



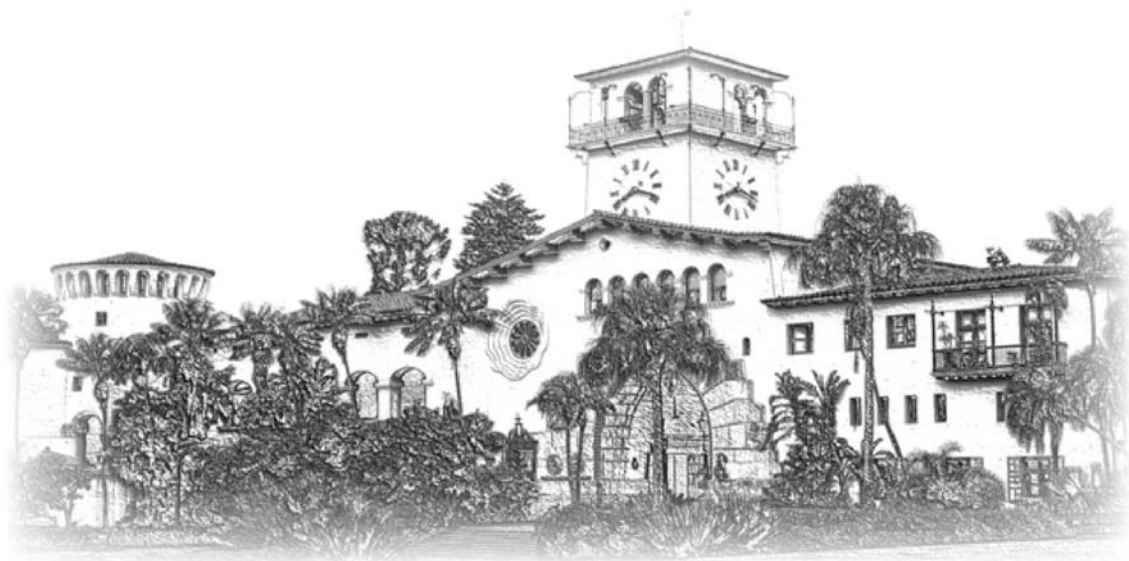
**Superior Court of California, County of Santa Barbara**  
1100 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

**Request For Proposal**

Children's Waiting Room Childcare Services

RFP # 2009-01

**Proposals Due By: Friday, June 19 2009 at 3:00 p.m.**



## *Table of Contents*

---

<i>Section</i>	<i>Page</i>
<b>A. Introduction</b>	<b>3</b>
<b>B. Procedures for Submitting and Evaluating Proposals</b>	<b>4</b>
<b>C. Proposal Evaluation Criteria</b>	<b>7</b>
<b>D. Contents of Proposal</b>	<b>9</b>
<b>E. Proposal Checklist for Vendors</b>	<b>14</b>
<b>F. Contract Requirements</b>	<b>15</b>
<b>G. Statement and Acceptance of Terms and Conditions</b>	<b>28</b>

## *Section A*

### **Introduction**

The Superior Court of California, County of Santa Barbara (“Court”) is in the process of establishing children’s waiting rooms in two Court locations, one in Santa Maria Juvenile Court and one in Santa Barbara. The Santa Maria location has a space available in the Juvenile Court which is approximately 205 square feet. The Court is seeking a vendor to operate the Santa Maria waiting room two days per week, on Monday and Thursday between the hours of 8:00 a.m. and 4:30 p.m. The Santa Barbara location is in the Figueroa Division Courthouse, and is approximately 400 square feet. The Court is seeking a vendor to operate the Figueroa waiting room Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.; or to operate the room on Monday, Tuesday, and Wednesday from 8:00 a.m. to 4:30 p.m.

The children’s waiting rooms will be operated on a drop-in basis. They will be available to children of families having business in the courthouse (custody hearings, trials, witness duties, self-help services, etc). The waiting room will be free of charge to any and all users. Users must sign-in, and agree in writing to abide by all established procedures.

The waiting rooms are available for children ages 2 ½ years to 12 years of age and all children utilizing the room must be toilet trained. The Court will provide furniture and equipment, including necessary furniture and equipment such as; a table and chairs, a television, a DVD player, and some toys and books.

The Court will be contracting for an initial term from August 1, 2009 to June 30, 2010.

## *Section B*

### **Procedures for Submitting and Evaluating Proposals**

#### **Procurement Schedule and General Instructions**

1. The court has developed the following list of key events from RFP issuance through notice of contract award. All deadlines are subject to change at the Court's discretion.

<b><u>No.</u></b>	<b><u>Events</u></b>	<b><u>Key Dates</u></b>
<b>1</b>	<b>Issue RFP</b>	<b>Wednesday May 13, 2009</b>
<b>4</b>	<b>Letter of Intent to Attend pre-proposal conference. Email to submittal contact at <a href="mailto:sbsolicitation@sbcourts.org">sbsolicitation@sbcourts.org</a>.</b>	<b>Friday May 29, 2009 by 5:00 p.m.</b>
<b>5</b>	<b>Mandatory Pre-Proposal Conference Details of the pre-proposal conference will be posted as an addendum at <a href="http://www.sbcourts.org">www.sbcourts.org</a></b>	<b>Thursday June 4, 2009 at 9:00 a.m.</b>
<b>2</b>	<b>Deadline to submit questions to court via email. Email to submittal contact at <a href="mailto:sbsolicitation@sbcourts.org">sbsolicitation@sbcourts.org</a></b>	<b>Monday June 8, 2009 by 5:00 p.m.</b>
<b>3</b>	<b>All questions and answers posted on Court website</b>	<b>Wednesday June 10, 2009 by 5:00 p.m.</b>
<b>6</b>	<b>Proposal Due Date and Time</b>	<b>Friday June 19, 2009 at 3:00 p.m. (Pacific Standard Time)</b>
<b>7</b>	<b>Potential Interviews &amp; Negotiations</b>	<b>Week of June 29, 2009</b>
<b>8</b>	<b>Notice of Award (<i>estimated</i>)</b>	<b>Week of July 6, 2009</b>
<b>9</b>	<b>Contract to Begin</b>	<b>August 1, 2009</b>

2. The RFP and any addenda that may be issued will be available on the following website, referred to as "Court website" [www.sbcourts.org](http://www.sbcourts.org), and on the eProcurement BidSync website.

3. The provider shall submit in a sealed envelope one (1) signed original and four (4) complete copies of the proposal addressed to:

Ammon M. Hoenigman, Procurement Specialist  
Superior Court of California, County of Santa Barbara  
1100 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
805-882-4674

4. Proposals must be received no later than 3:00 p.m. Friday June 19, 2009. This means that proposals must be mailed prior to the due date in order for the Court to receive them by the deadline.
5. Proposals must be typed and double-spaced. Each package must begin with a complete table of contents showing page numbers, and all pages in the package shall be numbered consecutively. The outside of your proposal envelope should be marked in the lower left corner "Proposal for Children's Waiting Room Services".
6. All costs of provider's proposal preparation shall be borne by the provider.
7. All responses to this RFP become the property of Superior Court of California, County of Santa Barbara.
8. Failure to comply with any and all parts of the RFP may be cause for the proposal being eliminated from consideration.
9. The Court reserves the right to reject all proposals and not to award any contract pursuant to the RFP.
10. There is a mandatory pre-proposal conference scheduled at 9:00 a.m. on Thursday June 4, 2009. The directions and addresses for the pre-proposal conference will be posted as an addendum to this RFP on the Courts website at [www.sbcourts.org](http://www.sbcourts.org).
11. The purpose of this conference is to permit interested vendors to tour the facilities that have been secured for the Children's Waiting Room. Pre-proposal conference participants must send a Letter of Intent to the Submittal Contact at the address listed in the above Section 3 or via email to [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org) no later than Friday, May 29, 2009 by 5:00 p.m.
12. Each proposal will be evaluated by a review committee. Important selection criteria includes: completeness of proposal, vendors relevant experience, cost effectiveness, quality of references and quality of work plan (complete selection criteria are listed in Section C). The committee's assessment may include oral interviews.
13. Requests for Clarification or Modifications: Vendors interested in this solicitation may submit questions on procedural matters related to the RFP or requests for clarification of this solicitation to [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org). All questions and requests must be submitted via email no later than Monday June 8, 2009 by 5:00 p.m. Questions or requests submitted after the due date will not be answered.

14. Without disclosing the source of the question or request, the Submittal contact will post a copy of the questions and the Court's responses on the Court website.

15. Contact with Court: Vendors are specifically directed NOT to contact any Court personnel or consultants for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any award of a contract. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the vendor's response.

16. RFP Addenda: The Court may modify this solicitation document prior to the date fixed for submissions of proposals by posting any addenda on the Court's website. If any potential vendor determines that an addendum unnecessarily restricts its ability to propose, it must notify the Submittal Contact listed above in Section 3 no later than three (3) business days following the date the addendum was posted.

- a. It is the responsibility of all interested participants in this RFP process to check the Courts website for the posting of any addenda. Pricing shall reflect all addenda issued by the Court. Failure to do so will permit the Court to interpret the proposal to include all addenda issued in any resulting contract.

17. Award of Contract: The Evaluation Committee will make a final recommendation for award of the contract. Upon award, the successful proposer(s) will be required to execute a Contract in accordance with the Scope of Work, Section D and the General Conditions, Section F, and provide a certificate of insurance in conformance with the requirements set forth in the General Conditions within thirty (30) business days of award. The period for execution of the Contract may be changed by mutual contract of the parties. Contracts are not effective until signed by both parties.

18. Protest Procedures: Any requests to appeal the vendor selection decision must be submitted in writing to the Court Executive Officer, no later than one week (7 calendar days) after the original announcement of vendor selection. The appeal must clearly state the reasons why the appellant believes the selection procedures were not properly followed. The Court Executive Officer will review the appeal with the Presiding Judge of the Court and their joint decision will be final.

## *Section C*

### **Proposal Evaluation Criteria**

#### **Selection Criteria**

Selection of a vendor and determination of the award will be made to the qualified vendor whose proposal is determined to be of superior quality, responsive to the requirements of this RFP and competitively priced. Selection will result from the Court's overall judgment that a proposal meets or exceeds its requirements, as measured against the following criteria (not listed in order of importance):

- Confidence that the vendor has the ability to best deliver high quality, setting-appropriate children's waiting room services and any other services consistent with the stated specifications.
- Superior responsiveness to specifications, quality of work plan, and demonstrated understanding of the purposes of this project. Specifications for documentation, performance, service or any other deliverables are the minimum requirements for this RFP. Provider qualifications, office hours, and prompt and continuous availability of quality care during the Children's Waiting Room's proposed hours are critical.
- Financial feasibility and cost effectiveness of the proposal.
- The number of years the vendor has been providing this type of service.
- Vendor's capabilities in terms of qualifications and relevant past experience. Vendors shall indicate their past performance functioning as a vendor agency, including past performance in providing similar types of program start-up services, children's waiting room services, and family support services; and working with the target population and with the judiciary.
- Past service history of vendor regarding child safety, family and staff satisfaction. Indicate any significant problems that have occurred at a program owned, operated or serviced by your agency (e.g., complaints, lawsuits and liability proceedings, incidents when a child was seriously injured or killed, findings of sexual abuse, physical abuse or neglect of a child by a staff member, employee discrimination or wrongful dismissal suits). Discuss any corrective action that the agency has taken as a result of the problem or problems.
- Vendor's complete documentation of the number, scope and service specifications for similar children's waiting rooms or conventional child care programs begun and completed, including (a) a list of contact names, addresses and telephone numbers for such project, and (b) demonstration that the key people proposed and guaranteed as

available by the vendor to work on the project resulting from this RFP have participated in a significant number of these projects.

- Qualifications and experience of key individuals proposed and guaranteed as available and committed to this project (including resumes). In the case of positions that will be filled by new-hires, the vendor's stated and guaranteed minimum qualifications and the guaranteed start date of any to be hired as a child supervision worker in the Children's Waiting Room.
- The proposed schedule for program start up and childcare service provision. The Court would like the waiting rooms to open by September 1, 2009. It is anticipated that a contract can be in place by August 1, 2009 and that the vendor will then have a paid, one-month start-up time to prepare for full operation.
- The reasonableness of the proposed work plan, including the capabilities and number of personnel and/or personnel hours allocated to specific tasks, a detailed description of each task, the time frames for completion and the logical sequence of tasks to be performed.
- The Court reserves the right to request additional information to assure itself of a vendor's financial status.
- Personnel must successfully pass a criminal background check.



## *Section D*

### **Contents of Proposal**

Responsive proposals should provide straightforward, concise information that satisfies the requirements of this solicitation. Emphasis should be placed on conformity to the Court's instructions, requirements of this solicitation, and the completeness and clarity of content.

#### **Executive summary**

The vendor must provide an Executive Summary of its proposal. The Executive Summary should be a general overview of how the vendor proposes to accomplish the requirements of this RFP. The Executive Summary should demonstrate the vendor's understanding of the requirements. The vendor must also address in this section how it meets the minimum qualification requirements.

#### **Cover Page and Vendor Information**

The vendor's proposal must provide the information requested below.

- a. Cover page to include: Complete name and address, contact information, fax and phone numbers, email address. The authorized signature and name of submitting authority must be included.
- b. Vendor profile and California locations (a short description of the vendor)
- c. Federal tax identification number.
- d. If incorporated, the state in which incorporated.
- e. A short narrative description of the vendor's organization, including organization charts and indication of vendor officers, if applicable.
- f. Principle type of business.
- g. Total number of years in business.
- h. Number of years providing services similar in size and scope to those requested in this RFP.
- i. Significant transactional events in the past five (5) years such as: bankruptcies, mergers, acquisitions, initial public offerings (IPO's).

#### **Qualification, Experience and References**

The court requires the vendor and its subcontractors to have prior experience in all aspects of the services described in this RFP for customers similar to or with relevance in the size, complexity and scope of this RFP. Vendor shall:

Describe the vendor's experience as it pertains to providing services similar in size, complexity and scope to those required under this RFP and in the manner required pursuant to this RFP.

Provide the names, addresses and telephone numbers for a minimum of three (3) customers for whom the vendor has provided similar products and services within the last 18 months. The vendor should include a brief description of the scope of services provided to the customer and the duration of the contract. The Court may contact some or all of the references provided in order to determine the vendor's performance records. The Court reserves the right to contact references other than those provided in the proposal and to use the information gained from them in the evaluation process.

## **Scope of Work**

The average number of children who will be using the waiting rooms at any particular time is not known. The Court appreciates that this presents a problem for planning by potential vendors. Given the difficulty of estimating, the Court understands that proposals need to be flexible. It is suggested that ratios of staff to children be used rather than a fixed number of staff. The Court will work with the vendor to set a maximum number of children who can use the room at one time. Vendors may use volunteers as part of their program plan. All staff and volunteers are subject to full background checks by the Court.

It is planned that the rooms will be in operation between the hours of 8:00 a.m. and 4:30 p.m. and closed for one hour at lunch time. It is planned that the site at Santa Maria Juvenile Court will only operate two (2) days per week. The site at the Figueroa Division in Santa Barbara will operate five (5) days per week; or three (3) days per week. Responding vendors shall provide proposals that address both of these options.

The vendor will be responsible for preparation and clean up. Respondents to this RFP shall submit a Scope of Work that specifically discusses how they will provide the children's waiting room services sought by the Court, using the minimum service components below. The narrative should include detailed information about the vendor's capability to provide such services, previous experience and resources that will enable the provider to accomplish the tasks set forth in this section. Proposals may include additional components or enhancements, in a separate section, if the vendor sees fit. The following should be addressed in the narrative:

1. A start-up plan and timetable, including but not limited to hiring, orientation, start of care and accountability procedures. Court will assist in developing forms to be used in the facility, including parent release forms and others.
2. Comply with all contractual obligations imposed by the Court.
  - a. Offer care 52 weeks a year during specified operating hours, excluding Court holidays. A copy of the Court holiday schedule will be provided upon award of contract.
  - b. Develop administrative, personnel and child supervision policies that reflect an understanding of Court requirements (in conjunction with the Court Project Managers).

- c. Employ child safety, infection control, facility cleaning and maintenance procedures that protect children from hazards and harm while reducing the incidence of illness or injury.
3. Obtain adequate and appropriate liability insurance coverage and professional liability insurance for the facility, including insurance for its personnel, clients and staff.
4. Institute and maintain a high-quality, age appropriate children's waiting room facility and program that meet the emotional, social, developmental and physical needs of all children that may use the waiting room.
  - a. Provide daily activities appropriate for each age group served by the waiting room.
  - b. Provide an area that is appropriate for gross motor play where children may engage in that type of play in a manner that is safe and comfortable.
  - c. Provide attractive, well-maintained and diverse educational and recreational equipment, toys, and supplies that are interesting and developmentally appropriate to the children served.
  - d. Ensure that all toys and equipment are safe and do not pose choking or other hazards.
  - e. Ensure that educational and play materials contained in the waiting room reflect a range of racial, ethnic, linguistic and family structure models.
  - f. Offer simple nutritious snacks to children on a flexible schedule that meets the needs of children who arrive at any time during the day.
  - g. Develop non-punitive, child-centered rules regarding children's behavior and the respectful supportive management of that behavior. Establish methods that effectively deal with separation anxiety, stress and fear in the children throughout their visit to the waiting room.
  - h. Establish procedures and practices for appropriately and thoughtfully dealing with departures, arrivals, separations between children and their families, toileting, napping and other transitions.
  - i. Provide in a non-threatening, non-judgmental and non-intrusive manner, materials for parents and older children who may desire family support and assistance with emotional, social, psychological, physiological and developmental problems.
5. Provide employees and volunteers for the waiting room that are appropriate and effective role models for the children.

- a. Implement an employee and volunteer screening and reference check system that ensures employees are appropriate for children's waiting room, including screenings for substance abuse and a history of child abuse. Personnel must successfully pass a criminal background check.
  - b. Establish procedures and practices for ongoing monitoring of employee and volunteer performance.
  - c. Conduct regular and timely performance reviews for all staff of the waiting room and establish procedures for hiring, discipline, and termination.
  - d. Provide for ongoing recruitment and monitoring of suitable volunteer and regular staff that reflect the racial, economic, linguistic and ethnic diversity of Santa Barbara County.
6. Monitor and document the number of children and families served and the effectiveness of its work with children, on a schedule to be established by the Court.
- a. Give all clients utilizing the waiting room an opportunity to complete an anonymous satisfaction survey.
  - b. Establish and follow procedures that obtain, to the greatest extent possible on an ongoing basis, input from those Court personnel whose work is affected by the presence or absence of children.
  - c. Document program utilization by keeping accurate monthly statistics regarding children and families using the waiting room.
7. Together with the Court's security officials, establish safety and security procedures that strictly control access to the children's waiting room and effectively respond to legal and physical custodial arrangements for children, emergency situations, the remand of parents into custody by the Court and failure of parents to reclaim their children from the center at the appropriate time, all in a manner that minimizes anxiety, fear and disruption for the child.
8. Each responding vendor shall state in the proposal whether the vendor is a licensed or unlicensed child care provider.

### **Budget Narrative**

Include a budget that details and/or explains expenditures. The Court will provide all necessary space, utilities and telephone service. Proposals should not include line items for these expenses. The Court will pay for painting, carpeting, counters, cabinets and office furniture for the office area. The Court will have limited funding for furniture and equipment, but will provide the necessary furniture and equipment such as a television, a DVD player, and some toys and books.

### **Start-Up Budget**

Any start-up costs prior to a vendor's commencement of children's waiting room services should be listed in a separate, clearly labeled section. Explain the nature of proposed costs and why they are appropriate and necessary. Include a description of who would be performing the start-up activities and how long it will take to perform those activities.

Start-up labor costs should not exceed the equivalent of one month's labor costs as outlined in your proposed annual budget. The Court intends to issue a contract to begin on August 1, 2009, which will allow the vendor a period of one month to be paid for by the Court for start-up activities.

### **Annual Budget**

The annual budget should outline the ongoing personnel and other costs associated with operating the planned children's waiting room. Each major expense should be listed separately and there should be justifications containing a level of detail sufficient for the proposal to be analyzed for cost effectiveness and for the vendor to deliver a high quality level of service.

## ***Section E***

### **Proposal Checklist for Vendors**

- Submitted questions/clarifications, if needed, to Court no later than May 26, 2009 by 5:00 p.m., addressed to Ms. Ammon M. Hoenigman, Procurement Specialist at sbsolicitation@sbcourts.org.
- Included Executive Summary, cover Page to include contact information and authorized signature and name of submitting authority and Vendor information.
- Included Narrative with Scope of Work, Qualifications and Experience
- Included Budget Narrative
- Include three (3) references
- Included one (1) signed original and four (4) copies
- Included Attachment A, signed and accepted, or signed with a list of exceptions taken.
- Submitted proposal to be received by Court no later than Friday June 19, 2009 at 3 p.m. (Pacific Time) addressed to:

Ms. Ammon M. Hoenigman, Procurement Specialist  
Superior Court of California, County of Santa Barbara  
1100 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

## ***Section F***

### **Contract Requirements**

Vendors should be aware that a contract for the services noted in this proposal will include all, but not be limited to, the following sections:

#### **GENERAL TERMS AND CONDITIONS**

##### **1. Accounting**

Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).

##### **2. Audit; Retention of Records**

A. Audit. Upon reasonable Notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority, or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations. Contractor agrees to provide Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records.

B. Retention of Records. Contractor will maintain all financial information, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law. The minimum retention period will be four years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

##### **3. Assignment**

Contractor will not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of Court, in the form of an Amendment. Any attempted assignment in violation of this clause shall be null and void.

##### **4. Choice of Law; Jurisdiction and Venue**

A. Choice of Law. This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.

B. Jurisdiction. Contractor irrevocably consents to the exclusive jurisdiction of the state and federal courts located in California in any legal action concerning or relating to this Agreement.

##### **5. Certifications and Representations**

1. Contractor's signature on the cover page shall also serve as certification for the following paragraphs, A-G below.

A. ADA Compliance. Contractor certifies that it and its Subcontractors comply with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101

et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

B. FEHA Compliance. Contractor certifies that it and its Subcontractors comply with all applicable provisions of the Fair Employment and Housing Act, Calif. Gov. Code, § 12990 *et seq.*, and all applicable regulations promulgated under Calif. Code of Regulations, title 2, § 7285 *et seq.*

Contractor certifies that it and its Subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability, marital status, age (over 40), sex, or sexual orientation. Contractor will ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Contractor certifies that it and its Subcontractors will not unlawfully harass, including sexually harass, any persons with whom Contractor or its Subcontractors interact in the performance of this Work. Contractor and its Subcontractors will take all reasonable steps to prevent such harassment.

C. Section 504 of the Rehabilitation Act of 1973

Pursuant to Section 504 (Public Law 93-112), the Contractor agrees that no otherwise qualified disabled individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

Compliance of Section 504 of the Rehabilitation Act of 1973, as amended, requires that all benefits, aids, and services are made available to disabled persons on an equivalent basis with those received by non-disabled persons. Contractor shall agree to be in compliance with Section 504 requirements.

Non-Discrimination – General

No person shall, on the grounds of age (over 40), ancestry, creed, color, disability, marital status, medical conditions, national origin, political or religious affiliation, race, sex, sexual orientation or any non-job related criteria be excluded from participation in, be denied benefits, or be subjected to discrimination under this Agreement.

Non-Discrimination – Employment

Contract shall ensure equal opportunity employment based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management's relations, for all employees under this Agreement. Contractor's equal employment opportunity policies shall be made available to Court upon request.

D. Drug-free Workplace. Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, § 8355-8357.

E. Labor/Collective Bargaining. Contractor certifies that it and its Subcontractors will provide Notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this Agreement.



F. National Labor Relations Board (NLRB) Certification. Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.

G. Prohibition Against Hiring Court Employees. Contractor certifies and will require all Subcontractors to certify to the following:

“Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment.”

## **6. Changes in Work; Stop Work**

### **A. Changes in Work.**

A.1. Court reserves the right to require Contractor to make changes in the Work, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work. Contractor may also request additions, deletions or modifications to the Work

A.2. For any change proposed by Court or Contractor, Contractor will submit in writing:

- a) a description of the proposed change and the reasons for the change;
- b) a summary of the total compensation to be paid Contractor with a breakdown of Tasks and costs, including any increase or reduction in work or costs resulting from the change; and
- c) a statement of the expected impact on schedule.

A.3. If, with respect to any change requested by Court, the Court agrees to the terms submitted by Contractor under this section, Contractor shall undertake such change following execution of an Amendment documenting such change(s). If Court and Contractor agree on any change requested by Contractor, Contractor may undertake such change following execution by the parties of an Amendment documenting such change(s).

A.4. If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by Court, and any continuing disagreement will follow the dispute resolution process set forth in section 11. Contractor should not proceed with any change prior to receiving a written directive or Amendment from Court. All costs for changes performed by Contractor without Court's prior written approval will be at Contractor's sole risk and expense.

### **B. Stop Work.**

B.1. Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.

B.2. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within

any mutually agreed extension of that period, Court will either cancel the Stop Work Order or terminate the Work, as provided in section 22 (Termination).

B.3 If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. Court may make an equitable adjustment in the delivery schedule, the Agreement Amount, or both, if (a) the Stop Work Order increases Contractor's costs or the time required for performance; and (b) Contractor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.

B.4 If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, Court may allow reasonable costs resulting from the Stop Work Order.

B.5 Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

## **7. Confidential Information**

A. Requirements of Strict Confidence. While performing Work under this Agreement, Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to Court, its personnel, court users, or other government entity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any Third Party. All Confidential Information disclosed to Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.

B. Permissible Disclosures. Contractor may disclose Court's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and any representatives of Court that are working on the project. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement.

## **8. Conflict of Interest; Prohibition Against Gratuities**

A. Conflict of Interest.

A.1 Contractor covenants that it and its Subcontractors presently have no interest, and will acquire no interest, which would directly or indirectly conflict in any manner or to any degree, with the full and complete performance required under this Agreement. Contractor further agrees to submit full disclosure statements, if required by law to do so, pursuant to the requirements of the California Fair Political Practices Act or any other applicable federal or state law, regulation, or conflict of interest code.

A.2 Contractor and its Subcontractors and employees will not participate in proceedings that involve the use of Court funds or that are sponsored by Court if the Contractor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.

A.3 Contractor and its Subcontractors and employees will not engage in actions resulting in,

or creating the appearance of:

- a) use of an official position with the government for private gain;
- b) preferential treatment to any particular person associated with this Work or Agreement;
- c) impairment of Court's independence or impartiality;
- d) a decision made outside official channels; or
- e) adverse effects on the confidence of the public in the integrity of Court.

**B. Prohibition Against Gratuities.**

B.1 Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Court, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.

B.2. For any breach or violation of this covenant, Court has the right to terminate the Agreement for cause, whether whole or in part. Any loss or damage sustained by Court in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under this Agreement.

**9. Consideration**

The consideration paid to Contractor is the entire compensation for all Work performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided.

A. Payment Does Not Imply Acceptance of Work. Court's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, that does not conform to requirements of this Agreement will be rejected, and will be redone by Contractor, without delay or additional cost to Court.

B. Disallowance. If Contractor receives payment from Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to Court upon Court's request. At its option, Court may offset the amount disallowed from any payment due to Contractor, under this Agreement or any other agreement.

**10. Contractor Status**

A. Independent Contractor.

A.1 Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent Contractors and not as Court agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of Court. Except as expressly provided in Section C, Scope of Work. Contractor has no authority or responsibility to exercise any rights or power vested in Court.

A.2 This Agreement will not be considered under any circumstance to create a joint-venture relationship.

A.3 If any governmental entity concludes that Contractor is not an independent Contractor, Court may terminate this Agreement immediately upon Notice. Alternatively, Contractor may

agree to a reduction in Court's financial liability, so that Court's total costs under this Agreement do not exceed the originally contemplated amount.

B. Contractor's Employees.

B.1 Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.

B.2 On site employees must not have a criminal history and/or currently be on probation or parole (reference not in violation of Labor Code 432.7).

B.3 Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent Contractors.

B.4 If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.

B.5 Contractor will indemnify and hold Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Court and any Contractor or Subcontractor personnel.

C. Exclusive Control of Means and Method of Performance. Contractor will determine the method, details, and means of performing or supplying the Work under this Agreement. Contractor will be responsible to Court only for the requirements and results specified in this Agreement and more particularly as set forth in Exhibit D – Statement of Work, and will not be subjected to Court's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

D. Permits, Laws, and Regulations.

D.1 Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of this Agreement, Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work. Such permits and licenses will be made available to Court, upon request.

D.2 Contractor will promptly provide Notice to Court of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

E. Subcontracting.

E.1 Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of Court. Any Subcontracting without Court's written consent is a material breach of this Agreement.

E.2 Contractor warrants and represents that all Subcontractors will be subject to and bound by the same terms and conditions applicable to Contractor under this Agreement. Contractor will be liable for all acts or omissions for employees, Subcontractors or other Third Party performing service under this Agreement, including any and all indemnity obligations.

F. Signature Authority. Contractor has all requisite power and authority to conduct its business, and to execute and perform the Agreement.

## **11. Dispute Resolution**

Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

### **A. Escalation**

A.1 If a dispute remains unresolved following Notice by either party, each party's Chief Executive Officer ("CEO") or designated representative will meet to exchange information and attempt resolution within fifteen days of the effective date of the Notice.

A.2 If the matter is not resolved as set forth in section 11.A.1, the aggrieved party will submit a second Notice which will:

- a) provide detailed factual information;
  - b) identify the specific provisions in this Agreement on which any demand is based;
  - c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
  - d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment.
- Notice will be signed by an authorized representative of the aggrieved party.

A.3 Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

### **B. Confidentiality During Dispute Resolution**

B.1 All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

B.2 Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

## **12. Force Majeure**

A. Force Majeure events include, but are not limited to:

1. catastrophic acts of nature, or public enemy;
2. civil disorder;
3. fire or other casualty for which a party is not responsible; and
4. quarantine or epidemic.

The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The

party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

B. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

### **13. Indemnification**

A. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend (with counsel satisfactory to the Court) Court and its agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with, the performance or breach of this Agreement by Contractor or its officers, employees, agents, representatives, or Subcontractors. Such indemnification will not include loss, damage, or expense arising from the sole negligence or willful misconduct of Court or its agents, officers, and employees.

B. Contractor's obligation to defend, indemnify, and hold Court and its agents, officers, and employees harmless is not limited to, or restricted by, any requirement in this Agreement that Contractor procure and maintain a policy of insurance.

### **14. Insurance**

A. General Insurance Requirements. Contractor will obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, Court will not be deemed or construed to have assessed the risks applicable to Contractor. Contractor will assess its own risks, and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for three years from the date of completion of the Work.

B. Minimum Scope & Limits of Coverage.

Contractor will maintain the following coverages:

1. Workers' Compensation at statutory requirements of the state of residency.
2. Employers' Liability with minimum limits of **\$1,000,000.00** for each accident.
3. Commercial General Liability Insurance with minimum limits of **\$1,000,000.00** for each occurrence, Combined Single Bodily Injury and Property Damage and Personal Injury. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit.
4. Business Automobile Liability Insurance with minimum limits of \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
5. A Crime Insurance or Fidelity Bond covering the dishonest acts of employees furnished by Contractor. The limit shall not be less than \$50,000 each occurrence.
6. Excess coverage, at the same limits specified for Comprehensive General Liability: Contractual Liability, Independent Contractor, Broadform Property Damage, Personal Injury, Product, and Completed Operation coverage.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, Court. The deductible and/or self-insured retentions will not limit or apply to Contractor's liability to Court and will be the sole responsibility of Contractor.

D. Endorsements; Additional Insureds.

The General Liability policy will contain, or be endorsed to contain, the following provisions:

1. Court, its officers, officials, employees
2. To the extent of Contractor's negligence, Contractor's insurance coverage will be primary insurance as respects Court, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Court, its officers, officials, employees or agents will not contribute with the insurance, or benefit Contractor in any way;
3. Contractor's insurance will apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability;
4. Contractor will provide Court certificates of insurance satisfactory to Court, evidencing all required coverages before Contractor begins any Work, and complete copies of each policy upon Court's request;
5. If at any time, the foregoing policies become unsatisfactory to Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to Court, Contractor will, upon Notice from Court, promptly obtain a new policy, and submit the same to Court, with the appropriate certificates and endorsements, for approval;
6. All of Contractor's policies will be endorsed to provide Notice to Court of cancellation, non-renewal, and reduction in coverage, within fifteen days, mailed to the Court's representative for Notices named on the Agreement Cover Sheet. Such Notice will reference the relevant project, and Agreement number.

E. Waiver of subrogation. Contractor and its insurance carrier waive any and all rights of subrogation against the Judicial Branch Entities. This waiver will be reflected on the Certificate of Insurance, provided by Contractor. If Contractor fails to obtain the appropriate waivers of subrogation, additional insured status, or certificates of insurance from carrier, Contractor will indemnify Court from all costs and liability caused by Contractor's breach.

## **15. Limitation of Liability**

Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, incidental, or consequential damages, including lost profits or revenue, arising from or relating to this Agreement, regardless whether Court was advised of the possibility of such loss or damage. In no event will Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in Agreement or in tort, exceed the amounts paid to Contractor by Court under this Agreement.

## **16. Material Safety Data Sheets**

If some or all of the products used by Contractor to perform the Work are on CAL OSHA's "Hazardous Substances List," Contractor shall forward a completed Material Safety Data Sheet (MSDS) to the Court.

## **17. Modification.**

No modification or change to this Agreement will be valid without written approval by Court, in the form of an Amendment, including any changes to Section D (Scope of Work).

## **18. Scope of Work; Acceptance**

A. Scope of Work. Contractor will perform and complete all Work described in Section D – Scope of Work, in compliance with the requirements of this Agreement, and to the satisfaction of Court.

B. Acceptance. All Work provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court’s Project Manager. The Court’s Project Manager will apply the acceptance criteria set forth in Section D – Scope of Work, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

B.1 If the Work is not acceptable, Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten business days from receipt of Acceptance and Sign-Off Form to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this section 18 until Contractor’s receipt of Court’s written acceptance of such corrected Work; provided, however, that if Court rejects any Work on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to Court.

C. Prior Work. Prior work, performed by Contractor pursuant to Court’s authorization, but before execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.

D. Non-Exclusivity. This is a non-exclusive agreement. Court reserves the right to perform, or have others perform the Work of this Agreement. Court reserves the right to bid the Work to others or procure the Work by other means.

## **19. Standard of Performance; Warranties**

A. Standard of Performance. Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that Court relies on the accuracy, competence, and completeness of Contractor’s services.

B. Warranties.

B.1 Services Warranty. Contractor warrants and represents that the services rendered and Work performed under this Agreement shall be performed in a competent and professional manner with requisite skill and diligence consistent with professional standards for the industry and type of work being performed, and in compliance with all applicable laws, rules and regulations. Contractor further warrants and represents that each of Contractor’s employees, subcontractors, and agents assigned to perform the Work shall possess the training, background, and skills reasonably commensurate with the level of performance required. Contractor hereby acknowledges that Court relies on the accuracy, competence, and completeness of the services and Work to be performed hereunder by Contractor.

B.2 Non-Infringement. Contractor represents and warrants to Court that it is and will be either own, or be authorized to use for its own and the Court’s benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.



B.3 All warranties will inure to Court, its successors, assigns, customer agencies, and users of the Work provided hereunder.

B.4 Unless otherwise specified, the warranties set forth in this section 19 commence after Work has been approved and accepted by Court.

C. Personnel Requirements.

C.1 Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Work. For continuity, Contractor will endeavor to retain the same individuals (listed in Exhibit. E: Attachments) during the performance of Work.

C.2 Court reserves the right to disapprove Contractor's personnel, if dissatisfied with their performance. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the Project Manager.

C.3 Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, Court may terminate this Agreement for cause.

C.4 No minor under 18 years of age shall work in any Court facility without the express written approval of the Court Executive Officer.

D. Background Checks. For Contractor's employees, Subcontractors, or agents performing work, and with access to Court's systems (on-site or remotely) in the performance of their Work under this Agreement, Court will have the right, but not the obligation, to request or conduct a background check, before granting access to Court's premises or systems or at any other time. Contractor will cooperate with Court in performing any background checks; will provide prompt Notice to Court of

- a. Any person refusing to undergo such background check, and will immediately remove person from the project, and
- b. The results of any background check as requested by Court.

Contractor will obtain all releases, waivers, or permissions required for the release of such information to Court. Any additional costs will be borne by Contractor.

**20. Survival**

Terms that will survive termination or expiration of this Agreement include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties.

**21. Term**

This Agreement shall be effective July 1, 2009 and shall remain in effect for an initial one-year term, unless otherwise terminated as provided herein. This Agreement is of no force or effect until signed by both parties. Contractor shall not perform any of its obligations under this Agreement, until this Agreement is fully executed. The Court shall have the option to extend this Agreement for three additional one-year periods.

**22. Termination**

A. Termination for Cause. Court may terminate this Agreement, in whole or in part, and be relieved of any payments, if Contractor fails to perform the requirements of this Agreement at the time and in the manner agreed. Court may proceed with the Work in any manner deemed proper. All costs to Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.

B. Termination for Convenience.

B.1 Court may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least ten days Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.

B.2 If Court terminates all or part of this Agreement other than for cause; the Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.

C. Termination due to Fund Appropriation and Availability.

C.1 Court's obligations under this Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement.

C.2 Upon Notice, Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of Court, for lack of appropriation of funds. Upon termination, Court will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

D. Effect of Termination.

D.1 Upon any expiration or termination, Court will have the right to take possession of any Materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to Court all of Contractor's right, title, and interest in and to such Work and related materials and work product, and any and all intellectual property rights.

D.2 Upon termination of any kind, Court may withhold from payment any sum that Court determines to be owed to Court by Contractor, or necessary to protect Court against loss due to outstanding liens or claims of former lien holders.

### **23. Time is of the Essence.**

Time of performance is of the essence in the performance of services by Contractor under this Agreement.

### **24. Waiver; Severability**

A. Waiver of Rights. Court's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent Court from enforcing such rights on any future occasion.

B. Severability. The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are

separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.

**25. Entire Agreement**

A. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and will not be used to interpret or determine the validity of this Agreement.

B. This Agreement was negotiated between the parties, and neither party “prepared” this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.

C. This Agreement constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter.

*End of Section F*

## *Attachment A*

### **Statement of Acceptance of Terms and Conditions**

Execution hereof is certification that the undersigned has read and understands the terms and conditions hereof (Section F), and that the undersigned's principle is fully bound and committed.

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_