

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF MERCED, STATE OF CALIFORNIA**

In the Matter of:)
)
AMENDING RESOLUTION NO. 06-120/A)
DEPARTMENTAL POSITION ALLOCATION)
SCHEDULE)

RESOLUTION NO. 2011-05

WHEREAS, IT IS HEREBY RESOLVED, that Resolution No. 06-120/A is hereby amended specifically as follows:

<u>Action</u>	<u>Pos #</u>	<u>Job Title</u>	<u>Class</u>	<u>Salary Range</u>	<u>Salary</u>
<u>Sheriff - Budget Unit 22100</u>					
ADD: 1		Sheriff Sergeant	6913	74.5	5384-6551
DELETE: 1	73	Sheriff Deputy/Coroner I/II	4079/4080	68.7/70.6	4053-4930/4448-5410

I, **LARRY T. COMBS**, Clerk of the Board of Supervisors of the County of Merced, do hereby certify that the foregoing resolution was regularly introduced, passed, and adopted by said Board at a regular meeting thereof held on the 4th day of January, 2011, by the following vote:

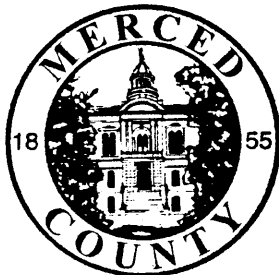
Supervisors

Ayes: John Pedrozo, Hub Walsh, Linn Davis, Deidre F. Kelsey, Jerry O'Banion

Noes: None

Absent: None

Witness my hand and the Seal of this Board this 4th day of January, 2010.



LARRY T. COMBS, Clerk

By Victoria Bryan
Deputy

MC 1953

**MERCED COUNTY
CONTRACT NO. 2004019
AGREEMENT FOR SPECIAL SERVICES
BETWEEN
MERCED COUNTY
AND
MERCED COMMUNITY COLLEGE DISTRICT**

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, on behalf of the County of Merced, acting through the Merced County Sheriff's Department (hereinafter referred to as "COUNTY") and Merced Community College District (hereinafter referred to as "COLLEGE").

WHEREAS, COUNTY is authorized to establish and maintain a law enforcement agency to provide for the safety and protection of the general public through its Sheriff Department; and,

WHEREAS, COLLEGE desires to contract with COUNTY for special services to consist of providing a sworn peace officer to provide full time law enforcement management as described in this Agreement (this individual is referred to as a "Law Enforcement Manager at the rank of Sergeant"); and,

WHEREAS, COLLEGE has its own police department and requires an experienced supervisor for that department; and,

WHEREAS, COUNTY'S Sheriff's Department personnel are specially trained, experienced, expert and competent to perform such services in connection with placement of a Law Enforcement Manager; and,

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. COUNTY Covenants

- A. The Sheriff of Merced County shall, after consulting with, and with the consent of the COLLEGE, designate a sworn peace officer from the Merced County Sheriff's Department to serve as a full time (40 hours per week) Law Enforcement Manager for the COLLEGE. The Law Enforcement Manager so designated shall set his or her schedule on a weekly basis according to the needs of the COLLEGE, and with agreement of the Sheriff.
- B. Should the COLLEGE at any time become dissatisfied with the Law Enforcement Manager, it shall submit a written request for a replacement Law Enforcement Manager in writing to the COUNTY. Upon receipt of said request the COUNTY shall designate a

replacement Law Enforcement Manager, as soon as practicable, but in no event later than thirty (30) days after the request for a change is made by the COLLEGE.

2. COLLEGE Covenants

- A. The COLLEGE acknowledges and agrees that the Law Enforcement Manager's presence does not relieve the COLLEGE or COLLEGE staff of their legal requirements under the mandatory reporting laws of the California Penal Code to properly report child or adult abuse or endangerment in writing to outside legal authorities. The COUNTY agrees to work with the COLLEGE, on an as needed or requested basis, to train and develop a program to comply with such reporting requirements.
- B. If the COLLEGE needs the Law Enforcement Manager to work in excess of the regular (40) hour work week, permission for such "extra work" must be requested in advance, in writing. The extra work must be requested in writing setting forth a defined scope of service by the COLLEGE. The request shall be deemed denied unless approved by the Sheriff prior to the performance of the extra work. The Sheriff may condition the performance of the extra work on the payment to the COUNTY by COLLEGE of additional compensation.
- C. All **off campus** COLLEGE student activities for the Law Enforcement Manager must be submitted for approval in writing by COLLEGE to the Sheriff's Department. The request for approval must define the scope of service and time required of the Law Enforcement Manager.

3. INDEPENDENT CONTRACTOR RELATIONSHIP

The Law Enforcement Manager is an employee of the COUNTY. In this regard, it is the express intention of the parties that the COUNTY and the Law Enforcement Manager are not employees, agents, joint venturers or partners of the COLLEGE. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the COLLEGE and the Law Enforcement Manager or any other employee or agent of COUNTY. Both parties acknowledge that the Law Enforcement Manager is not an employee of COLLEGE for state or federal tax purposes. The Law Enforcement Manager shall not be entitled to any of the rights or benefits afforded to COLLEGE'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. At a minimum, COUNTY shall maintain worker's compensation insurance for the Law Enforcement Manager during the term of this Agreement. COUNTY and the Law Enforcement Manager shall retain the right to perform services for others during the term of this Agreement.

4. SCOPE OF SERVICES

The Law Enforcement Manager shall act as the supervisor of law enforcement services for the COLLEGE, under the direction of the Sheriff and report to the Vice President of Administrative Services on campus. The COUNTY agrees to provide all necessary equipment and/or vehicles in connection with Law Enforcement Manager Duties and obligations under this Agreement without any additional cost to the College. In the course of his or her duties under this Agreement, the Law Enforcement Manager shall be charged with the performance of the following duties, by way of illustration and not by limitation:

- A. Provide to COLLEGE oversight and supervision of the COLLEGE law enforcement sworn officers, security officers and their support staff on a daily operational basis and provide patrol and participate in issuance of citations;
- B. Supervise, schedule, and evaluate law enforcement/security staff of the COLLEGE;
- C. Evaluate patrol activities of assigned staff;
- D. Ensure staff meets California POST standards of training and maintain accreditation;
- E. Ensure that local and state laws, including California Penal Code, Vehicle Code, Health and Safety Codes, and COLLEGE Board rules, policies and procedures are adhered to;
- F. Perform quality control of subordinate's activities;
- G. Develop or update COLLEGE law enforcement policies and procedures;
- H. Organize and direct security and safety programs;
- I. Meet California Education Codes 67380-67385.3 and 72330-72332 requirements;
- J. As needed, provide K-9 services including, but not limited to patrol, and search;
- K. As needed, provide extra help Deputy Sheriff personnel for special events, who may be compensated with prior special agreement;
- L. As needed, provide air support surveillance;
- M. As needed, allow for work-in-lieu support on mutually agreed projects;
- N. Provide communication support;
- O. In case of arrest, the Sheriff arrestee, shall then be under the control and authority of the Sheriff's Department;
- P. Plan, organize and direct the District's Emergency Preparedness Program and coordinate emergency response training for District employees. Develop contingency plans for college disturbances and emergency situations as required.
- Q. Provide leadership in the development and implementation of District health and safety programs.
- R. Develop and administer a formal campus crime prevention program. Develop programs and procedures, prepare and distribute memos and other forms of communication to students and staff regarding safety and security issues, escort services and the prevention of crime and accidents.

- S. Develop and prepare the COLLEGE Police Department budgets; analyze and review budgetary and financial data; control and authorize expenditures in accordance with established limitations; review, approve and purchase equipment as needed.
- T. Attend college meetings and serve on selected District committees **by way of illustration and not by limitation including** Direct Management, Management Council, Health and Safety, Security Task Force, Administrative Services Master Planning Committee, and other deemed appropriate by supervisor and President.

5. TERM

The term of this Agreement shall commence on the 1st day of the month following the signing of this Agreement, and continue until the 30th day of June, 2013, unless sooner terminated in accordance with Sections "TERMINATION FOR CAUSE" or "TERMINATION FOR CONVENIENCE", as specified elsewhere in this Agreement.

6. COMPENSATION

In consideration of COUNTY performing such work as set forth under Section, "SCOPE OF SERVICES", and COLLEGE shall pay COUNTY \$140,000 annually, in monthly payments of approximately \$11,667 per month, plus agreed amounts for extra work and or expenses necessary for extra work or work away from campus.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the MERCED COUNTY and be mailed to MERCED COUNTY at:

Name: **Merced County Sheriff's Department**
Division: **Sheriff Administrative Services**
Address: **2222 "M" Street**
City/State/Zip: **Merced, CA 95340**

7. TERMS OF PAYMENT

Payment shall be only for full and complete satisfactory performance of the services required to be provided herein and as are set forth in Section 1, "SCOPE OF SERVICE." Payment shall be made in the following manner:

Upon approval by COLLEGE, the fee due hereunder shall be paid to COUNTY within thirty (30) days following receipt of a proper invoice.

8. NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT.

COUNTY shall have no claim against COLLEGE for payment of any kind whatsoever for any services provided by COUNTY which were provided after the expiration or termination of the Agreement.

9. NOTICES

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
- E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced
Merced County Sheriff's Dept.
Attn: Merced Sheriff
2222 "M" Street
Merced, CA 95340

Merced Community College District
Attn: Benjamin T. Duran, Ed. D.
3600 "M" Street
Merced, CA 95348

Any party may change its address, fax, or recipient of notice by giving the other party notice of the change in any manner permitted by this Agreement.

10. TERMINATION FOR CAUSE

If COUNTY shall fail to comply with any of COUNTY'S obligations under this Agreement or otherwise breach this Agreement, COLLEGE may, in addition to any other remedies it may have, terminate this Agreement "for cause" by giving written notice to COUNTY in the manner set forth under Section 9, "NOTICES" specifying the reason the Agreement is being terminated. In the event COUNTY fails to remedy the event giving rise to the "for cause" termination within ten (10) days of the effective date of notice, then this Agreement shall terminate. For purposes of this Agreement, a "for cause" termination shall include the bankruptcy, insolvency, appointment of receiver or a trustee or an assignment of the benefit of creditors of COUNTY.

11. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

12. DISPOSITION OF WORK UPON TERMINATION

In the event of termination, all finished or unfinished documents, reports, notes, compiled data and other materials, if any, prepared by the Law Enforcement Manager in the course and scope of his or her services under this Agreement, at the option of COLLEGE, and to the extent permitted by law, shall be delivered to and become the property of the COLLEGE. COUNTY shall be entitled to receive compensation for any work completed prior to receipt of the notice of termination. Neither party, however, shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Agreement was terminated for convenience or for cause.

13. MODIFICATION OF THE AGREEMENT

The parties may agree to amend this Agreement, provided any alteration or variation of the terms of this Agreement requires the written consent of both parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

14. MUTUAL GOVERNMENTAL INDEMNIFICATION

The provisions herein are made in accordance with Government Code, section 895.4, as follows:

COUNTY shall indemnify, defend and hold harmless COLLEGE, its officers, employees and agents, from and against any claims, damages, costs, expenses,

including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims, damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, liabilities or losses arise from the sole negligence or sole willful acts or omissions solely of COUNTY, its officers, employees or agents.

COLLEGE shall indemnify, defend and hold harmless COUNTY, its officers, supervisors, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising of or in any way connected or arising from this Agreement, including, without limitation, claims damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons including , but not limited to employees of COLLEGE, and shall arise at the time a claim is made. This is to be interpreted to the broadest extent permitted by law, but shall not apply to acts or omissions ultimately determined to result from the intentional acts of the Law Enforcement Manager.

The obligations set forth above shall survive expiration or termination of this Agreement.

In the event of a termination of this Agreement "for cause" or "for convenience" under either Sections 10 or 11, the obligation of the COUNTY or the COLLEGE arising under Section 14, "INDEMNIFICATION," shall continue in full force and effect in order to cover acts or omissions occurring in any way during the term of this agreement as to the limited issue of liability for indemnification as set forth in this Agreement. Upon the effective date of termination, COLLEGE shall have no further liability to COUNTY except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by COLLEGE. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by COUNTY prior to, and in connection with, discontinuing the work hereunder.

15. INSURANCE

- A. Prior to commencement of work, COLLEGE shall purchase and maintain the following types of insurance for minimum limits indicated during the term of this Agreement and provide a Certificate of Endorsement from COLLEGE Insurance Carrier guaranteeing such coverage to the COUNTY, and its employees as an additional insured's. Such Certificate shall be mailed directly to the County department as referenced under Section 6, "NOTICES", with a copy going to Merced County Risk Management, 2222 "M" Street, Merced, California 95340.
 - 1. Commercial General Liability: \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering bodily injury, personal injury and property damage. The COUNTY and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026

or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or split limits of \$500,000 per person \$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage.
6. Workers Compensation: Statutory coverage for all COLLEGE employees, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the COUNTY.

B. Insurance Conditions

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A: VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County Risk Manager.
2. Each of the above required policies shall be endorsed to provide the COUNTY with 30 days prior written notice of cancellation. The COUNTY is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of DISTRICT to furnish insurance during the term of this Agreement

16. RECORDS AND INSPECTIONS

COUNTY shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, COLLEGE shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement. The personnel file of the Law Enforcement Manager shall be confidential, however, in accordance with law.

17. REPORTS AND INFORMATION

To the extent permitted by law, COUNTY shall furnish COLLEGE such periodic reports as COLLEGE may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the COLLEGE.

18. OWNERSHIP OF DOCUMENTS

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work product developed by COUNTY in the performance of its duties hereunder shall be the exclusive property of COUNTY. COLLEGE may retain copies thereof for its files and internal use. Publication of the information directly derived from, work performed, or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY.

19. QUALITY OF SERVICE

COUNTY shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by the law enforcement profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under this Agreement.

20. PROHIBITION OF ASSIGNMENT

The parties to this Agreement shall not at any time assign their rights, obligations, or benefits under this Agreement or any interests therein to any third party, without the prior written consent of the other party.

21. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

22. COUNTY NOT OBLIGATED TO THIRD PARTIES

COUNTY shall not be obligated or liable hereunder to any party other than COLLEGE. There are no third party beneficiaries to this agreement, other than the rights of indemnity and additional insured status to the Law Enforcement Manager and other COUNTY employees affected by this Agreement.

23. COMPLIANCE WITH STATE LAWS AND REGULATIONS

COLLEGE and COUNTY agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to COLLEGE and COUNTY, their sub grantees, contractors, or subcontractor, and their work.

24. PERSONNEL

COUNTY represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by COUNTY or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

25. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. Notwithstanding any other provision of this Agreement, any dispute concerns any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

26. WAIVER

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

27. BREACH OF CONTRACT

Upon breach of this Agreement by either party hereto, the opposing party shall have all remedies available to it both in equity and/or at law.

28. SUCCESSORS IN INTEREST

All the terms, covenants, and conditions of this Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This Section shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

29. CONFLICT OF INTEREST

COUNTY covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. COUNTY shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the COLLEGE. COUNTY shall make all reasonable efforts to ensure that no COUNTY officer or employee, whose position in the COUNTY enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall

have any relationship to the COLLEGE or officer or employee of the COLLEGE, nor that any such person will be employed by COUNTY in the performance of this Agreement without immediate divulgence or such fact to the COLLEGE.

30. COMPLIANCE WITH STATE LAWS AND REGULATIONS

COLLEGE and COUNTY agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to COLLEGE and COUNTY, their sub grantees, contractors, or subcontractor, and their work.

31. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

COLLEGE and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. COLLEGE shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

COLLEGE represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ ~~12900 et seq.~~), and regulations and guidelines issued pursuant thereto.

COLLEGE agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

COLLEGE shall include this nondiscrimination provision in all subcontracts related to this Agreement.

32. CAPTIONS

The captions of each Section in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

33. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected.

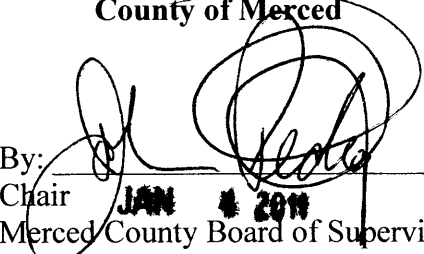
34. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

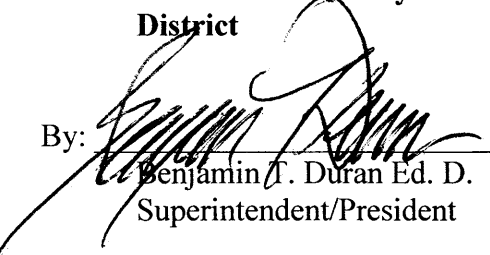
35. LICENSE AND PERMITS

COUNTY and COLLEGE shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by either party. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by either party.

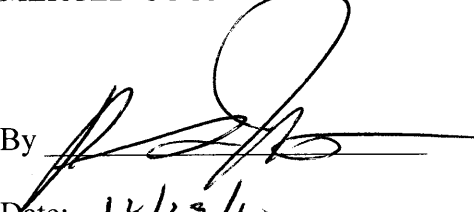
County of Merced

By: 
Chair **JAN 4 2011**
Merced County Board of Supervisors

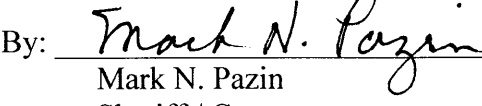
Merced Community College District

By: 
Benjamin T. Duran Ed. D.
Superintendent/President

APPROVED AS TO LEGAL FORM
JAMES FINCHER
MERCED COUNTY COUNSEL

By: 
Date: 12/29/10

Merced County Sheriff Department

By: 
Mark N. Pazin
Sheriff / Coroner