



Revision to ASR and/or Exhibits/Attachments

Date: May 2, 2007

To: Darlene J. Bloom, Clerk of the Board of Supervisors

CC: County Executive Office

From: Paula Burrier-Lund, Director
Housing and Community Services Department

A handwritten signature in black ink, appearing to read "AM for".

RE: Agenda Item(s) # 11 for the May 8, 2007 Board Meeting

ASR Control #(s): 07-000527

Subject: Approve St. Joseph Health System - HGI Agreement

Explanation:

1. The Agreement contains standard indemnification language, therefore two changes need to be made:
 - a. Eliminate current Recommended Action #3 pertaining to non-standard mutual indemnification language and renumber remaining recommended actions.
 - ~~3. Approve non-standard mutual indemnification language under Section 30 of the St. Joseph Healthcare System Agreement as reviewed and approved by CEO Risk Management and County Counsel.~~
 - b. Eliminate the last paragraph from the background information section of the ASR that pertains to the non-standard mutual indemnification issue. See below modification.
2. The Agreement is being modified as follows and will therefore need to be updated with the attached pages:
 - a. The starting date for the term of the contract has been updated to be consistent with the date when the Orange County Board of Supervisors will take action on the above-referenced ASR.
 - b. Addition of professional liability insurance to the contract.
 - c. Contractor is aware of the changes, considers them to be non-substantive and has waived re-signing of the contract.
3. Recommended Action #1 and the summary need to be modified to reflect the new start date of the contract.

Revised Recommended Action(s)

1. Approve the High Growth Job Training Initiative Biotechnology Cost Reimbursement Agreement with St. Joseph Health System (SJHS) to provide training services for High Growth Initiative Biotechnology trainees in the amount of \$100,000 for the period of May 9, 2007 through April 30, 2008.
2. Authorize the Chairman of the Board to execute, on behalf of the County of Orange, the High Growth Job Training Initiative Biotechnology Cost Reimbursement Agreement with the St. Joseph Health System.
3. Authorize the Housing and Community Services Department Director or designee, without further Board action to modify WIA Policies and Procedures for the provision of recruitment, intake, assessments and referrals as changes are required by the State of California, Employment Development Department or the U.S. Department of Labor.
4. Authorize the Housing and Community Services Department Director or designee without further Board action to extend the term of this Agreement up to and including a period of one year as time extensions are granted by the U.S. Department of Labor.
5. Authorize the Housing and Community Services Department Director or designee without further Board action to modify portions of the contract or exhibits, and/or transfer allocated program funds from one category of the overall program budget to any other category of the overall program budget as long as the total payments under this Agreement are not increased and the basic goals and objectives of the program are not altered.
6. Authorize the Housing and Community Services Department Director or designee, without further Board action to exercise a contingency agreement cost increase, not to exceed a total of 10 percent of the agreement amount for the entire term of the agreement, including renewals, and within the scope of work set forth in the agreement. The use of this contingency agreement cost increase is subject to approval requirements established by the Board of Supervisors pursuant to Minute Order dated August 5, 2003, for Agenda Item 27 and County policies and procedures.

Make modifications to the:

- Subject Background Information Summary

Background Information:

The last paragraph of the background information needs to be deleted as shown:

~~Finally, the SJHS contract includes a non-standard mutual indemnification provision to provide equal coverage and insure against liability for both parties. This action has been approved by CEO/Risk Management.~~

Summary:

The start date of the contract has been changed as follows:

Approve the High Growth Job Training Initiative (HGI) Biotechnology Cost Reimbursement Agreement with St. Joseph Health System in the amount of \$100,000 to provide training services for HGI Biotechnology trainees for the period of May 9, 2007 through April 30, 2008.

- Revised Exhibits/Attachments (attached)

The following pages need to be substituted in the boilerplate of the attached Agreement:

Pages 4 - 6
Page 12
Pages 22 - 36

- Additional Information and/or Correspondence (attached)

Regarding Insurance Waivers (Referenced in the Background Information)

It has been the practice of HCS/CID to outline insurance waiver requests in the ASR on the advice of County Counsel.

Sexual Misconduct Liability Insurance:

Sexual Misconduct Liability insurance protects the County in claims alleging sexual misconduct. According to the CEO/Purchasing website, contracts should include Sexual Misconduct Liability coverage when the contract deals with the custody, transportation or unsupervised contact with minors, elderly or any client of the County of Orange.

In this contract, we will be reimbursing the costs associated for St. Joseph to train their staff. This training does not involve the custody or transportation of clients (St. Joseph trainees), and since the training is done in the public areas of the Hospital, there is little to no unsupervised contact with clients. This waiver does not absolve the St. Joseph Healthcare System of their federal and state responsibilities regarding existing Sexual Harassment policies.

Employee Dishonesty:

This waiver was requested and granted since the contractor will not be maintaining petty cash or handling cash with the funds.

- (a) Eligibility 17
- (b) Benefits 17
- (c) Rights and Privileges 17
- (d) Labor Standards 18
- (e) Complaint Handling Procedures 18
- (f) Nondiscrimination and Compliance Provisions 18
- 27. CONFIDENTIALITY 19
- 28. EQUIPMENT 20
- 29. INDEMNIFICATION 21
- 30. INSURANCE 21
- 31. PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION 24
 - (a) Ownership 24
 - (b) Acknowledgement of Funding Source 25
- 32. INTELLECTUAL PROPERTY 25
- 33. CORPORATE STATUS 32
- 34. STANDARDS OF CONDUCT 32
 - (a) General Assurance 32
 - (b) Employment of Former State or COUNTY Employees 32
 - (c) Conducting Business Involving Relatives 33
 - (d) Conducting Business Involving Close Personal Friends and Associates 33
 - (e) Avoidance of Conflict of Economic Interest 33
- 35. SWEATFREE CODE OF CONDUCT 33
- 36. DRUG FREE WORKPLACE 34
- 37. DEBARMENT 34
- 38. SECTARIAN ACTIVITIES 34
- 39. LITERATURE 34

40. LOBBYING	35
41. BREACH - SANCTIONS.....	35
42. DISPUTES	35
43. TERMINATION.....	36
44. TOTAL AGREEMENT	36
45. CHILD SUPPORT ENFORCEMENT	36
46. EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS	37
47. ASSURANCES – NON-CONSTRUCTION PROGRAMS.....	37
48. NOTICES	37
49. GOVERNING LAW AND VENUE	37
50. WAIVER	37
51. PUBLICITY.....	38
52. CALENDAR DAYS	38

SIGNATURES

EXHIBITS

- A General Program Requirements
- B Statement of Work
- C Performance Standards
- D Budget
- E Drug-Free Workplace Certification
- F Suspension & Debarment Certification
- G Certification Regarding Lobbying
- H Disclosure Form to Report Lobbying
- I Child Support Enforcement Provision (for-profit only providers)
- J EDD Independent Operator Reporting Requirements
- K Assurances - Non-Construction Programs

1 **WHEREAS**, Congress has enacted the "Workforce Investment Act of 1998," hereinafter referred to
2 as "the Act," to provide workforce investment activities, through statewide and local workforce investment
3 systems, that increase employment, retention and earnings of participants, and increase occupational skill
4 attainment by participants, and, as a result, improve the quality of the workforce and enhance the
5 productivity and competitiveness of the Nation; and

6 **WHEREAS**, COUNTY, acting as the Administrator of the Act funds, is empowered to make a
7 portion of the funds available pursuant to the Act (hereinafter referred to as "grant funds") to
8 CONTRACTOR, for the purpose of implementing the provisions of the Act; and

9 **WHEREAS**, COUNTY, by Minute Order dated _____, a copy of which is on file with the
10 Clerk of the Board of Supervisors of Orange County and which by this reference is incorporated herein
11 and made a part hereof as if fully set forth, has appropriated a portion of grant funds in the amount of
12 (\$100,000) to engage CONTRACTOR to carry out certain program services; and

13 **WHEREAS**, COUNTY's Housing and Community Services Department (hereinafter referred to as
14 "HCS"), Director or designee (hereinafter referred to as "DIRECTOR"), shall administer this Agreement as
15 is necessary or reasonable to comply with or implement the grant funds received by COUNTY and as
16 required by law or applicable regulations; and

17 **WHEREAS**, CONTRACTOR, in order to receive grant funds, is agreeable to the terms and
18 conditions hereinafter set forth;

19 **NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

20 **TERM**

21 1. The term of this Agreement shall commence on May 9, 2007 and terminate on April 30, 2008,
22 subject to the provisions of Sections 16, 39 and 41 of this Agreement; however, CONTRACTOR shall be
23 obligated to perform such duties as would normally extend beyond this term, including but not limited to
24 obligations with respect to indemnification, audits, reporting and accounting. CONTRACTOR and
25 DIRECTOR may mutually agree in writing to extend the term of this Agreement up to and including a
26 period of one year, provided that COUNTY's maximum obligation as stated in Subparagraph 19 of this
Agreement does not increase as a result and all other terms and conditions of this Agreement remain the
same.

1 **MODIFICATION OF BUDGET SCHEDULE**

2 18. The BUDGET consists of the following categories: Tuition (which includes instruction, books
3 and supplies). Upon written approval of DIRECTOR, CONTRACTOR shall have the authority to transfer
4 allocated program funds from one category of the overall program budget to any other category of the
5 overall program budget, as long as the amount of the total grant is not increased and the basic goals and
6 objectives of the program are not altered. No such transfer may be made without the express prior written
7 approval of DIRECTOR. A modification of the BUDGET may include the addition of any new budget
8 category. Approval of the Budget Modification by DIRECTOR includes approval of the new Budget
9 Category.

9 **PAYMENTS BY COUNTY**

10 19. CONTRACTOR agrees that any and all funds received under this Agreement shall be
11 disbursed or encumbered on or before April 30, 2008, and that any and all funds remaining as of April 30,
12 2008, which have not been disbursed or encumbered shall be returned by CONTRACTOR to COUNTY
13 within thirty (30) days of the expiration or earlier termination of the Agreement in accordance with
14 paragraph 41. No expense of CONTRACTOR will be reimbursed by COUNTY if incurred after April 30,
15 2008. No CONTRACTOR expenses shall be paid if billing is received by COUNTY after May 31, 2008.

16 Upon the effective date of this Agreement, COUNTY shall make payments to CONTRACTOR in
17 accordance with the following payment schedule:

18 (a) Payments. Beginning May 9, 2007, upon receipt and approval by HCS/Community
19 Investment Division (CID) of CONTRACTOR's invoice, CONTRACTOR shall invoice COUNTY from a
20 hospital listed in Exhibit B. CONTRACTOR shall invoice COUNTY Thirty-Three Thousand Three Hundred
21 Thirty-Three Dollars (\$33,333) for each cohort of students. COUNTY shall make reimbursement
22 payments based on CONTRACTOR's invoice so long as the total payments under this Agreement do not
23 exceed One Hundred Thousand Dollars (\$100,000).

24 (b) COUNTY Discretion. At the sole discretion of COUNTY, payments to CONTRACTOR
25 may be made more frequently than monthly, but such payments shall always be in arrears and not in
26 advance of the provision of services by CONTRACTOR.

1 insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

2 (b) All insurance policies required by this Agreement shall declare any deductible or self-insured
3 retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically
4 be approved by the County Executive Office (CEO)/Office of Risk Management. CONTRACTOR shall be
5 responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or
6 deductibles shall be clearly stated on the Certificate of Insurance. If the CONTRACTOR fails to maintain
7 insurance acceptable to the COUNTY for the full term of this Agreement, the COUNTY may terminate this
8 Agreement.

9 (c) If CONTRACTOR is a governmental entity, CONTRACTOR may elect to self-insure for the
10 insurance coverage required by this Agreement.

11 (d) The policy or policies of insurance required herein must be issued by an insurer licensed to do
12 business in the State of California (California Admitted Carrier). If the insurer is not licensed to do
13 business in the State of California, CEO/Office of Risk Management retains the right to approve or reject
14 the insurer after a review of the insurer's performance and financial ratings.

15 (e) The policy or policies of insurance required herein must be issued by an insurer with a
16 minimum rating of "A- (Secure Best's Rating)" and a minimum financial rating of "VIII (Financial Size
17 Category)," as determined by the most current edition of the **Best's Key Rating Guide/Property-
18 Casualty/United States** or by going on-line to "ambest.com."

19 (f) The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum
20 limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with Broad Form Property Damage Endorsement and Contractual Liability	\$1,000,000 combined single limit per occurrence \$2,000,000 Aggregate
Automobile Liability including all owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

1 (g) All liability insurance, except Professional Liability, required by this contract shall be at least
2 \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a
3 "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be
4 \$2,000,000.

5 (h) The County of Orange, Orange County Workforce Investment Board, and State of California
6 shall be added as additional insureds on all insurance policies required by this Agreement with respect to
7 the services provided by CONTRACTOR under the terms of this Agreement (except Workers'
8 Compensation/Employers' Liability and Professional Liability). An additional insured endorsement
9 evidencing that the County of Orange, Orange County Workforce Investment Board, and State of
10 California are additional insureds shall accompany the Certificate of Insurance.

11 (i) All insurance policies required by this Agreement shall be primary insurance, and any insurance
12 maintained by the County of Orange shall be excess and non-contributing with insurance provided by
13 ~~these policies.~~ An endorsement evidencing that CONTRACTOR's insurance is primary and non-
14 contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

15 (j) All insurance policies required by this Agreement shall give the County of Orange 30 days
16 notice in the event of cancellation. This shall be evidenced by an endorsement separate from the
17 Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits
18 the pre-printed ACORD certificate:

19 **SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE**
20 **EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN**
21 **NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.**

22 (k) All insurance policies required by this Agreement shall waive all rights of subrogation against
23 the County of Orange and members of the Board of Supervisors, its elected and appointed officials,
24 officers, agents and employees when acting within the scope of their employment or appointment.

25 (l) If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to
26 maintain professional liability coverage for two years following completion of contract.

1 (m) The Commercial General Liability policy shall contain a severability of interests clause.

2 (n) CONTRACTOR is aware of the provisions of Section 3700 of the California Labor Code which
3 requires every employer to be insured against liability for Workers' Compensation or be self-insured in
4 accordance with provisions of that code. CONTRACTOR will comply with such provisions and shall
5 furnish COUNTY satisfactory evidence that CONTRACTOR has secured, for the period of this Agreement,
6 statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of
\$1,000,000 per occurrence.

7 (o) If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7)
8 days of notification by CEO/Risk Management or by DIRECTOR, award may be made to the next qualified
9 proponent.

10 (p) COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
11 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
12 decrease in insurance will be as deemed by CEO/Risk Management as appropriate to adequately protect
COUNTY.

13 (q) COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
14 CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with
15 DIRECTOR incorporating such changes within thirty (30) days of receipt of such notice, this Agreement
16 may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal
17 remedies.

18 (r) The procuring of such required policy or policies of insurance shall not be construed to limit
19 CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this
20 Agreement.

21 (s) The County of Orange Certificate of Insurance and the Special Endorsement for the County of
22 Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of
commercial insurance certificates and endorsements.

23 **PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION**

24 31. (a) CONTRACTOR agrees to give COUNTY and the United States Department of Labor –
25 Employment and Training Administration (USDOL-ETA) all training models, curricula, and technical
26

1 assistance products, etc. developed with DOL funds. COUNTY and USDOL-ETA has the right to use,
2 reuse, and modify all grant-funded products, curricula, materials, etc. Additionally, COUNTY and USDOL-
3 ETA has the right to distribute these grant-funded materials and products to any interested parties,
4 including broad distribution to the state and local public workforce systems through Internet-based and
5 other means.

6 (b) Acknowledgement of Funding Source. In all publications, outreach materials, etc. developed
7 in association with grant-funded activities and projects, High Growth Job Training Initiative grantees will
8 prominently display the following language: *This program was funded [in part, as applicable] by a grant*
9 *awarded under the President's High Growth Job Training Initiative, as implemented by the U.S.*
10 *Department of Labor's Employment and Training Administration.*

11 INTELLECTUAL PROPERTY

12 32. (a) Federal Funding. In any Agreement funded in whole or in part by the federal
13 government, COUNTY may acquire and maintain the Intellectual Property rights, title, and ownership,
14 which result directly or indirectly from the Agreement, except as provided in 37 Code of Federal
15 Regulations part 401.14. CONTRACTOR agrees to grant the COUNTY, Federal and State
16 governments a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use,
17 duplicate, or dispose of such Intellectual Property in any matter, whatsoever, without limitation, for
18 governmental purposes and to have and permit others to do so.

18 (b) Ownership.

19 (1) Except where COUNTY has agreed in a signed writing to accept a license, COUNTY
20 shall be and remain, without additional compensation, the sole owner of any and all rights, title
21 and interest in all intellectual property, from the moment of creation, whether or not jointly
22 conceived, that are made, conceived, derived from, or reduced to practice by CONTRACTOR or
23 COUNTY and which result directly or indirectly from this Agreement.

24 (2) For the purposes of this Agreement, Intellectual Property means recognized
25 protectable rights and interest such as: patents, (whether or not issued) copyrights,
26 trademarks, service marks, applications for any of the foregoing, inventions, trade secrets,

1 trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity,
2 author's rights, contract and licensing rights, works, mask works, industrial design rights, rights
3 of priority, know how, design flows, methodologies, devices, business processes,
4 developments, innovations, good will, any data or information maintained, collected or stored in
5 the ordinary course of business by COUNTY, and all other legal rights protecting intangible
6 proprietary information as may exist now and/or hereafter come into existence, and all
7 renewals and extensions, regardless of whether those rights arise under the laws of the United
8 States, or any other state, country or jurisdiction.

9 (i) For the purposes of the definition of Intellectual Property, "works" means all
10 literary works, writings and printed matter including the medium by which they are
11 recorded or reproduced, photographs, art work, pictorial and graphic representations
12 and works of a similar nature, film, motion pictures, digital images, animation cells, and
13 other audiovisual works including positives and negatives thereof, sound recordings,
14 tapes, educational materials, interactive videos, computer software and any other
15 materials or products created, produced, conceptualized and fixed in a tangible medium
16 of expression. It includes preliminary and final products and any materials and
17 information developed for the purposes of producing those final products. "Works" does
18 not include articles submitted to peer review or reference journals or independent
19 research projects.

20 (3) In the performance of this Agreement, CONTRACTOR may exercise and utilize
21 certain of its Intellectual Property in existence prior to the effective date of this Agreement. In
22 addition, under this Agreement, CONTRACTOR may access and utilize certain of COUNTY's
23 Intellectual Property in existence prior to the effective date of this Agreement. Except as
24 otherwise set forth herein, CONTRACTOR shall not use any of COUNTY's Intellectual
25 Property now existing or hereafter existing for any purposes without the prior written
26 permission of COUNTY. Except as otherwise set forth herein, neither the CONTRACTOR nor
COUNTY shall give any ownership interest in or rights to its Intellectual Property to the other
Party. If, during the term of this Agreement, CONTRACTOR accesses any third-party

1 Intellectual Property that is licensed to COUNTY, CONTRACTOR agrees to abide by all
2 license and confidentiality restrictions applicable to COUNTY in the third-party's license
3 agreement.

4 (4) CONTRACTOR agrees to cooperate with COUNTY in establishing or maintaining
5 COUNTY's exclusive rights in the Intellectual Property, and in assuring COUNTY's sole rights
6 against third parties with respect to the intellectual Property. If the CONTRACTOR enters into
7 any agreements or subcontracts with other parties in order to perform this Agreement,
8 CONTRACTOR shall require the terms of the agreement(s) to include all Intellectual Property
9 provisions of paragraphs thirty-three (33) (a) through thirty-three (i). Such terms must include,
10 but are not limited to, the subcontractor assigning and agreeing to assign to COUNTY all
11 rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to
12 practice by the subcontractor, CONTRACTOR or COUNTY and which result directly or
indirectly from this Agreement or any subcontract.

13 (5) Pursuant to paragraph thirty-three (b) (4) herein, the requirement for the
14 CONTRACTOR to include all Intellectual Property Provisions of paragraph thirty three a)
15 through thirty-three i) of the Intellectual Property Provisions in all agreements and
16 subcontracts it enters into with other parties does not apply to agreements or subcontracts
that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.

17 (6) CONTRACTOR further agrees to assist and cooperate with COUNTY in all
18 reasonable respects, execute all documents and, subject to reasonable availability, give
19 testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and
20 enforce COUNTY's Intellectual Property rights and interests.

21 (c) Retained Rights/License Rights.

22 (1) Except for Intellectual Property made, conceived, derived from, or reduced to
23 practice by CONTRACTOR or COUNTY which result directly or indirectly from this Agreement,
24 CONTRACTOR shall retain title to all of its Intellectual Property to the extent such Intellectual
25 Property is in existence prior to the effective date of this Agreement. CONTRACTOR hereby
26 grants to COUNTY, without additional compensation, a permanent, non-exclusive, royalty free,

1 paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce,
2 manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform,
3 distribute, and dispose of CONTRACTOR's Intellectual Property with the right to sublicense
4 through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the
5 Intellectual Property resulting from this Agreement, unless CONTRACTOR assigns all rights,
6 title and interest in the Intellectual Property as set forth herein.

7 (2) Nothing in this provision shall restrict, limit, or otherwise prevent CONTRACTOR
8 from using any ideas, concepts, know-how, methodology or techniques related to its
9 performance under this Agreement, provided that CONTRACTOR's use does not infringe the
10 patent, copyright, trademark rights, license or other Intellectual Property rights of COUNTY or
11 third party, or result in a breach or default of any provisions of paragraphs thirty three (a)
12 through thirty-three (i) or result in a breach of any provisions of law relating to confidentiality.

13 (d) Copyright.

14 (1) CONTRACTOR agrees that for purposes of copyright law, all works (as defined in
15 Ownership, paragraph thirty-three (b) (2) (i) of authorship made by or on behalf of
16 CONTRACTOR in connection with CONTRACTOR's performance of this Agreement shall be
17 deemed "works made for hire." CONTRACTOR further agrees that the work of each person
18 utilized by CONTRACTOR in connection with the performance of this Agreement will be a
19 "work made for hire," whether that person is an employee of CONTRACTOR or that person has
20 entered into an agreement with CONTRACTOR to perform the work. CONTRACTOR shall
21 enter into a written agreement with any such person that (i) all work performed for
22 CONTRACTOR shall be deemed a "work made for hire" under the Copyright Act and (ii) that
23 person shall assign all right, title, and interest to COUNTY to any work product made,
24 conceived, derived from or reduced to practice by CONTRACTOR or COUNTY and which
25 result directly or indirectly from this Agreement.

26 (2) All materials, including, but not limited to, computer software, visual works or text,
reproduced or distributed pursuant to this Agreement that include Intellectual Property made,
conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and which

1 result directly or indirectly from this Agreement may not be reproduced or disseminated without
2 prior written permission from COUNTY.

3 (e) Patent Rights. With respect to inventions made by CONTRACTOR in the performance of
4 this Agreement, which did not result from research and development specifically included in the
5 Agreement's scope of work, CONTRACTOR hereby grants to COUNTY a license as described under
6 paragraph thirty three (c) for devices or material incorporating, or made through the use of such
7 inventions. If such inventions result from research and development work specifically included within
8 the Agreement's scope of work, then CONTRACTOR agrees to assign to COUNTY, without additional
9 compensation, all its right, title and interest in and to such inventions and to assist COUNTY in
10 securing United States and foreign patents with respect thereto.

11 (f) Third-Party Intellectual Property. Except as provided herein, CONTRACTOR agrees that its
12 performance of this Agreement shall not be dependent upon or include any Intellectual Property of
13 CONTRACTOR or third party without first: (i) obtaining COUNTY's prior written approval; and (ii)
14 granting to or obtaining for COUNTY's, without additional compensation, a license, as described in
15 paragraph thirty-three (c), for any of CONTRACTOR's or third-party's Intellectual Property in existence
16 prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and
17 COUNTY determines that the Intellectual Property should be included in or is required for
18 CONTRACTOR's performance of this Agreement, CONTRACTOR shall obtain a license under terms
19 acceptable to COUNTY.

20 (g) Warranties.

21 (1) CONTRACTOR represents and warrants that:

22 (i) CONTRACTOR has secured and will secure all rights and licenses necessary
23 for its performance of this Agreement.

24 (ii) Neither CONTRACTOR's performance of this Agreement, nor the exercise by
25 either Party of the rights granted in this Agreement, nor any use, reproduction,
26 manufacture, sale, offer to sell, import, export, modification, public and private
display/performance, distribution, and disposition of the Intellectual Property made,
conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and

1 which result directly or indirectly from this Agreement will infringe upon or violate any
2 Intellectual Property right, non-disclosure obligation, or other proprietary right or interest
3 of any third-party or entity now existing under the laws of, or hereafter existing or issued
4 by, any state, the United States, or any foreign country. There are currently no actual
5 or threatened claims by any such third party based on an alleged violation of any such
6 right by CONTRACTOR.

7 (iii) Neither CONTRACTOR's performance nor any part of its performance will
8 violate the right of privacy of, or constitute a libel or slander against any person or
9 entity.

10 (iv) CONTRACTOR has secured and will secure all rights and licenses
11 necessary for Intellectual Property including, but not limited to, consents, waivers or
12 releases from all authors of music or performances used, and talent (radio, television
13 and motion picture talent), owners of any interest in and to real estate, sites locations,
14 property or props that may be used or shown.

15 (v) CONTRACTOR has not granted and shall not grant to any person or entity
16 any right that would or might derogate, encumber, or interfere with any of the rights
17 granted to COUNTY in this Agreement.

18 (vi) CONTRACTOR has appropriate systems and controls in place to ensure that
19 state funds will not be used in the performance of this Agreement for the acquisition,
20 operation or maintenance of computer software in violation of copyright laws.

21 (vii) CONTRACTOR has no knowledge of any outstanding claims, licenses or
22 other charges, liens or encumbrances of any kind or nature whatsoever that could affect
23 in any way CONTRACTOR's performance of this Agreement.

24 (2) COUNTY MAKES NO WARRANTY, THAT THE INTELLECTUAL PROPERTY
25 RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT,
26 TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

(h) Intellectual Property Indemnity.

1 (1) CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its
2 licensees and assignees, and its officers, directors, employees, agents, representatives,
3 successors, and users of its products, ("Indemnitees") from and against all claims, actions,
4 damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or
5 not rightful, arising from any and all actions or claims by any third party or expenses related
6 thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees
7 incurred in investigating, preparing, serving as a witness in, or defending against, any such
8 claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be
9 subject, whether or not CONTRACTOR is a party to any pending or threatened litigation, which
10 arise out of or are related to (i) the incorrectness or breach of any of the representations,
11 warranties, covenants or agreements of CONTRACTOR pertaining to Intellectual Property; or
12 (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement
13 claim, arising out of COUNTY's use, reproduction, manufacture, sale, offer to sell, distribution,
14 import, export, modification, public and private performance/display, license, and disposition of
15 the Intellectual Property made, conceived, derived from, or reduced to practice by
16 CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement. This
17 indemnity obligation shall apply irrespective of whether the infringement claim is based on a
18 patent, trademark or copyright registration that was issued after the effective date of this
19 Agreement. COUNTY reserves the right to participate in and/or control, at CONTRACTOR's
20 expense, any such infringement action brought against COUNTY.

21 (2) Should any Intellectual Property licensed by the CONTRACTOR to COUNTY under
22 this Agreement become the subject of an Intellectual Property infringement claim
23 CONTRACTOR will exercise its authority reasonably and in good faith to preserve COUNTY's
24 right to use the licensed Intellectual Property in accordance with this Agreement at no expense
25 to COUNTY. COUNTY shall have the right to monitor and appear through its own counsel (at
26 CONTRACTOR's expense) in any such claim or action. In the defense or settlement of the
claim, CONTRACTOR may obtain the right for COUNTY to continue using the licensed
intellectual Property or, replace or modify the licensed Intellectual Property, so that the

1 replaced or modified Intellectual Property becomes non-infringing provided that such
2 replacement or modification is functionally equivalent to the original licensed Intellectual
3 Property. If such remedies are not reasonably available, COUNTY may be entitled to a refund
4 of all monies paid under this Agreement, without restriction or limitation of any other rights and
5 remedies available at law or in equity.

6 (3) CONTRACTOR agrees that damages alone would be inadequate to compensate
7 COUNTY for breach of any term of these Intellectual Property provisions of paragraphs thirty
8 three (a) through thirty-three (i) by CONTRACTOR. CONTRACTOR acknowledges COUNTY
9 would suffer irreparable harm in the event of such breach and agrees COUNTY shall be
10 entitled to obtain equitable relief, including without limitation an injunction, from a court of
11 competent jurisdiction, without restriction or limitation of any other rights and remedies
12 available at law or in equity.

13 (i) Survival. The provisions set forth herein shall survive any termination or expiration of this
14 Agreement or any project schedule.

15 **CORPORATE STATUS**

16 33. All corporate CONTRACTORS shall be registered with the California Secretary of State and
17 shall be in good standing, without suspension by the California Secretary of State, Franchise Tax Board,
18 or Internal Revenue Service. Any change in corporate status or suspension shall be reported by
19 CONTRACTOR immediately in writing to DIRECTOR.

20 **STANDARDS OF CONDUCT**

21 34. (a) General Assurance. Every reasonable course of action will be taken by CONTRACTOR in
22 order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable
23 or improper conduct. This Agreement will be administered in an impartial manner, free from efforts to gain
24 personal, financial or political gain. CONTRACTOR, its officers and employees, in administering this
25 Agreement, will avoid situations which give rise to a suggestion that any decision was influenced by
26 prejudice, bias, special interest or desire for personal gain.

(b) Neither COUNTY or CONTRACTOR shall not hire any officer or employee of the other
party to perform any service covered by this agreement for a period not less than two (2) years following

1 the termination of such employment. COUNTY and CONTRACTOR affirms that there exists no actual or
2 potential conflict of interest. Any question regarding possible conflict of interest which may arise will be
3 raised with the other party.

4 (c) Conducting Business Involving Relatives. No relative by blood, adoption or marriage of
5 any executive or employee of CONTRACTOR will receive favorable treatment when considered for
6 enrollment in programs provided by, or employment with, CONTRACTOR.

7 (d) Conducting Business Involving Close Personal Friends and Associates. Executives and
8 employees of CONTRACTOR will be particularly aware of the varying degrees of influence that can be
9 exerted by personal friends and associates and, in administering this Agreement, will exercise due
10 diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to
11 friends and associates.

12 (e) Avoidance of Conflict of Economic Interest. No executive or employee of CONTRACTOR,
13 elected official in the area, or voting or non-voting member of a WIB, will solicit or accept money or any
14 other consideration from a third person, for the performance of an act reimbursed in whole or part by
15 CONTRACTOR or COUNTY. Supplies, materials, equipment or services purchased with Agreement
16 funds will be used solely for purposes allowed under this Agreement. No voting member of the OCWIB
17 will cast a vote on the provision of services by that member (or any organization which that member
18 represents) or vote on any matter which would provide direct financial benefit to that member or any
19 business or organization which the member directly represents.

20 **SWEATFREE CODE OF CONDUCT**

21 35. All CONTRACTORs contracting for the procurement or laundering of apparel, garments or
22 corresponding accessories, or the procurement of equipment, materials, or supplies, other than
23 procurement related to a public works contract, declare under penalty of perjury that no apparel, garments
24 or corresponding accessories, equipment, or supplies furnished to the sweatshop labor, forced labor,
25 convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children
26 in sweatshop labor. The CONTRACTOR further declares under penalty of perjury that they adhere to the
Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website

1 The CONTRACTOR agrees to cooperate fully in providing reasonable access to the
2 CONTRACTOR's records, documents, agents or employees, or premises if reasonably required by
3 authorized officials of the State or COUNTY, the Department of Industrial Relations, or the Department of
4 Justice to determine the CONTRACTOR's compliance with the requirements under paragraph a of the
5 Sweatfree Code of Conduct.

6 **DRUG FREE WORKPLACE**

7 36. CONTRACTOR shall adhere to the Drug Free Workplace requirements of 29 CFR 98.
8 CONTRACTOR shall execute and abide by the Drug Free Workplace Certification attached hereto as
9 Exhibit "E" and incorporated herein by this reference.

10 **DEBARMENT**

11 37. CONTRACTOR shall abide by all terms of 29 CFR Part 93, Lobbying Certification.
12 CONTRACTOR shall execute and abide by the Debarment & Suspension Certification attached hereto as
13 Exhibit "F" and incorporated herein by this reference and by so doing declares that it is not debarred or
14 suspended or otherwise excluded from or ineligible for participation in Federal/State assistance programs
15 in accordance with 29 C.F.R. Part 98.

16 **SECTARIAN ACTIVITIES**

17 38. CONTRACTOR agrees that this Agreement will not provide for the advancement or aid to any
18 religious sect, church or creed for a purpose that is sectarian in nature, nor will it help to support or sustain
19 any school, college, university, hospital or other institution controlled by any religious creed, church, or
20 sectarian denomination. However, in accordance with Presidential Executive Order No. 13279, issued
21 December, 2002, CONTRACTOR shall also provide and promote equal treatment to all faith-based
22 organizations in administering its federally-funded activities.

23 **LITERATURE**

24 39. Any literature distributed by CONTRACTOR for the purpose of apprising businesses,
25 participants, or the general public of its programs under this Agreement shall state that its programs are
26 supported by the County of Orange and the Orange County Workforce Investment Board, and shall state
that the program is an "equal opportunity employer/program" and that "auxiliary aids and services are
available upon request to individuals with disabilities."

1 **LOBBYING**

2 40. (a) CONTRACTOR shall abide by all terms of 29 CFR Part 93, Lobbying Certification.
3 CONTRACTOR shall execute and abide by the terms of the "Certification Regarding Lobbying," which is
4 attached hereto as Exhibit "G" and incorporated herein by this reference. CONTRACTOR shall complete
5 and immediately forward to DIRECTOR the "Disclosure Form to Report Lobbying," a copy of which is
6 attached hereto as Exhibit "H", incorporated herein by this reference, if CONTRACTOR, or any person,
7 firm or corporation acting on CONTRACTOR's behalf, engaged or engages in lobbying any federal officer,
8 employee, elected official or agency with respect to this Agreement or the funds to be received by
CONTRACTOR pursuant to this Agreement.

9 (b) CONTRACTOR agrees that the funds provided herein shall not be used to promote, directly
10 or indirectly, any political party, political candidate or political activity, except as permitted by law.

11 **BREACH - SANCTIONS**

12 41. If, through any cause, CONTRACTOR violates any of the terms and conditions of this
13 Agreement, or any prior Agreements whereby grant funds were received by CONTRACTOR, or if
14 CONTRACTOR reports inaccurately, or if an audit report makes disallowances, CONTRACTOR shall
15 promptly remedy its acts or omissions and/or repay COUNTY all amounts due COUNTY as a result
16 thereof. For any such failures or violations COUNTY shall also have the right, at its sole discretion, to: (1)
17 immediately discontinue program support until such time as CONTRACTOR fulfills its obligations or
18 remedies all violations of this Agreement or prior Agreements; and/or (2) collect outstanding amounts, as
19 determined by DIRECTOR to be due COUNTY from CONTRACTOR, by offsetting or debiting from current
20 claims or invoices, if after thirty (30) days written notice CONTRACTOR has failed to repay same or a
21 repayment schedule has not been made; and/or (3) terminate this Agreement in accordance with Section
22 40 herein. DIRECTOR shall give CONTRACTOR written notice of any action pursuant to this paragraph,
which notice shall be deemed served on the date of mailing.

23 **DISPUTES**

24 42. Except as otherwise provided in this Agreement, any dispute concerning any question arising
25 after the commencement of this Agreement shall be decided by DIRECTOR. In such a case, DIRECTOR
shall reduce its decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The

26 ~~decision of DIRECTOR shall be final and conclusive unless within thirty (30) calendar days from the~~

1 mailing or delivery of such copy, DIRECTOR receives from CONTRACTOR a written request to appeal
2 said decision to the COUNTY Board of Supervisors. Pending final decision of the appeal, CONTRACTOR
3 shall act in accordance with the written decision of DIRECTOR.

4 **TERMINATION**

5 43. (a) DIRECTOR may terminate this Agreement without penalty immediately with cause or after
6 thirty (30) days written notice without cause, unless otherwise specified. Notice shall be deemed served on
7 the date of mailing. Cause shall be defined as any breach of contract, any misrepresentation or fraud on
8 the part of the CONTRACTOR. Exercise by DIRECTOR of the right to terminate this Agreement shall
9 relieve COUNTY of all further obligations under this Agreement.

10 (b) Upon termination, or notice thereof, CONTRACTOR agrees to cooperate with DIRECTOR
11 in the orderly transfer of service responsibilities, active case records, pertinent documents and all
12 equipment or materials purchased with COUNTY funds.

13 **TOTAL AGREEMENT**

14 44. This Agreement, together with the attachments hereto, expresses the total understanding of
15 the parties. There are no oral understandings of the parties or terms and conditions other than as are
16 stated herein. CONTRACTOR acknowledges that it has read and agrees to all terms and conditions
17 included in this Agreement.

18 **CHILD SUPPORT ENFORCEMENT**

19 45. In order to comply with child support enforcement requirements of the County of Orange,
20 CONTRACTOR shall execute and abide by the "Child Support Enforcement Provision" (for profit only
21 providers) attached hereto as Exhibit "I" and incorporated herein by this reference within thirty (30) days of
22 award of contract.

23 Failure of CONTRACTOR to timely submit the data and/or certifications required above or to
24 comply with all federal and state reporting requirements for child support enforcement or to comply with all
25 lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a
26 material breach of this Agreement. Failure to cure such breach within sixty (60) days of notice from
COUNTY shall constitute grounds for termination of this Agreement.