

DRAFT FORM

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS,**

AND THE COUNTY OF EL DORADO

**FOR COURT FACILITY SERVICES RELATING TO THE JOHNSON
BUILDING COURT FACILITY**

This Memorandum of Understanding (“**MOU**”) is made and entered into on _____, 2008 (the “**Effective Date**”) by and between the Judicial Council of California, Administrative Office of the Courts (“**AOC**”), and the County of El Dorado, a political subdivision of the State of California (“**County**”). For purposes of this MOU, AOC and County are each a “**Party**” and are sometimes referred to as the “**Parties**.”

BACKGROUND TO AND PURPOSE OF MOU

A. The Trial Court Facilities Act of 2002, commencing at Government Code § 70301 (the “**Act**”), provides for the County to transfer responsibility for the funding and operation of all trial court facilities, as defined at Government Code § 70301(d) located in the County to the Judicial Council of California through the AOC. Pursuant to the Act, the County and the AOC have entered into a Transfer Agreement (“**Transfer Agreement**”) with respect to the court facility located at 1354 Johnson Boulevard, South Lake Tahoe, CA 96150 (“**Court Facility**”).

B. The AOC is responsible for providing all of the Operations (as defined in the Transfer Agreement) for the Court Facility.

C. In lieu of the AOC performing the Operations for the Court Facility, the AOC desires that the County provide, and the County is willing to provide, Operations for the Court Facility upon the terms and conditions more particularly described below.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Provision of Services.

1.1. Levels of Service to Court Facility.

When requested by the AOC via a work order in accordance with the Work Order Procedures set forth in Exhibit “A” of this MOU or when an Emergency Services Situation arises (defined in Section 1.6 of this MOU), County will provide Operations for the Court Facility (“**Services**”) at a performance standard and response time substantially similar to (1) that which the County has historically provided to the Court Facility prior to the Effective Date of this MOU, and (2) that which the County provides to similar types and locations of County-operated facilities. County will respond to Service requests from the AOC in the same manner as County responds to all other County requests.

1.2. County’s Services.

(a) AOC may request County to provide Services including the following: to operate, repair, replace, and maintain in good order and condition the Court Facility.

(b) In performing the Services, County must comply with all applicable state and federal codes, ordinances, laws, regulations, and judicial and administrative orders and directives issued by a court or governmental entity with jurisdiction over the Court Facility (“**Law**”), and all permits for building operation as required by Law.

1.3. Days and Hours of Operation. County shall be available to provide Services to the Court Facility each weekday (Monday through Friday) other than the court holidays, during the County’s normal working hours of 7:00 a.m. to 5:00 p.m. excluding any holidays recognized as court holidays under California law. With respect to Emergency Services situations, County shall be available 24 hours per day, seven days per week.

1.4. Service Call Log. County shall maintain a Service call log in sufficient detail to enable AOC to determine whether Services are completed in accordance with the terms of this MOU. The Service Call Log shall be available for inspection by AOC representatives at all reasonable times. The Service Call Log shall include the following information:

- (a) Name of the person calling from the AOC;
- (b) Work Order Number;
- (c) Location within the Court Facility where the problem exists;

- (d) Date and time the call or Work Order was received;
- (e) Description of the action taken to resolve the problem and the time and date corrective action was taken;
- (f) Follow-up action to be taken, if any.

1.5. County's Default. County shall be in default of its obligations under this Section 1, if County fails to perform and complete non-emergency Services within seven (7) days after written notice by AOC to County of the need for such Services. If, due to the nature of the particular Service obligation, more than seven (7) days are reasonably required to complete it, County shall not be in default under this Section 1 if County begins work within this seven (7) day period and diligently prosecutes this work to completion.

1.6. Emergency Services Situation.

(a) An “**Emergency Service Situation**” means the existence of any condition arising from a sudden or unexpected occurrence, and as to which prompt Services must be performed to avoid or minimize the impact of such condition or occurrence on any of the following:

- (i) protection of the life, health, or safety of persons occupying or visiting the Court Facility;
- (ii) the Court's ability to conduct Court business in the Court Facility in an orderly, neat, clean, safe, and functional environment;
- (iii) the security of the Court Facility or the security of the persons occupying and visiting the Court Facility;
- (iv) preservation of the asset value of the Court Facility;
- (v) protection of files, records, and documents located in the Court Facility;
- (vi) prevention or avoidance of an unsafe, unsanitary, or non-functional condition affecting the Court Facility.

County agrees to make a commercially-reasonable best effort to resolve Service requests arising from Emergency Service Situations promptly and in a manner similar to the County's response to Emergency Service Situations in other County buildings. County will provide a pager or cell phone number(s) for emergency service requests 24 hours per day, seven days a week.

(b) If County becomes aware of an Emergency Service Situation, County shall have the authority and obligation to perform repairs or replacements necessitated by an Emergency Service Situation, as and if required to avoid or minimize the impact of the Emergency Service Situation. Should any Services be required, in the professional judgment of County, in response to an Emergency Service Situation, County shall promptly notify AOC, of the nature and extent of the Emergency Service Situation and shall describe the services performed by County in response to the Emergency Service Situation, County shall seek the guidance and concurrence of the AOC to the degree possible, but in any case shall have full authority to exercise its professional judgment to remediate the Emergency Service Situation.

(c) If AOC notifies County of an Emergency Service Situation, then County shall commence appropriate Services promptly after receiving such notice. AOC may give such notice via telephone, facsimile, personal contact, or any other means, and AOC shall follow any non-written request for Services with written confirmation of the request to County within twenty-four (24) hours of AOC's initial call.

(d) With respect to Emergency Services Situations, each party may give such notice via telephone, facsimile, personal contact, or any other means, and that party shall follow any non-written notice with written confirmation of notice to the other party within twenty-four (24) hours of the initial non-written notice.

(e) When performing Services in response to an Emergency Service Situation, County must comply with the applicable provisions of the Work Order Procedures set forth in Exhibit "A" of this MOU.

(f) If County performs Services in response to an Emergency Service Situation, then within sixty (60) days after written demand by County, AOC will reimburse County for the costs and expenses incurred by County to respond to the Emergency Service Situation so long as such costs and expenses have been invoiced to the AOC and are reasonable and documented and consistent with the hourly rates set forth in Appendix 1 to Exhibit B.

1.7. Excluded Elements. The Services to be provided by the County under this MOU shall not include the following:

(i) Janitorial Services. Janitorial Services are not covered in this MOU.

1.8. Criminal Background Screening.

(a) Access to Restricted Areas. Unless a person is responding to and correcting a Deficiency arising from an Emergency Services Situation under section 1.6 of this MOU, only County employees and County Contractor employees who are screened and approved pursuant to section 1.8 (b) of this MOU ("**Approved Persons**")

may have unescorted access to any room, closet or other space in which a California Department of Motor Vehicles (“DMV”) or California Law Enforcement Telecommunications System (“CLETS”) database, computers or terminals are located (“Restricted Areas”). Unscreened County employees and unscreened County Contractor employees may access Restricted Areas if they are escorted and monitored by any of the following: (1) an Approved Person, or (2) an employee of the Court if the Court’s Executive Officer, or their designee, consents to a Court employee escorting and monitoring the unscreened person. The County must take all reasonable steps to ensure that Operation in and of all Restricted Areas is at all times consistent with this section 1.8.

(b) Screening and Approval Process. When conducting screenings of County employees and County Contractor employees, County shall utilize a Live Scan background check or, if the Live Scan system becomes unavailable during the Term of this MOU, by other similar or successor system. **Exhibit “C”** to this MOU sets forth the criteria for approval of a County employee or County Contractor employee based on the results of the screening. In lieu of the County conducting the screening and approval process set forth herein, the AOC may, but is not obligated to, conduct the screening and approval of County employees or County Contractor employees that have access to the Restricted Areas, and, in such event, County agrees to cooperate with the AOC with respect to the screening of County employees or County Contractor employees that access the Restricted Areas.

(c) Identification of Approved Persons. The County must issue and provide an identification badge to each Approved Person bearing the Approved Person’s name and picture, which badge will indicate that the Approved Person is permitted to access the Restricted Areas. If the County issues identification badges to its employees, the County need not issue a separate badge to Approved Persons, but may affix a sticker or other marking on the existing badges of Approved Persons to indicate their right to access Restricted Areas. If the AOC has chosen to conduct the screening and approval of County employees or County Contractor employees, the AOC will either (1) notify the County if an employee is approved, whereupon the County will provide and issue an identification badge for that Approved Person, or (2) provide an identification badge for the Approved Person to the County, and the County will be responsible for issuing the identification badge to that Approved Person. All Approved Persons must wear their identification badges in a readily-visible manner whenever they are in a Restricted Area.

(d) DOJ and DMV Requirements. Notwithstanding anything in this MOU to the contrary, County must comply with background check and clearance requirements of the California Department of Justice (“DOJ”) and the DMV relating to any County employee or County Contractor employee who has physical access to any area which is either connected to, or contains records from, the DOJ criminal computer database, including, without limitation, CLETS and the Criminal Offender Record

Information (CORI), or the DMV computer database (collectively the “**Databases**”). If requested by either the Court (as defined in the Transfer Agreement) or the AOC, County must provide to either the Court or the AOC suitable documentation evidencing the County’s compliance with the policies, practices, and procedures of the DOJ and the DMV regarding background check and clearance requirements relating to access to the Databases.

(e) County Facilities Payment. Nothing in this MOU diminishes or modifies the County’s obligations under the Act and the Agreement for payment of the County Facilities Payment.

1.9. Cooperation Regarding Third-Party Vendors. Each Party shall at all times cooperate with the other Party’s vendors or contractors, shall not interfere with the other Party’s vendors or contractors in the performance of their contractual obligations, and shall advise the other Party of any cooperation or coordination problems that may arise.

1.10. AOC’s Right to Perform Services. AOC reserves the right, without any notice to the County, to utilize third party contractors or the AOC’s own employees to provide operations and maintenance services to the Court Facility.

2. Insurance.

2.1. County’s Insurance Programs. County may provide for all or any portion of its obligations under Section 2 of this MOU by commercial insurance, an authorized program of self-insurance, or participation in a joint power authority established for the purpose of pooling self-insured claims. County must notify AOC of any material changes to its insurance or self-insurance programs from what existed on the effective date of the Transfer Agreement.

2.2. Workers’ Compensation Insurance. County must maintain and keep in force workers’ compensation insurance or similar insurance for its employees who are employed in connection with the performance of County’s obligations under this MOU. That insurance must comply with applicable State statutes and contain Employer’s Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

2.3. Liability Insurance. County must maintain and keep in force during the term of this MOU minimal general liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and if subject to an annual aggregate limit of liability, such aggregate limit of liability shall be for an amount of not less than Five Million Dollars (\$5,000,000). The liability insurance may be issued in one or more policies by insurers acceptable to AOC and shall include without limitation coverage for the following:

(i) Bodily injury and property damage liability, including the products and completed operations hazard, resulting from the County's performance, pursuant to the terms of this MOU, of Services in or to Court Facility; and

(ii) Bodily injury or property damage resulting from the County's assumption, if any, of its liabilities under any contract related to County's performance under this MOU; and

(iii) Damages resulting from personal and advertising injury resulting from the County's performance, pursuant to the terms of this MOU, of Services in or to Court Facility.

2.4. Automobile Liability. County must maintain and keep in force during the term of this MOU automobile liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence with respect to owned, non-owned, hired or leased vehicles assigned to or used in connection with the County's performance, pursuant to the terms of this MOU, of Services in or to the Court Facility.

2.5. Verification of Coverage. The County shall provide verification of coverage from insurers that are satisfactory to the AOC as evidence that the coverage required under this Section 2 is in force. Such verifications of coverage shall identify this MOU and shall contain a written provision requiring not less than thirty (30) days' prior written notice will be provided to AOC of cancellation, non-renewal, or material change in coverage of said policies. The AOC reserves the right to request and receive copies of any of the above insurance policies and/or endorsements. If the County provides the required insurance through commercial insurance companies, such insurers shall have an A.M. Best rating of at least equal to, or better than an "A-:VII" and be authorized to do business in California. Only as it relates to the County's performance, pursuant to the terms of this MOU, of Services in or to Court Facility the insurance policies required under Section 2.3 shall be endorsed to include the AOC and the Court, as well as their agents, officials, and employees as additional insureds, or covered parties, as appropriate, and shall stipulate that the coverage afforded shall be primary insurance, and any insurance, self-insurance or risk retention programs maintained by the AOC will be excess and non-contributory to the insurance required by Section 2.3 and 2.4, and shall waive all rights of recovery against the AOC and the Court.

2.6. Third Party Contractors. To the extent that County contracts with third parties (other than with each other) for any provision of Services, goods, or supplies of any nature whatsoever in or to the Court Facility, then County shall require that such third-party contractors, all levels of subcontractors, and their respective employees, consultants, and representatives: (a) obtain not less than the insurance required of County under this Section 2; (b) name AOC and the Court as additional insureds; (c) provide a waiver of subrogation in favor of the AOC, the Court and County; (d) provide to AOC, the Court, and County a 30-day notice of cancellation or material change in any insurance

policy coverages required hereunder; and (e) promptly deliver to AOC, the Court, and County written evidence that all insurance coverage required by this Section 2.6 is in place and complies with the requirements hereof. However, this provision does not preclude the County's ability to require any third-party contractor to provide additional limits of liability and insurance coverages which are usual and customary to their type of business or exposures arising from the work being performed. Notwithstanding the foregoing, third-party contractors engaged by County need only carry general liability insurance with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence or Two Million Dollars (\$2,000,000) in the aggregate.

3. Compensation Payment for Services and Reimbursement Costs

3.1. Compensation for Services. AOC agrees to compensate County for Services provided pursuant to this MOU in accordance with the Payment Provisions set forth in Exhibit B.

3.2. Supporting Documentation. County shall provide additional supporting documentation regarding the amount charged by County in an invoice within thirty (30) days of a request by the AOC Designated Representative. AOC's payment of any County invoice will not preclude AOC from questioning the accuracy of the particular invoice provided by County or any information or charges contained in the Invoice.

3.3. Retention of Records. County shall maintain all supporting documentation regarding any amounts charged by County for a minimum retention period of at least three (3) years.

4. Term.

This MOU has a term commencing on the Effective Date, and terminating on _____, 200__. The AOC may renew this MOU for three one (1) year terms by giving the County written notice prior to the termination of the existing term of the MOU. This MOU may be terminated by either party, without cause, with ninety (90) days written notice.

5. Indemnification.

County shall, and hereby does, protect, defend, indemnify and hold harmless the Judicial Council of California, the AOC and the Court, and their officers, agents, and employees (collectively "**Indemnitees**") from and against any and all loss, cost, damage, expense, and liability of any and every kind or nature, including without limitation, attorney fees and court costs (herein "**Claims**") arising from or in any way connected with the performance or nonperformance by County of its obligations under this MOU except to the extent that such claims arise out of or relates to the negligence or willful misconduct of the Indemnitees. County will be relieved of its obligations to

protect, defend, indemnify and hold harmless Indemnitees upon County receiving a judgment of no liability and being dismissed from a case by a court of competent jurisdiction for the alleged acts or omissions which gave rise to the Claim. In the event any legal action(s) or any other proceeding(s) may be brought against the Indemnitees by reason of any such Claims, County, upon written notice from AOC, shall promptly defend Indemnitees at County's sole cost and expense. The foregoing indemnity shall survive the termination of this MOU.

In addition, County agrees to indemnify and hold Indemnitees harmless from any acts, errors, omissions of any nature whatsoever arising out of or from each of their respective contractual arrangements with their third-party vendors, contractors, and all tiers of subcontractors, their employees, consultants, agents, or representatives. County shall require their third party vendors, contractors, and all tiers of subcontractors who provide goods or services of any nature whatsoever for the care, maintenance, or repair of the Court Facility to indemnify and hold harmless the Indemnitees.

6. Dispute Resolution.

6.1. Continuation of Services. Whenever County and AOC disagree as to any matter governed by this MOU, the dispute resolution process set forth in this Section 6 shall govern. While the dispute is pending, County shall continue to provide Services, and AOC shall continue to pay for those Services, as set forth herein.

6.2. Request for Meeting. If, after seven (7) days, AOC and County cannot resolve any dispute, either Party may give the other Party a written request for a meeting between AOC Designated Representative and County Designated Representative for the purpose of resolving a disagreement between the Parties. Such meeting shall be held within fourteen (14) days of the receipt of such request. If the meeting fails to occur or fails to resolve the disagreement, nothing in this MOU shall preclude the Parties from exercising their legal remedies.

7. Miscellaneous.

7.1. Entire Agreement. This MOU and the Exhibits to this MOU, together with the Transfer Agreement, and other agreements related to the transfers of responsibility for the Court Facility covered by this MOU, collectively contain the entire and complete understanding of the Parties hereto and supersede any and all other previous agreements, oral or written.

7.2. Amendment. No addition to or alteration of the terms of this MOU shall be valid unless made in the form of a written amendment to this MOU, which is formally approved and executed by the governing bodies of each of the Parties to this MOU.

7.3. Time of Performance. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or Court holiday, such payment shall be made or act performed on the next-succeeding business day.

7.4. Further Assurances. Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this MOU.

7.5. Time of the Essence. Time is of the essence in each and all of the provisions of this MOU.

7.6. Assignment. A significant consideration for this MOU is the familiarity of County with the Court Facility and its operations that will allow County to efficiently provide the Services utilizing trained County staff. For this reason, County and AOC agree that County shall not assign any interest in this MOU, or subcontract any of the Services that County is to perform hereunder without the prior written consent from AOC.

7.7. Notices. Any notices required or permitted hereunder shall be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service; addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to the County: County of El Dorado
Chief Administrative Office
Attention: Chief Administrative Officer
330 Fair Lane
Placerville, CA 95667
Voice: 530-621-5567
Fax: 530-626-5730

With a copy to: County of El Dorado
Office of the County Counsel
Attention: County Counsel
330 Fair Lane
Placerville, CA 95667
Voice: 530-621-5770
Fax: 530-621-2937

The County officer responsible for administering this MOU and the Transfer Agreement is the Chief Administrative Officer or their successor or designee.

If to the AOC: Administrative Office of the Courts
 Attention: Assistant Director, Office of Court
 Construction and Management
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688
 Voice: 415-865-4040
 Fax: 415-865-8885

With a copy to: Administrative Office of the Courts
 Office of the General Counsel
 Attention: Managing Attorney, Real Estate Unit
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688
 Voice: 415-865-4057
 Fax: 415-865-8885

Provided, however, that any and all audit requests and notices by the County relating to termination or alleged violation by AOC of this MOU shall also be directed to:

If to the AOC: Administrative Office of the Courts
 Attention: Senior Manager, Business Services
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688
 Voice: 415-865-4090
 Fax: 415-865-4326
 E-mail: grant.walker@jud.ca.gov

7.8. Waiver. Any waiver by either Party hereto of a breach of any of the terms of this MOU shall not be construed as a waiver of any succeeding breach of the same or other term of this MOU.

7.9. Binding. This MOU shall be binding upon the successors and permitted assigns of AOC and County.

7.10. Counsel and Drafting. Each Party hereto, by its due execution of this MOU, represents to the other Party that it has reviewed each term of this MOU with its counsel, or has had the opportunity for such review with its counsel. No Party shall deny the validity of this MOU on the ground that such Party did not have the advice of counsel. Each Party hereto has had the opportunity to participate in drafting and

preparation of this MOU. The provisions and terms of this MOU shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against either Party.

7.11. Counterparts. This MOU may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.


7.12. Severability. In the event any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or is otherwise inconsistent with applicable Law, then upon the request of either Party, the Parties shall promptly meet and confer to determine how to amend the affected term or terms of this MOU in a manner consistent with Law, but in any event, all parts of this MOU not affected shall remain in full force and effect.

7.13. Governing Law. This MOU shall be construed under the laws of the State of California, without regard to its conflict of law provisions.

7.14. Certification of Authority to Execute this MOU. County and AOC each certify that the individual(s) signing below on its behalf, has authority to execute this MOU on behalf of the Party, and may legally bind the Party to the terms and conditions of this MOU and any attachments hereto.

7.15. Independent Contractor. In performing its duties pursuant to this MOU, County shall at all times be an independent contractor of AOC, and it is expressly understood and agreed that payments hereunder shall be payments by AOC to County as an independent contractor and not as an employee, partner, or joint venture of AOC. County, with its departments as its agents, shall perform this MOU as an independent contractor, exercising due care and providing the Services with such skill that is customary for providers of such Services. County and the officers, agents and employees of County are not, and shall not be deemed, AOC employees for any purpose, including workers' compensation and shall not be entitled to any of the benefits accorded to AOC employees. County shall determine, at its own risk and expense, the method and manner by which the duties imposed on County in general by this MOU shall be performed; provided, however, that Court may monitor the work performed. AOC shall not deduct or withhold any amounts required to be withheld for state and federal taxes or employee benefits for County employees or sub-contractors. County alone shall be responsible for all such withholdings.





















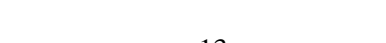
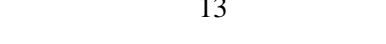




7.16. Designated Representatives. AOC and County shall each identify and appoint a designated representative who shall have the authority to bind AOC and County, respectively, for all matters and approvals related to provision of Services under this MOU. As of the Effective Date of this MOU, the designated representative for AOC is Nick Turner, Regional Manager, Facility Operations, of the Administrative Office of the Courts, Office of Court Construction and Management (“**AOC Designated Representative**” or “**Project Manager**”), and the designated representative for County is

 (“County Designated Representative” or “County Representative”). AOC and County each may change its respective Designated Representative by written notice to the other in accordance with the notice provisions set forth in Section 7.7 of this MOU. The Parties hereby acknowledge and agree that their respective Designated Representatives are the persons who shall bear primary responsibility for the giving and receipt of notices, and for the coordination of the administrative obligations of the Party that each Designated Representative represents under this MOU; but neither Party’s Designated Representative has the authority, acting alone, to bind the Party that the Designated Representative represents.

The contact information for the AOC’s Project Manager for all Services under this MOU is:

Nick Turner
Regional Manager, Facility Operations
Office of Court Construction and Management
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833
Phone: 916-263-7886
Fax: 916-263-8140

The contact information for the County’s Representative for all Services to be provided under this MOU is:

[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the day and year first above written.

APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel

**JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE
COURTS**

By: _____
Name: Leslie G. Miessner
Title: Attorney
Date: _____

By: _____
Name: Grant Walker
Title: Senior Manager, Business Services
Date: _____

ATTEST:
Cindy Keck, Clerk of the Board

**COUNTY OF EL DORADO, a political
subdivision of the State of California**

By: _____
Cindy Keck

By: _____
Name: Rusty Dupray
Title: Chair, Board of Supervisors
Date: _____

EXHIBIT “A”
WORK ORDER PROCEDURES

- 1) Work Order Procedure for Services which do not arise from an Emergency Service Situation.
 - A. The AOC will authorize spending of funds for Services which do not arise from an Emergency Service Situation via a Work Order (“WO”). Each WO shall have its own WO number for identification purposes. Work performed without a WO, outside the scope of the WO, or beyond the maximum approved cost for the WO (“Maximum Approved Cost”), will not be compensated or paid by the AOC.
 - B. The following personnel are authorized to issue a WO for the AOC. A letter will be provided to the Contractor with the name of the person filling each position. This letter will be updated from time to time as personnel change.
 - 1) Senior Manager for Facility Management
 - 2) Regional Manager for Facility Operations
 - 3) District Supervisor(s) for Facility Operations
 - 4) Area Supervisor(s) for Facility Operations
 - 5) AOC Customer Service Center Personnel
 - C. Each WO will be in writing and will include:
 - 1) Name of the requestor or point of contact.
 - 2) Identification of where the work is to be performed, description of the work, and any special requirements or authorizations applicable to the WO.
 - 3) Date and time of WO released to the Contractor.
 - 4) Priority for the Work

5) Maximum Approved Cost, including all Labor Costs and Materials Reimbursement.

D. County will perform the work specified in each WO in accordance with the requirements of this MOU. Upon receipt of a WO, if County estimates that the Work necessary to complete the task cannot be provided for less than the Maximum Approved Cost set forth on that WO, then County will provide the AOC with justification for the additional cost and obtain a new Maximum Approved Cost. County shall not exceed the original Maximum Approved Cost without express written consent of the AOC. Once the County has commenced the Work and County becomes aware that completion of Work may exceed the original applicable Maximum Approved Cost, County shall immediately notify the AOC and provide the AOC with justification for additional cost and obtain a new Maximum Approved Cost. County agrees to complete all work specified on the Work Order for no more than the applicable Maximum Approved Cost. County shall not be reimbursed for more than the applicable Maximum Approved Cost with respect to any WO. If the AOC and the County cannot agree upon a Maximum Approved Cost for the Work, then the Work Order will be cancelled.

E. Any commencement of work prior to the County's receipt of an authorized WO shall be done at the County's own risk.

F. Within 48 hours of completing the Work Order, the County will notify the AOC of the completion of the work and provide the cost of the Work Order and the number of hours of labor utilized to complete the Work Order and a line item list of any material cost exceeding \$20.

2) Work Order Procedure for Services arising from an Emergency Service Situation

A. In the event of any services arising from an Emergency Service Situation as described in Section 1.6 of the MOU ("Emergency Work"), the County is authorized to initiate work prior to receiving a WO from the AOC. The Maximum Approved Cost for any single event of Emergency Work shall be limited to three thousand five hundred dollars (\$3,500.00) per incident unless authorization to exceed that amount is obtained pursuant to Section 2.B of this Exhibit.

B. As soon as practical but before the \$3,500 threshold is reached, the County must contact AOC for a WO to document the Emergency Work and receive additional authorization to the Maximum Approved Cost, if necessary.

C. Except as noted in A and B above, all other aspects of the Work Order Procedure for Non-emergency Work are applicable.

**EXHIBIT “B”
PAYMENT PROVISIONS**

1) Compensation

i. Invoices.

County will invoice, on a quarterly basis, for all Services properly performed by County, provided that those Services have been authorized by a Work Order, but not to exceed the approved Maximum Approved Cost for the Work.

ii. Cost Components of Services

The Services for any Work may include the following components: (1) labor costs for the Work (“Labor Costs”), (2) reimbursement for Materials (“Materials Reimbursement”), and (3) compensation for mileage at the AOC rate of \$0.445 per mile.

(1) Labor Costs

County will invoice the AOC for the Labor Costs which must be based upon the hourly rates set forth in Appendix 1 to this Exhibit B. Commencing upon _____, 20____, these hourly rates may be updated annually upon the written amendment to this MOU.

(2) Materials Reimbursement

- a. Provided that materials are necessary to perform a Work Order (“Materials”), the AOC will reimburse County for said expenses.
- b. Costs for the Materials are limited to those necessary for the performance of the Services and actually incurred by County in the performance of the Services.
- c. All expenses for Materials must be billed at the County’s actual cost, and are not subject to any markup. Any rebates, refunds or similar discounts received by County must be passed onto the AOC.

2) Invoicing Requirements

- i) County must submit to the AOC, on a quarterly basis, an invoice for all authorized work performed in the prior month. The invoice must include all Materials Reimbursements claimed. County must submit one original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102

- ii) County must simultaneously submit a copy of the invoice to the Regional Manager:

Nick Turner
Regional Manager, Facility Operations
Office of Court Construction and Management
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833

Section 1 of the invoice will include basic identifying data to include:

1. Name of County and address of County.
2. MOU Number.
3. A unique invoice number.
4. Date of invoice.
5. County's Taxpayer identification number (FEIN).
6. Dates of Service covered in the invoice (this will be a full calendar quarter).
7. Preferred remittance address, if different from the mailing address.

- iii) Section 2 of the invoice will include a summary and itemization of each WO being billed including a breakdown of the Labor Costs and Materials Reimbursement being sought for each WO.

3) Payment

The AOC will make payment for all proper invoices within sixty (60) days after receipt.

4) Reasons to Withhold Payment

The AOC may withhold payment, in whole or in part, to such extent as may be necessary to protect the AOC from loss because of, but not limited to:

1. Defective work not remedied within three (3) days of written notice to County or other period of time stated in the written notice;
2. Stop Notices or other liens served upon the AOC or the applicable Court as a result of the Work;
3. Damage to the AOC, the Court, or the Court Facility;
4. Unsatisfactory prosecution of the Work by the County;
5. Failure to properly maintain or clean up the Work site;
6. County is otherwise in breach, default, or in substantial violation of any provision of this MOU.

5) Payment After Cure

As to the amounts withheld by the AOC pursuant to section 4 of the Payment Provisions, when the County removes the grounds for declining approval, payment will be made for amounts withheld because of them. No interest will be paid on any amounts withheld pursuant to section 4 of the Payment Provisions.

6) State Budget

Notwithstanding anything in this Agreement to the contrary, an event of default by the AOC cannot occur if the AOC is unable to make any payments as a result of

the State of California's failure to timely approve and adopt a budget. Should the AOC fail to make any payment as a result of the State of California's failure to timely approve and adopt a budget, County must continue to provide services under this MOU and the AOC must promptly pay any previously due payment upon approval and adoption of the budget for the State of California, except that County may terminate this agreement pursuant to paragraph 4 of the MOU.

**APPENDIX 1 to EXHIBIT “B”
HOURLY RATES**

| <u>Job Title</u> | <u>Hourly Rate</u> |
|---|---|
| 1. Composite Rate for All Crafts | \$ |

EXHIBIT “C”

CRITERIA FOR APPROVING COUNTY EMPLOYEES AND COUNTY CONTRACTORS WITH RESPECT TO BACKGROUND CHECKS

The County will not knowingly permit any County employee or County contractor employee to access or work unescorted in any Restricted Area of the Court Facility if any of the following applies to that employee or Contractor:

1. Any conviction or charge pending court disposition with respect to felonies or misdemeanors involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, moral turpitude, drugs (excluding misdemeanor marijuana convictions), or sexual activity (for a list of crimes constituting moral turpitude, please see **Appendix 1** to this **Exhibit “C”**).

2. Any conviction or charge pending court disposition involving a serious felony which is listed in Penal Code § 1192.7(c) or any violent felony which is listed in Penal Code § 667.5(c).

3. Any conviction or charge pending court disposition with respect to felonies or misdemeanors contributing to the delinquency of a minor.

4. Any conviction or charge pending court disposition with respect to felonies or misdemeanors involving gang enhancements.

5. Any conviction or charge pending court disposition with respect to felonies or misdemeanors involving any crime not included in paragraphs 1 through 4, above, for which the AOC’s Emergency & Response Unit (“**ERS**”) has not provided a written exemption for that conviction or pending charge.

6. Outstanding bench warrant.

In order to obtain a written exemption with respect to paragraph 5, above, the County must submit all relevant information relating to the conviction or pending charge (e.g. type of offense, date of conviction, and sentence) to the Senior Manager of ERS. The County shall not include the name of the employee with this information. After review of the submitted information, the Senior Manager of ERS will notify the County in writing if an exemption for that conviction or pending charge will be provided by the AOC.

For purposes of these criteria, “conviction” includes a verdict of guilty, a plea of guilty, a plea of *nolo contendere*, or a forfeiture of bail in municipal, superior, or federal court regardless of whether sentence is imposed by the court.

APPENDIX 1 TO ATTACHMENT “C”

The appellate courts have determined that the following crimes are crimes of moral turpitude:

1. Property Crimes. Arson; auto theft; attempted auto theft; burglary (any degree); attempted burglary; embezzlement; forgery; grand theft; receiving stolen property; theft; and vandalism (felony).
2. Assaultive Crimes. Assault by force likely to produce grievous bodily injury; assault with deadly weapon; assault with intent to murder; assault with intent to rape; battery of non-inmate by inmate; battery on peace officer; corporal injury to child; discharge a firearm; false imprisonment; robbery; shooting at inhabited dwelling; and spousal battery.
3. Homicide. Murder; second degree murder; and voluntary manslaughter.
4. Sex Crimes. Assault with intent to rape; indecent exposure; lewd act on child; pimping and pandering; rape; statutory rape; and sexual battery.
5. Escape. Escape with or without violence; and evading a peace officer.
6. Drug Crimes. Maintaining a drug house; possession of heroin for sale; possession of marijuana for sale; sale of drugs; and transportation of controlled substance.
7. Weapons. Felon in possession of firearm; possession or conspiracy to possess illegal firearm; and possession of deadly weapon with intent to assault.
8. Other. Felony drunk driving; felony false imprisonment; felony hit and run; kidnapping; terrorist threat; bribery; extortion; and perjury.