

INDEPENDENT CONTRACTOR AGREEMENT:
EMPLOYMENT TRAINING SERVICES

This AGREEMENT ("Agreement") is effective as of the 29th day of May 2023 and is entered into by and between the 18th Judicial Circuit's Department of Probation and Court Services, 503 N. County Farm Road, Wheaton, Illinois 60187 (the "Department") Probation Employment Program (PEP) and Kelly A. Graham, Address on file Batavia, IL, an Independent Contractor ("Contractor").

RECITALS

WHEREAS, the Department must contract with certain individuals to provide employment training services to unemployed defendants who are court ordered to interact with the Department,; and

WHEREAS, the employment training services must extend to both adult and juvenile defendants; and

WHEREAS, the Department desires that Contractor render employment training services more fully described herein; and

WHEREAS, the Contractor has demonstrated expertise in providing such services; has represented that she has the requisite knowledge, skill, experience and other resources necessary to perform such services; and is desirous of providing such services for the Department.

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

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term:** This Agreement is for a term commencing May 29, 2023 and continuing through May 28, 2024 ("Term"), unless terminated sooner as provided herein.
3. **Scope of Services:** Contractor agrees to provide the services required and, if applicable, set forth on Exhibit "A" including providing the deliverables set forth thereon, in accordance with the terms and conditions of this Agreement. The Department may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Contractor's fees, shall be documented by an amendment to this Agreement in accordance with State and County laws.
4. **Compensation and Payment:** Compensation for Services during the initial term shall be based on an hourly rate of \$30.00 and shall not exceed twenty-seven thousand dollars, (\$27,000.00), with no reimbursement for expenses. Compensation shall be based on actual Services performed during the Term of this Agreement and the Department shall not be obligated to pay for any Services not in compliance with this Agreement. In the event of early termination of this Agreement, the Department shall only be obligated to pay the fees incurred up to the date of termination. In no event shall the Department be liable for any costs incurred or Services performed after the effective date of termination as provided herein. Contractor shall submit invoices referencing this Agreement with such supporting documentation as may be requested by the Department prior to payment. The Department will process payment in accordance with the Illinois Prompt Payment Act (50 ILCS 505/1 *et. seq.*). As such, the Department will approve or disapprove of an invoice for goods or services within 30 days of the presentation of the invoice (or delivery of the goods or services, whichever is later) and will then pay any portion of the invoice which it has not disapproved within 30 days thereafter.
5. **Non-appropriation:** Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event

sufficient funds are not appropriated in a subsequent fiscal year by the Department for performance under this Agreement, the Department shall notify Contractor and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated. In no event shall the Department be liable to the Contractor for any amount in excess of the current appropriated amount.

6. **Termination:** Either party may terminate this Agreement, effective immediately, if (i) the other party fails to maintain such party's licenses, insurances, or required certifications that are required to perform such party's duties or obligations under this Agreement, (ii) the other party breaches any representation, warranty or other term of this Agreement, (iii) the Contractor is convicted of any offense punishable as a felony, (iv) the other party commits fraud, embezzlement, misappropriation or the like with respect to the other party or such party's assets. Except as set forth above, either party shall have the right to terminate this AGREEMENT for any cause upon serving thirty (30) days' prior written notice upon the other party.
7. **Standards of Performance:** Contractor agrees to devote such time, attention, skill, and knowledge as is necessary to perform Services effectively and efficiently. Contractor acknowledges and accepts a relationship of trust and confidence with the Department and agrees to cooperate with the Department in performing Services to further the best interests of the Department.
8. **Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.
9. **Confidentiality and Ownership of Documents.**
 - 9.1 **Confidential Information.** In the performance of Services, Contractor may have access to certain information that is not generally known to others ("Confidential Information"). Contractor agrees not to use or disclose to any third party, except in the performance of Services, any Confidential Information or any records, reports or documents prepared or generated as a result of this Agreement without the prior written consent of the Department. Contractor shall not issue publicity news releases or grant press interviews, except as may be required by law, during or after the performance of the Services, nor shall Contractor disseminate any information regarding Services without the prior written consent of the Department. Contractor agrees to cause its personnel, staff and/or subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Contractor under this Agreement. The terms of this Paragraph 9.1 shall survive the expiration or termination of this Agreement.
 - 9.2 **Ownership.** All records, reports, documents, and other materials prepared by Contractor in performing Services, as well as all records, reports, documents, and other materials containing Confidential Information prepared or generated as a result of this Agreement, shall at all times be and remain the property of the Department. All of the foregoing items shall be delivered to the Department upon demand at any time and in any event, shall be promptly delivered to the Department upon expiration or termination of the Agreement. In the event any of the above items are lost or damaged while in Contractor's possession, such items shall be restored or replaced at Contractor's expense.
10. **Representations and Warranties of Contractor:** Contractor represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement.
 - 10.1 **Licensed Professionals.** Services required to be performed by professionals shall be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline.
 - 10.2 **Compliance with Laws.** Contractor is and shall remain in compliance with all local, state and

federal laws, County of DuPage ordinances, and regulations relating to this Agreement and the performance of Services. Further, Contractor is and shall remain in compliance with all Department policies and rules, including, but not limited to, criminal background checks.

- 10.3 **Good Standing.** Contractor is not in default and has not been deemed by the Department to be in default under any other Agreement with the Department during the five (5) year period immediately preceding the effective date of this Agreement.
- 10.4 **Authorization.** In the event Contractor is an entity other than a sole proprietorship, Contractor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Contractor is duly authorized by Contractor and has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Contractor.
- 10.5 **Gratuities.** No payment, gratuity or offer of employment, except as permitted by the Illinois State Gift Ban Act, was made by or to Contractor in relation to this Agreement or as an inducement for award of this Agreement.
11. **Independent Contractor:** It is understood and agreed that the relationship of Contractor to the Department is and shall continue to be that of an independent contractor and neither Contractor nor any of Contractor's employees shall be entitled to receive Department employee benefits. As an independent contractor, Contractor agrees to be responsible for the payment of all taxes and withholdings specified by law, which may be due in regard to compensation paid by the Department. Contractor agrees that neither Contractor nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Department. Contractor hereby represents that Contractor's valid taxpayer identification number as defined by the United States Internal Revenue Code (social security number or federal employer identification number) was or will be provided to the Department upon request.
12. **Favored Nation:** Contractor shall furnish Services to the Department at the lowest price that the Contractor charges to other similarly situated parties. If Contractor overcharges, in addition to all other remedies, the Department is entitled to a refund in the amount of the overcharge, plus interest at the rate of 1% per month from the date the overcharge was paid by the Department until the date refund is made. The Department has the right to offset any overcharge against any amounts due to Contractor under this or any other Agreement between Contractor and the Department, and at the Department's sole option the right to declare Contractor in default under this Agreement.
13. **Contractor's Insurance:**
 - 13.1 The Contractor shall maintain, at its sole expense, insurance coverage including:
 - 13.1.a Worker's Compensation Insurance in the statutory amounts.
 - 13.1.b Employer's Liability Insurance in an amount not less than one million (\$1,000,000.00) dollars each accident/injury and one million dollars (\$1,000,000.00) employee/disease.
 - 13.2 It shall be the duty of the Contractor to provide to the Department, copies of the Contractor's Certificates of Insurance before issuance of a Notice to Proceed.
 - 13.3 The insurance required to be purchased and maintained by Contractor shall be provided by an insurance company acceptable to the Department, and licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation

whichever is greater; and shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Department.

14. **Indemnification.**

- 14.1 The Contractor shall indemnify, hold harmless and defend the Department, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the Contractor's negligent or willful acts, errors or omissions in its performance under this Agreement.
- 14.2 The DuPage County State's Attorney is the exclusive legal representative of the County and the Department. Nothing contained herein shall be construed as prohibiting the DuPage County State's Attorney's Office from defending the Department, its officials, directors, officers, agents and employees through the selection and use of its own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them.
- 14.3 Any indemnity as provided in this Agreement shall not be limited by reason of the enumeration of any insurance coverage herein provided. Contractor's indemnification of Department shall survive the termination, or expiration, of this Agreement.
- 14.4 Neither the provision of insurance or indemnification shall be deemed a waiver of the Department's defenses under the Illinois Local Government and Governmental Employees Tort Liability Act.

15. **Entire Agreement and Amendment:** This Agreement, including all exhibits and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

16. **Governing Law:** This agreement shall be subject to and governed by the laws of the State of Illinois. The exclusive venue for the resolution of any disputes or the enforcement of any rights pursuant to this agreement shall be in the 18th Judicial Circuit Court of DuPage County, Illinois.

17. **Waiver:** No delay or omission by the Department to exercise any right hereunder shall be construed as a waiver of any such right and the Department reserves the right to exercise any such right from time to time as often and as may be deemed expedient.

18. **County Approval:** If applicable, This Agreement is subject to approval of the appropriate committee(s) and County Board of the County of DuPage.

19. **Notices:** Any required notice shall be sent to the following addresses and parties:

IF TO THE DEPARTMENT:

Robert McEllin, Director
Department of Probation and Court Services
503 North County Farm Road
Wheaton, IL 60187

Copy to: Du Page County Finance Department
421 North County Farm Road
Wheaton, IL 60187
Attn: Jeffrey Martynowicz CFO

Copy to: DuPage County Procurement Services Division
421 North County Farm Road
Wheaton, IL 60187-3978

Copy to: Mark Winistorfer, Assistant State's Attorney
DuPage County State's Attorney's Office
503 North County Farm Road
Wheaton, IL 60187-2521

IF TO CONTRACTOR:

Kelly A. Graham
Address on file
Batavia, IL 60510

All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 17, above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

DEPARTMENT

Signature on file

By: _____

Robert McEllin,
Director

**INDEPENDENT
CONTRACTOR**

By: Signature on file

Kelly A. Graham

Exhibit A

SCOPE OF SERVICES

County's Purchase Order #		County Resolution #	
Contract Name	<u>EMPLOYMENT SERVICES TRAINER</u>	Contract Date	<u>May 29, 2023</u>
County's Project Managers	<u>Walter Davis</u>	Contractor's Project Manager	<u>Kelly A. Graham</u>

This Scope of Services is for Contractors providing to the County certain Services pursuant to the above-referenced Contract and County Resolution. The undersigned agree that this Independent Contractor project shall be conducted pursuant to the terms and conditions of the above-referenced Contract and by the following terms and conditions:

1. DESCRIPTION OF INDIVIDUAL'S WORK:

Contractor is responsible for developing employment opportunities for adult offenders receiving services through the Adult Probation Employment Program (APEP). Contractor will:

- Promote attendance and coach all defendants referred to Community Career Center;
- Prepare offenders and follow up with all APEP graduates about job leads given by CCC;
- Coach defendants to follow through with employers and set up interviews;
- Recruit businesses to hire probationers who complete job skills training:
 - Identify, contact and establish relationships with prospective partner employers;
 - Describe the employment training and job placement program to employers;
 - Answer employer questions about the program;
- Serve as liaison between partner employers and Department staff.

Contractor is responsible for developing employment opportunities for juvenile offenders. Contractor will:

- Recruit businesses to attend a Probation sponsored Job Fair;
- Facilitate Job Skills training for our juvenile offenders;
- Follow up with juveniles after job skills training to help them obtain employment;

Perform additional duties as assigned.

2. DELIVERABLES:

On a monthly basis, Contractor will submit written progress reports by the 15th of each month indicating:

- Offender participation, interview history, and job placement;
- Prospective partner employers;
- Employment opportunities with partner employers; and,
- Updates on offenders currently employed by partner employers.

On a quarterly basis, Contractor will attend program status meetings and present progress in recruiting employers and matching offenders with employment opportunities.