



County of Orange

MEMO

DATE: January 19, 2012

TO: Chairman John M. W. Moorlach, Board of Supervisors
Supervisor, Second District

FROM: Thomas G. Mauk, County Executive Officer *Rob Richardson for*

SUBJECT: Exception to the Rule 21 *S50A*

County Executive is requesting a supplemental agenda item for the January 24, 2012 Board Hearing Meeting:

Board Meeting Date: January 24, 2012

Subject: Labor Negotiator Contract

Calendar: Supplemental

Districts: All Districts

Reason for Supplemental:

As directed by the Board of Supervisors, present Supplemental Agenda Item: Labor Negotiator Contract.

Concur: *Thomas G. Mauk for John Moorlach*
John M. W. Moorlach, Chairman Board of Supervisors

cc: Member, Board of Supervisors
Rob Richardson, Assistant CEO
Nicholas Chrisos, County Counsel
Susan Novak, Interim Clerk of the Board of Supervisors



SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

S50A

ASR Control

MEETING DATE: January 24, 2012
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Human Resources Department
DEPARTMENT CONTACT PERSON(S): Carl H. Crown (714) 834-2836
M.E. Fuelleman (714) 834-4078

SUBJECT: Labor Negotiator Contract

CEO CONCUR [Signature] COUNTY COUNSEL REVIEW [Signature] CLERK OF THE BOARD Discussion 3 Votes Board Majority

Budgeted: No Current Year Cost: N/A Annual Cost: \$500,000
Staffing Impact: No # of Positions: Sole Source: No
Current Fiscal Year Revenue: N/A
Funding Source: 100% County General

Prior Board Action: 8/23/11 Item 57; 12/13/11 Item S41F

RECOMMENDED ACTION(S):

Authorize the County Purchasing Agent or deputy to execute Agreement #MA-054-12011245 with Liebert Cassidy Whitmore for labor negotiations services commencing on January 25, 2012, through January 24, 2014, renewable for one additional year, per Board policy, in an amount not to exceed \$500,000.

Increase FY 2011 - 2012 appropriations for the Human Resources Department (HRD) (Fund 054) in the amount of \$500,000. (Requires a 4/5 vote)

SUMMARY:

On August 23, 2011, your Board directed HRD to release a Request for Proposals for labor negotiations services. On December 13, 2011, your board directed the County Purchasing Agent to negotiate a contract with Liebert Cassidy Whitmore for those services and return to your Board for final contract approval when negotiations with the firm were complete. HRD recommends that your Board authorize the execution of that agreement and increase FY 2011-2012 appropriations.

BACKGROUND INFORMATION:

On June 7, 2011, your Board received a report from the Performance Audit Director that included the recommendation that an outside firm be hired to conduct labor negotiations for upcoming contracts.

Subsequently, an *ad hoc* Human Resources Subcommittee was formed and it included Supervisors Bates and Nelson. The Subcommittee directed that HRD develop a scope of work for inclusion in a Request for Proposal (RFP) for labor negotiations services and your Board approved the scope of work on August 23, 2011.

The RFP (# 017-557952-32) was released on September 20, 2011, in Bidsync and six responsive, responsible bids were received on October 25, 2011. Your Board assigned three senior County Managers to a panel to evaluate and score the responses. An additional panel member from the Auditor-Controller's office scored the bids for cost. Liebert Cassidy Whitmore received the highest score from the panel and on December 13, 2011, your Board directed the County Purchasing Agent to negotiate a contract with Liebert Cassidy Whitmore for those services and return to your Board for final contract approval when negotiations with the firm were complete.

Negotiations were completed with the firm on Friday, January 13, 2012.

Liebert Cassidy Whitmore offers their services at a rate of \$300 per hour, including travel time to and from their offices in Century City. Based on HRD's history of negotiations for the 14 existing contracts, including those that currently are in negotiations, the expenditures may occur in subsequent fiscal years. It is anticipated, however that the majority of expenditures will occur in FY 2011-2012. This cost estimate includes the time historically spent by HRD on activities that Liebert Cassidy Whitmore now will manage, per the agreement's scope of work. Additional unknown costs may be incurred depending on the needs of your Board and therefore HRD may return to the Board to request additional funding.

The HRD requests authorization from your Board for the County Purchasing Agent or deputy to execute Agreement #MA-054-12011245 with Liebert Cassidy Whitmore for labor negotiations services commencing on January 25, 2012, through January 24, 2014, renewable for one additional year, per Board policy.

The HRD also requests an increase in appropriations of \$500,000 for FY 2011-12 to cover the estimated cost of the proposed contract.

FINANCIAL IMPACT:

\$500,000

STAFFING IMPACT:

N/A

EXHIBIT(S):

Exhibit 1 – Labor Negotiator Contract

CONTRACT
FOR
LABOR NEGOTIATING SERVICES
BETWEEN
THE COUNTY OF ORANGE
AND
LIEBERT CASSIDY WHITMORE





MODEL CONTRACT

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County," and Liebert Cassidy Whitmore, with a place of business at 6033 W. Century Blvd., 5th Floor, Los Angeles, CA 90045; hereinafter referred to as "Contractor," with County and Contractor sometimes referred to as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor responded to a Request for Proposal ("RFP") for Labor Negotiating Services; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for Labor Negotiating Services with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, including [Attachments A, B, C, D, and E] which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.



- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.



- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor nor its employees; nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor nor its employees; nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.
- P. **Insurance Requirements:**

INSURANCE PROVISIONS

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating be A- (Secure A.M.



Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com.

If the insurance carrier is not a non-admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the County CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 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

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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



The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

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

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Procurement Office or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.



- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of service attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.



- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. **Indemnification Provisions:** Contractor agrees to indemnify, defend with counsel approved in writing by County, which shall not be unreasonably withheld, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to intentional misconduct, negligence, errors or omissions in the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.



Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure labor negotiation services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A."
2. **Term of Contract:** This Contract shall commence on January 24, 2012 and continue for two (2) calendar years through and including January 23, 2014, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one (1) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Adjustments – Scope of Service:** No adjustments made to the scope of service will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
5. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

6. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.



7. **Authorization Warranty:** The contractor represents and warrants that the person executing this contract on behalf of and for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition and obligation of this agreement and that all requirements of the contractor have been fulfilled to provide such actual authority.
8. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Terminate the Contract immediately, pursuant to Section K herein;
 - b. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
9. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
10. **Compensation:** Total compensation for services rendered under this Contract shall not exceed \$500,000.00. Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
11. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
12. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.
13. **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.



14. **Contingent Fees:** The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

For breach or violation of this warranty, the County shall have the right to terminate this contract in accordance with the termination clause and at its sole discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the contractor.

15. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this contract without penalty.
16. **Contractor Bankruptcy/Insolvency:** If the contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.
17. **Contractor – Change in Ownership:** The contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.
18. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a project manager to direct the contractor's efforts in fulfilling contractor's obligations under this contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.

The contractor's project manager and key personnel shall be assigned to this project for the duration of this contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the contractor's project manager.

19. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
20. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
21. **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County's safety regulations and laws.



22. **Contractor Personnel-Uniform/Badges/Identification:** The contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned buyer must be notified in writing, within seven days of notification of award of contract of the uniform and /or badges and/or other notification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

23. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.
24. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
25. **Conditions Affecting Work:** The contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the contractor to do so will not relieve contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the County are expressly stated in the contract.
26. **Correspondence to Buyer - Contract:** Any correspondence related to the terms, prices and conditions of this contract must be directed to the agency/department purchasing division to the attention of the assigned DPA. Correspondence not directed through the DPA for resolution will not be regarded as valid.

County of Orange
Attn: Melva Gipson
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705

27. **County Project Manager:** The County shall appoint a project manager to act as liaison between the County and the contractor during the term of this contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the contractor.

The County's project manager shall have the right to require the removal and replacement of the contractor's project manager and key personnel. The County's project manager shall notify the contractor in writing of such action. The contractor shall accomplish the removal within 14 calendar days after written notice by the County's project manager. The County's project



manager shall review and approve the appointment of the replacement for the contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.

28. **County Of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
- a. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
 - b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

29. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the contractor in the performance of this contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the contractor after completion or termination of this contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this contract.
30. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
31. **Default - Reprocurement Costs:** In case of default by Contractor, the County of Orange may procure the services from other sources. If the cost for those services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.



32. **Delivery Location – No Loading Dock:** Delivery locations may not have loading docks. The contractor is required to make all necessary arrangements for lift trucks or other means necessary to complete delivery. Inside delivery to secured facilities may be required.

33. **Disputes – Contract:**

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

34. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and



- ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:

- a. The Contractor has made false certification, or
 - b. The Contractor violates the certification by failing to carry out the requirements as noted above.
35. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. (See Exhibit D.)

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Payroll_Taxes/FAQ-California_Independent_Contractor_Reporting.htm

36. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
37. **Firm Price Quotes:** Prices quoted herein shall be firm during the term of the Contract.
38. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the



County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

39. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
40. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
41. **News/Information Release:** The contractor agrees that it will not issue any news releases in connection with either the award of this contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the County through the County's project manager.
42. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Liebert Cassidy Whitmore
Attention: J. Scott Tiedemann
6033 W. Century Blvd., 5th floor
Los Angeles, CA 90045

For County: County of Orange
Attn: Mary Ellen Fuelleman
Human Resources
333 W. Santa Ana Blvd., 2nd floor
Santa Ana, CA 92701

County of Orange
Attn: Melva Gipson
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705



43. **Parking for Pick-Up and Delivery Services:** The County of Orange will not provide free parking for pick-up/delivery services.
44. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
45. **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30)-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
46. **Taxpayer ID Number:** The contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
47. **Termination – Default:** If contractor is in default of any of its obligations under this contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this contract. Upon termination of the contract with contractor, the County may begin negotiations with a third-party contractor to provide goods and/or services as specified in this contract.

The right of either party to terminate this contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.
48. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
49. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.



50. **Usage Reports:** The contractor shall submit usage reports upon request by the County Procurement Office/County of Orange. The usage report shall be in a format specified by County Procurement Office.
51. **Validity:** The invalidity in whole or in part of any provision of this contract shall not void or affect the validity of any other provision of the contract.
52. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

Additional Terms and Conditions applicable to Law Firms only:

1. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the California Rules of Professional Conduct. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. These confidentiality obligations shall survive this Agreement's termination or expiration.

2. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment.

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."



If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board's authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

3. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.



MODEL CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Contractor*

J. SCOTT TIEDEBMAN	PRESIDENT
Print Name	Title
<i>[Signature]</i>	1/19/12
Signature	Date
Bruce Barsook	Treasurer
Print Name	Title
<i>[Signature]</i>	1/19/12
Signature	Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

_____	_____
Print Name	Title
_____	_____
Signature	Date

APPROVED AS TO FORM
Office of the County Counsel
County of Orange, California

Daniel Shepherd	
Print Name	Title
<i>[Signature]</i>	1.20.12
_____	_____



Signature

Date



ATTACHMENT A

Scope of Work

Background

The County of Orange is a public sector governmental entity, a Charter County, governed by a five member Board of Supervisors. It is composed of 24 departments and agencies with over 17,000 employees represented by seven labor organizations in 14 bargaining units (see Exhibit 1). The County's core businesses are public safety, public health, environmental protection, regional planning, social services, internal administration and financial management, elections, and aviation.

Throughout the term of this contract, the Contractor will work closely with the County Board of Supervisors and County Executive Officer to successfully achieve their objectives.

Under the direction of the Board of Supervisors, the County of Orange is seeking an experienced professional contractor to act as the Lead Negotiator with labor unions for contract negotiations and other meet and confer issues, which shall include the following:

Contract Term and Objectives

The Contract Term shall be for two years with an option to renew for a third year, subject to approval of the Board of Supervisors.

- Negotiate 2012 contract renewals with one or more County Bargaining Units, through successful final agreement or "last, best and final" offer.
- Negotiate 2013 and 2014 (as necessary) Re-openers through successful final agreement or "last, best and final" offer.

Activities listed below shall be undertaken by the Contractor at the direction of the Board of Supervisors and/or the CEO:

Negotiation Planning Activities

- Contractor shall become knowledgeable about the County's labor agreements ("MOU" or "agreement") and related practices and policies, and the County's past negotiations history, including review of any relevant files and documents necessary to prepare for contract negotiations
 - Contractor shall review existing MOUs and develop recommendations for revisions that may include language consistency within and among the MOUs, order of appearance of Articles within the MOUs, and other relevant elements
- Contractor shall lead and facilitate discussions among Senior Officials of the County, such as Department Heads and other County management, regarding goals, strategic and financial objectives, priorities and general information regarding negotiations.



- Contractor alternately may use information solicited by HRD to consolidate and analyze priorities from Department Heads and other County management
- County will furnish the following information, for each current MOU since its inception, to the Contractor as needed and directed by the Contractor:
 - Grievance and arbitration history
 - Other issue resolutions and meet and confer history
 - Side letters and other modifying agreements or changes in practice
 - MOU modifications necessitated by changes in technology or benefit provider agreements, law, regulation or ordinance.

Negotiation Strategy Activities

- Contractor shall participate with the Board of Supervisors, the CEO, and the HR Director on the development of potential County negotiation proposals and in the Board's final determination of negotiation parameters.
 - Contractor shall work with the HRD Director and the CEO to develop potential proposals for BOS closed session;
 - Contractor shall prepare all pre-negotiations Board briefing materials ("Red Book") including but not limited to potential proposals and review them with the CEO prior to their submission to the Board in closed session
 - Contractor shall, in consultation with the CEO, identify County participants in negotiating teams - -Departments; HRD; County Counsel; CEO/Budget and Benefits(as needed)
 - Contractor shall provide any necessary training to and identify specific roles and rules for County negotiating teams
 - Contractor shall provide specific training to note takers on processes, rules, expectations and styles preferred by negotiators
- Contractor shall develop and recommend negotiation strategies to the Board of Supervisors and the CEO.

Contract Negotiation Activities

- Contractor shall act as the County's Lead Negotiator in contract negotiations, impasse resolution process, if necessary, and in final adoption of agreements by the Board of Supervisors.
 - Contractor shall negotiate ground rules with each bargaining unit
 - Contractor shall prepare and present County proposals/counter-proposals during negotiations
 - Contractor shall lead negotiations caucus sessions with the County's bargaining team
 - Contractor shall conduct side bar discussions with labor's negotiator counterpart
 - Contractor shall prepare and present tentative agreements ("TA's) to the Board of Supervisors prior to presenting them to labor



- Contractor shall prepare and present TAs to labor and obtain signatures as appropriate
- Contractor shall evaluate and analyze negotiations proposals received from labor organizations, advise and make recommendations to the Board of Supervisors and the CEO on how to proceed during negotiations, and receive and follow directions from the Board of Supervisors on how to proceed.
 - Contractor shall review negotiations notes between negotiations sessions and analyze proposals and counter-proposals from labor
 - Contractor shall receive labor's proposals and review each proposal with applicable stakeholders including Agency Directors/Department Heads as appropriate
- Contractor shall maintain communication with and provide updates regularly to the Board of Supervisors and the CEO on the status of negotiations, prior to and after each negotiation session, and throughout the process as developments occur which may impact the outcomes or direction of contract negotiations.
 - Contractor shall prepare all Board briefing materials ("Red Book") including but not limited to labor proposals and suggested counter-proposals (or other responses) with appropriate analysis and review them with the CEO prior to their submission to the Board in closed session
 - Contractor shall participate in briefings as requested by individual Board offices
 - Contractor shall participate in closed session briefings as requested by the Board
- Contractor shall prepare or assist in the preparation of any and all documents, staff reports, exhibits, presentations, charts or spreadsheets necessary to convey information to the Board of Supervisors and the CEO, and/or in preparation for final adoption of agreements by the Board of Supervisors.
 - Contractor shall prepare a memo to Board of Supervisors informing them of final TA, summarize key deal points and informing them of the anticipated date it will be on the Board agenda for approval
 - Contractor shall prepare and present the final TA to the Board in closed session
 - Contractor shall prepare and present the final TA to labor and obtain signatures
 - Contractor shall prepare two versions of the MOU for inclusion on the Board agenda item. These should NOT include either the table of contents or the index:
 - Redline version with negotiated changes in BOLD
 - *Final version* ("accept changes") with additions in BOLD: text *deletions* should not appear
 - Contractor shall prepare a cover memo/summary for the Board of key changes. The summary shall contain page number cross-references to the *final version* of the MOU
 - Contractor shall review the *final version* MOU changes with a designated representative of the labor group as necessary



- Contractor shall prepare written summaries or status reports as requested by the Board of Supervisors and/or the CEO, and maintain complete and accurate documentation of the negotiations process, with assistance from County staff as needed.
- Contractor shall work with the County Counsel Office and provide any requested information to that office pertaining to the negotiations process.

Post Negotiation Activities

- Contractor shall be present and speak at public meetings when labor contracts are agendized for adoption by the Board of Supervisors
 - Contractor shall participate as needed in discussing changes with key stakeholders and other impacted County parties no later than one week prior to scheduled MOU adoption by the Board

Other Services to be provided as needed

- Contractor shall advise and consult on best practices and trends in labor negotiations, both in the public and private sectors.
- Contractor shall be available to provide ongoing support as needed on such matters as contract interpretation and strategies for implementing and administering terms of the negotiated labor agreements.
- Contractor shall provide other advisory services as requested by the County.



ATTACHMENT B
County Supplied Resources

The County will provide the Contractor with the following resources as needed.

- Staff support and subject matter experts from Human Resources, CEO Budget Office, County Departments and County Counsel.
- Access to any and all available documents, historical files and agreements, unless prohibited by law or Board policy.
- Office space, supplies and conference rooms as required and as available.
- Administrative and technical support.



ATTACHMENT C

Payment/Compensation

1. **Payment– Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from 1, above
 - c. Name of County agency/department
 - d. Date of invoice
 - e. Billing period
 - f. Breakdown of billing charges
 - g. Total
2. **Payment Terms – Payment in Arrears:** The invoice is to be submitted in arrears to the user agency/department to the bill-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of the invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.



ATTACHMENT D

Cost/Compensation

Total compensation for services rendered under this contract shall not exceed \$500,000.00. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

County shall pay Contractor at the hourly rate as specified.

<u>Name</u>	<u>Hourly Rate</u>
Richard Kreisler	<u>\$300.00</u>
Bruce Barsook	<u>\$300.00</u>
Jeff Freedman	<u>\$300.00</u>
Steve Berliner	<u>\$300.00</u>
Mark Meyerhoff	<u>\$300.00</u>

County shall pay Contractor reimbursable expenses as specified.

<u>Reimbursable Expense</u>	<u>Rate</u>
Photocopying (at County's request)	<u>\$0.15 per page</u>
Outgoing Faxes	<u>\$0.25 per page</u>



ATTACHMENT E

Staffing Plan

Primary Staff/Key Personnel to perform Contract duties:

Name	Classification/Title
Richard Kreisler	Partner
Bruce Barsook	Partner
Jeff Freedman	Partner
Steve Berliner	Partner
Mark Meyerhoff	Partner

Substitution or addition of Contractor's key personnel in any given category or classification shall be allowed only with prior written approval of the County's Project Manager.

The Contractor may reserve the right to involve other personnel as their services are required. The specific individuals will be assigned based on the need and timing of the services required. Assignment of additional key personnel shall be subject to County approval in writing. In addition to the rights set forth in paragraph 18 regarding Contractor's Project Manager removal, County expressly retain the right to have any of the Contractor personnel prohibited from performing services to County under this Contract. Contractor shall effectuate the removal of the specified Contractor personnel from performing services to County under this Contract within 3 (three) business days of notification by Project Manager. County shall notify the Contractor in writing of the specific personnel to be prohibited from providing services to County under this Contract. County is not required to provide any reason, rational or factual information if it elects to request any specific Contractor personnel to be prohibited from performing services under this Contract. Contractor's failure to comply with the County Project Manager's decision and remove the specified personnel shall be deemed a material breach of this Contract and County may immediately terminate the Contract without penalty.

**Exhibit 1
CONTRACT TERMS BY BARGAINING UNIT**

MEMORANDUM OF UNDERSTANDING	MOU TERM	BEGINNING OF CONTRACT TERM	END OF CONTRACT TERM	REOPENER	EXTENSION	MEMBERSHIP TOTAL
The Orange County Managers Association for the Administrative Management Unit (OCMA)	Memorandum Of Understanding 2007-2011	2/1/2007	1/29/2010	N/A	1/3/2011	1,000
Association of Orange County Deputy Sheriffs for the Peace Officer Unit - Supervising Peace Office Unit (AOCDs)	Memorandum of Understanding 2009-2012	10/9/2009	10/4/2012	Begin 8/1/2011; conclude 10/2011	N/A	1,754
The Orange County Employees Association for the Probation Services Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	782
The Orange County Employees Association for the Office Services Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	2,549
The Orange County Employees Association for the County General Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	3,429
The International Union of Operating Engineers, Local 501 AFL-CIO for the Craft & Plant Engineer Unit (IUOE)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	131
The American Federation of State, County and Municipal Employees Council 36, Local 2076, AFL-CIO for the Eligibility Worker Unit (AFSCME)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	1,097
The Orange County Employees Association for the Probation Supervisory Management Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	87
The Orange County Employees Association for the Sheriffs Special Officer and Deputy Coroner Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	320
The Alliance of Orange County Workers for the Operations and Service Maintenance Unit (AOCW)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	470
The Orange County Employees Association for the Supervisory Management Unit (OCEA)	Memorandum of Understanding 2009-2012	6/19/2009	6/14/2012	Begin 2010 & 2011; concluded 05/11	N/A	1,752