 32.45% across-the-board. In addition, full-time employees on the payroll immediately preceding the December 8, 2017 pay period will receive a one-time, off-schedule lump sum payment of $500. Part-time employees on the payroll as of the payroll period immediately preceding the December 8, 2017 pay period will receive a prorated amount of the lump sum payment set forth above.

Section 4.

Effective July 26, 2018, the salary schedule will be increased by 3.41.0% across-the-board. In addition, full-time employees on the payroll immediately preceding the December 7, 2018 pay period will receive a one-time, off-schedule lump sum payment of $500. Part-time employees on the payroll as of the payroll period immediately preceding the December 7, 2018 pay period will receive a prorated amount of the lump sum payment as set forth above.

Section 5.

Effective July 1, 2022 the salary schedule will be increased by 3.4% across-the-board. Extra Help employees are ineligible from receiving the one-time off-schedule lump sum payments.
Article XXX PERFORMANCE EVALUATION WORKGROUP

SECTION 1. Intent

The County and AFSCME agree that employees are to be evaluated through a fair evaluation system. The County and AFSCME agree to work collaboratively to review the current evaluation process to determine areas of recommended improvement in the documents, forms and implementation of the evaluation system.

Section 2. Establishment of the Performance Evaluation Workgroup

A. Within ninety (90) days of the adoption of this Memorandum, the County shall establish a Performance Evaluation Workgroup as follows:

1. A Working Group will be established consisting of up to five (5) AFSCME representatives and up to an equal number of County representatives.

2. Based on the topic of discussion at any particular Working Group, additional AFSCME or County representatives may attend at the mutual agreement of AFSCME and the County.

3. The length of each meeting will be mutually agreed upon by the County and AFSCME.

4. The group will conclude within six (6) months of its first meeting. By mutual agreement, the workgroup may be extended up to an additional six (6) months if reasonable progress has been made regarding the objectives of the Working Group.

Section 3. Objectives

The Working Group shall meet once a month, or more than once a month by mutual agreement, for the purpose of reviewing the forms and documents of the current evaluation process, as well as the methods in which the evaluation process is implemented. The Working Group will develop specific recommendations including, but not limited to:

1. Evaluation processes for new hire probationary employees
2. Evaluating performance standards.
3. Methods to assist an employee if performance standards are not being met
4. The implementation of the performance evaluation process
A. The County may provide information regarding new evaluation systems and/or processes that may be considered to replace the current evaluation process.

B. County management shall review the recommendations of the Working Group and where practicable, adopt documents, forms, and/or procedures proposed by the Working Group.

Section 4. Operating Procedures

A. The Working Group shall establish its own operating procedures.

B. The Working Group will endeavor to meet on dates in which AFSCME Union Officers are provided release time in accordance with Article XIV, Section 7., Release Time for Union Officers. For other County employees who serve as AFSCME representatives in the Working Group during paid work time, AFSCME will reimburse the County for all compensation costs in accordance with Senate Bill 1085.
APPENDIX A

Classes included in the Eligibility Worker Unit as of June 24, 2016.

7005    Eligibility Technician
7009    Employment and Eligibility Specialist
Deal Points Between AFSCME and County of Orange

DEAL POINTS

FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING

ELIGIBILITY WORKER UNIT

BETWEEN THE

COUNTY OF ORANGE

AND

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

COUNCIL 36, LOCAL 2076, AFL-CIO

ALL BARGAINING UNITS

The County and AFSCME have negotiated and reached a tentative agreement pertaining to the American Federation of State, County, and Municipal Employees Council 36, Local 2076, AFL-CIO for the Eligibility Worker Unit Memorandum of Understanding (“MOU”). This tentative agreement is not final until such time as, and is subject to, the County and AFSCME reaching agreement on a total package for a new MOU. Final approval of a new MOU is subject to approval by AFSCME and by the County Board of Supervisors.

October 28, 2019

<table>
<thead>
<tr>
<th>Contract Term</th>
<th>Date of Board of Supervisors Adoption – June 29, 2023</th>
</tr>
</thead>
</table>
| **Salary**            | - Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, increase salary schedule by 3.5%.  
                        | - Effective July 3, 2020, the salary schedules will be increased by 3.4%.  
                        | - Effective July 2, 2021, the salary schedules will be increased by 3.4%.  
                        | - Effective July 1, 2022, the salary schedules will be increased by 3.4%.  
<p>| Clean Up Language Regarding | Address administrative and legal changes, which have occurred during the term of the prior contract. |
| (1) Definition of Official Personnel File | |
| (2) Call Back Pay      | |</p>
<table>
<thead>
<tr>
<th><strong>Deal Points Between AFSCME and County of Orange</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(3) Removal of Reduction due to Physical Disability</strong></td>
</tr>
<tr>
<td><strong>(4) Deletion of Reference to Extra Help Sick Time Language</strong></td>
</tr>
<tr>
<td><strong>(5) Flex Days Occurring on Holidays</strong></td>
</tr>
<tr>
<td><strong>(6) Union and Employee Rights (Agency Shop)</strong></td>
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<tr>
<td><strong>(7) Abeyance of Grievances During EEO Investigation</strong></td>
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<tr>
<td><strong>(8) Intra-Agency Transfer</strong></td>
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<tr>
<td><strong>(9) Working Group Reopener</strong></td>
</tr>
<tr>
<td><strong>(10) Workload Management Forums</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bereavement Leave</th>
<th>Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, eligible employees may use paid bereavement leave for the death of a family member, subject to the terms and conditions of Article V, Section 2 (Bereavement Leave).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuition Reimbursement</td>
<td>Effective the first day of the first full pay period following Board of Supervisors adoption of MOU, the annual tuition reimbursement maximum shall be $10,000 per fiscal year.</td>
</tr>
<tr>
<td>Performance Evaluation Working Group</td>
<td>AFSCME and SSA/HRS agree to collaboratively work to review the current evaluation process to determine areas of recommended improvement in the documents, forms and implementation of the evaluation system and provide recommendations to County Human Resources Services for improvements.</td>
</tr>
<tr>
<td>Definition of Personal Business</td>
<td>Added to Definitions section of MOU</td>
</tr>
<tr>
<td>Leave Provisions</td>
<td>Increased permitted use of Sick Leave hours for Personal Business to forty (40) hours; permit use of ten (10) Sick Leave hours per fiscal year to attend school conferences and events.</td>
</tr>
</tbody>
</table>
Deal Points Between AFSCME and County of Orange

The signatures below indicate the parties have reached a tentative agreement on the foregoing subjects. This is an abbreviated version of the tentative agreement agree to by the parties. This document does not and is not intended to set out the tentative agreements agree upon in their entirety and does not supersede agreed-upon tentative agreements. Final agreement is dependent upon drafting of specific contract language and ratification by AFSCME and adoption by the County’s Board of Supervisors.

FOR AFSCME

Cory Cordova  
Date  
10/28/19

FOR THE COUNTY OF ORANGE

Nikhil Daftary  
Date  
10/28/19
November 13, 2019

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 19, 2019, Board Hearing.

Agency: County Executive Office
Subject: Risk Management Workers’ Compensation Legal Defense Panel
Districts: All Districts

Reason for supplemental: The County Executive Office is requesting that this item be added to the November 19, 2019, Board of Supervisors (Board) agenda because the legal defense contracts had an effective start date of November 1, 2019. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: Chairwoman Lisa A. Bartlett, Supervisor, Fifth District

cc: Board of Supervisors
County Executive Office
County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT HEAD REVIEW: [Signature]
DEPARTMENT CONTACT PERSON(S): Michael Alio (714) 285-5510
Beverly Umholtz (714) 285-5511

SUBJECT: Approval of Risk Management Workers' Compensation Legal Defense Panel

<table>
<thead>
<tr>
<th>CEO CONCUR</th>
<th>COUNTY COUNSEL REVIEW</th>
<th>CLERK OF THE BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Signature]</td>
<td>[Signature] Britanny McLean</td>
<td>Discussion 3 Votes Board Majority</td>
</tr>
</tbody>
</table>

Budgeted: Yes  Current Year Cost: See Financial Impact Section  Annual Cost: See Financial Impact Section
Staffing Impact: No  # of Positions: 
Current Fiscal Year Revenue: N/A  Sole Source: N/A
Funding Source: Workers' Compensation ISF Fund 293: 100%  County Audit in last 3 years: No
Prior Board Action: 6/25/2019 #19

RECOMMENDED ACTION(S):

Authorize County Procurement Officer or authorized Deputy to execute aggregate contracts for Risk Management Workers' Compensation Legal Defense Panel, effective upon Board of Supervisors approval for a five-year term, through October 31, 2024, in a total aggregate annual amount not-to-exceed $2,800,000:

1. Law Office of Jodie P. Filkins, APC
2. Mantle, Zimmer & Eulo, LLP
3. Wall McCormick Baroldi & Dugan APC
5. Glenn L Silverii & Associates
6. Hanna Brophy MacLean McAleer & Jensen LLP
7. Stander Reubens Thomas Kinsey APC
8. Kegel, Tobin & Truce APC

Page 1
9. The Wenderoff Law Group, APC

SUMMARY:

Approval of the Contracts for workers’ compensation legal defense services with nine firms for a five-year term will ensure the County is legally represented by well-qualified and experienced law firms.

BACKGROUND INFORMATION:

The County of Orange (County), through its workers’ compensation third party administrator, is currently represented by ten outside law firms, consisting of 20 attorneys in defending litigated workers’ compensation claims. The current panel has been in place for three years, with hourly rates that were previously approved by the Board of Supervisors (Board) in 2011. The County’s rates became inconsistent with current market rates, and on June 25, 2019, your Honorable Board approved updated hourly rates in advance for the release of this Request for Proposals (RFP). Increasing the hourly rates was required to ensure access to quality representation and to attract qualified law firms to respond to the RFP.

These rates will apply to the newly seated legal defense panel:

<table>
<thead>
<tr>
<th>Service Level</th>
<th>Hourly Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner</td>
<td>$175</td>
</tr>
<tr>
<td>Workers’ Compensation Specialist</td>
<td>$175</td>
</tr>
<tr>
<td>Associate</td>
<td>$155</td>
</tr>
<tr>
<td>Paralegal/Hearing Representative</td>
<td>$110</td>
</tr>
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</table>

The proposed legal defense panel is the culmination of an extensive RFP process that was posted on BidSync on June 26, 2019, with responses due no later than July 23, 2019.

The RFP written response requirements contained rigorous components that called for a minimum of five years’ experience defending government and non-government entities, identification of current case scenarios including issues, results and submitted case decisions. Additionally, responses were required to include creative solutions for performing the litigations work in a manner that efficiently and cost effectively resolves claims.

The County ultimately received 33 responsive proposals including 10 from current incumbents and 23 from new firms. All 33 of the responses were thoroughly reviewed and independently scored by a RFP evaluation panel comprised of five subject matter experts with over 94 years of combined experience in workers’ compensation litigation. The RFP evaluation panel members consisted of three workers’ compensation experts from outside the County, and two from County departments.

The results of the RFP evaluation panel’s scoring of the 33 written proposals was an average weighted-written score of 40.06. The RFP evaluation panel then determined to invite all 17 firms scoring above-average (41) for oral interviews.

Oral interviews of the 17 firms were conducted over two and one-half days. Each firm responded to several questions designed to elicit information regarding the firm’s experience and background defending public entities in workers’ compensation cases, including their approach to legal defense and case management. After the RFP evaluation panel completed the scoring of the 17 oral interviews, the average combined weighted score was 70.76 (see Attachment A).
The RFP evaluation panel then determined that the nine firms scoring 70 and above should be selected for placement on the workers' compensation legal defense panel. Of the nine firms selected, five are current incumbents and four are new firms.

CEO Risk Management requests the law firms below be approved for placement on the workers' compensation legal defense panel. The County Procurement Office (CPO) has conducted due diligence on the firms. Reference checks were satisfactory and completed with the following companies:

<table>
<thead>
<tr>
<th>Recommended Firm</th>
<th>Reference Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Office of Jodie P. Filkins, APC</td>
<td>Orange County Transportation Authority</td>
</tr>
<tr>
<td></td>
<td>Intercare Holdings Insurance Services</td>
</tr>
<tr>
<td>Mantle, Zimmer &amp; Eulo, LLP</td>
<td>Nordstrom Inc. Risk Management</td>
</tr>
<tr>
<td></td>
<td>KPC Healthcare, Inc.</td>
</tr>
<tr>
<td>Wall McCormick Baroldi &amp; Dugan APC</td>
<td>City of Anaheim</td>
</tr>
<tr>
<td></td>
<td>City of Santa Ana</td>
</tr>
<tr>
<td>Michael Sullivan &amp; Associates LLP</td>
<td>County of Riverside</td>
</tr>
<tr>
<td></td>
<td>County of San Bernardino</td>
</tr>
<tr>
<td>Glenn L Silverii &amp; Associates</td>
<td>Lockheed Martin</td>
</tr>
<tr>
<td></td>
<td>City of Pasadena</td>
</tr>
<tr>
<td>Hanna Brophy MacLean McAleer &amp; Jensen LLP</td>
<td>East Bay Regional Park District</td>
</tr>
<tr>
<td></td>
<td>AdminSure Inc.</td>
</tr>
<tr>
<td>Stander Reubens Thomas Kinsey APC</td>
<td>San Bernardino Superior Court</td>
</tr>
<tr>
<td></td>
<td>Placentia, Yorba-Linda Unified School District</td>
</tr>
<tr>
<td>Kegel, Tobin &amp; Truce APC</td>
<td>City of Los Angeles</td>
</tr>
<tr>
<td></td>
<td>California State University</td>
</tr>
<tr>
<td>The Wenderoff Law Group, APC</td>
<td>County of Santa Barbara</td>
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<td></td>
<td>County of Los Angeles</td>
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</tbody>
</table>

In addition, all of the incumbent firms recommended for placement on the new panel have satisfactory performance. CPO has verified there are no concerns that must be addressed with respect to Contractors' ownership/name, litigation status or conflicts with County interests. These contracts do not currently include subcontractors or pass through to other providers. See Attachment K for Contract Summary Form.

FINANCIAL IMPACT:

The annual cost for defense of litigated workers' compensation claims is between $2.7M and $2.8M. Appropriations for these contracts are included in Workers’ Compensation Internal Service Fund 293 for FY 2019-20 Budget and will be included in the budgeting process for future years.

STAFFING IMPACT:

N/A
ATTACHMENT(S):

Attachment A - Memorandum of Recommendation and Final Scoring Summary
Attachment B - Contract MA-017-20010511 - Law Office of Jodie P. Filkins, APC
Attachment C - Contract MA-017-20010511 – Mantle, Zimmer & Eulo, LLP
Attachment D - Contract MA-017-20010511 - Wall McCormick Baroldi & Dugan APC
Attachment E - Contract MA-017-20010511 - Michael Sullivan & Associates LLP
Attachment F - Contract MA-017-20010511 - Glenn L Silverii & Associates
Attachment G - Contract MA-017-20010511 - Hanna Brophy MacLean McAleer & Jensen LLP
Attachment H - Contract MA-017-20010511 - Stander Reubens Thomas Kinsey APC
Attachment I - Contract MA-017-20010511 – Kegel, Tobin & Truce APC
Attachment J - Contract MA-017-20010511 - The Wenderoff Law Group, APC
Attachment K - Contract Summary Form
September 24, 2019

To: Michael Alio, Risk Manager

From: Jeff Miller, CPPB – Supervising Procurement Contract Specialist

Subject: RFP-017-C023945-JM – Legal Defense of Workers’ Compensation

The evaluation panel has concluded its written and oral-interview scoring regarding the above subject RFP. To that end the evaluation panel has recommended the following nine (9) firms to be awarded contracts:

1. Law Office of Jodie P. Filkins, APC
2. Mantle, Zimmer & Eulo, LLP
3. Wall, McCormick, Baroldi & Dugan, APC
5. Glenn L. Silverii & Associates, APC
6. Hanna, Brophy, MacLean, McAleer, & Jensen, LLP
7. Stander, Reubens, Thomas & Kinsey, APC
8. Kegel, Tobin & Truce, APC
9. Wedneroff Law Group, APC

A scoring overview as well as the individual scoring of the evaluators are attached for your reference.
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Proposer: Bredfeldt, Odukoya, & Han, LLP
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**Proposer: Cipolla, Calaba, & Wolfman, a Law Corporation**

**Proposer: Coleman, Chavez, & Associates, LLP**

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**Memorandum of Recommendation**

**Final Scoring Summary**

**RFP #017-C023945-JM**

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**Attachment A**
## Written Criteria

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100% | 10.00 | 50.00 | 10.00 | 48.00 | 12.00 | 60.00 | 10.00 | 52.00 | 11.00 | 53.00 | 52.60 | 31.56

## Oral Criteria

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### Oral Proposal Evaluation - Must Equal 100%
100% | 0.00 | 0.00 |

Grand Total - Must Equal 100%
100% | 31.56

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**Proposer:** Dietz, Gilmor & Chazen, APC  
**Proposer:** Fabiano, Castro, & Clem, LLP
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Oral Proposal Evaluation - Must Equal 100%

| Grand Total - Must Equal 100%                                                   | 100%   | 80.56    | 43.68    | 72.80    | 92.20    | 36.88    | 80.56           |

Proposer: Glen L Silverii & Associates APC

Proposer: Gilson Daub, LLP
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Oral Proposal Evaluation - Must Equal 100%

| Grand Total - Must Equal 100% | 100% | 33.96 |

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**Proposer:** Gray & Prouty, APC

**Proposer:** Hanna, Brophy, MacLean, McAleer & Jensen, LLP

---

**Memorandum of Recommendation**

**Final Scoring Summary**

RFP #017-C023945-JM
### Evaluation Criteria

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### Oral Proposal Evaluation - Must Equal 100%

17.00 89.00 18.00 92.00 15.00 77.00 19.00 97.00 15.00 77.00 86.40 51.84

### Grand Total - Must Equal 100%

63.64

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**Proposer:** Laughlin, Falbo, Levy & Moressi, LLP

**Proposer:** Law Office of Jodie P. Filkins, APC

---

**Attachment A**
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## Memorandum of Recommendation

Final Scoring Summary

RFP #017-C023945-JM

**Attachment A**

Proposer: Law Offices of Daniel P Goggins Inc.

Proposer: Law Offices of Pearlman, Brown, & Wax, LLP
**Evaluation Criteria**

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**Oral Criteria**

| Criteria 1 - Communication Skills | 25% | Panel #1 | Panel #2 | Panel #3 | Panel #4 | Panel #5 | Percentage | Score | Weighted Score |
| Criteria 2 - Staffing | 25% | | | | | | | | |
| Criteria 3 - Firm's Background and Qualifications | 20% | | | | | | | | |
| Criteria 4 - Methods & Procedures | 30% | | | | | | | | |
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| **Grand Total - Must Equal 100%** | | | | | | | | | | 33.72 |

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**Proposer: Law Offices of Stacey L. Tokunaga**

**Proposer: Law Offices of Robert Wheatley, APC**
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| Grand Total - Must Equal 100% | 100% | 83.96 |

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| Grand Total - Must Equal 100% | 100% | 81.56 |

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**Proposer:** Mantle, Zimmer, & Eulo, LLP

**Proposer:** Michael Sullivan & Associates, LLP
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| Criteria 1: Communication Skills | 25% | 3.00 | 15.00 |
| Criteria 2: Staffing | 25% | 3.00 | 15.00 |
| Criteria 3: Firm's Background and Qualifications | 20% | 2.00 | 10.00 |
| Criteria 4: Methods & Procedures | 30% | 3.00 | 15.00 |

**Oral Proposal Evaluation - Must Equal 100%**

| Criteria 1: Communication Skills | 25% | 3.00 | 15.00 |
| Criteria 2: Staffing | 25% | 3.00 | 15.00 |
| Criteria 3: Firm's Background and Qualifications | 20% | 2.00 | 10.00 |
| Criteria 4: Methods & Procedures | 30% | 3.00 | 15.00 |

**Grand Total - Must Equal 100%**

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| Criteria 3: Firm's Background and Qualifications | 20% | 2.00 | 10.00 |
| Criteria 4: Methods & Procedures | 30% | 3.00 | 15.00 |

**Oral Proposal Evaluation - Must Equal 100%**

| Criteria 1: Communication Skills | 25% | 3.00 | 15.00 |
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| Criteria 4: Methods & Procedures | 30% | 3.00 | 15.00 |

**Grand Total - Must Equal 100%**

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**Written Proposal Evaluation - Must Equal 100%**

| Criteria 1: Communication Skills | 25% | 3.00 | 15.00 |
| Criteria 2: Staffing | 25% | 3.00 | 15.00 |
| Criteria 3: Firm's Background and Qualifications | 20% | 2.00 | 10.00 |
| Criteria 4: Methods & Procedures | 30% | 3.00 | 15.00 |

**Oral Proposal Evaluation - Must Equal 100%**

<p>| Criteria 1: Communication Skills | 25% | 3.00 | 15.00 |
| Criteria 2: Staffing | 25% | 3.00 | 15.00 |
| Criteria 3: Firm's Background and Qualifications | 20% | 2.00 | 10.00 |
| Criteria 4: Methods &amp; Procedures | 30% | 3.00 | 15.00 |</p>
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| **Written Proposal Evaluation** | Must Equal 100% | 13.00 | 63.00 | 16.00 | 80.00 | 14.00 | 70.00 | 12.00 | 60.00 | 14.00 | 68.00 | 68.20 | 40.92 |

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| **Oral Proposal Evaluation** | Must Equal 100% | 12.00 | 80.00 | 12.00 | 60.00 | 12.00 | 60.00 | 12.00 | 60.00 | 12.00 | 60.00 | 60.00 | 24.00 |

| **Grand Total - Must Equal 100%** | 100% | 64.92 |

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| **Written Proposal Evaluation** | Must Equal 100% | 17.00 | 85.00 | 20.00 | 100.00 | 17.00 | 87.00 | 18.00 | 92.00 | 16.00 | 80.00 | 88.80 | 53.28 |

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| **Oral Proposal Evaluation** | Must Equal 100% | 12.00 | 80.00 | 12.00 | 60.00 | 13.00 | 64.00 | 14.00 | 69.00 | 13.00 | 65.00 | 63.60 | 25.44 |

<p>| <strong>Grand Total - Must Equal 100%</strong> | 100% | 78.72 |</p>
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**Proposer: Trovillion, Inveiss, & Demakis, APC**

**Proposer: Wall, McCormick, Baroldi, & Dugan, APC**
### Evaluation Criteria Weight Score Weighted

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**Written Proposal Evaluation - Must Equal 100%**
100% | 14.00 | 71.00 | 14.00 | 71.00 | 14.00 | 70.00 | 16.00 | 85.00 | 14.00 | 71.00 | 72.80 | 28.64 |

**Grand Total - Must Equal 100%**
100% | 70.56 |
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**Written Proposal Evaluation - Must Equal 100%**

| 100% | 15.00 | 77.00 | 13.00 | 65.00 | 13.00 | 65.00 | 17.00 | 85.00 | 16.00 | 82.00 | 74.80 | 44.88 |

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**Oral Proposal Evaluation - Must Equal 100%**

| 100% | 12.00 | 60.00 | 12.00 | 60.00 | 12.00 | 60.00 | 12.00 | 60.00 | 12.00 | 60.00 | 60.00 | 34.00 |

**Grand Total - Must Equal 100%**

| 100% | 68.88 |

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**Evaluation Criteria**

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**Proposer:** Wogee and Cyprien, APC
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS’ COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers’ Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Law Office of Jodie P Filkins, APC, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers’ Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers’ Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
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<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 aggregate</td>
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Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Intentionally Omitted.

V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board ("County Indemnities") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS:

1. Scope of Contract: This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.

2. Term: This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. Precedence: The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. Professional Conflict of Interest: Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. General Conflicts of Interest: The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. Confidentiality and Communication with County: Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement's termination or expiration.

7. Attorneys Personnel: Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel (“Lead Counsel”) for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. **Improper Influence:** Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. **Improper Consideration:** Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. **County’s Project Manager:** The County Project Manager, as specified in Article “25” Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. **Contractor’s Project Manager:** Contractor Project Manager, as specified in Article “25” Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor's Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

12. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. Contractor's Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. Child Support Enforcement Requirements: Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. Publication: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. News/Information Release: The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. Breach of Contract: The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. Contract Disputes: The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. **Termination for County's Convenience:** Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Law Office of Jodie P. Filkins, APC  
Attn: Jodie Filkins, Project Manager  
625 The City Drive S., Ste. 305  
Orange, CA 92868  
Phone: 714-748-4404  
Email: jfilkins@filkinslaw.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Law Office of Jodie P. Filkins, APC

*Pursuant to California Corporations Code Section 313, if the Contracting party is a corporation, two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Print Name: Jodie P. Filkins  
Title: CEO  
Signature: Jodie P. Filkins  
Date: 09/25/2019

Print Name:  
Title:  
Signature:  
Date: 

COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent

Print Name:  
Title:  
Signature:  
Date: 

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Carolyn S. Frost  
Deputy County Counsel

Print Name: Carolyn S. Frost  
Title:  
Signature: Carolyn S. Frost  
Date: 11/07/19
ATTACHMENT A

SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).

   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.

   c. The Case Evaluation must include the following elements:
      • Statement of facts
      • Statement of issues, including any unusual or potentially precedent setting issues
      • Investigations needed and additional background
      • Injuries
      • Applicant's allegations or contentions
      • Affirmative defenses if any
      • Discovery requirements, witness and parties' identification and identification of any records that need to be produced
      • Legal issues and research
      • Expected and or potential liability
      • Case cost potential
      • Subrogation, if any
• Exposure
• Proposed strategies and litigation management
• Settlement valuation
• Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County's Workers' Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers' Compensation Program Manager and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers' Compensation Claims Management Litigation Protocols. Contractor's non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked "Confidential-Attorney/Client Communication Privilege."

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management's representative. Any changes in case staffing must be approved by the CEO Risk Management's representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor's compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

   - Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B
WORKERS’ COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.
2. Provide clear, concise, timely and necessary communication as specified herein.
3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.
4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.
5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers’ Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.
6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).
7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to
   the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be
   sent to the TPA (with a copy to the County Workers’ Compensation Program Manager)
   within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report
   shall include, but is not limited to:
   - Statement of facts
   - Statement of issues, including any unusual or potentially precedent setting issues
   - Investigations needed and additional background
   - Injuries
   - Applicant’s allegations or contentions
   - Affirmative defenses if any
   - Discovery requirements, witness and parties’ identification and identification of
     any records that need to be produced
   - Legal issues and research
   - Expected and or potential liability
   - Case cost potential
   - Subrogation, if any
   - Exposure
   - Proposed strategies and litigation management
   - Settlement valuation
   - Action Plan
   - Name and contact information for attorney handling case

   The Case Evaluation report shall also include a written estimate of the litigation budget
   for anticipated representation costs to cover handling of the case to conclusion. In the
   semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within
   thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new
   information or activity are duplicative, redundant and unnecessarily increase litigation
   costs. As such, the assigned attorney shall use discretion as to submission of subsequent
   status reports to the TPA (with a copy to the County’s Workers’ Compensation Program
   Manager) and only when the activities of file events warrant. Letters directed to
   Applicant’s attorney do not require a separate letter to the TPA/County reiterating the
   content of the attorney correspondence. County/TPA will not pay for duplicative or
   unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business
   days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner
   (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s
   attorney within five (5) business days. If the claimant falls under the County’s
   Alternative Dispute Resolution Program, the Claims Examiner will provide the name of
   the Independent Medical Examiner (IME).
Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

Legal Correspondence shall be provided to the County and TPA within the following timeframes:

- Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
- Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
- Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
- If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten (10) business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County’s expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants’ attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   - Medicare Releases shall be included in all C&R settlements, as applicable.

   - Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement...
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrsg.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report

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findings, hearings, notices of appointments of QME, AME and depositions, settlement
demand and or requests should be emailed to the Claims Examiner, County’s Workers’
Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with
direction of paying mileage by referencing the mileage due to the Applicant in the
appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm
must contact the TPA Program Manager to arrange delivery of legal files to the TPA if
the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the
County to issue additional payments to injured workers and/or other parties on a
particular claim file, said defense counsel shall issue a reimbursement for the full amount
of the overpayment in the form of a check payable to the County of Orange and
referencing the specific claim file and claimant name from which the overpayment was
issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety
(90) days. Firms that fully comply with these Litigation Protocols and achieve the best
outcomes will remain on rotation and will be assigned additional files. Firms not in
compliance with these Litigation Protocols and with poor outcomes, unprofessional
conduct, unethical behavior and/or improper billing may be removed from rotation, not
assigned additional files and are subject to being dismissed from the panel at the
discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that
claims remain unresolved for protracted timeframes may be removed from the panel after
a claim review and a discussion with the County’s Director of Risk Management and/or
the County’s Workers’ Compensation Program Manager to determine why delays are
occurring. The County and the TPA believe that timely resolution of claims by all panel
firms and the TPA’s resolution specialist is in the best interest of the County. All files
handled by panel firms and/or the TPA shall be properly evaluated for case resolution
that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have
the same meaning given to such terms under the Health Insurance Portability and Accountability
Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic
and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing
regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be
hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the
HIPAA regulations between the Contractor and County arises to the extent that Contractor
performs, or delegates to subcontractors to perform, functions or activities on behalf of County
pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the
definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the
Contract MA-017-20010511, some of which may constitute Protected Health Information
("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of
providing services and activities pursuant to, and as set forth in, the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created,
received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511
in compliance with the applicable standards, implementation specifications, and requirements of
HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter
amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-
empted by other Federal law(s) and impose more stringent requirements with respect to privacy
of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in
Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a
covered entity (County). Contractor agrees therefore to be in compliance at all times with the
terms of this Business Associate Contract and the applicable standards, implementation
specifications, and requirements of the Privacy and the Security rules, as they may exist now or be
hereafter amended, with respect to PHI and electronic PHI created, received, maintained,
transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage
the selection, development, implementation, and maintenance of security measures to protect
electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection
of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under
the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or
         person acting under the authority of Contractor or County, if such acquisition, access,
         or use was made in good faith and within the scope of authority and does not result in
         further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care
arrangement in which County participates, and the information received as a result of
such disclosure is not further used or disclosed in a manner not permitted under the
HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an
unauthorized person to whom the disclosure was made would not reasonably have
been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed
to be a breach unless Contractor demonstrates that there is a low probability that the PHI
has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the
likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR
§ 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR
§ 160.103 and shall include a person who qualifies as a personal representative in accordance
with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect
CONTRACTOR’s electronic information systems and related buildings and equipment, from
natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable
Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the
HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or
her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
modification, or destruction of information or interference with system operations in an
information system. “Security incident” does not include trivial incidents that occur on a daily
basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers
maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45
CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA...
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

<table>
<thead>
<tr>
<th>Agency/Department</th>
<th>Or Agency/Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>City, State</td>
<td>City, State</td>
</tr>
<tr>
<td>Phone Number</td>
<td>Phone Number</td>
</tr>
<tr>
<td>Email Address</td>
<td>Email Address</td>
</tr>
</tbody>
</table>

   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

   1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

**F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data...
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformance with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers' Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS' COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County's Board of Supervisors as compensation for Workers' Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers' Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers' Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

* On a per case basis
* In 1/10th hour increments
* Date work performed
* Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
* Include a total summary of hours by attorney and/or staff person
* Include a final total of all hours worked by all staff
* Include a separate section for costs and advances
* Include receipts, invoices or cancelled checks for all costs advanced
* Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
- Mileage for hearings and or depositions at the current IRS rate; and
- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel's hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511

FOR
LEGAL DEFENSE OF WORKERS’ COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers’ Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Mantle, Zimmer & Eulo, LLP, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers’ Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers’ Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor’s part to indemnify, defend and hold County and its indemnitees as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made $1,000,000 aggregate</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County, there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Intentionally Omitted.

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney’s fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

**BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

**CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.

2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

   "It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

   "Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board's authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement's termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific
Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily
operational matters under this Agreement and shall serve as or designate lead counsel (“Lead
Counsel”) for all activities performed under the scope of services described below. Designation
of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in
Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. Improper Influence: Contractor shall make all reasonable efforts to ensure that no County
officer or employee, whose position in the County of Orange enables him/her to influence any
award of this contract or any competing offer, shall have any direct or indirect financial interest
resulting from the award of this Contract or shall have any relationship to the Contractor or
officer or employee of the contractor.

9. Improper Consideration: Contractor shall not offer (either directly or through an intermediary)
any improper consideration such as, but not limited to, cash, discounts, service, the provision of
travel or entertainment, or any items of value to any officer, employee, or agent of the County of
Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it
determines that any improper consideration as described in the preceding paragraph was offered
to any officer, employee, or agent of the County of Orange with respect to the proposal and award
process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit
(either directly or through an intermediary) improper consideration from Contractor. The report
shall be made to the supervisor or manager charged with supervision of the employee or to the
County of Orange Administrative Office. In the event of a termination under this provision, The
County of Orange is entitled to pursue any available legal remedies.

10. County’s Project Manager: The County Project Manager, as specified in Article “25” Notices,
will act as liaison between the County and the Contractor during the term of this Contract. The
County’s Project Manager shall coordinate the activities of the County staff assigned to work
with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the
Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall
notify the Contractor in writing of such action. The Contractor shall accomplish the removal
within 14 calendar days after written notice by the County’s Project Manager. The County’s
Project Manager shall review and approve the appointment of the replacement for the
Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably
withheld.

11. Contractor’s Project Manager: Contractor Project Manager, as specified in Article “25”
Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this
Contract. This Project Manager shall be subject to approval by the County and shall not be
changed without the written consent of the County’s Project Manager, which consent shall not be
unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. Contractor’s Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. Child Support Enforcement Requirements: Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. Publication: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County’s Convenience: Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Mantle, Zimmer & Eulo, LLP  
Attn: Earl Zimmer, Project Manager  
4685 MacArthur Ct. Ste. 390  
Newport Beach, CA 92660  
Phone: 949-757-5900  
Email: ezimmer@mantlezimmer.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Uinholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.uinholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE Follows**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Mantle, Zimmer & Eulo, LLP

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Earl P. Zimmer
Senior Partner

Print Name
Signature
Date

Print Name
Title

Signature
Date

COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent

Print Name
Signature
Title
Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Brittany McLean
DEPUTY COUNTY COUNSEL

Print Name
Signature
Date

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ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers’ compensation or employer’s liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers’ compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County’s Workers’ Compensation Program Manager in addition to the OSC West (TPA email automated system).

b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor’s recommendation when considering case evaluation.

c. The Case Evaluation must include the following elements:
   • Statement of facts
   • Statement of issues, including any unusual or potentially precedent setting issues
   • Investigations needed and additional background
   • Injuries
   • Applicant’s allegations or contentions
   • Affirmative defenses if any
   • Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
   • Legal issues and research
   • Expected and or potential liability
   • Case cost potential
   • Subrogation, if any
• Exposure
• Proposed strategies and litigation management
• Settlement valuation
• Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers’ compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers’ Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant’s counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County’s interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;

a) Penalties caused by Contractor shall be paid by Contractor

b) Penalties assessed will be reviewed by CEO/Risk Management

c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.

d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County's Workers' Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers' Compensation Program Manager/ and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers' Compensation Claims Management Litigation Protocols. Contractor's non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked "Confidential-Attorney/Client Communication Privilege."

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management's representative. Any changes in case staffing must be approved by the CEO Risk Management's representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor's compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

• Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers’ compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years’ experience.
ATTACHMENT B
WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County’s approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
   - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
   - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
   - Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
   - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/ Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County's expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants' attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   • Medicare Releases shall be included in all C&R settlements, as applicable.
   • Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrs.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County's Workers' Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County's Director of Risk Management and/or the County's Workers' Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA's resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
A. GENERAL PROVISIONS AND RECITALS
1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth in, the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS
1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

   b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

      i. The Disclosure is required by law; or

      ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

   b. Contractor shall retain no copies of the PHI.

   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS’ COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers’ Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

• On a per case basis
• In 1/10th hour increments
• Date work performed
• Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
• Include a total summary of hours by attorney and/or staff person
• Include a final total of all hours worked by all staff
• Include a separate section for costs and advances
• Include receipts, invoices or cancelled checks for all costs advanced
• Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and

- Mileage for hearings and or depositions at the current IRS rate; and

- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511

FOR

LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers' Compensation Claims, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Wall McCormick Baroldi & Dugan APC, (hereinafter referred to as "Contractor") with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, County solicited Legal Defense of Workers' Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers' Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers' Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers' Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment D, Workers' Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemmites as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 aggregate</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys' insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys' Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

**P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

**Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Intentionally Omitted.

V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney's fees, costs and expenses.

X. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

**BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

**CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.

2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1985:

   "It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

   "Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. **Improper Influence:** Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. **Improper Consideration:** Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. **County’s Project Manager:** The County Project Manager, as specified in Article "25" Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. **Contractor’s Project Manager:** Contractor Project Manager, as specified in Article "25" Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project timelines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. **Child Support Enforcement Requirements:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached thereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

   c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

   a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such
demand involves a cost adjustment to the Contract, the Contractor shall include with the
demand a written statement signed by a senior official indicating that the demand is made in
good faith, that the supporting data are accurate and complete, and that the amount requested
accurately reflects the Contract adjustment for which the Contractor believes the County is
liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the
Contractor agrees to diligently proceed with the performance of this Contract, including the
delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall
be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and
shall be signed by the County Purchasing Agent or his designee. If the County fails to render a
decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a
final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed
as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience
as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall
promptly return to the other Party all papers, materials, and other properties of the other held by
each for purposes of execution of the Contract. In addition, each Party will assist the other Party
in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as
may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County’s Convenience: Services performed under this Contract may be
terminated in whole or in part at any time County or its Board of Supervisors deems termination
of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by
delivering to Attorneys a written Termination Notice specifying the extent to which services are
terminated and the effective termination date. After receiving a Termination Notice and unless
otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the
   Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date,
   including a brief description of any outstanding legal issues or matters which are pending
   with Attorneys (including a discussion of applicable law) a list and description of all
   scheduled meetings, court appearances or matters which Attorneys were to attend and an
   assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the
   effective termination date. If Attorneys fail to submit a final billing within the time
   allowed, CEO/Risk Management may determine, on the basis of information available to
   it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a
determination, it shall pay Attorneys that amount. The determination made by CEO/Risk
   Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and
   attorney work product for any matters in which Attorneys were retained by CEO/Risk
   Management. This includes any computerized index, computer programs and document
   retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Wall McCormick Baroldi & Dugan APC  
Attn: William McCormick, Project Manager  
515 Cabrillo Park Dr., Ste. 200  
Santa Ana, CA 92701  
Phone: 714-547-7266  
Email: wmccormick@wmbsa.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Wall McCormick Baroldi & Dugan APC

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required; one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

William A. McCormick
Print Name: William A. McCormick
Title: President
Signature: [Signature]
Date: 9/23/2019

Baroldi
Print Name: Baroldi
Title: [Title]
Signature: [Signature]
Date: [Date]

Anthony
Print Name: Anthony
Title: [Title]
Signature: [Signature]
Date: [Date]

COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent

Print Name: [Print Name]
Title: [Title]
Signature: [Signature]
Date: [Date]

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Brittany McLean
Print Name: Brittany McLean
Title: Deputy County Counsel
Signature: [Signature]
Date: [Date]
ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).

   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.

   c. The Case Evaluation must include the following elements:
      - Statement of facts
      - Statement of issues, including any unusual or potentially precedent setting issues
      - Investigations needed and additional background
      - Injuries
      - Applicant's allegations or contentions
      - Affirmative defenses if any
      - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
      - Legal issues and research
      - Expected and or potential liability
      - Case cost potential
      - Subrogation, if any
Attachment D

- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;

a) Penalties caused by Contractor shall be paid by Contractor

b) Penalties assessed will be reviewed by CEO/Risk Management

c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.

d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County’s Workers’ Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services
   a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.
   b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers’ Compensation Program Manager and the TPA Unit Manager within (2) days.
   c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers’ Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;
   a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.
   b) County shall receive written notification within twenty-four (24) hours of appearance.
   c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:
   • Partner: Must be a partner in the firm
• W/C Specialist: Must have 10 years of experience practicing law and a certification in workers’ compensation designation.

• Associate: Law school graduate licensed to practice law in California and minimum of 5 years’ experience.
ATTACHMENT B
WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County’s approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers' Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers' Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

   - Statement of facts
   - Statement of issues, including any unusual or potentially precedent setting issues
   - Investigations needed and additional background
   - Injuries
   - Applicant's allegations or contentions
   - Affirmative defenses if any
   - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
   - Legal issues and research
   - Expected and or potential liability
   - Case cost potential
   - Subrogation, if any
   - Exposure
   - Proposed strategies and litigation management
   - Settlement valuation
   - Action Plan
   - Name and contact information for attorney handling case

   The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. *In the semi-annual reports defense counsel shall provide an updated litigation budget.*

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. **ONGOING REPORTING REQUIREMENTS**

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County's Workers' Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant's attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME's from the County's panel must be forwarded to the Applicant's attorney within five (5) business days. If the claimant falls under the County's Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
   - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
   - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
   - Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
   - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system).

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County's Workers' Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney's recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County's Workers' Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers' Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County's Workers' Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County's expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants' attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   • Medicare Releases shall be included in all C&R settlements, as applicable.

   • Structured settlement quotes from Chronovo must be presented to Applicant's counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant's counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

**Note: The County will not provide case reserves to defense counsel at any time.**

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and

- Is on leave without pay; and

- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.

- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. **MISCELLANEOUS PROTOCOLS**

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrs.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County’s Workers’ Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County’s Director of Risk Management and/or the County’s Workers’ Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA’s resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

   b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

      i. The Disclosure is required by law; or

      ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS' COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers' Compensation Claims, as needed and as set forth in Attachment A, "Scope of Work."

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and

- Mileage for hearings and or depositions at the current IRS rate; and

- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS’ COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers’ Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Michael Sullivan & Associates LLP, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers’ Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers’ Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best’s Rating) and VIII (Financial Size Category as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

**Required Coverage Forms**

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Intentionally Omitted.

V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney's fees, costs and expenses.

X. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

**BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

**CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers’ Compensation Claims under a fixed fee Contract.

2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management's approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. Improper Influence: Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. Improper Consideration: Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. County's Project Manager: The County Project Manager, as specified in Article "25" Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Contractor personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. Contractor's Project Manager: Contractor Project Manager, as specified in Article "25" Notices, will direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. Contractor’s Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. Child Support Enforcement Requirements: Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. Publication: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. **Termination for County’s Convenience:** Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

   a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

   b. Complete services not terminated by the Termination Notice.

   c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

   d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

   e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor’s Expense**: The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices**: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor**: Michael Sullivan & Associates LLP  
Attn: Keith Figgins, Project Manager  
400 Continental Blvd., Ste. 250  
El Segundo, CA 90245  
Phone: 714-202-3440  
Email: kfiggins@sullivanattorneys.com

**County**: County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc**: County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Michael Sullivan & Associates LLP

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Keith Figgins
Senior Partner
Print Name
Title
Signature
Date

Print Name
Title
Signature
Date

******************************************************
COUNTY OF ORANGE A political subdivision of the State of California

Print Name
Title
Signature
Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Print Name
Title
Signature
Date
ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;
   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).
   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.
   c. The Case Evaluation must include the following elements:
      - Statement of facts
      - Statement of issues, including any unusual or potentially precedent setting issues
      - Investigations needed and additional background
      - Injuries
      - Applicant's allegations or contentions
      - Affirmative defenses if any
      - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
      - Legal issues and research
      - Expected and or potential liability
      - Case cost potential
      - Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;

   a) Penalties caused by Contractor shall be paid by Contractor

   b) Penalties assessed will be reviewed by CEO/Risk Management

   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.

   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County’s Workers’ Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers’ Compensation Program Manager/ and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers’ Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

- Partner: Must be a partner in the firm
• W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

• Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B
WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County's Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers' Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers' Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant's allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties' identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County's Workers' Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant's attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME's from the County's panel must be forwarded to the Applicant's attorney within five (5) business days. If the claimant falls under the County's Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:

- Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
- Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
- Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
- If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/ Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County's Workers' Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney's recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County's expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants' attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   - Medicare Releases shall be included in all C&R settlements, as applicable.

   - Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrs.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement
demand and or requests should be emailed to the Claims Examiner, County’s Workers’
Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with
direction of paying mileage by referencing the mileage due to the Applicant in the
appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm
must contact the TPA Program Manager to arrange delivery of legal files to the TPA if
the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the
County to issue additional payments to injured workers and/or other parties on a
particular claim file, said defense counsel shall issue a reimbursement for the full amount
of the overpayment in the form of a check payable to the County of Orange and
referring the specific claim file and claimant name from which the overpayment was
issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety
(90) days. Firms that fully comply with these Litigation Protocols and achieve the best
outcomes will remain on rotation and will be assigned additional files. Firms not in
compliance with these Litigation Protocols and with poor outcomes, unprofessional
conduct, unethical behavior and/or improper billing may be removed from rotation, not
assigned additional files and are subject to being dismissed from the panel at the
discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that
claims remain unresolved for protracted timeframes may be removed from the panel after
a claim review and a discussion with the County’s Director of Risk Management and/or
the County’s Workers’ Compensation Program Manager to determine why delays are
occurring. The County and the TPA believe that timely resolution of claims by all panel
firms and the TPA’s resolution specialist is in the best interest of the County. All files
handled by panel firms and/or the TPA shall be properly evaluated for case resolution
that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS
1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS
1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

5. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

6. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

7. Contractor agrees to provide, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.526.

8. Contractor agrees to provide, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.526.

9. Contractor agrees to provide, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.526.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

**D. SECURITY RULE**

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

**E. BREACH DISCOVERY AND NOTIFICATION**

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR § 164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor’s initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

   b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

      i. The Disclosure is required by law; or

      ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS’ COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers' Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
- Mileage for hearings and or depositions at the current IRS rate; and
- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers' Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Glenn L. Silverii & Associates, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers' Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers' Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers' Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>$1,000,000 aggregate</td>
<td></td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys' insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys' Professional Liability and Network Security & Privacy Liability are "Claims-Made" policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure**: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality**: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws**: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight**: Intentionally Omitted.

V. **Severability**: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees**: In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnities") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

**BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

**CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers’ Compensation Claims under a fixed fee Contract.

2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1985:

   "It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

   "Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel (“Lead Counsel”) for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. **Improper Influence**: Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. **Improper Consideration**: Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. **County’s Project Manager**: The County Project Manager, as specified in Article “25” Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. **Contractor’s Project Manager**: Contractor Project Manager, as specified in Article “25” Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor's Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

12. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. Contractor's Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. Child Support Enforcement Requirements: Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. Data - Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. Publication: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without
prior written approval by the County, except as necessary for the performance of the services of
this Contract. All press contacts, including graphic display information to be published in
newspapers, magazines, etc., are to be administered only after County approval.

18. Errors and Omissions: All reports, files and other documents prepared and submitted by
Contractor shall be complete and shall be carefully checked by the professional(s) identified by
Contractor as Project Manager and key personnel attached hereto, prior to submission to the
County. Contractor agrees that County review is discretionary and Contractor shall not assume
that the County will discover errors and/or omissions. If the County discovers any errors or
omissions prior to approving Contractor’s reports, files and other written documents, the reports,
files or documents will be returned to Contractor for correction. Should the County or others
discover errors or omissions in the reports, files or other written documents submitted by the
Contractor after County approval thereof, County approval of Contractor’s reports, files or
documents shall not be used as a defense by Contractor in any action between the County and
Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. News/Information Release: The Contractor agrees that it will not issue any news releases or
make any contact with the media in connection with either the award of this Contract or any
subsequent amendment of, or effort under this Contract. Contractors must first obtain review and
approval of said news media contact from the County through the County DPA. Any requests for
interviews or information received by the media should be referred directly to the County.
Contractors are not authorized to serve as a media spokesperson for County projects without first
obtaining permission from the County.

20. Breach of Contract: The failure of the Contractor to comply with any of the provisions,
covenants or conditions of this Contract, shall constitute a material breach of this Contract. In
such event the County may, and in addition to any other remedies available at law, in equity, or
otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time
   that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in
   breach and offset against any monies billed by the Contractor but yet unpaid by the County
   those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. Contract Disputes: The Parties shall deal in good faith and attempt to resolve potential disputes
informally. If the dispute concerning a question of fact arising under the terms of this Contract is
not disposed of in a reasonable period of time by the Contractor’s Project Manager and the
County’s Project Manager by way of the following process, such matter shall be brought to the
attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision
   regarding the disposition of any dispute between the Parties arising under, related to, or
   involving this Contract, unless the County, on its own initiative, has already rendered such a
   final decision.
b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County's Convenience: Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Glenn L Silverii & Associates  
Attn: Scott Kubis, Project Manager  
2122 N Broadway  
Santa Ana, CA 92706  
Phone: 714-547-790  
Email: skubis@silverii.com

County: County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

cc: County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Glenn L Silverii & Associates

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required; one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Glenn L. Silverii
President
Print Name
Signature
Date

Scott K. Kubis
Partner / Project Manager
Print Name
Signature
Date

COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent
Print Name
Signature
Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

BRITTANY MCLEAN DEPUTY COUNTY COUNSEL
Print Name
Signature
Date
ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).

   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.

   c. The Case Evaluation must include the following elements:
      - Statement of facts
      - Statement of issues, including any unusual or potentially precedent setting issues
      - Investigations needed and additional background
      - Injuries
      - Applicant's allegations or contentions
      - Affirmative defenses if any
      - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
      - Legal issues and research
      - Expected and or potential liability
      - Case cost potential
      - Subrogation, if any
County of Orange, Office of Risk Management
Legal Defense of Workers Compensation Claims

- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County's Workers' Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers' Compensation Program Manager/ and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers' Compensation Claims Management Litigation Protocols. Contractor's non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management's representative. Any changes in case staffing must be approved by the CEO Risk Management's representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor's compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

- Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B

WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County’s approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers’ Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
   - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
   - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
   - Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
   - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system).

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen-day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County's Workers' Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney's recommendations for further action required (e.g., payment of awards, disability benefits, etc.) "Urgent - Immediate Action Required" shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten (10) business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County's Workers' Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers' Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County's Workers' Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County's expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants' attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   • Medicare Releases shall be included in all C&R settlements, as applicable.

   • Structured settlement quotes from Chronovo must be presented to Applicant's counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant's counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:
   - Has personnel issues such as attendance, performance and/or disciplinary; and
   - Is on leave without pay; and
   - Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

   • Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.

   • Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrs.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County’s Workers’ Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County’s Director of Risk Management and/or the County’s Workers’ Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA’s resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth in, the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
   i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
   ii. The unauthorized person who used the PHI or to whom the disclosure was made;
   iii. Whether the PHI was actually acquired or viewed; and
   iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings,” or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

   
<table>
<thead>
<tr>
<th>Agency/Department</th>
<th>Or Agency/Department</th>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>City, State</td>
<td>City, State</td>
</tr>
<tr>
<td>Phone Number</td>
<td>Phone Number</td>
</tr>
<tr>
<td>Email Address</td>
<td>Email Address</td>
</tr>
</tbody>
</table>

   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor’s initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS' COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers’ Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING - WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

• On a per case basis
• In 1/10th hour increments
• Date work performed
• Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
• Include a total summary of hours by attorney and/or staff person
• Include a final total of all hours worked by all staff
• Include a separate section for costs and advances
• Include receipts, invoices or cancelled checks for all costs advanced
• Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and

- Mileage for hearings and or depositions at the current IRS rate; and

- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS’ COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers’ Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Hanna Brophy MacLean McAleer & Jensen LLP, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECIPIENTS

WHEREAS, County solicited Legal Defense of Workers’ Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers’ Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.
C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor’s part to indemnify, defend and hold County and its indemnities as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
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<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Intentionally Omitted.

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney’s fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

**ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers’ Compensation Claims under a fixed fee Contract.

2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1985:

   “It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment.”

   “Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action.”
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board's authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific
Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily
operational matters under this Agreement and shall serve as or designate lead counsel (“Lead
Counsel”) for all activities performed under the scope of services described below. Designation
of Lead Counsel shall be subject to CEO/Risk Management's approval. Any change in
Attorneys' Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. Improper Influence: Contractor shall make all reasonable efforts to ensure that no County
officer or employee, whose position in the County of Orange enables him/her to influence any
award of this contract or any competing offer, shall have any direct or indirect financial interest
resulting from the award of this Contract or shall have any relationship to the Contractor or
officer or employee of the contractor.

9. Improper Consideration: Contractor shall not offer (either directly or through an intermediary)
any improper consideration such as, but not limited to, cash, discounts, service, the provision of
travel or entertainment, or any items of value to any officer, employee, or agent of the County of
Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it
determines that any improper consideration as described in the preceding paragraph was offered
to any officer, employee, or agent of the County of Orange with respect to the proposal and award
process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit
(either directly or through an intermediary) improper consideration from Contractor. The report
shall be made to the supervisor or manager charged with supervision of the employee or to the
County of Orange Administrative Office. In the event of a termination under this provision, The
County of Orange is entitled to pursue any available legal remedies.

10. County’s Project Manager: The County Project Manager, as specified in Article “25” Notices,
will act as liaison between the County and the Contractor during the term of this Contract. The
County’s Project Manager shall coordinate the activities of the County staff assigned to work
with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the
Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall
notify the Contractor in writing of such action. The Contractor shall accomplish the removal
within 14 calendar days after written notice by the County’s Project Manager. The County’s
Project Manager shall review and approve the appointment of the replacement for the
Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably
withheld.

11. Contractor’s Project Manager: Contractor Project Manager, as specified in Article “25”
Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this
Contract. This Project Manager shall be subject to approval by the County and shall not be
changed without the written consent of the County’s Project Manager, which consent shall not be
unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. Contractor’s Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. Child Support Enforcement Requirements: Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. Publication: No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County’s Convenience: Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Hanna Brophy MacLean McAleneer & Jensen LLP  
Attn: Mark Lee, Project Manager  
701 S Parker St., Ste. 6000  
Orange, CA 92868  
Phone: 714-598-4053  
Email: mlee@hannabrophy.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St., 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Hanna Brophy MacLean McAleer & Jensen LLP

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Mark Lee  Project manager / Partner
Print Name  Title  9/25/2019
Signature  Date

Michael White  Firm Managing Partner
Print Name  Title
Signature  Date  10/03/19

*****************************************
COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent
Print Name  Title
Signature  Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Brittany McLean  DEPUTY COUNTY COUNSEL
Print Name  Title
Signature  Date  11/5/19
ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers’ compensation or employer’s liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers’ compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County’s Workers’ Compensation Program Manager in addition to the OSC West (TPA email automated system).

b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor’s recommendation when considering case evaluation.

c. The Case Evaluation must include the following elements:
- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
• Exposure
• Proposed strategies and litigation management
• Settlement valuation
• Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County’s Workers’ Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers’ Compensation Program Manager/ and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers’ Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

- Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B
WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers’ Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers’ Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:
   - Statement of facts
   - Statement of issues, including any unusual or potentially precedent setting issues
   - Investigations needed and additional background
   - Injuries
   - Applicant’s allegations or contentions
   - Affirmative defenses if any
   - Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
   - Legal issues and research
   - Expected and or potential liability
   - Case cost potential
   - Subrogation, if any
   - Exposure
   - Proposed strategies and litigation management
   - Settlement valuation
   - Action Plan
   - Name and contact information for attorney handling case

   The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-speciality Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:

- Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.

- Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)

- Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.

- If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen-day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County’s expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants’ attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

- Medicare Releases shall be included in all C&R settlements, as applicable.

- Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrg.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement
demand and or requests should be emailed to the Claims Examiner, County’s Workers’
Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with
direction of paying mileage by referencing the mileage due to the Applicant in the
appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm
must contact the TPA Program Manager to arrange delivery of legal files to the TPA if
the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the
County to issue additional payments to injured workers and/or other parties on a
particular claim file, said defense counsel shall issue a reimbursement for the full amount
of the overpayment in the form of a check payable to the County of Orange and
referring the specific claim file and claimant name from which the overpayment was
issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety
(90) days. Firms that fully comply with these Litigation Protocols and achieve the best
outcomes will remain on rotation and will be assigned additional files. Firms not in
compliance with these Litigation Protocols and with poor outcomes, unprofessional
conduct, unethical behavior and/or improper billing may be removed from rotation, not
assigned additional files and are subject to being dismissed from the panel at the
discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that
claims remain unresolved for protracted timeframes may be removed from the panel after
a claim review and a discussion with the County’s Director of Risk Management and/or
the County’s Workers’ Compensation Program Manager to determine why delays are
occurring. The County and the TPA believe that timely resolution of claims by all panel
firms and the TPA’s resolution specialist is in the best interest of the County. All files
handled by panel firms and/or the TPA shall be properly evaluated for case resolution
that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth in, the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

   1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disable code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

   b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

      i. The Disclosure is required by law; or

      ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS’ COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers’ Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
- Mileage for hearings and or depositions at the current IRS rate; and
- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers' Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Stander Reubens Thomas Kinsey APC, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers' Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers' Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment D, Workers' Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z," below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes**: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests**: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. Freight: Intentionally Omitted.

V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS:

1. Scope of Contract: This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.

2. Term: This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. Precedence: The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. Professional Conflict of Interest: Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1983:

“it is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment.”

“Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action.”
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management's approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. Improper Influence: Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. Improper Consideration: Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. County’s Project Manager: The County Project Manager, as specified in Article “25” Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. Contractor’s Project Manager: Contractor Project Manager, as specified in Article “25” Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor's Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

12. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. **Child Support Enforcement Requirements:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. **Data - Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

   c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

   a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. **Termination for County’s Convenience:** Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Stander Reubens Thomas Kinsey APC  
Attn: Tim Kinsey, Project Manager  
1 City Blvd W., Ste. 1400  
Orange, CA 92868  
Phone: 310-502-5622  
Email: tkinsey@srtklaw.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

SIGNATURE PAGE FOLLOWS
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Stander Reubens Thomas Kinsey APC

*Pursuant to California Corporations Code Section 313, if the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Print Name: [Signature]
Title: CFO/ Treasurer
Date: 9/23/19

Print Name: [Signature]
Title: [Title]
Date: 9/30/19

COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent
Print Name: [Signature]
Title: [Title]
Date: [Signature Date]

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Print Name: [Signature]
Title: [Title]
Date: [Signature Date]
A. **CONTRACTOR RESPONSIBILITIES**

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;

   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).

   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.

   c. The Case Evaluation must include the following elements:

   - Statement of facts
   - Statement of issues, including any unusual or potentially precedent setting issues
   - Investigations needed and additional background
   - Injuries
   - Applicant’s allegations or contentions
   - Affirmative defenses if any
   - Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
   - Legal issues and research
   - Expected and or potential liability
   - Case cost potential
   - Subrogation, if any
• Exposure
• Proposed strategies and litigation management
• Settlement valuation
• Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers’ compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers’ Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant’s counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County’s interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County's Workers' Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers' Compensation Program Manager/ and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers' Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

* Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B
WORKERS’ COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers’ compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Towards that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County’s approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest must be brought to the attention of the TPA Program Manager and the Workers’ Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers’ Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. **ONGOING REPORTING REQUIREMENTS**

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:

- Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
- Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
- Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
- If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen-day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g., payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County’s expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants’ attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   • Medicare Releases shall be included in all C&R settlements, as applicable.

   • Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant's attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers' compensation claims in which the claimant is no longer employed by the County (separated or retired) or it's believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County's Workers' Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the "Brown Act" and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney's recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. **MISCELLANEOUS PROTOCOLS**

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@vorkrs.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AMB and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County's Workers' Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County's Director of Risk Management and/or the County's Workers' Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA's resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor’s workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care
arrangement in which County participates, and the information received as a result of
such disclosure is not further used or disclosed in a manner not permitted under the
HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an
unauthorized person to whom the disclosure was made would not reasonably have
been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed
to be a breach unless Contractor demonstrates that there is a low probability that the PHI
has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the
likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR
§ 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR
§ 160.103 and shall include a person who qualifies as a personal representative in accordance
with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect
CONTRACTOR’s electronic information systems and related buildings and equipment, from
natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable
Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the
HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or
her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
modification, or destruction of information or interference with system operations in an
information system. “Security incident” does not include trivial incidents that occur on a daily
basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers
maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45
CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules. Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR § 164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor’s initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

   a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

   b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

      i. The Disclosure is required by law; or

      ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

   c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS’ COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers’ Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING -- WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and

- Mileage for hearings and or depositions at the current IRS rate; and

- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers’ Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and Kegel Tobin & Truce APC, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers’ Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers’ Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers’ Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers’ Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers’ Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employees or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 aggregate</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insured for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or to any litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Intentionally Omitted.

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney’s fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board ("County Indemnities") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overrun and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS:

1. Scope of Contract: This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers’ Compensation Claims under a fixed fee Contract.

2. Term: This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. Precedence: The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. Professional Conflict of Interest: Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County’s Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel (“Lead Counsel”) for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. Improper Influence: Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. Improper Consideration: Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. County’s Project Manager: The County Project Manager, as specified in Article “25” Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. Contractor’s Project Manager: Contractor Project Manager, as specified in Article “25” Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project timelines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. **Child Support Enforcement Requirements:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. News/Information Release: The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. Breach of Contract: The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. Contract Disputes: The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County’s Convenience: Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
24. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** Kegel Tobin & Truce APC  
Attn: Elizabeth Wagner, Project Manager  
P.O Box 76907  
Los Angeles, CA 90076-0907  
Phone: 562-810-9857  
Email: ewagner@kttlaw.us

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Kegel, Tobin & Truce APC

*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

DOVAN F. CALUMPANG VICE-PRESIDENT
Print Name
Signature
Title 10/7/2019
Date

E. CHARLES MAKI VP-TREASURER APC
Print Name
Signature
Title 10/8/19
Date

COUNTY OF ORANGE A political subdivision of the State of California

Print Name Deputy Purchasing Agent
Signature Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

BRITTANY McLEAN DEPUTY COUNTY COUNSEL
Print Name
Signature
Title 11/5/19
Date
ATTACHMENT A
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;
   
a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).

b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.

c. The Case Evaluation must include the following elements:
   • Statement of facts
   • Statement of issues, including any unusual or potentially precedent setting issues
   • Investigations needed and additional background
   • Injuries
   • Applicant's allegations or contentions
   • Affirmative defenses if any
   • Discovery requirements, witness and parties' identification and identification of any records that need to be produced
   • Legal issues and research
   • Expected and or potential liability
   • Case cost potential
   • Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County’s interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County’s Workers’ Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers’ Compensation Program Manager and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers’ Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

- Partner: Must be a partner in the firm
- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B

WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers’ Compensation defense law and must be approved through the County’s Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers’ Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. **ONGOING REPORTING REQUIREMENTS**

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County's Workers' Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
   - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
   - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
   - Pre-trial/WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
   - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers' Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County's Workers' Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County's Workers' Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen-day period, the assigned attorney shall escalate to the Claims Examiner's manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g., payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County’s expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants’ attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

   • Medicare Releases shall be included in all C&R settlements, as applicable.

   • Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrsg.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report...
findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County’s Workers’ Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County’s Director of Risk Management and/or the County’s Workers’ Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA’s resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth in, the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.


10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
Coun@  ofOrange,  Office  ofRisk  Mamgemem
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protected electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County’s compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner as determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County’s obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (e) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D

WORKERS' COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers' Compensation Claims, as needed and as set forth in Attachment A, "Scope of Work."

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles "C" and "P" of the County Contract Terms and Conditions.

II. PRICING – WORKERS' COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County's Board of Supervisors as compensation for Workers' Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers' Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers' Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
- Mileage for hearings and or depositions at the current IRS rate; and
- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
MA-017-20010511
FOR
LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS

THIS Contract, MA-017-20010511 for Legal Defense of Workers' Compensation Claims, (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as “County”) and The Wenderoff Law Group, APC, (hereinafter referred to as “Contractor”) with County and Contractor sometimes individually referred to as (“Party”), or collectively referred to as (“Parties”).

RECITALS

WHEREAS, County solicited Legal Defense of Workers' Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers' Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers' Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers' Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor’s Pricing, attached hereto as Attachment D, Workers' Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

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

B. Entire Contract: This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made
in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph “Z” below, and as more fully described in paragraph “Z,” harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. **Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company’s performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 combined single limit per occurrence</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Professional Liability Insurance</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>$1,000,000 aggregate</td>
<td></td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
</tbody>
</table>

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,
which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that Attorneys’ insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys’ Professional Liability and Network Security & Privacy Liability are “Claims-Made” policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys’ liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Freight:** Intentionally Omitted.

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract,
each party shall bear their own attorney’s fees, costs and expenses.

X. Interpretation: This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnities”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.
Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s project manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS:

1. Scope of Contract: This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.

2. Term: This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.

3. Precedence: The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.

4. Professional Conflict of Interest: Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."
If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board’s authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys’ employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys’ efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.

6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County’s officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement’s termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys’ personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys’ personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to
provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys’ Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel (“Lead Counsel”) for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management’s approval. Any change in Attorneys’ Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. **Improper Influence:** Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.

9. **Improper Consideration:** Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. **County’s Project Manager:** The County Project Manager, as specified in Article “25” Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager and Contractor personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. **Contractor’s Project Manager:** Contractor Project Manager, as specified in Article “25” Notices, will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
The Contractor’s Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

12. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.

14. **Child Support Enforcement Requirements:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

15. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the
supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.

20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

c. Terminate the Contract immediately without penalty.

21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:

a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
b. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. Orderly Termination: Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

23. Termination for County’s Convenience: Services performed under this Contract may be terminated in whole or in part at any time the County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:

a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.

b. Complete services not terminated by the Termination Notice.

c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys’ engagement.

d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.

e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk
Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**Contractor:** The Wenderoff Law Group, APC  
Attn: Lori Wenderoff, Project Manager  
21820 Burbank Blvd., Ste. 305  
Woodland Hills, CA 91367  
Phone: 818-407-1413  
Email: lori@wenderofflaw.com

**County:** County of Orange  
Office of Risk Management  
Attn: Beverly Umholtz, Project Manager  
601 N. Ross St, 5th Floor  
Santa Ana, CA 92701  
Phone: 714-285-5511  
Email: beverly.umholtz@ocgov.com

**cc:** County of Orange  
County Executive Office/County Procurement Office  
Attn: Jenny Daniels, County DPA  
1300 S. Grand Ave., Bldg. A, 2nd Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-5153  
Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

The Wenderoff Law Group, APC

*Pursuant to California Corporations Code Section 313, if the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

Lori Wenderoff  PRES/CEO
Print Name  Title
Signature  Date  10/4/19

Lori Wenderoff  Secretary
Print Name  Title
Signature  Date  10/4/19

******************************************************************************
COUNTY OF ORANGE A political subdivision of the State of California

Deputy Purchasing Agent

Print Name  Title
Signature  Date

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Brittany McLean  Deputy County Counsel
Print Name  Title
Signature  Date  6/5/19
ATTACHMENT A  
SCOPE OF WORK

A. CONTRACTOR RESPONSIBILITIES

1. Contractor shall defend all claims or actions, including pre-judgment and post-judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers’ compensation or employer’s liability.

2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.

3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.

4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers’ compensation case law and statutory requirements to handle all issues that may arise on a claim.

5. Case management and litigation budget;
   a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County’s Workers’ Compensation Program Manager in addition to the OSC West (TPA email automated system).
   b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor’s recommendation when considering case evaluation.
   c. The Case Evaluation must include the following elements:
      • Statement of facts
      • Statement of issues, including any unusual or potentially precedent setting issues
      • Investigations needed and additional background
      • Injuries
      • Applicant’s allegations or contentions
      • Affirmative defenses if any
      • Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
      • Legal issues and research
      • Expected and or potential liability
      • Case cost potential
      • Subrogation, if any
• Exposure
• Proposed strategies and litigation management
• Settlement valuation
• Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.

7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.

8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers’ compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.

9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.

10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.

11. Contractor will provide all correspondence relating to each claim as referenced in the Workers’ Compensation Claims Management Litigation Protocols.

12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant’s counsel. Settlements that are over $75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.

13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.

14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County’s interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the
TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.

15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.

16. Contractor shall notify CEO/Risk Management of any potential case with exposure over $100,000 as soon as it becomes evident that the case has merit or may result in potential costs of $100,000.

17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County’s Workers’ Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.

18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.

19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.

20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.

21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.

22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.

23. Penalties;
   a) Penalties caused by Contractor shall be paid by Contractor
   b) Penalties assessed will be reviewed by CEO/Risk Management
   c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
   d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.
e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County’s Workers’ Compensation Program Manager.

24. Monitoring of Service/Quality of Legal Services

a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.

b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers’ Compensation Program Manager and the TPA Unit Manager within (2) days.

c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers’ Compensation Claims Management Litigation Protocols. Contractor’s non-compliance is grounds for dismissal from the panel.

25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.

26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked “Confidential-Attorney/Client Communication Privilege.”

27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management’s representative. Any changes in case staffing must be approved by the CEO Risk Management’s representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.

28. Monitoring of Service/Quality;

a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.

b) County shall receive written notification within twenty-four (24) hours of appearance.

c) County may monitor Contractor’s compliance with all of the Contractual Terms and Conditions contained in this contract.

B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF

1) The County requires the following experience levels for each category identified in the approved fee schedule:

   • Partner: Must be a partner in the firm
• W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.

• Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.
ATTACHMENT B

WORKERS' COMPENSATION CLAIMS
MANAGEMENT LITIGATION PROTOCOLS

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

A. GENERAL REQUIREMENTS

1. At all times protect the interests of the County.

2. Provide clear, concise, timely and necessary communication as specified herein.

3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.

4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.

5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County's Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.

6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers' Compensation defense law).

7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

B. INITIAL FILE REFERRAL

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.
2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.

3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers’ Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:

- Statement of facts
- Statement of issues, including any unusual or potentially precedent setting issues
- Investigations needed and additional background
- Injuries
- Applicant’s allegations or contentions
- Affirmative defenses if any
- Discovery requirements, witness and parties’ identification and identification of any records that need to be produced
- Legal issues and research
- Expected and or potential liability
- Case cost potential
- Subrogation, if any
- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Action Plan
- Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. In the semi-annual reports defense counsel shall provide an updated litigation budget.

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

C. **ONGOING REPORTING REQUIREMENTS**

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County’s Workers’ Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant’s attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.

2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.

3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME’s from the County’s panel must be forwarded to the Applicant’s attorney within five (5) business days. If the claimant falls under the County’s Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).
4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).

5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.

6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
   - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
   - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
   - Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
   - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.

7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system).

8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers’ Compensation Program Manager and TPA/Claim Examiner and or TPA Unit manager.

9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County’s Workers’ Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.

10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County’s Workers’ Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.

11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner’s manager.
12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County’s Workers’ Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney’s recommendations for further action required (e.g. payment of awards, disability benefits, etc.) “Urgent – Immediate Action Required” shall be noted in the subject line of the email with a copy to OSC West.

13. Within ten (10) business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County’s Workers’ Compensation Program Manager why the claim is not in posture for settlement.

14. After claim resolution, authorization from the TPA is required for any further attorney involvement.

15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers’ Compensation Appeals Board (WCAB).

16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. All updates shall include a litigation budget update. If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County’s Workers’ Compensation Program Manager.

17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS

1. The County’s expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants’ attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.

- Medicare Releases shall be included in all C&R settlements, as applicable.

- Structured settlement quotes from Chronovo must be presented to Applicant’s counsel for all C&R settlements over $100,000.

When defense counsel receives a settlement demand from Applicant’s counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement
value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant’s attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

Note: The County will not provide case reserves to defense counsel at any time.

2. The County will offer a C&R on workers’ compensation claims in which the claimant is no longer employed by the County (separated or retired) or it’s believed an employee will voluntarily resign. Commonly, this is a claimant who:

- Has personnel issues such as attendance, performance and/or disciplinary; and
- Is on leave without pay; and
- Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County’s Workers’ Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding $75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.

- Due to the “Brown Act” and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
- Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.

4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney’s recommendations for settlement.

5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

E. MISCELLANEOUS PROTOCOLS

1. All legal correspondence is to be emailed to the Claims Examiner and OSCWest@yorkrsg.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report
findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County’s Workers’ Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.

3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.

4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.

5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.

6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County’s Director of Risk Management and/or the County’s Workers’ Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA’s resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.
ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS
1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-017-20010511.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

B. DEFINITIONS
1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
   a. Breach excludes:
      i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
      ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor
to another person authorized to access PHI at the Contractor, or organized health care
arrangement in which County participates, and the information received as a result of
such disclosure is not further used or disclosed in a manner not permitted under the
HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an
unauthorized person to whom the disclosure was made would not reasonably have
been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed
to be a breach unless Contractor demonstrates that there is a low probability that the PHI
has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the
likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.501.

4. “Designated Record Set” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR
§ 160.103.

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy
Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR
§ 160.103 and shall include a person who qualifies as a personal representative in accordance
with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect
CONTRACTOR’s electronic information systems and related buildings and equipment, from
natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable
Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “Protected Health Information” or “PHI” shall have the meaning given to such term under the
HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in
45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or
her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure,
modification, or destruction of information or interference with system operations in an
information system. “Security incident” does not include trivial incidents that occur on a daily
basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers
maintained by Contractor.


15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45
CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that
protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA
Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

   a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

   b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County at:

<table>
<thead>
<tr>
<th>Agency/Department</th>
<th>Or Agency/Department</th>
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<tbody>
<tr>
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   a. Contractor’s notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

   a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;

   b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

      1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.

5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor’s initial report of the Breach to County pursuant to Subparagraph E.2 above.

8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data
Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County’s notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor’s Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor’s Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor’s Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County’s knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
   a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
   b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.

2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
   a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
   b. Contractor shall retain no copies of the PHI.
   c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract.
ATTACHMENT D
WORKERS’ COMPENSATION DEFENSE PANEL
RATE SCHEDULE & BILLING PROCEDURES

I. COMPENSATION: This is a usage Contract between County and Contractor to provide Legal Defense of Workers’ Compensation Claims, as needed and as set forth in Attachment A, “Scope of Work.”

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles “C” and “P” of the County Contract Terms and Conditions.

II. PRICING – WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES: The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

A. One hundred seventy-five dollars ($175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers’ Compensation Specialist.

B. One hundred fifty-five dollars ($155.00) per hour for Associates (i.e., a panel attorney who is not a Partner and/or is not certified as a Workers’ Compensation Specialist).

C. One hundred ten dollars ($110.00) per hour for a Paralegal and/or Hearing Representative.

III. BILLING INSTRUCTIONS

A. Billing Procedures

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10th hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:

- Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
- Mileage for hearings and or depositions at the current IRS rate; and
- Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

D. Overhead and Other Non-Billable Costs: The County considers the following items to be overhead/cost of doing business (included in defense counsel’s hourly billing rate) and will not remit payment for the following charges:

- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
- Opening/closing files;
- Preparation of bills and/or collection of invoices;
- Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
- Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
- Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
- Technology costs, including hardware/software, licenses;
- Photocopy costs in excess of ten cents ($0.10) per page;
- Equipment, books and periodicals;
- Any other items customarily associated with overhead expense;
- Attorney travel, parking costs and tolls.

E. Billing Detail: The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County’s contracted 3rd Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3rd Party Administrator’s Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.
PO Box 619079
Roseville, CA 95661
CONTRACT SUMMARY FORM
RISK MANAGEMENT WORKERS' COMPENSATION LEGAL DEFENSE PANEL

SUMMARY OF SIGNIFICANT CHANGES

N/A, this is a new contract.

SUBCONTRACTORS

This contract does not include subcontractors or pass through to other providers.

CONTRACT OPERATING EXPENSES

I. WORKERS’ COMPENSATION DEFENSE PANEL HOURLY RATES

The hourly billing rates for legal services authorized by the County’s Board of Supervisors as compensation for Workers’ Compensation Defense litigation services provided to the County will be as follows:

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   • On a per case basis
   • In 1/10th hour increments
   • Date work performed
   • Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
   • Include a total summary of hours by attorney and/or staff person
   • Include a final total of all hours worked by all staff
   • Include a separate section for costs and advances
   • Include receipts, invoices or cancelled checks for all costs advanced
   • Include a total amount due
B. Billable Items: The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:
   - Photocopy charges at up to ten cents ($0.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
   - Mileage for hearings and or depositions at the current IRS rate; and
   - Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.

C. Non-Billable Events: The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.

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   - Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
   - Opening/closing files;
   - Preparation of bills and/or collection of invoices;
   - Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
   - Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
   - Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
   - Technology costs, including hardware/software, licenses;
   - Photocopy costs in excess of ten cents ($0.10) per page;
   - Equipment, books and periodicals;
   - Any other items customarily associated with overhead expense;
   - Attorney travel, parking costs and tolls.
November 13, 2019

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 19, 2019, Board Hearing.

Agency: County Executive Office
Subject: Approval of Technical Adjustments to 2019 Contract Policy Manual
Districts: All Districts

Reason for supplemental: The County Executive Office is requesting that this item be added to the November 19, 2019, Board of Supervisors (Board) agenda so that the Board can review and approve Technical Adjustments to 2019 Contract Policy Manual in advance of training and the implementation of the Local Small Business Preference Policy effective January 1, 2020. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: Chairwoman Lisa A. Bartlett, Supervisor, Fifth District

cc: Board of Supervisors
County Executive Office
County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT HEAD REVIEW: [Signature]
DEPARTMENT CONTACT PERSON(S): Michelle Aguirre (714) 834-4304
Rob Richardson (714) 834-3481


CEO CONCUR

[Signature]
CEO Signature

COUNTY COUNSEL REVIEW

APPROVED AGREEMENT AS TO FORM

[Signature]
County Counsel Signature

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A  Current Year Cost: N/A  Annual Cost: N/A

Staffing Impact: N/A  # of Positions:  Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A

County Audit in last 3 years: Yes

Prior Board Action: 09/10/2019 #23, 08/13/2019 #19

RECOMMENDED ACTION(S)

SUMMARY:
The County Procurement Office is recommending technical adjustments to facilitate implementation of the Local Small Business Preference Policy.

BACKGROUND INFORMATION:
On August 13, 2019, the Board of Supervisors adopted the 2019 Contract Policy Manual (CPM). This action included adoption of the Local Small Business Preference Policy with an effective date of January 1, 2020, to provide adequate time for training and development of procedures for this new Board initiative. Since the approval date, County Procurement Office (CPO) staff have been preparing the procedures, training sessions and communications to successfully implement the Local Small Business Preference Policy.
During these efforts, CPO identified specific technical adjustments to CPM sections 4.2-113, 4.3-118 and 4.4-106 to assist with implementation. The primary adjustment modifies the CPM to reflect that the definition of a Small Business is contained on the web site of the State of California Department of General Services (DGS) https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise. The DGS Certification Eligibility Requirements include:

- Be independently owned and operated;
- Not dominant in field of operations
- Principal office located in California;
- Owners (officers, if a corporation) domiciled in California; and,
- Including affiliates, be either,
  - A business with 100 or fewer employees; an average annual gross receipts of $15 million or less, over the last three tax years;
  - A manufacturer with 100 or fewer employees; or,
  - A micro business - a small business will automatically be designated as a micro business, if gross Annual receipts are less than $5,000,000; or the small business is a manufacturer with 25 or fewer employees.

For Small Business Certification purposes, a manufacturer is a business that is both of the following:

1. Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

Other adjustments have been made for consistency and clarity; please see Attachment A for more details.

FINANCIAL IMPACT:
N/A

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A - Redline version of 2019 CPM Local Small Business Sections
Attachment B - Proposed 2019 CPM Local Small Business Sections
§4.2-113 Local Small Business (LSB) Preference

To be certified as a Local Small Business by the County of Orange, a qualifying Local Small Business shall meet (1) and (2) below:

(1) Local Business requirements:
   a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;
   b) has:
      b)i. a business address located in the County of Orange that is not a post office box, or
      b)ii. is shown to have a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.

(2) Small Business requirements:
   a) be independently owned and operated must be certified as a Small Business by the State of California Department of General Services (DGS); and,
   b) not dominant in field of operation DGS Small Business requirements must be valid at the time of bid submittal;
   c) principal office located in Orange County;
   d) owners (officers, if a corporation) domiciled in California;
   e) a business with 100 or fewer employees; an average annual gross receipts of $14 million or less, over the last three (3) tax years;
   f) certified by the State of California.

(3) When the lowest bidder is not an LSB, a qualifying LSB who submitted a bid the sole lowest certified LSB within five percent (5%) of the lowest bid shall be given the opportunity to price match the non-LSB lowest bid. The offer to match the lowest bid must be in writing as prescribed by the County, and To participate in the LSB Preference Policy, the sole lowest qualified LSB must accept the County’s offer to price match must be made within three (3) business days after the bid is closed and prior to bid results being posted in bidding system from the County’s offer, unless otherwise specified by the County.

(4) The County Procurement Officer may consider a departmental request to waive the LSB Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving an LSB waiver request, the County Procurement Office will notify the Board of Supervisors of this request.

(5) The LSB Prior to approving a submitted waiver request, County Procurement Officer will notify the Board of Supervisors. The approved waiver request must be approved by the County Procurement Officer (CPO) and Chief Financial Officer (CFO) on the form(s) approved and provided by the County Procurement Office CPO, and shall be made part of the procurement file.

(6) LSB Preference Policy requirements shall not apply where prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.
§4.3-118 Local Small Business (LSB) Preference

To be certified as a Local Small Business by the County of Orange, a business shall qualify as a Local Small Business and shall meet (1) and (2) below:

(1) Local Business requirements:
   a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;
   b) has:
      i) a business address located in the County of Orange that is not a post office box,
      ii) is shown to have a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city or, other documentation acceptable to the County of Orange.

(2) Small Business requirements:
   a) be independently owned and operated and must be certified as a Small Business by the State of California DGS and;
   b) not dominant in field of operation DGS Small Business requirements must be valid at the time of proposal submittal.
   c) principal office located in Orange County
   d) owners (officers, if a corporation) domiciled in California
   e) a business with 100 or fewer employees; an average annual gross receipts of $14 million or less, over the last three (3) tax years
   f) certified by the State of California.

(3) The evaluation committee shall apply an extra five percent (5%) shall be applied to the tallied score of each certified LSB to obtain the final score for each LSB. If the final score of any LSB matches the final score of a non-LSB, preference shall be given to the qualifying certified LSB. If two or more LSBs have the same final score, then the County shall determine the contract award based on the County’s best interest. Evaluation committee shall award the contract to the LSB having the highest score on the most heavily weighted criterion score defined by the department in the solicitation.

(4) The County Procurement Officer may consider a departmental request to waive the LSB Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving an LSB waiver request, the County Procurement Officer will notify the Board of Supervisors of the request.

(5) The LSB waiver request must be Prior to approving a submitted waiver request, County Procurement Officer will notify the Board of Supervisors. The approved waiver by the County Procurement Officer (CPO) and Chief Financial Officer (CFO) on the form(s) approved and provided by the County Procurement Office shall be made part of the procurement file.

(6) LSB Preference Policy requirements shall not apply where prohibited by this policy, law or regulation including, but not limited to, specific state or federal funded projects.
SECTION 4.4
TWO-STEP SEALED BIDDING

§4.4-106 Local Small Business (LSB) Preference

To be certified as a Local Small Business by the County of Orange, a business qualifying as a Local Small Business shall meet (1) and (2) below:

1. Local Business requirements:
   a) maintain their principal center of operations (i.e. headquarters) within Orange County; and,
   b) has:
      i. a business address located in the County of Orange that is not a post office box, or
      ii. is shown to have a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city or, other documentation acceptable to the County of Orange.

2. Small Business requirements:
   a) be independently owned and operated must be certified as Small Business by the State of California DGS; and,
   b) not dominant in field of operation DGS Small Business requirements must be valid at the time of the bid/proposal submittal.
   c) principal office located in Orange County
   d) owners (officers, if a corporation) domiciled in California
   e) a business with 100 or fewer employees; an average annual gross receipts of $14 million or less, over the last three (3) tax years
   f) certified by the State of California

3. When an Invitation for Bid (IFB) is the method of solicitation, refer to Section 4.2-113 of this Manual.

4. When a Request for Proposal (RFP) is the method of solicitation, refer to Section 4.3-118 of this Manual.

5. The County Procurement Officer may consider a departmental request to waive the Local Small Business Preference requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a LSB waiver request, the County Procurement Officer will notify the Board of Supervisors of the request.

6. The LSB waiver request must be approved by the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the County Procurement Office. The approved waiver shall be made part of the procurement file.

7. LSB Preference Policy shall not apply when prohibited by this policy, law or regulation including, but not limited to, specific state or federal funded projects.
SECTION 4.2
INVITATION FOR BID (IFB)

§4.2-113 Local Small Business (LSB) Preference

To be certified as a Local Small Business by the County of Orange, a business shall meet (1) and (2) below:

(1) Local Business requirements:
   a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;
   b) has:
      i. a business address located in the County of Orange that is not a post office box, or
      ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.

(2) Small Business requirements:
   a) must be certified as a Small Business by the State of California Department of General Services (DGS); and,
   b) DGS Small Business requirements must be valid at the time of bid submittal.

(3) When the lowest bidder is not an LSB, the sole lowest certified LSB within five percent (5%) of the lowest bid shall be given the opportunity to price match. To participate in the LSB Preference Policy, the sole lowest qualified LSB must accept the County’s offer to price match within three (3) business days from the County’s offer, unless otherwise specified by the County.

(4) The County Procurement Officer may consider a departmental request to waive the LSB Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving an LSB waiver request, the County Procurement Office will notify the Board of Supervisors of this request.

(5) The LSB waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.

(6) LSB Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to specific state or federal funded projects.
§4.3-118 **Local Small Business Preference**

To be certified as a Local Small Business by the County of Orange, a business shall meet (1) and (2) below:

(1) Local Business requirements:
   a) maintains their principal center of operations (i.e. headquarters) within Orange County, and;
   b) has:
      i. a business address located in the County of Orange that is not a post office box, or
      ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city or, other documentation acceptable to the County of Orange.

(2) Small Business requirements:
   a) must be certified as a Small Business by the State of California DGS and;
   b) DGS Small Business requirements must be valid at the time of proposal submittal.

(3) An extra five percent (5%) shall be applied to the tallied score of each certified LSB to obtain the final. If the final score of any LSB matches the final score of a non-LSB, preference shall be given to the certified LSB. If two or more LSBs have the same final score, the County shall determine the contract award based on the County’s best interest.

(4) The County Procurement Officer may consider a departmental request to waive the LSB Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving an LSB waiver request, the County Procurement Officer will notify the Board of Supervisors of the request.

(5) The LSB waiver request must be approved by the County Procurement Officer and Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.

(6) LSB Preference Policy requirements shall not apply when prohibited by this policy, law or regulation including, but not limited to, specific state or federal funded projects.
§4.4-106 Local Small Business Preference

To be certified as a Local Small Business by the County of Orange, a business shall meet (1) and (2) below:

(1) Local Business requirements:
   a) maintains their principal center of operations (i.e. headquarters) within Orange County; and,
   b) has:
      i. a business address located in the County of Orange that is not a post office box, or
      ii. a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city or, other documentation acceptable to the County of Orange.

(2) Small Business requirements:
   a) must be certified as Small Business by the State of California DGS; and,
   b) DGS Small Business requirements must be valid at the time of the bid/proposal submittal.

(3) When an Invitation for Bid (IFB) is the method of solicitation, refer to Section 4.2-113 of this Manual.

(4) When a Request for Proposal (RFP) is the method of solicitation, refer to Section 4.3-118 of this Manual.

(5) The County Procurement Officer may consider a departmental request to waive the LSB Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a LSB waiver request, the County Procurement Officer will notify the Board of Supervisors of the request.

(6) The LSB waiver request must be approved by the County Procurement Officer and Chief Financial Officer on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.

(7) LSB Preference Policy shall not apply when prohibited by this policy, law or regulation including, but not limited to, specific state or federal funded projects.
November 13, 2019

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

The County Executive Office is requesting a Supplemental Agenda Staff Report for the November 19, 2019, Board Hearing.

Agency: OC Community Resources
Subject: Approval of California Emergency Solutions and Housing Contracts
Districts: All Districts

Reason for supplemental: The OC Community Resources is requesting that this item be added to the November 19, 2019, Board of Supervisors (Board) agenda to expedite the contracts with Orange County United Way (OCUW) to increase permanent housing resources for individuals and families experiencing homelessness in Orange County. Expediting the contract approvals for OCUW will ensure that services to the homeless population are not delayed and that CESH funds are used in a collaborative manner with other service providers to close gaps in the System of Care. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur: Chairwoman Lisa A. Bartlett, Supervisor, Fifth District

cc: Board of Supervisors
    County Executive Office
    County Counsel
SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE: 11/19/19
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources
DEPARTMENT HEAD REVIEW: 

DEPARTMENT CONTACT PERSON(S): Dylan Wright (714) 480-2788
Shannon Legere (714) 480-6534

SUBJECT: Approval of California Emergency Solutions and Housing Contracts

CEO CONCUR
County Counsel Review

LAWYER'S SIGNATURE

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: Yes Current Year Cost: $236,425 Annual Cost:
FY 2020-21 $405,300
FY 2021-22 $33,775

Staffing Impact: No # of Positions: Sole Source: No
Current Fiscal Year Revenue: N/A Funding Source: State: 100% (Department of Housing and Community Development
County Audit in last 3 years: No

Prior Board Action: 10/22/2019 #14, 08/27/2019 #37, 09/25/2018 #35

RECOMMENDED ACTION(S)

1. Approve selection of Orange County United Way as provider and authorize the OC Community Resources Director or designee to execute contract with Orange County United Way in an amount not to exceed $275,000 to provide California Emergency Solutions and Housing Rental Assistance and Housing Relocation and Stabilization services for the contract term starting December 1, 2019, through July 31, 2021, renewable for one additional one-year term.

2. Approve selection of Orange County United Way as provider and authorize the OC Community Resources Director or designee to execute contract with Orange County United Way in an amount not to exceed $400,500 to provide California Emergency Solutions and Housing Flexible Housing Subsidy Funds services for the contract term starting December 1, 2019, through July 31, 2021, renewable for one additional one-year term.
SUMMARY:

Approval of California Emergency Solutions and Housing contracts with Orange County United Way will increase rental assistance and housing relocation and stabilization services and flexible housing subsidy funds for those experiencing homelessness in Orange County for FY 2019-20 and FY 2020-21.

BACKGROUND INFORMATION:

The California Emergency Solutions and Housing Program (CESH) is a new program established by California Senate Bill 850 Housing, funded with a portion of Senate Bill 2 Building and Jobs Act homeless revenue and remaining California Emergency Solutions Grant funds, and designates the Department of Housing and Community Development (HCD) to administer the program. CESH is designed to implement activities that address the needs of individuals and families experiencing homelessness to assist them in transitioning to permanent housing as quickly as possible. HCD grants CESH funds to eligible applicants in the form of five-year grants.

The Orange County Continuum of Care (CoC) designated the County of Orange (County) as the Administrative Entity to administer CESH funding in collaboration with the CoC during the CoC Board of Supervisors (Board) meeting on August 22, 2018. On September 25, 2018, the Board approved OC Community Resources (OCCR) to submit a grant application for CESH funding in the amount of $1,948,684. The County submitted the CESH application to HCD on October 15, 2018.

On January 11, 2019, OCCR was notified of the CESH program award in the amount of $1,948,684. Of the CESH program award received, $1,851,250 is dedicated to eligible activities under the CESH guidance, with the remaining amount of $97,434 (five percent) to be used for administrative costs by OCCR. The County and the state finalized the State’s Standard CESH Agreement on July 26, 2019, and the Board approved the grant award acceptance on August 27, 2019.

On February 19, 2019, OCCR released a Request for Proposal (RFP) on the County’s online bidding system, known as BidSync, to select sub recipients for the CESH funds in the amount of $1,851,250. OCCR sent an additional notification of the release of the RFP to the provider community through the 2-1-1 Orange County listserv and included BidSync information for those interested in applying. The RFP presented funds for the following service activities:

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<th>Description</th>
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<tr>
<td>Activity #1</td>
<td>Rental assistance, housing relocation and stabilization services</td>
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<tr>
<td>Activity #2</td>
<td>Operating subsidies and flexible housing subsidy funds</td>
<td>$650,500</td>
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<tr>
<td>Activity #3</td>
<td>Operating support for emergency housing interventions, including, but not limited to Navigation Centers, Street Outreach Services and Shelter Diversion</td>
<td>$775,500</td>
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The eligible activities were prioritized based on local needs and in coordination with the System of Care that optimizes performance goals and works to close gaps in care. Selected projects demonstrate Regional...
Service Planning Area (North, Central and South Orange County regions) and Countywide collaboration as well as maximization of funds by delivering client-centered services.

On March 19, 2019, OCCR received 15 proposals in response to the RFP, with each proposal detailing their specialized approach to implementing programs based on the eligible activities. The submitted proposals were evaluated and scored by a designated evaluation committee based on qualifications and expertise related to the subject matter as noted in Attachment A, Written Summarized Score Sheet. The evaluation committee recommended that OCCR proceed with negotiations with six top-ranked proposers, as listed below, under the various activity types identified within the RFP.

1) Orange County United Way (OCUW)
2) Interval House
3) Families Forward
4) Grandma’s House of Hope
5) Fullerton Interfaith Emergency Services (FIES) dba Pathways of Hope
6) Mercy House Living Centers, Inc. (Mercy House)

The Board approved contracts for Interval House, Families Forward, Grandma’s House of Hope, FIES and Mercy House on October 22, 2019.

OCCR conducted due diligence on the proposers. Reference checks were satisfactory and completed for the top-ranked proposer, OCUW, with the City of Anaheim and Friendship Shelter regarding similar projects.

On June 26, 2019, the CoC Board approved the CESH funding recommendations. The following table reflects the RFP applicant recommendations for the top-ranked proposer.

**ACTIVITY #1: Rental Assistance and Housing Stabilization**  
Applicant: OCUW  
Project Details: Provide rental assistance, security deposits, utility deposits and payments, move-in costs and housing stability case management incentives to secure 100 rental units throughout Orange County. Project to serve 17 to 50 households.

**ACTIVITY #2: Flexible Housing Subsidy Funds**  
Applicant: OCUW  
Project Details: Provide flexible housing using the OCUW Welcome Home OC Program for all in need throughout Orange County. This includes rental unit incentives for property owners, rental unit identification and acquisition, housing search, housing navigation and placement, mitigation funds and housing stability case management incentives. Project to serve 33 to 50 households.

OCCR is asking the Board to approve these CESH recommendations to enter into contracts with OCUW to close a gap in the System of Care by increasing access to permanent housing resources and reduce barriers to housing for individuals and families experiencing homelessness in Orange County.

These homeless services contracts are urgent in nature due to the need to quickly provide persons experiencing homelessness connections to benefits and services. In order to expedite the administration of CESH funds, OCCR is bringing this contract to the Board less than 30 days prior to the contract commencement date. Approval of these contracts will ensure service delivery efficiency and continuity and increase services to individuals and families experiencing homelessness in our community.
FINANCIAL IMPACT:
The State of California’s allocation of CESH grant funding covers $675,500 in contracts presented to the Board for approval in this agenda item. Additional contracts in the amount of $1,175,750 were approved by the Board on October 22, 2019. The total of these planned contracts and the $97,434 allowed for County administrative costs amounts to the full CESH program award of $1,948,684.

Appropriations for these Contracts are included in Budget Control 012 FY 2019-20 Budget and will be included in the budgeting process for future years.

STAFFING IMPACT:
N/A

ATTACHMENT(S):
Attachment A – Written Summarized Score Sheet
Attachment B – Orange County United Way contract #19-23-0064-CESS
Attachment C – Orange County United Way contract #19-23-0065-CESS
Attachment D – Contract Summary Form
### American Family Housing

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**Score Descriptions:**
- 5 - Excellent
- 4 - Above Average
- 3 - Average
- 2 - Poor
- 1 - Inadequate
- 0 - Unacceptable
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### Fullerton Interfaith Emergency Services dba Pathways of Hope

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## WRITTEN SUMMARIZED SCORE SHEET - COMPONENT A
### FY 2019-20 CALIFORNIA EMERGENCY SOLUTIONS AND HOUSING PROGRAM (CESH)
### RFP No. 012-182314

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- 5 - Excellent
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CONTRACT # 19-23-0065-CESH

FOR

CALIFORNIA EMERGENCY SOLUTIONS AND HOUSING PROGRAM
(Activity #2 – Flexible Housing Subsidy Funds)

BETWEEN

COUNTY OF ORANGE

AND

ORANGE COUNTY UNITED WAY
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ATTACHMENTS

Attachment A - Scope of Services
Attachment B - Payment/Compensation
Attachment C - Budget Schedule
Attachment D - Staffing Plan

EXHIBITS

Exhibit 1 – OC Community Resources Contract Reimbursement Policy
Contract #19-23-0065-CESH
with
Orange County United Way
for
California Emergency Solutions and Housing Program

This Contract #19-23-0065-CESH for California Emergency Solutions and Housing Program (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County” and Orange County United Way, a private non-profit corporation in the State of California, with a place of business at 18012 Mitchell South, Irvine, CA 92614, DUNS Number 076064914, (hereinafter referred to as “Contractor”), with the County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services
Attachment B – Payment/Compensation
Attachment C – Budget Schedule
Attachment D – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for California Emergency Solutions and Housing Program under a cost reimbursement Contract; and

WHEREAS, Contractor agrees to provide California Emergency Solutions and Housing Program services as further set forth in the Scope of Services, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on services/activities set forth in Payment/Compensation, attached hereto as Attachment B; and

WHEREAS, Contractor agrees to manage allotted funding set forth in the Budget Schedule, attached hereto as Attachment C; and

WHEREAS, Contractor agrees to provide staff set forth in the Staffing Plan, attached hereto as Attachment D; and

WHEREAS, the County Board of Supervisors has authorized the OC Community Resources Director or his designee to enter into a Contract for said Services with the Contractor to carry out certain program services and activities during Fiscal Years 2019-20, FY 2020-21, and FY 2021-22.

NOW, THEREFORE, the Parties mutually agree as follows:
ARTICLES

General Terms and Conditions:

A. Governing Law and Venue: This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. Entire Contract: This Contract, Attachments A, B, C, and D and Exhibit 1 contain the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Contract Administrator.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Intentionally left blank

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of services. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Intentionally left blank:

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with
the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
O. Insurance Requirements:
Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer
The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).
If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td></td>
<td>$2,000,000 aggregate</td>
</tr>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>Employee Dishonesty (if applicable)</td>
<td>$100,00 per occurrence (limit commensurate with exposure)</td>
</tr>
</tbody>
</table>

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the *County of Orange its elected and appointed officials, officers, agents and employees* as Additional Insureds, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT.*

2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor’s Network Security & Privacy Liability are “Claims-Made” policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by the Contract Administrator, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or instruments of other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a Party to any litigation against the County, or a Party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and Subcontractors associated with the provision of Services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of Services under the Contract.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEEs harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Intentionally left blank**

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney’s fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of
this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County and its County Indemnitees, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or County Indemnitees or its agents or any combination of the three in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of five years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right
to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s Project Manager.

BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon receipt of funds from, and/or obligation of funds by, Federal, State of California and/or local funds to County; and inclusion of sufficient funding for the services hereunder in the Budget Schedule approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are delayed, not forthcoming, or are otherwise limited, County may delay reimbursement to Contractor, immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Contract Administrator in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for services exceeding the dollar limit on the Contract unless a written and approved change order to cover those costs has been issued. Board of Supervisor approval may be required.
Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Public Services from Contractor as further detailed in the Scope of Services, identified and incorporated herein by this reference as “Attachment A”.

2. **Term of Contract:** This Contract shall commence on December 1, 2019 and continue through July 31, 2021, unless otherwise terminated by the County.

3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one (1) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

4. **Maximum Obligation:**
   The total Maximum Obligation of County to the Contractor for the cost of services provided in accordance with this Contract is $400,500, as further detailed in the Budget Schedule, identified and incorporated herein by this reference as Attachment “C”.

5. **Amendments - Changes/Extra Work:**
   The Contractor shall make no changes to this Contract without the County’s written consent. In the event that there are new or unforeseen requirements, the County has the discretion with the Contractor’s concurrence, to make changes at any time without changing the scope or price of the Contract.

   If County-initiated changes or changes in laws or government regulations affect price, the Contractor’s ability to deliver services, or the project schedule, the Contractor will give County written notice no later ten (10) days from the date the law or regulation went into effect or the date the change was proposed and Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County-assigned Contract Administrator, shall require the mutual consent of all Parties, and may be subject to approval by the County Board of supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as originally set forth or as previously amended in this Contract.

6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a) Terminate the Contract immediately, pursuant to Section K herein;

   b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

   Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Conditions Affecting Work:**
   The Contractor shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this Contract; and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

8. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and Federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

9. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

10. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

11. **Consulting Contract – Follow-On Work:**
    No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.

12. **Project Manager, County**
    The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

    The County’s Project Manager, in consultation and agreement with the County, shall have the right to require the removal and replacement of the Contractor’s Project Manager and key personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County’s Project Manager. The County is not required to provide any additional information, reason or rationale in
the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

13. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager, in consultation and agreement with County, shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines.

14. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract.

15. **County of Orange Child Support Enforcement:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Licenses:** At its own expense, Contractor and its subcontractors, if any, shall, at all time during the term of this Contract, maintain in full force and effect such licenses or permits as may be required by the State of California or any other government entity. Contractor and his subcontractors, if any, shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, State, or Federal governmental entity.

18. **Disputes – Contract:**

   A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager, such matter shall be brought to the attention of the Contract Administrator by way of the following process:

      1. The Contractor shall submit to the agency/department assigned Contract Administrator a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this
Contract, unless the County, on its own initiative, has already rendered such a final decision.

2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the Director. If the County fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for cause or termination for convenience as stated in Section K herein.

19. EDD Independent Contractor Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a “service provider” to whom the County pays $600 or more or with whom the County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, Subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who receives compensation or executes a contract for services performed for that service recipient within or without the State.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm.

20. Emergency/Declared Disaster Requirements: In the event of an emergency or if Orange County is declared a disaster area by the County, State or Federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the
circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

21. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

22. Non-Supplantation of Funds:
Contractor shall not supplant any Federal, State, or County funds intended for the purposes of this Contract with any funds made available under this Contract. Contractor shall not claim reimbursement from County for, or apply sums received from County with respect to, that portion of its obligations which have been paid by another source of revenue. Contractor agrees that it shall not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for the purposes of obtaining Federal, State, or County funds under any Federal, State, or County program without prior written approval from the County.

23. Satisfactory Work: Services rendered hereunder are to be performed to the written satisfaction of County. County’s staff will interpret all reports and determine the quality, acceptability and progress of the services rendered.

24. Access and Records:
A. County, the State of California and the United States Government and/or their representatives, shall have access, for purposes of monitoring, auditing, and examining, to Contractor’s activities, books, documents and papers (including computer records and emails) and to records of Contractor’s subcontractors, consultants, contracted employees, bookkeepers, accountants, employees and participants related to this Contract. Contractor shall insert this condition in each Contract between Contractor and a subcontractor that is pursuant to this Contract. Contractor shall require the subcontractor to agree to this condition. Such departments or representatives shall have the right to make excerpts, transcripts and photocopies of such records and to schedule on site monitoring at their discretion. Monitoring activities also may include, but are not limited to, questioning employees and participants and entering any premises or onto any site in which any of the services or activities funded hereunder are conducted or in which any of the records of Contractor
are kept. Contractor shall make available its books, documents, papers, financial records, etc., within three (3) days after receipt of written demand by Director which shall be deemed received upon date of sending. In the event Contractor does not make the above referenced documents available within the County of Orange, California, Contractor agrees to pay all necessary and reasonable expenses incurred by County, or County’s designee, in conducting any audit at the location where said records and books of account are maintained.

**B. Records Retention.** All accounting records and evidence pertaining to all costs of Contractor and all documents related to this Contract shall be kept available at Contractor’s office or place of business for the duration of this Contract and thereafter for five (5) years after completion of an audit. Records which relate to: (1) complaints, claims, administrative proceedings or litigation arising out of the performance of this Contract; or (2) costs and expenses of this Contract to which County or any other governmental department takes exception, shall be retained beyond the five (5) years until final resolution or disposition of such appeals, litigation, claims, or exceptions.

**C. Liability.** Contractor shall pay to County the full amount of County’s liability to the State or Federal government or any department thereof resulting from any disallowance or other audit exceptions to the extent that such liability is attributable to Contractor’s failure to perform under this Contract.

**25. Signature in Counterparts:** The Parties agree that separate copies of this Contract and/or electronic signatures and handwritten signatures may be signed by each of the Parties, and this Contract will have the same force and effect as if the Original had been signed by all the Parties.

**26. Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County’s Project Manager and the Contractor’s Project Manager will meet on reasonable notice to discuss the Contractor’s performance and progress under this contract. If requested, the Contractor’s Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this contract.

**27. Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

**28. Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of
California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

29. Gratuities: The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

30. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County.

31. Notices: Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.
For County:

OC Community Resources
OC Housing and Homeless Services
Project Manager
1501 E. Saint Andrew Place, 1st Floor
Santa Ana, CA 92705-4930

OC Community Resources
Contract Development and Management
Contract Administrator
601 N. Ross St., 6th Floor
Santa Ana, CA 92701

For Contractor:

Orange County United Way
18012 Mitchell South
Irvine, CA 92614
Attn: Project Manager

32. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

33. Precedence: The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments and exhibits.

34. Termination – Orderly: After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

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Program Specific Terms and Conditions:

35. **Debarment:** Contractor hereby certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Notwithstanding anything to the contrary set forth in this Agreement, Contractor shall not engage in any activities that lead to its debarment or suspension from performing services for the County or the United States government and shall not engage any Subcontractors that are now or hereafter debarred or suspended from performing services for County or the United States government.

36. **Fraud:** Contractor shall immediately report all suspected or known instances and facts concerning possible fraud, abuse or criminal activity under this contract. Contractor shall inform staff and the general public of how to report fraud, waste or abuse through appropriate postings of incident reporting notice. The County’s Anti-Fraud Program can be accessed through: [http://ocgov.com/gov/risk/programs/antifraud](http://ocgov.com/gov/risk/programs/antifraud).

37. **Fiscal Accountability:**

   A. **Financial Management System:** Contractor shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. Contractor’s system shall provide fiscal control and accounting procedures that will include the following:
   
   i. Information pertaining to payments in accordance with the line items identified in Attachment C of this Contract;
   
   ii. Source documentation to support accounting records; and
   
   iii. Proper charging of costs and cost allocation.

   B. **Contractor’s Record:** Contractor’s records shall be sufficient to:
   
   i. Permit preparation of required reports;
   
   ii. Permit tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;
   
   iii. Permit the tracking of program income, or profits earned, and any costs incurred (such as stand-in costs) that are otherwise allowable except for; and
   
   iv. Permit tracking and reporting of leveraging as required.

   C. **Costs Charged:** Cost shall be charged to this contract only in accordance with the County and other requirements as required by funding source(s).

38. **Performance Standards:** Contractor shall comply with and adhere to the performance accountability standards as described in this Contract and applicable regulations and the activity levels to be utilized by County for program evaluation and monitoring.

39. **Budget Schedule:** Contractor agrees that the expenditures of any and all funds under this Contract will be in accordance with the Budget Schedule, a copy of which is attached hereto as Attachment C, and which by this reference is incorporated herein and made a part hereof as if fully set forth.

40. **Payment Requirements:**

   If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by Contractor, the Contract may be
terminated by the County at the end of the period for which funds are available. The County shall notify Contractor at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised and the County shall not be obligated nor liable for any damages as a result of termination under this provision of this Contract, and nothing herein shall be construed as obligating the County to expend or as involving the County in any Contract or other obligation for future payment of money in excess of appropriations authorized by law.

A. Contract Amount: It is expressly agreed and understood that the total amount to be paid by County under this Contract shall not exceed the total County funding as set forth in Attachment B - Payment/Compensation to Contractor attached hereto and incorporated herein by reference.

B. County will reclaim any unused balance of funds for reallocation to other County approved projects.

C. Payment of Project Activities:

1. Payment of Project Activities: County will reimburse Contractor for eligible project-related costs only. Contractor shall submit requests for reimbursement to County on a monthly basis beginning on January 1, 2020, and must provide adequate documentation as required by County in accordance with the OC Community Resources Contract Reimbursement Policy (revised August 16, 2019), as set forth in Exhibit 1, attached hereto and incorporated herein by reference. In addition, Contractor will submit to County Project Manager a monthly performance report by the 15th of the month for the preceding month of services, as prescribed by County. Failure to provide any of the required documentation and reporting will cause County to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to Contractor, until such documentation and reporting has been received and approved by County.

2. If Contractor has no request for reimbursement during any quarter during the term of this Contract, a monthly performance report, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.

3. Contractor will have forty-five (45) days following the expiration of the Contract to submit outstanding invoices for reimbursement of eligible costs incurred during the Contract period. After the forty-five (45) day period for submitting invoices has expired, County shall reallocate the remaining balance under this Contract for other program purposes and Contractor shall be ineligible for any further reimbursement.

D. Funds shall not be disbursed for any costs incurred prior to the certification by County of Certificate(s) of Insurance as further defined in Paragraph O “Insurance Requirements” of this Contract.

E. Eligible costs related to services provided by Contractor must be incurred during the period beginning December 1, 2019. The Project shall be completed and all funds provided through this Contract shall be expended on eligible Project activities through and including July 31, 2021.
F. **ADVANCE** - Notwithstanding Paragraph 40.C above, upon written request and justification of an immediate need based upon cash forecasting from Contractor, County may advance to Contractor a portion of County’s maximum obligation hereunder. Project Manager shall reduce the amount of monthly payments in the third, fourth, and fifth months by an equal amount of any advance payment, under Paragraph 40.C above, to recover any outstanding advance or part thereof. Such recovery may not exceed the total of all outstanding advances. No monthly payment shall be made to Contractor which would result in less money remaining unpaid to Contractor than the total of advances made to Contractor.

41. **Modification of Budget:** Upon written approval of County shall have the authority to transfer allocated program funds from one category of the overall program Budget to another category of the overall Budget. No such transfer may be made without the express prior written approval of County. A modification of the Budget may include the addition of any new Budget category.

42. **Performance:**

Contractor shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. Contractor also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this Contract.

43. **Contractor Personnel - Drug-Free Workplace:**

The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
   
   a. The dangers of drug abuse in the workplace;
   
   b. The organization’s policy of maintaining a drug-free workplace;
   
   c. Any available counseling, rehabilitation and employee assistance programs; and
   
   d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
   
   a. Will receive a copy of the company’s drug-free policy statement; and
b. Will agree to abide by the terms of the company’s statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or

2. The Contractor violates the certification by failing to carry out the requirements as noted above.

44. Publicity, Literature, Advertisements, and Social Media:

A. County owns all rights to the name, logos, and symbols of County. The use and/or reproduction of County’s name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County’s prior written consent is expressly prohibited.

B. Contractor may develop and publish information related to this Contract where all of the following conditions are satisfied:

1. County provides its written approval of the content and publication of the information at least 30 days prior to Contractor publishing the information, unless a different timeframe for approval is agreed upon by the County;

2. Unless directed otherwise by County, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];

3. The information does not give the appearance that the County, its officers, employees, or agencies endorse:
   a. any commercial product or service; and,
   b. any product or service provided by Contractor, unless approved in writing by County; and,

4. If Contractor uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this Contract, Contractor shall develop social media policies and procedures and have them available to County. Contractor shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at http://www.ocgov.com/gov/ceo/cio/govpolicies.

45. Lobbying: On the best information and belief, Contractor certifies that in connection with this Agreement, no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the
awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract. Contractor agrees to comply with the lobbying Laws and policies applicable to County and to assure that its officers and employees comply before any appearance before the County of Orange’s Board of Supervisors. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before state or federal legislatures or the Board of Supervisors of the County of Orange.

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IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and hereby cause this Contract to be executed.

Orange County United Way

By: _____________________________  By: _____________________________

Name: _____________________________  Name: _____________________________

Title: _____________________________  Title: _____________________________

Dated: _____________________________  Dated: _____________________________

*For Contractors that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the secretary, any Assistant secretary, the Chief Financial Officer or an Assistant Treasurer.

For Contractors that are not corporations, the person who has authority to bind the Contractor to a contract, must sign on one of the lines above.

********************************************************************************************************

County of Orange
A Political Subdivision of the State of California

By: _____________________________  Dated: _____________________________

Dylan Wright, Director
OC Community Resources

APPROVED AS TO FORM

By: _____________________________  Dated: 11/8/2019

Deputy County Counsel
ATTACHMENT A

1. **Scope of Services Summary**

Contractor shall perform all services set forth herein; and is responsible for administering the program funded with the California Emergency Solutions and Housing Program ("CESH") funds, as described as follows, in a manner satisfactory to the County of Orange and consistent with any standards required as a condition of providing CESH funds including but not limited to SB 850, Section 4, Chapter 48, and the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act 24 CFR Parts 91 and 576.

The State of California Department of Housing and Community Development (HCD) administers CESH funding to implement activities that address the needs of individuals and families experiencing homelessness and assist them to regain stability in permanent housing as quickly as possible.

For the purposes of the Program, CESH funds are designated to the following prioritized activities:

1. Rental assistance, housing relocation and stabilization services;
2. Operating subsidies and flexible housing subsidy funds; and
3. Operating support for emergency housing interventions, including, but not limited to, Navigation Centers, Street Outreach Services, and Shelter Diversion.

A. **Program Description – Summary**

Contractor’s CESH Flexible Housing Subsidies program shall serve a minimum of 33 households experiencing literal homelessness with housing subsidies through the Welcome Home OC Program. These services provide eligible participants connection to the most appropriate level of care and to help secure and maintain permanent housing.

B. **Eligible Participants**

Individuals and families experiencing homelessness or at risk of homelessness. Assistance is prioritized to homeless households over households at risk of homelessness. For the purposes of the Program, families/individuals are considered to be homeless only when he/she/they lack(s) a fixed, regular and adequate nighttime residence and reside(s) in a place not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings, motels, or other shelters, or for reference as further defined in 24 CFR Part 578.3 and 576.2.
C. **Use of Funds**

CESH funds will be used to provide flexible housing subsidy funds as indicated in the California Health and Safety Code Chapter 2.8 Section 50490.4(a)(3), including, but not limited to, the following:

Flexible housing subsidy funds for local programs that establish or support the provision of rental subsidies in permanent housing to assist homeless individuals and families. Funds used for purposes of this paragraph may support rental assistance, bridge subsidies to property owners waiting for approval from another permanent rental subsidy source, vacancy payments, or project-based rent or operating reserves.

Rental assistance provided from flexible housing subsidy funds shall not exceed 48 months for each assisted household, and rent payments shall not exceed two times the current HUD fair market rent for the local area, as determined pursuant to 24 CFR part 888. Operating subsidies from flexible housing subsidy funds shall be in the form of 15-year capitalized operating reserves for new or existing affordable permanent housing units for homeless individuals and/or families.

For purposes of this Contract and in accordance with applicable laws and regulations, funds may be used for the following, including but not limited to:

A. Rental Unit Incentives
B. Rental Unit Identification and Acquisition
C. Housing Search, Navigation, and Placement
D. Vacancy Payments
E. Mitigation Funds
F. Housing Stability Case Management

2. **Contractor Programmatic Responsibilities/ Description of Services**

In addition to the administrative services required as part of the Contract, and the Scope of Services, which is incorporated as if fully set herein, the Contractor agrees to provide the following:

A. **Program Essential Requirements**

The Program shall meet the County’s need to provide flexible housing subsidy funds identified in this Contract to those experiencing homelessness through evaluation of needs and connection to resources.

1. Contractor shall provide regional services to families and individuals experiencing homelessness in Orange County.

2. Contractor shall provide flexible housing subsidies to individuals and families experiencing homelessness to secure permanent housing, increased stability, and connections to community resources and mainstream benefits through the Welcome
Home OC Program. These include:

a. Property owner signing bonuses and unit provision bonuses
b. Rental unit identification and acquisition, including property owner recruitment, management, and retention (salaries and benefits)
c. Housing search, navigation, and placement (salaries and benefits)
d. Vacancy payments
e. Mitigation funds
f. Housing stability case management services through County-approved subcontracted service providers

3. Contractor shall serve a minimum of 33 households experiencing homelessness for the term of this Contract. Performance goals and thresholds are itemized in Section 2.B., with reporting and data requirements listed in Section 3 of this Scope of Services.

4. Contractor shall utilize and participate in the County Coordinated Entry System (CES) for families and individuals; meet CES requirements of 24 CFR part 576.400(d) or 24 CFR part 578.7(a)(8) and related HUD requirements.

B. Program Performance Measures

Performance criteria shall be used to assess the level of performance of the Contractor and considered by the County when determining future funding. In order to be considered in compliance with the performance criteria, the Contractor must submit to the County a request for reimbursement which demonstrates that Contractor has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the Director.

Failure to achieve performance may cause any remaining balance in this Contract to be reclaimed by County, and will negatively affect future funding to Contractor.

The table below itemizes the performance criteria the Contract will be measured against. The County will also monitor performance using the available Homeless Management Information System (HMIS) reports pertaining to the Program. For the life of the Contract, Contractor shall meet or exceed the following performance metrics:

<table>
<thead>
<tr>
<th>Flexible Housing Subsidy Funds</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>Total unduplicated number of households experiencing homelessness to be served</td>
</tr>
<tr>
<td>20</td>
<td>Total unduplicated number of unsheltered households experiencing homelessness to be served</td>
</tr>
<tr>
<td>150</td>
<td>Average length of homelessness (in days) before entry into the program</td>
</tr>
<tr>
<td>33</td>
<td>Total number of households who will enter the program to permanent housing</td>
</tr>
<tr>
<td>0</td>
<td>Total number of households that return to homelessness after exiting program</td>
</tr>
<tr>
<td>33</td>
<td>Total number of households who remain in permanent housing</td>
</tr>
<tr>
<td>100%</td>
<td>% of households will move into permanent housing at project exit</td>
</tr>
</tbody>
</table>
C. **Minimum Requirement Thresholds**  
The following “Performance and Expenditure Threshold” criteria shall be used to assess the level of performance of the Contractor. Furthermore, the criteria will be considered when determining future funding. In order to be considered in compliance with the performance threshold criteria, the Contractor must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that Contractor has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the Director.

<table>
<thead>
<tr>
<th><em>Milestone Date</em></th>
<th>Minimum Required Expenditure and Performance Thresholds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contract Term: December 1, 2019 through July 31, 2021</td>
</tr>
<tr>
<td>June 1, 2020</td>
<td>35% of Contracted Amount Expended</td>
</tr>
<tr>
<td>June 1, 2020</td>
<td>35% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>September 1, 2020</td>
<td>50% of Contracted Amount Expended</td>
</tr>
<tr>
<td>September 1, 2020</td>
<td>50% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>January 1, 2021</td>
<td>70% of Contracted Amount Expended</td>
</tr>
<tr>
<td>January 1, 2021</td>
<td>70% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>May 31, 2021</td>
<td>80% of Contracted Amount Expended</td>
</tr>
<tr>
<td>May 31, 2021</td>
<td>80% of Proposed Accomplishments Met</td>
</tr>
</tbody>
</table>

*The required milestone dates are established to comply with state requirements.*

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the Director, may cause any remaining balance in this Contract to be reclaimed by County, and will negatively affect future funding to Contractor. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the Director, may cause any remaining balance in this Contract to be reclaimed by County, and will impact future funding to Contractor.

3. **Contractor’s Administrative Responsibilities**

A. **HMIS Data Activities**  
Contractor and County-approved subcontracted service provider partners shall enter data directly into the HMIS system, and adhere to all implementation guidelines developed under the County of Orange Continuum of Care’s Homeless Management Information System (HMIS).
System (HMIS). Participation includes, but is not limited to, the input of all programmatic and client data, the generation of all mandated monthly and close-out reports.

1. Contractor and County-approved subcontracted service provider partners must input the collected data no more than the required number of calendar days after date of program entry as set forth by the Continuum of Care’s HMIS Policies and Procedures.

2. Contractor and County-approved subcontracted service provider partners’ services rendered to clients must be entered into HMIS within the required number of calendar days from date of service as set forth by the HMIS Policies and Procedures.

3. Contractor’s clients who exit from Program must have updated status in HMIS within the required calendar days of the actual exit date as set forth by the HMIS Policies and Procedures.

4. Contractor will be given access to HMIS to provide oversight to County-approved subcontracted service provider partners.

B. Reporting

Contractor is required to submit monthly County-approved reports in a format acceptable to County by the fifteenth (15th) day of the following month of services rendered, unless otherwise approved by County. These reports shall include, but are not limited to:

1. Contractor shall report eligible activities and data sets such as
   a. Number of homeless households and persons served
   b. Number of unsheltered homeless households and persons served
   c. The average length of time spent as homeless before entry into the program
   d. The length of time served during program enrollment
   e. The number of homeless households and persons exiting the program to permanent housing
   f. The number of households and persons that return to homelessness after exiting the program
   g. Units of services
   h. Program and operational costs and activities
   i. Additional program-level data as required by County to meet other applicable reporting or audit requirements

2. Contractor and County-approved subcontracted service provider partners will also be required to enter the data into HMIS prior to approval of monthly invoices.

3. Data and due dates for the monthly reports will be items mutually agreed upon with the County and includes data collected through HMIS and the ArcGIS Survey 123 smartphone application or comparable outreach tool and database.

C. Technical Assistance and Monitoring

1. County shall actively partner with Contractor to provide technical assistance, proactively resolve issues, and monitor the program activities selected to ensure compliance with State and County requirements at least once during the grant period.

2. County will monitor the performance of the Contractor according to the terms of this Contract and when County deems appropriate.
3. County will monitor the performance of Contractor based on the performance measures outlined in the Contractor’s RFP and aligned with CESH eligible activities, data reporting, other monthly performance and financial reports and ESG standards for rapid rehousing. In the event that performance consistently remains below the minimum requirement thresholds of the performance criteria in sections 2.B. and 2.C. of this Attachment, the Contractor will develop and submit performance improvement plans for County to evaluate.

4. If it is determined that Contractor falsified any certification, application information, financial, or contract report, the Contractor shall be required to reimburse the full amount of the CESH award to the County, and may be prohibited from any further participation in the CESH program.

5. As requested by County, the Contractor shall submit all CESH monitoring documentation necessary to ensure that Contractor is in continued compliance with State and County requirements. Such documentation requirements and the submission deadline shall be provided by County at the time such information is requested from the Contractor.

D. Contractor acknowledges that they are required to collaborate with Orange County Continuum of Care and other homeless services agencies, including the participation of the Coordinated Entry system for flexible housing subsidy funds and services, as applicable.

E. Contractor shall comply with all State of California and local regulations including all requirements, and regulations of the CESH Program, as applicable.

F. Contractor shall partner with medical or law enforcement in the event of an emergency. With the nature of the population being served on the streets, there is a need to take precautions, should a medical need or emergency arise. The first reaction for any emergency situation would be to call 9-1-1. Contractor staff will be provided with additional emergency contact numbers. All Contractor staff of the Program shall be trained on the appropriate emergency procedures in order to handle crisis situations in the most effective manner possible.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK
Payment/ Compensation

1. **COMPENSATION:**

   This is a cost reimbursement Contract between the County and the Contractor for $400,500 as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference for the period of December 1, 2019 through July 31, 2021. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The County shall have no obligation to pay any sum in excess of the total Contract amount specified unless authorized by an amendment in accordance with paragraphs C and P of the County’s General Terms and Conditions.

2. **FIRM DISCOUNT AND PRICING STRUCTURE:**

   Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

3. **PAYMENT TERMS:**

   An invoice for activities/services shall be submitted to the address specified below upon the completion of the activities/services and approval of the County Project Manager. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice, contingent upon availability of funds, in a format acceptable to the County of Orange and verified and approved OC Community Resources and subject to routine processing requirements of the County. The responsibility for providing an acceptable invoice rests with the Contractor. Billing shall cover services not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

   Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

   Invoice(s) are to be sent to:
4. **INVOICING INSTRUCTIONS:**

Further instructions regarding invoicing/reimbursement as set forth in Exhibit 1, OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

The Contractor will provide an invoice on Contractor’s letterhead for services rendered. Each invoice will have a number and will include the following information:

The Demand Letter/Invoice must include Delivery Order (DO) Number, Contract Number, Service date(s) – Month of Service along with other required documentation (See Exhibit 1).

5. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit 1, OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.
### ATTACHMENT C

#### Budget Schedule

**Orange County United Way**

**CESH Program: Contract Term December 1, 2019 – July 31, 2021**

<table>
<thead>
<tr>
<th>Operating Costs</th>
<th>Funds Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Salaries and Benefits for Rental Unit</strong></td>
<td>$130,500</td>
</tr>
<tr>
<td>Identification and Acquisition, Housing Search, Navigation, and Placement</td>
<td></td>
</tr>
<tr>
<td><strong>Rental Unit Incentives – Property Owner Bonuses</strong></td>
<td>$25,000</td>
</tr>
<tr>
<td><strong>Vacancy Payments</strong></td>
<td>$15,500</td>
</tr>
<tr>
<td><strong>Mitigation Funds</strong></td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Housing Stability Case Management (Subcontracted)</strong></td>
<td>$214,500</td>
</tr>
</tbody>
</table>

**Total**                                                   **$400,500**
ATTACHMENT D

1. **Staffing Plan: Orange County United Way**  
   **Project Title: CESH Flexible Housing Subsidy Funds**

<table>
<thead>
<tr>
<th>FTE</th>
<th>Title</th>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td>Welcome Home OC Program Manager</td>
<td>FHSF</td>
<td>Direct program implementation of Welcome Home OC including housing search, navigation and placement; oversees housing matches made, serves as liaison for owners and property managers and works with nonprofit service providers; reports to Director, United to End Homelessness.</td>
</tr>
<tr>
<td>0.50</td>
<td>Director, Community Engagement</td>
<td>FHSF</td>
<td>Rental unit identification and acquisition, property owner recruitment, management and retention; reports to Vice President, Donor Relations.</td>
</tr>
<tr>
<td>0.05</td>
<td>Chief Executive Officer</td>
<td>FHSF</td>
<td>Provides program oversight and direction; reports to Board of Directors.</td>
</tr>
<tr>
<td>0.25</td>
<td>Director, United to End Homelessness</td>
<td>FHSF</td>
<td>Provides technical expertise and direction; manages Welcome Home OC; reports to CEO.</td>
</tr>
<tr>
<td>0.06</td>
<td>Grants and Program Data Manager</td>
<td>FHSF</td>
<td>Manages grant administration, evaluation systems, and reporting; reports to Director, Community Investments and Evaluation.</td>
</tr>
</tbody>
</table>

*FTE = Full-Time Equivalent*

Project Manager will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract.

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written approval of the County Project Manager.

The County may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to County approval.
PURPOSE:
This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services and OC Housing and Homeless Services. The procedures provide instructions for submitting reimbursement demand letter or invoice.

REFERENCES:
Executed County Board of Supervisors approved contract
Budget included in contract or presented as an attachment
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For OC Housing and Homeless Services Contracts only.
2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)

BACKGROUND:
The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced Uniform Guidance and Code of Federal Regulations (CFR).

ATTACHMENTS:
Reimbursement Policy Status Form (RPS-1)

POLICY:
Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services and OC Housing and Homeless Services reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services and OC Housing and Homeless Services may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services and OC Housing and Homeless Services may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by Contractor must be substantiated and incurred during the contract period. Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable Code of Federal Regulations (CFR) or Uniform Guidance. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract requires matching contribution, documentation substantiating contribution match must be
submitted with demand letter or invoice.

At any time, based on County’s business needs and/or Contractor’s performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

PROCEDURES:

Abbreviated Documentation Requirements
Compile and submit:
1. Supporting documentation includes, but is not limited to:
   a. General ledger/expense transaction report
   b. Payroll register or labor distribution report
   c. Payroll allocation plan
   d. Personnel Documentation
   e. Benefit plan and calculation of benefit
   f. Employer-employee contract for non-customary benefits (if applicable)
   g. Pre-approval documentation for equipment purchases equal to or greater than $5,000
2. The following is required with the first month’s invoice only:
   a. Cost allocation plan for rent, utilities, etc.
   b. Indirect rate approved by cognizant agency (if applicable)
3. Summary of leveraged resources (if applicable)
4. Demand letters must contain the following certification (if required by Contract):
   “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31 Sections 3729-3730 and 3801-3812)”
5. Grantee Performance Report (if required by Contract)
6. Supporting documentation shall be on single-sided sheets
7. Please redact employees’ Social Security Number from payroll reports
8. Demand letter or invoice, along with supporting documentation shall be submitted to:
   OC Community Resources Accounting
   601 N. Ross St., 6th Floor
   Santa Ana, CA 92701

Comprehensive Documentation Requirements
In addition to abbreviated documentation, compile and submit:
9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

ACTION:
Distribute this policy to all appropriate staff

INQUIRIES: Inquiries may be directed to OCR Accounts Payable at: OCRAccountsPayable@occr.ocgov.com
Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regard to the Contract #19-23-0065-CESH listed herein, Contractor is designated with the Documentation Status of Abbreviated unless Comprehensive is checked below. If the contractor’s designation should change to Abbreviated, a new status form shall be approved. All related documentation requirements are in full force, until further notice.

Contractor: Orange County United Way  
Effective Date: 12/1/19

Contract #: 19-23-0065-CESH

Documentation Status: ☒ Abbreviated  ☐ Comprehensive

Program Authorization by:  
Auditor Controller Authorization by:

Print Name  
Print Name

Signed by:  
Signed by:

Date:  
Date:

Two signatures are required to implement the form.

Distribution:
Contractor  
Auditor Controller  
Contract File  
Program File
CONTRACT # 19-23-0064-CESH

FOR

CALIFORNIA EMERGENCY SOLUTIONS AND HOUSING PROGRAM
(Activity #1 – Rental Assistance and Housing Relocation and Stabilization)

BETWEEN

COUNTY OF ORANGE

AND

ORANGE COUNTY UNITED WAY
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ATTACHMENTS

Attachment A - Scope of Services
Attachment B - Payment/Compensation
Attachment C - Budget Schedule
Attachment D - Staffing Plan

EXHIBITS

Exhibit 1 – OC Community Resources Contract Reimbursement Policy
Contract #19-23-0064-CESH
with
Orange County United Way
for
California Emergency Solutions and Housing Program

This Contract #19-23-0064-CESH for California Emergency Solutions and Housing Program (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County” and Orange County United Way, a private non-profit corporation in the State of California, with a place of business at 18012 Mitchell South, Irvine, CA 92614, DUNS Number 076064914, (hereinafter referred to as “Contractor”), with the County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services
Attachment B – Payment/Compensation
Attachment C – Budget Schedule
Attachment D – Staffing Plan

RECITALS

WHEREAS, Contractor and County are entering into this Contract for California Emergency Solutions and Housing Program under a cost reimbursement Contract; and

WHEREAS, Contractor agrees to provide California Emergency Solutions and Housing Program services as further set forth in the Scope of Services, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on services/activities set forth in Payment/Compensation, attached hereto as Attachment B; and

WHEREAS, Contractor agrees to manage allotted funding set forth in the Budget Schedule, attached hereto as Attachment C; and

WHEREAS, Contractor agrees to provide staff set forth in the Staffing Plan, attached hereto as Attachment D; and

WHEREAS, the County Board of Supervisors has authorized the OC Community Resources Director or his designee to enter into a Contract for said Services with the Contractor to carry out certain program services and activities during Fiscal Years 2019-20, FY 2020-21, and FY 2021-22.

NOW, THEREFORE, the Parties mutually agree as follows:
ARTICLES

General Terms and Conditions:

A. Governing Law and Venue: This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

B. Entire Contract: This Contract, Attachments A, B, C, and D and Exhibit 1 contain the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Contract Administrator.

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Intentionally left blank

E. Delivery: Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of services. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor’s expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Intentionally left blank:

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with
the more specific requirement contained in paragraph “Z” below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers’ compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County’s satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
O. **Insurance Requirements:**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor’s expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor’s, its agents, employee’s or subcontractor’s performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

**Qualified Insurer**
The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).
If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence $2,000,000 aggregate</td>
</tr>
<tr>
<td>Automobile Liability including coverage for owned, non-owned and hired vehicles</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers Liability Insurance</td>
<td>$1,000,000 per occurrence</td>
</tr>
<tr>
<td>Network Security &amp; Privacy Liability</td>
<td>$1,000,000 per claims-made</td>
</tr>
<tr>
<td>Employee Dishonesty (if applicable)</td>
<td>$100,00 per occurrence (limit commensurate with exposure)</td>
</tr>
</tbody>
</table>

**Required Coverage Forms**
The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**
The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange its elected and appointed officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.

2) A primary and non-contributing endorsement evidencing that the Contractor’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor’s Network Security & Privacy Liability are “Claims-Made” policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by the Contract Administrator, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. Changes: Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.

Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or instruments of other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a Party to any litigation against the County, or a Party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and Subcontractors associated with the provision of Services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.
County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of Services under the Contract.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor’s staff, agents and employees.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEEs harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Intentionally left blank**

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney’s fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of
this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.

Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County and its County Indemnitees, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or County Indemnitees or its agents or any combination of the three in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor’s records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of five years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right
to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor’s records pertaining to this Contract shall be forwarded to the County’s Project Manager.

BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon receipt of funds from, and/or obligation of funds by, Federal, State of California and/or local funds to County; and inclusion of sufficient funding for the services hereunder in the Budget Schedule approved by County’s Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are delayed, not forthcoming, or are otherwise limited, County may delay reimbursement to Contractor, immediately terminate or modify this Contract without penalty.

CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Contract Administrator in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for services exceeding the dollar limit on the Contract unless a written and approved change order to cover those costs has been issued. Board of Supervisor approval may be required.
Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Public Services from Contractor as further detailed in the Scope of Services, identified and incorporated herein by this reference as “Attachment A”.

2. **Term of Contract:** This Contract shall commence on December 1, 2019 and continue through July 31, 2021, unless otherwise terminated by the County.

3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one (1) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

4. **Maximum Obligation:**
   The total Maximum Obligation of County to the Contractor for the cost of services provided in accordance with this Contract is $275,000, as further detailed in the Budget Schedule, identified and incorporated herein by this reference as Attachment “C”.

5. **Amendments - Changes/Extra Work:**
   The Contractor shall make no changes to this Contract without the County’s written consent. In the event that there are new or unforeseen requirements, the County has the discretion with the Contractor’s concurrence, to make changes at any time without changing the scope or price of the Contract.

   If County-initiated changes or changes in laws or government regulations affect price, the Contractor’s ability to deliver services, or the project schedule, the Contractor will give County written notice no later ten (10) days from the date the law or regulation went into effect or the date the change was proposed and Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County-assigned Contract Administrator, shall require the mutual consent of all Parties, and may be subject to approval by the County Board of supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as originally set forth or as previously amended in this Contract.

6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

   a) Terminate the Contract immediately, pursuant to Section K herein;

   b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

   c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

   Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Conditions Affecting Work:**
   The Contractor shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this Contract; and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

8. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and Federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

9. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

10. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

11. **Consulting Contract – Follow-On Work:**
   No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.

12. **Project Manager, County**
   The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County’s Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

   The County’s Project Manager, in consultation and agreement with the County, shall have the right to require the removal and replacement of the Contractor’s Project Manager and key personnel. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County’s Project Manager. The County is not required to provide any additional information, reason or rationale in
the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

13. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager, in consultation and agreement with County, shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines.

14. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract.

15. **County of Orange Child Support Enforcement:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

17. **Licenses:** At its own expense, Contractor and its subcontractors, if any, shall, at all time during the term of this Contract, maintain in full force and effect such licenses or permits as may be required by the State of California or any other government entity. Contractor and his subcontractors, if any, shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, State, or Federal governmental entity.

18. **Disputes – Contract:**

   A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager, such matter shall be brought to the attention of the Contract Administrator by way of the following process:

   1. The Contractor shall submit to the agency/department assigned Contract Administrator a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this
Contract, unless the County, on its own initiative, has already rendered such a final decision.

2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the Director. If the County fails to render a decision within 90 days after receipt of the Contractor’s demand, it shall be deemed a final decision adverse to the Contractor’s contentions. Nothing in this section shall be construed as affecting the County’s right to terminate the Contract for cause or termination for convenience as stated in Section K herein.

19. EDD Independent Contractor Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a “service provider” to whom the County pays $600 or more or with whom the County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, Subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the State.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm.

20. Emergency/Declared Disaster Requirements: In the event of an emergency or if Orange County is declared a disaster area by the County, State or Federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the
circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor’s reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor’s reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

22. **Non-Supplantation of Funds:**

Contractor shall not supplant any Federal, State, or County funds intended for the purposes of this Contract with any funds made available under this Contract. Contractor shall not claim reimbursement from County for, or apply sums received from County with respect to, that portion of its obligations which have been paid by another source of revenue. Contractor agrees that it shall not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for the purposes of obtaining Federal, State, or County funds under any Federal, State, or County program without prior written approval from the County.

23. **Satisfactory Work:** Services rendered hereunder are to be performed to the written satisfaction of County. County’s staff will interpret all reports and determine the quality, acceptability and progress of the services rendered.

24. **Access and Records:**

A. County, the State of California and the United States Government and/or their representatives, shall have access, for purposes of monitoring, auditing, and examining, to Contractor’s activities, books, documents and papers (including computer records and emails) and to records of Contractor’s subcontractors, consultants, contracted employees, bookkeepers, accountants, employees and participants related to this Contract. Contractor shall insert this condition in each Contract between Contractor and a subcontractor that is pursuant to this Contract. Contractor shall require the subcontractor to agree to this condition. Such departments or representatives shall have the right to make excerpts, transcripts and photocopies of such records and to schedule on site monitoring at their discretion. Monitoring activities also may include, but are not limited to, questioning employees and participants and entering any premises or onto any site in which any of the services or activities funded hereunder are conducted or in which any of the records of Contractor...
are kept. Contractor shall make available its books, documents, papers, financial records, etc., within three (3) days after receipt of written demand by Director which shall be deemed received upon date of sending. In the event Contractor does not make the above referenced documents available within the County of Orange, California, Contractor agrees to pay all necessary and reasonable expenses incurred by County, or County’s designee, in conducting any audit at the location where said records and books of account are maintained.

B. Records Retention. All accounting records and evidence pertaining to all costs of Contractor and all documents related to this Contract shall be kept available at Contractor’s office or place of business for the duration of this Contract and thereafter for five (5) years after completion of an audit. Records which relate to: (1) complaints, claims, administrative proceedings or litigation arising out of the performance of this Contract; or (2) costs and expenses of this Contract to which County or any other governmental department takes exception, shall be retained beyond the five (5) years until final resolution or disposition of such appeals, litigation, claims, or exceptions.

C. Liability. Contractor shall pay to County the full amount of County’s liability to the State or Federal government or any department thereof resulting from any disallowance or other audit exceptions to the extent that such liability is attributable to Contractor’s failure to perform under this Contract.

25. Signature in Counterparts: The Parties agree that separate copies of this Contract and/or electronic signatures and handwritten signatures may be signed by each of the Parties, and this Contract will have the same force and effect as if the Original had been signed by all the Parties.

26. Reports/Meetings: The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County’s Project Manager and the Contractor’s Project Manager will meet on reasonable notice to discuss the Contractor’s performance and progress under this contract. If requested, the Contractor’s Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this contract.

27. Subcontracting: No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

28. Equal Employment Opportunity: The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of
California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

29. Gratuities: The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

30. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County.

31. Notices: Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.
For County:

OC Community Resources
OC Housing and Homeless Services
Project Manager
1501 E. Saint Andrew Place, 1st Floor
Santa Ana, CA 92705-4930

For Contractor:

Orange County United Way
18012 Mitchell South
Irvine, CA 92614
Attn: Project Manager

32. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

33. Precedence: The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments and exhibits.

34. Termination – Orderly: After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
Program Specific Terms and Conditions:

35. **Debarment**: Contractor hereby certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Notwithstanding anything to the contrary set forth in this Agreement, Contractor shall not engage in any activities that lead to its debarment or, suspension from performing services for the County or the United States government and shall not engage any Subcontractors that are now or hereafter debarred or suspended from performing services for County or the United States government.

36. **Fraud**: Contractor shall immediately report all suspected or known instances and facts concerning possible fraud, abuse or criminal activity under this contract. Contractor shall inform staff and the general public of how to report fraud, waste or abuse through appropriate postings of incident reporting notice. The County’s Anti-Fraud Program can be accessed through: http://ocgov.com/gov/risk/programs/antifraud.

37. **Fiscal Accountability**:

   A. **Financial Management System**: Contractor shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. Contractor’s system shall provide fiscal control and accounting procedures that will include the following:
      i. Information pertaining to payments in accordance with the line items identified in Attachment C of this Contract;
      ii. Source documentation to support accounting records; and
      iii. Proper charging of costs and cost allocation.

   B. **Contractor’s Record**: Contractor’s records shall be sufficient to:
      i. Permit preparation of required reports;
      ii. Permit tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;
      iii. Permit the tracking of program income, or profits earned, and any costs incurred (such as stand-in costs) that are otherwise allowable except for; and
      iv. Permit tracking and reporting of leveraging as required.

   C. **Costs Charged**: Cost shall be charged to this contract only in accordance with the County and other requirements as required by funding source(s).

38. **Performance Standards**: Contractor shall comply with and adhere to the performance accountability standards as described in this Contract and applicable regulations and the activity levels to be utilized by County for program evaluation and monitoring.

39. **Budget Schedule**: Contractor agrees that the expenditures of any and all funds under this Contract will be in accordance with the Budget Schedule, a copy of which is attached hereto as Attachment C, and which by this reference is incorporated herein and made a part hereof as if fully set forth.

40. **Payment Requirements**:

   If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by Contractor, the Contract may be
terminated by the County at the end of the period for which funds are available. The County shall notify Contractor at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised and the County shall not be obligated nor liable for any damages as a result of termination under this provision of this Contract, and nothing herein shall be construed as obligating the County to expend or as involving the County in any Contract or other obligation for future payment of money in excess of appropriations authorized by law.

A. Contract Amount: It is expressly agreed and understood that the total amount to be paid by County under this Contract shall not exceed the total County funding as set forth in Attachment B-Payment/Compensation to Contractor attached hereto and incorporated herein by reference.

B. County will reclaim any unused balance of funds for reallocation to other County approved projects.

C. Payment of Project Activities:

1. Payment of Project Activities: County will reimburse Contractor for eligible project-related costs only. Contractor shall submit requests for reimbursement to County on a monthly basis beginning on January 1, 2020, and must provide adequate documentation as required by County in accordance with the OC Community Resources Contract Reimbursement Policy (revised August 16, 2019), as set forth in Exhibit 1, attached hereto and incorporated herein by reference. In addition, Contractor will submit to County Project Manager a monthly performance report by the 15th of the month for the preceding month of services, as prescribed by County. Failure to provide any of the required documentation and reporting will cause County to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to Contractor, until such documentation and reporting has been received and approved by County.

2. If Contractor has no request for reimbursement during any quarter during the term of this Contract, a monthly performance report, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.

3. Contractor will have forty-five (45) days following the expiration of the Contract to submit outstanding invoices for reimbursement of eligible costs incurred during the Contract period. After the forty-five (45) day period for submitting invoices has expired, County shall reallocate the remaining balance under this Contract for other program purposes and Contractor shall be ineligible for any further reimbursement.

D. Funds shall not be disbursed for any costs incurred prior to the certification by County of Certificate(s) of Insurance as further defined in Paragraph O “Insurance Requirements” of this Contract.

E. Eligible costs related to services provided by Contractor must be incurred during the period beginning December 1, 2019. The Project shall be completed and all funds provided through this Contract shall be expended on eligible Project activities through and including July 31, 2021.
F. ADVANCE - Notwithstanding Paragraph 40.C above, upon written request and justification of an immediate need based upon cash forecasting from Contractor, County may advance to Contractor a portion of County’s maximum obligation hereunder. Project Manager shall reduce the amount of monthly payments in the third, fourth, and fifth months by an equal amount of any advance payment, under Paragraph 40.C above, to recover any outstanding advance or part thereof. Such recovery may not exceed the total of all outstanding advances. No monthly payment shall be made to Contractor which would result in less money remaining unpaid to Contractor than the total of advances made to Contractor.

41. **Modification of Budget:** Upon written approval of County shall have the authority to transfer allocated program funds from one category of the overall program Budget to another category of the overall Budget. No such transfer may be made without the express prior written approval of County. A modification of the Budget may include the addition of any new Budget category.

42. **Performance:**

Contractor shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. Contractor also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this Contract.

43. **Contractor Personnel - Drug-Free Workplace:**

The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

   a. The dangers of drug abuse in the workplace;
   b. The organization’s policy of maintaining a drug-free workplace;
   c. Any available counseling, rehabilitation and employee assistance programs; and
   d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

   a. Will receive a copy of the company’s drug-free policy statement; and
b. Will agree to abide by the terms of the company’s statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or

2. The Contractor violates the certification by failing to carry out the requirements as noted above.

44. Publicity, Literature, Advertisements, and Social Media:

A. County owns all rights to the name, logos, and symbols of County. The use and/or reproduction of County’s name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County’s prior written consent is expressly prohibited.

B. Contractor may develop and publish information related to this Contract where all of the following conditions are satisfied:

1. County provides its written approval of the content and publication of the information at least 30 days prior to Contractor publishing the information, unless a different timeframe for approval is agreed upon by the County;

2. Unless directed otherwise by County, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];

3. The information does not give the appearance that the County, its officers, employees, or agencies endorse:
   a. any commercial product or service; and,
   b. any product or service provided by Contractor, unless approved in writing by County; and,

4. If Contractor uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this Contract, Contractor shall develop social media policies and procedures and have them available to County. Contractor shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at [http://www.ocgov.com/gov/ceo/cio/govpolicies](http://www.ocgov.com/gov/ceo/cio/govpolicies).

45. Lobbying: On the best information and belief, Contractor certifies that in connection with this Agreement, no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the
awarding of any federal contract, continuation, renewal, amendment, or modification of
any federal contract, grant, loan, or cooperative contract. Contractor agrees to comply with
the lobbying Laws and policies applicable to County and to assure that its officers and
employees comply before any appearance before the County of Orange’s Board of
Supervisors. None of the funds provided under this Agreement shall be used for publicity
or propaganda purposes designed to support or defeat any legislation pending before state
or federal legislatures or the Board of Supervisors of the County of Orange.

THE REMAINDER OF THE PAGE WAS INTENTIONALLY LEFT BLANK
IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and hereby cause this Contract to be executed.

Orange County United Way

By: _____________________________  By: _____________________________
Name: _____________________________  Name: _____________________________
Title: _____________________________  Title: _____________________________
Dated: _____________________________  Dated: _____________________________

*For Contractors that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the secretary, any Assistant secretary, the Chief Financial Officer or an Assistant Treasurer.

For Contractors that are not corporations, the person who has authority to bind the Contractor to a contract, must sign on one of the lines above.

***********************************************************

County of Orange
A Political Subdivision of the State of California

By: _____________________________  Dated: _____________________________
Dylan Wright, Director
OC Community Resources

APPROVED AS TO FORM

By: _____________________________  Dated: _____________________________
Deputy County Counsel

County of Orange
OC Community Resources

Orange County United Way
Contract # 19-23-0064-CESH
ATTACHMENT A

1. Scope of Services Summary

Contractor shall perform all services set forth herein; and is responsible for administering the program funded with the California Emergency Solutions and Housing Program ("CESH") funds, as described as follows, in a manner satisfactory to the County of Orange and consistent with any standards required as a condition of providing CESH funds including but not limited to SB 850, Section 4, Chapter 48, and the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act 24 CFR Parts 91 and 576.

The State of California Department of Housing and Community Development (HCD) administers CESH funding to implement activities that address the needs of individuals and families experiencing homelessness and assist them to regain stability in permanent housing as quickly as possible.

For the purposes of the Program, CESH funds are designated to the following prioritized activities:

1. Rental assistance, housing relocation and stabilization services;
2. Operating subsidies and flexible housing subsidy funds; and
3. Operating support for emergency housing interventions, including, but not limited to, Navigation Centers, Street Outreach Services, and Shelter Diversion.

A. Program Description – Summary
Contractor's CESH Rental Assistance, Housing Relocation and Stabilization program shall serve a minimum of 17 households experiencing literal homelessness with services including rental application fees, security deposits, utility deposits and payments, move-in costs and case management for relocation and stabilization to support the Welcome Home OC Program. These services provide eligible participants connection to the most appropriate level of care and to help secure and maintain permanent housing.

B. Eligible Participants
Individuals and families experiencing homelessness or at risk of homelessness. Assistance is prioritized to homeless households over households at risk of homelessness. For the purposes of the Program, families/individuals are considered to be homeless only when he/she/they lack(s) a fixed, regular and adequate nighttime residence and reside(s) in a place not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings, motels, or other shelters, or for reference as further defined in 24 CFR Part 578.3 and 576.2.
C. **Use of Funds**

CESH funds will be used to provide rental assistance and housing relocation and stabilization services as indicated in the California Health and Safety Code Chapter 2.8 Section 50490.4(a)(1), including, but not limited to, the following:

Rental assistance and housing relocation and stabilization services to ensure housing affordability to people experiencing homelessness or at risk of homelessness. Rental assistance provided pursuant to this paragraph shall not exceed 48 months for each assisted household, and rent payments shall not exceed two times the current HUD fair market rent for the local area, as determined pursuant to Part 888 of Title 24 of the Code of Federal Regulations.

For purposes of the Contract and in accordance with applicable laws and regulations, funds may be used for the following, including but not limited to:

A. Rental Application Fees  
B. Security Deposits  
C. Utility Deposits and Payments  
D. Moving Costs  
E. Housing Stability Case Management  

2. **Contractor Programmatic Responsibilities/ Description of Services**

In addition to the administrative services required as part of the Contract, and the Scope of Services, which is incorporated as if fully set herein, the Contractor agrees to provide the following:

A. **Program Essential Requirements**

The Program shall meet the County’s need to provide rental assistance and housing relocation and stabilization services identified in this Contract to those experiencing homelessness through evaluation of needs and connection to resources.

1. Contractor shall provide regional services to families and individuals experiencing homelessness in Orange County.

2. Contractor shall provide rental assistance and housing relocation and stabilization services to individuals and families experiencing homelessness to secure permanent housing, increased stability, and connections to community resources and mainstream benefits. These include:
   a. Rental application fees  
   b. Double security deposits  
   c. Utility deposits and payments  
   d. Holding fees  
   e. Move-in costs including truck rental, furnishings, moving of client’s belongings, payments to access storage, and other costs to move clients into housing.
f. Housing stability case management services through County-approved subcontracted service providers

3. Contractor shall serve a minimum of 17 households experiencing homelessness for the term of this Contract. Performance goals and thresholds are itemized in Section 2.B., with reporting and data requirements listed in Section 3 of this Scope of Services.

4. Contractor shall utilize and participate in the County Coordinated Entry System (CES) for families and individuals; meet CES requirements of 24 CFR part 576.400(d) or 24 CFR part 578.7(a)(8) and related HUD requirements.

B. Program Performance Measures
Performance criteria shall be used to assess the level of performance of the Contractor and considered by the County when determining future funding. In order to be considered in compliance with the performance criteria, the Contractor must submit to the County a request for reimbursement which demonstrates that Contractor has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the Director.

Failure to achieve performance may cause any remaining balance in this Contract to be reclaimed by County, and will negatively affect future funding to Contractor.

The table below itemizes the performance criteria the Contract will be measured against. The County will also monitor performance using the available Homeless Management Information System (HMIS) reports pertaining to the Program. For the life of the Contract, Contractor shall meet or exceed the following performance metrics:

<table>
<thead>
<tr>
<th>Rental Assistance and Housing Relocation &amp; Stabilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Total households experiencing homelessness to be served</td>
</tr>
<tr>
<td>10 Total unduplicated number of unsheltered households experiencing homelessness to be served</td>
</tr>
<tr>
<td>150 Average length of homelessness (in days) before entry into the program</td>
</tr>
<tr>
<td>17 Total number of households who will enter the program to permanent housing</td>
</tr>
<tr>
<td>0 Total number of households that return to homelessness after exiting program</td>
</tr>
<tr>
<td>17 Total number of households who remain in permanent housing</td>
</tr>
<tr>
<td>100% % of households will move into permanent housing at project exit</td>
</tr>
</tbody>
</table>

C. Minimum Requirement Thresholds
The following “Performance and Expenditure Threshold” criteria shall be used to assess the level of performance of the Contractor. Furthermore, the criteria will be considered when determining future funding. In order to be considered in compliance with the performance threshold criteria, the Contractor must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which
demonstrates that Contractor has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the Director.

<table>
<thead>
<tr>
<th><em>Milestone Date</em></th>
<th>Minimum Required Expenditure and Performance Thresholds</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1, 2020</td>
<td>35% of Contracted Amount Expended</td>
</tr>
<tr>
<td>June 1, 2020</td>
<td>35% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>September 1, 2020</td>
<td>50% of Contracted Amount Expended</td>
</tr>
<tr>
<td>September 1, 2020</td>
<td>50% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>January 1, 2021</td>
<td>70% of Contracted Amount Expended</td>
</tr>
<tr>
<td>January 1, 2021</td>
<td>70% of Proposed Accomplishments Met</td>
</tr>
<tr>
<td>May 31, 2021</td>
<td>80% of Contracted Amount Expended</td>
</tr>
<tr>
<td>May 31, 2021</td>
<td>80% of Proposed Accomplishments Met</td>
</tr>
</tbody>
</table>

*The required milestone dates are established to comply with state requirements.

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the Director, may cause any remaining balance in this Contract to be reclaimed by County, and will negatively affect future funding to Contractor. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the Director, may cause any remaining balance in this Contract to be reclaimed by County, and will impact future funding to Contractor.

3. **Contractor’s Administrative Responsibilities**

   A. **HMIS Data Activities**

      Contractor and County-approved subcontracted service provider partners shall enter data directly into the HMIS system, and adhere to all implementation guidelines developed under the County of Orange Continuum of Care’s Homeless Management Information System (HMIS). Participation includes, but is not limited to, the input of all programmatic and client data, the generation of all mandated monthly and close-out reports.

      1. Contractor and County-approved subcontracted service provider partners must input the collected data no more than the required number of calendar days after date of program entry as set forth by the Continuum of Care’s HMIS Policies and Procedures.
2. Contractor and County-approved subcontracted service provider partners’ services rendered to clients must be entered into HMIS within the required number of calendar days from date of service as set forth by the HMIS Policies and Procedures.

3. Contractor’s clients who exit from Program must have updated status in HMIS within the required calendar days of the actual exit date as set forth by the HMIS Policies and Procedures.

4. Contractor will be given access to HMIS to provide oversight to County-approved subcontracted service provider partners.

B. **Reporting**

Contractor is required to submit monthly County-approved reports in a format acceptable to County by the fifteenth (15th) day of the following month of services rendered, unless otherwise approved by County. These reports shall include, but are not limited to:

1. Contractor shall report eligible activities and data sets such as
   a. Number of homeless households and persons served
   b. Number of unsheltered homeless households and persons served
   c. The average length of time spent as homeless before entry into the program
   d. The length of time served during program enrollment
   e. The number of homeless households and persons exiting the program to permanent housing
   f. The number of households and persons that return to homelessness after exiting the program
   g. Units of services
   h. Program and operational costs and activities
   i. Additional program-level data as required by County to meet other applicable reporting or audit requirements

2. Contractor and County-approved subcontracted service provider partners will also be required to enter the data into HMIS prior to approval of monthly invoices.

3. Data and due dates for the monthly reports will be items mutually agreed upon with the County and includes data collected through HMIS and the ArcGIS Survey 123 smartphone application or comparable outreach tool and database.

C. **Technical Assistance and Monitoring**

1. County shall actively partner with Contractor to provide technical assistance, proactively resolve issues, and monitor the program activities selected to ensure compliance with State and County requirements at least once during the grant period.

2. County will monitor the performance of the Contractor according to the terms of this Contract and when County deems appropriate.

3. County will monitor the performance of Contractor based on the performance measures outlined in the Contractor’s RFP and aligned with CESH eligible activities, data reporting, other monthly performance and financial reports and ESG standards for rapid rehousing. In the event that performance consistently remains below the minimum requirement thresholds of the performance criteria in sections 2.B. and 2.C.
of this Attachment, the Contractor will develop and submit performance improvement plans for County to evaluate.

4. If it is determined that Contractor falsified any certification, application information, financial, or contract report, the Contractor shall be required to reimburse the full amount of the CESH award to the County, and may be prohibited from any further participation in the CESH program.

5. As requested by County, the Contractor shall submit all CESH monitoring documentation necessary to ensure that Contractor is in continued compliance with State and County requirements. Such documentation requirements and the submission deadline shall be provided by County at the time such information is requested from the Contractor.

D. Contractor acknowledges that they are required to collaborate with Orange County Continuum of Care and other homeless services agencies, including the participation of the Coordinated Entry system for rental assistance and housing relocation and stabilization services, as applicable.

E. Contractor shall comply with all State of California and local regulations including all requirements, and regulations of the CESH Program, as applicable.

F. Contractor shall partner with medical or law enforcement in the event of an emergency. With the nature of the population being served on the streets, there is a need to take precautions, should a medical need or emergency arise. The first reaction for any emergency situation would be to call 9-1-1. Contractor staff will be provided with additional emergency contact numbers. All Contractor staff of the Program shall be trained on the appropriate emergency procedures in order to handle crisis situations in the most effective manner possible.

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Payment/ Compensation

1. **COMPENSATION:**

   This is a cost reimbursement Contract between the County and the Contractor for $275,000 as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference for the period of December 1, 2019 through July 31, 2021. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The County shall have no obligation to pay any sum in excess of the total Contract amount specified unless authorized by an amendment in accordance with paragraphs C and P of the County’s General Terms and Conditions.

2. **FIRM DISCOUNT AND PRICING STRUCTURE:**

   Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

3. **PAYMENT TERMS:**

   An invoice for activities/services shall be submitted to the address specified below upon the completion of the activities/services and approval of the County Project Manager. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice, contingent upon availability of funds, in a format acceptable to the County of Orange and verified and approved OC Community Resources and subject to routine processing requirements of the County. The responsibility for providing an acceptable invoice rests with the Contractor. Billing shall cover services not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

   Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

   Invoice(s) are to be sent to:
OC Community Resources  
601 N. Ross St., 6th Floor  
Santa Ana, CA 92701  
Attention: Accounts Payable

4. **INVOICING INSTRUCTIONS:**

Further instructions regarding invoicing/reimbursement as set forth in Exhibit 1, OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

The Contractor will provide an invoice on Contractor’s letterhead for services rendered. Each invoice will have a number and will include the following information:

The Demand Letter/Invoice must include Delivery Order (DO) Number, Contract Number, Service date(s) – Month of Service along with other required documentation (See Exhibit 1).

5. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit 1, OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.
Budget Schedule –

Orange County United Way
CESH Program: Contract Term December 1, 2019 – July 31, 2021

<table>
<thead>
<tr>
<th>Budget Funds</th>
<th>Funds Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange County United Way – Rental Assistance, Housing Relocation and Stabilization Services</td>
<td></td>
</tr>
<tr>
<td>Operating Costs</td>
<td></td>
</tr>
<tr>
<td>Rental Application Fees</td>
<td>$1,500</td>
</tr>
<tr>
<td>Security Deposits</td>
<td>$155,000</td>
</tr>
<tr>
<td>Utility Deposits/Payments</td>
<td>$2,000</td>
</tr>
<tr>
<td>Moving Costs</td>
<td>$6,000</td>
</tr>
<tr>
<td>Housing Stability Case Management (Subcontracted)</td>
<td>$110,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$275,000</strong></td>
</tr>
</tbody>
</table>
1. **Staffing Plan: Orange County United Way**

   **Project Title:** CESH Rental Assistance, Housing Relocation and Stabilization

<table>
<thead>
<tr>
<th>FTE</th>
<th>Title</th>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.05</td>
<td>Chief Executive Officer</td>
<td>RA&amp;HRS</td>
<td>Provides program oversight and direction; reports to Board of Directors.</td>
</tr>
<tr>
<td>0.25</td>
<td>Director, United to End Homelessness</td>
<td>RA&amp;HRS</td>
<td>Provides technical expertise and direction; manages Welcome Home OC; reports to CEO.</td>
</tr>
<tr>
<td>0.06</td>
<td>Grants and Program Data Manager</td>
<td>RA&amp;HRS</td>
<td>Manages grant administration, evaluation systems, and reporting; reports to Director, Community Investments and Evaluation.</td>
</tr>
</tbody>
</table>

*FTE = Full-Time Equivalent

Project Manager will direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract.

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written approval of the County Project Manager.

The County may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to County approval.
Subject: OC Community Resources
Contract Reimbursement Policy

Effective: July 1, 2010
Revised: August 16, 2019

PURPOSE:
This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services and OC Housing and Homeless Services. The procedures provide instructions for submitting reimbursement demand letter or invoice.

REFERENCES:
Executed County Board of Supervisors approved contract
Budget included in contract or presented as an attachment
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For OC Housing and Homeless Services Contracts only.
2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)

BACKGROUND:
The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced Uniform Guidance and Code of Federal Regulations (CFR).

ATTACHMENTS:
Reimbursement Policy Status Form (RPS-1)

POLICY:
Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services and OC Housing and Homeless Services reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services and OC Housing and Homeless Services may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services and OC Housing and Homeless Services may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by Contractor must be substantiated and incurred during the contract period. Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable Code of Federal Regulations (CFR) or Uniform Guidance. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract requires matching contribution, documentation substantiating contribution match must be
submitted with demand letter or invoice.

At any time, based on County’s business needs and/or Contractor's performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

**PROCEDURES:**

**Abbreviated Documentation Requirements**
Compile and submit:

1. Supporting documentation includes, but is not limited to:
   a. General ledger/expense transaction report
   b. Payroll register or labor distribution report
   c. Payroll allocation plan
   d. Personnel Documentation
   e. Benefit plan and calculation of benefit
   f. Employer-employee contract for non-customary benefits (if applicable)
   g. Pre-approval documentation for equipment purchases equal to or greater than $5,000

2. The following is required with the first month’s invoice only:
   a. Cost allocation plan for rent, utilities, etc.
   b. Indirect rate approved by cognizant agency (if applicable)

3. Summary of leveraged resources (if applicable)

4. Demand letters must contain the following certification (if required by Contract):
   “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31 Sections 3729-3730 and 3801-3812)”

5. Grantee Performance Report (if required by Contract)

6. Supporting documentation shall be on single-sided sheets

7. Please redact employees’ Social Security Number from payroll reports

8. Demand letter or invoice, along with supporting documentation shall be submitted to:
   OC Community Resources Accounting
   601 N. Ross St., 6th Floor
   Santa Ana, CA 92701

**Comprehensive Documentation Requirements**
In addition to abbreviated documentation, compile and submit:

9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

**ACTION:**
Distribute this policy to all appropriate staff

**INQUIRIES:** Inquiries may be directed to OCR Accounts Payable at: OCRAccountsPayable@occr.ocgov.com
Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regard to the Contract #19-23-0064-CESH listed herein, Contractor is designated with the Documentation Status of Abbreviated unless Comprehensive is checked below. If the contractor’s designation should change to Abbreviated, a new status form shall be approved. All related documentation requirements are in full force, until further notice.

Contractor: Orange County United Way  Effective Date: 12/1/19
Contract #: 19-23-0064-CESH
Documentation Status: ☒ Abbreviated  ☐ Comprehensive

Program Authorization by:  Auditor Controller Authorization by:
Print Name  Print Name
Signed by: ______________________  Signed by: ______________________
Date:     Date:

Two signatures are required to implement the form.

Distribution:
Contractor
Auditor Controller
Contract File
Program File
Contract Summary Form

Orange County United Way – Rental Assistance, Housing Relocation and Stabilization Services and
Orange County United Way – Flexible Housing Subsidy Funds

SUMMARY OF SIGNIFICANT CHANGES

These are new contracts. No significant changes occur.

SUBCONTRACTORS

These contracts allow for subcontracting with OC Community Resources’ consent pursuant to Section 27 Subcontracting within the contract amount for the term specified. The following subcontractors will perform the same subcontracted services under both contracts.

<table>
<thead>
<tr>
<th>Subcontractor Name</th>
<th>Services</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. American Family Housing</td>
<td>Housing Stability Case Management for CESH Program participants. Services include: 1. Initial and re-evaluations for services 2. Housing and individualized service plans 3. In conjunction with Welcome Home OC, housing search assistance and housing navigation 4. Moving assistance 5. Case management services including, but not limited to:  • Legal services for housing needs  • Credit repair and financial management  • Employment assistance  • Securing basic resources and mainstream benefits  • Counseling support  • Access to food pantries  • Tenant education</td>
<td>Amount per subcontracted service provider not to exceed $6,500 per client served.</td>
</tr>
<tr>
<td>2. City of Huntington Beach</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. City Net</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Collette’s Children’s Home</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Dayle McIntosh Center</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Families Forward</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Friendship Shelter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Illumination Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Mercy House Living Centers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Fullerton Interfaith Emergency Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>dba Pathways of Hope</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CONTRACT OPERATING EXPENSES

The following contracts total to $675,500.
### Budget Funds: CESH Activity #1
**Orange County United Way – Rental Assistance, Housing Relocation and Stabilization Services**

<table>
<thead>
<tr>
<th>Operating Costs</th>
<th>Funds Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental Application/Holding Fees</td>
<td>$1,500</td>
</tr>
<tr>
<td>Security Deposits</td>
<td>$155,000</td>
</tr>
<tr>
<td>Utility Deposits/Payments</td>
<td>$2,000</td>
</tr>
<tr>
<td>Moving Costs</td>
<td>$6,000</td>
</tr>
<tr>
<td>Housing Stability Case Management (Subcontracted)</td>
<td>$110,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$275,000</strong></td>
</tr>
</tbody>
</table>

### Budget Funds: CESH Activity #2
**Orange County United Way – Flexible Housing Subsidy Funds**

<table>
<thead>
<tr>
<th>Operating Costs</th>
<th>Funds Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental Unit Incentives for Property Owners</td>
<td>$25,000</td>
</tr>
<tr>
<td>Rental Unit Identification and Acquisition</td>
<td>$57,000</td>
</tr>
<tr>
<td>Housing Search, Navigation, and Placement</td>
<td>$73,500</td>
</tr>
<tr>
<td>Vacancy Payments</td>
<td>$15,500</td>
</tr>
<tr>
<td>Mitigation Funds</td>
<td>$15,000</td>
</tr>
<tr>
<td>Housing Stability Case Management (Subcontracted)</td>
<td>$214,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$400,500</strong></td>
</tr>
</tbody>
</table>
November 18, 2019

Chairwoman Lisa Bartlett  
Orange County Board of Supervisors  
12 Civic Center Plaza, Santa Ana CA 92692

Dear Chairwoman Bartlett:

On behalf of the Orange County Housing Services Collaborative (OCHSC), thank you for the opportunity to support the proposed Pool Service Housing Fund. The OCHSC is represented by American Family Housing, Friendship Shelter, Mercy House, and Jamboree Housing. The OCHSC offers a combination of supportive and affordable housing units, placement, and case management services for individuals experiencing physical, mental and behavioral health needs, as well as experiencing homelessness.

Collectively, the OCHSC encompasses more than 90 percent of the current supportive housing units and nearly all the planned permanent supportive units Countywide. Currently, the OCHSC provides supportive housing and sustainability services for hundreds of Orange County residents and has developed a housing sustainability approach that results in a retention and success rate in excess of 90 percent. However, the population we serve are the most vulnerable and susceptible to losing their housing, often suffering from physical and mental physical conditions where they are able to live independently on their own, but are unable to maintain housing without ongoing, intensive support and services. The Pooled Service Fund will create an opportunity to access funding that is specific to the needs of individuals in supportive housing including, but not limited to, transportation, case management, financial and job training, and education in living skills that will enable them to integrate back into society.

With so much attention having gone towards the capital infrastructure needs to develop supportive housing, the Pooled Service Housing Fund represents a welcome focus on the need to ensure there is also sustainable funding to ensure housing sustainability. Without such funding, many opportunities to ensure individuals receive the supportive wrap-around services that are effective, as well as cost-effective, will go underfunded or completely non-funded. The OCHSC applauds the County of Orange and the Board of Supervisors for the vision to entertain the concept of a Pooled Service Housing Fund. Thank you for your leadership on this issue, and we look forward to working with you on opportunities to implement the program.

Sincerely,

Milo Peinemann, CEO  
American Family Housing  
Larry Haynes, CEO  
Mercy Housing
To: Clerk of the Board

From: Chairwoman Lisa A. Bartlett, Supervisor 5th District
Supervisor Doug Chaffee, Supervisor 4th District

Subject: Housing Supportive Services Funding Pool

Please add an item to the November 19, 2019 BOS meeting agenda. The item will establish a funding pool for supportive services provided to homeless clients in permanent supportive housing.
SUPPLEMENTAL AGENDA STAFF REPORT

MEETING DATE: 11-19-19

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All

SUBMITTING AGENCY/DEPARTMENT: Chairwoman Lisa Bartlett, Fifth District
Supervisor Doug Chaffee, Fourth District

DEPARTMENT CONTACT PERSON(S): Sara May (714) 834-3550
Montana Sudul (714) 834-3440

SUBJECT: Establish a Housing Supportive Services Funding Pool

<table>
<thead>
<tr>
<th>CEO CONCUR</th>
<th>COUNTY COUNSEL REVIEW</th>
<th>CLERK OF THE BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Discussion 3 Votes Board Majority</td>
</tr>
</tbody>
</table>

RECOMMENDED ACTION(S):

1. Direct the Health Care Agency to allocate $2.5 million from Whole Person Care (WPC) funds to establish a funding pool for supportive services for homeless clients with physical health conditions in permanent supportive housing.

2. Direct the Health Care Agency to allocate $500,000 from Mental Health Services Act (MHSA) towards the funding pool.

3. Direct the Health Care Agency to engage CalOptima to contribute resources to the pool.

SUMMARY:

Approval establishes a funding pool for supportive services provided to eligible homeless clients in permanent supportive housing.

BACKGROUND INFORMATION:

There are homeless clients who are eligible for permanent supportive housing but have not been placed in units due to gaps in funding for supportive services and lack of alignment between existing but disparate funding sources.
Currently, Mental Health Services Act (MHSA) dollars are used to provide supportive services to some homeless clients with severe mental illness who are placed in permanent supportive housing. However, there are homeless clients with serious mental illness that are not enrolled in the MHSA Full-Service Partnership (FSP) program and there are homeless clients with physical health conditions that are eligible for permanent supportive housing but are not eligible to receive supportive services funded through MHSA.

There are funding sources available that can be used towards different components of a comprehensive supportive service model, but they are managed by different agencies. The establishment of a funding pool will allow the Health Care Agency and CalOptima to leverage resources to help address funding gaps while also providing a coordinated, cost-effective, and client centered supportive service delivery model for underserved client populations.

The current WPC Pilot includes housing navigation and housing sustainability services for persons who are linked to the County’s BHS Programs and for medically fragile beneficiaries that do not have a linkage to County Behavioral Health services in securing housing. Since these components are also required for Health Homes under CalOptima, the WPC Pilot will benefit from the expertise of its Behavioral Health Services partners and collaborate with CalOptima so that Health Homes also benefits from this expertise, and that services developed under the WPC align well with Health Homes.

Supportive services include housing navigation and tenancy sustaining services and individualized case management services. Housing navigation and tenancy sustaining services include client assessments to identify barriers to housing placement and working with both landlords and clients to sustain tenancy. Individualized case management plans are developed for each client to meet their comprehensive physical, behavioral and social service needs.

Supportive services play a critical role in client success with housing retention and improve the client’s overall health and wellbeing. The client centered supportive service delivery model enhances the client’s ability to function in community-based settings which enhances their ability to be a good neighbor to the rest of the community.
November 18, 2019

Chairwoman Lisa Bartlett
Orange County Board of Supervisors
12 Civic Center Plaza, Santa Ana CA 92692

Dear Chairwoman Bartlett:

On behalf of the Orange County Housing Services Collaborative (OCHSC), thank you for the opportunity to support the proposed **Pooled Service Housing Fund**. The OCHSC is represented by American Family Housing, Friendship Shelter, Mercy House, and Jamboree Housing. The OCHSC offers a combination of supportive and affordable housing units, placement, and case management services for individuals experiencing physical, mental and behavioral health needs, as well as experiencing homelessness.

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With so much attention having gone towards the capital infrastructure needs to develop supportive housing, the Pooled Service Housing Fund represents a welcome focus on the need to ensure there is also sustainable funding to ensure housing sustainability. Without such funding, many opportunities to ensure individuals receive the supportive wrap-around services that are effective, as well as cost-effective, will go underfunded or completely non-funded. The OCHSC applauds the County of Orange and the Board of Supervisors for the vision to entertain the concept of a Pooled Service Housing Fund. Thank you for your leadership on this issue, and we look forward to working with you on opportunities to implement the program.

Sincerely,

Milo Peinemann, CEO
American Family Housing

Larry Haynes, CEO
Mercy Housing
MEMORANDUM

November 12, 2019

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session be held on Tuesday, November 19, 2019 for the Board to consider anticipated litigation pursuant to Government Code section 54956.9(d)(2).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – SIGNIFICANT EXPOSURE TO LITIGATION pursuant to Government Code section 54956.9(d)(2).
Number of Cases: One Case.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

[Signature]

LJP:jb

cc: Members of the Board of Supervisors
    Frank Kim, CEO