

AGREEMENT FOR COURT REPORTING SERVICES

This Agreement is entered into by and between the Tenth Judicial Circuit Court (hereinafter "Court"), in and for Polk County, Florida and McGill & Associates (hereinafter "Vendor" or "Court Reporter"). Professional Reporting Services

WITNESSETH:

The Chief Judge of the Tenth Judicial Circuit Court, after consultation with the circuit and county court judges, entered Administrative Order 1-22.3 implementing the circuit-wide plan for the provision of court-reporting services for all proceedings. The Court and the Vendor understand that the Court is operating under a system which utilizes employee digital court reporters and contract stenographic court reporters to record all circuit and county courts in which the Court is required by law to provide a transcript for appeal. This agreement is being awarded to the Court Reporter to cover stenographic court reporting needs within Polk County. In consideration of the mutual covenants and provisions herein, the Court and Vendor agree as follows:

1. **SCOPE OF SERVICES:** Vendor shall furnish court reporting services to the Court in Polk County, Florida on an as needed basis to report proceedings at the Polk County Courthouse. To accomplish this, Vendor will follow the directions of, and cooperate with, the Trial Coordinator and her assignees as she schedules the trials and assigns court reporting resources to those trials.

All court reporting services shall be provided pursuant to Florida Rule of Judicial Administration 2.535, Administrative Order No. 1-22.3, and any subsequent Rules of Court, administrative orders, or applicable laws. All transcription shall also be performed consistent with the Florida Rules of Appellate Procedure and any guidance provided by the Court Administrator's Office (hereinafter "CAO"). Additionally, Court Reporter shall provide:

- A. Real time transcription services upon request, with reasonable notice and preparation time provided.
- B. Transcripts that comply with the Florida Rules of Judicial Administration
- C. Provisions for the control of and retention by the Court Reporter of the notes, records, and transcripts of individual court reporters and the careful maintenance of all files and records.
- D. A verbatim record of legal proceedings and accurate transcripts in the format required by the Courts of the Tenth Judicial Circuit and the Supreme Court.
- E. Timely distribution of requested transcripts. Unless a different time frame is authorized by Florida statute or rule, or ordered by a court, all transcripts will be filed with the Clerk of Court within 30 days of service of the designations to the Court Reporter. If Court Reporter is unable to complete a transcript within the time specified under this Agreement, they will file a request with the presiding court during that specified time for an extension of time for preparation of the transcript.
- F. Vendor or Vendors shall retain the record in compliance with Florida Statutes.

G. In the event of a natural disaster or any impending natural disaster, the Court may require that all stenographic disks and notes, and any audio and electronic recordings of any proceedings reported under this Agreement, be turned in to the Court after any reporting service.

2. **QUALIFICATIONS FOR REPORTER:** Court Reporter agrees that:

- A. Court Reporters shall be governed by certification requirements as may be adopted by the Florida Supreme Court.
- B. Court Reporters shall be capable of translating, editing, and producing typed transcripts as needed, having full responsibility for technical accuracy.
- C. Court Reporters shall be capable of producing accurate transcripts consistent with established standards of accuracy.
- D. Court Reporters shall have an extensive knowledge of court practices and procedures.
- E. Court Reporters shall be skilled, knowledgeable, and dedicated to achieving and maintaining a high level of professionalism.
- F. Court Reporters shall be proficient in the English language, legal terminology, court practices and procedures, transcript preparation, and professional responsibility.
- G. Stenographic Court Reporters shall use steno-machines, provided by the reporters and/or proposers, capable of accommodating computer-aided transcription (CAT).
- H. Court Reporters shall maintain any required certifications.

3. **RATE SCHEDULE:** Court Reporter agrees to assess charges in accordance with the following Fee Schedule:

A. **Criminal and Juvenile Reporting Fees:**

- i. Transcript for trials, TPRs, all day proceedings and appeals:
 - Original and two (2) copies at \$7.00 per page
 - Additional copy at \$2.00 per page
- ii. Other transcripts:
 - Original and one (1) copy at \$6.00 per page.
 - Additional copy at \$2.00 per page
- iii. Expedited transcripts (weekend and holidays excluded):
 - 96 hours at \$6.50 per page
 - 72 hours at \$7.50 per page
 - 48 hours at \$8.50 per page

- 24 hours at \$9.50 per page
- Daily at \$10.50 per page
- Additional copy at \$2.00 per page

iv. In-Court Per Diem Appearance Fee:

- From 8:30 a.m. to 5:00 p.m., Court Reporter shall be compensated at the rate of \$60.00 per hour which shall be billed to the next ½ hour.
- Before 8:30 a.m. and after 5:00 p.m., Court Reporter shall be compensated at the rate of \$90.00 per hour which shall be billed to the next ½ hour
- After 9:00 p.m. and until 7:00 a.m., and weekends and holidays, Court Reporter shall be compensated at the rate of \$120.00 per hour which shall be billed to the next ½ hour

B. Real Time Reporting Services

C. CART Services for the Deaf/HOH, provided under ADA

- Transcripts: No transcripts provided with CART services. Not a verbatim record, and CART reporter is not the reporter of record; fees for reporter of record are a separate charge.
- Per Diem: \$100.00 per hour for CART
\$60.00 per hour for preparation time
- Minimum appearance fee: 2 hours appearance plus fee for any applicable preparation time. Court administration is responsible for monitor hook-up for CART recipient. If provider supplies equipment necessary for CART delivery, terms of such equipment rental will require authorization of the Court.

D. Rough ASCII:

- Per diem appearance fee: \$75.00 per hour
\$60.00 per hour preparation time
- Per page: \$1.25 per 24-line page of rough ASCII
- Minimum per diem appearance fee: 2 hours appearance
- Ordering of rough ASCII requires guaranteed purchase of original and 1 copy of final transcript at above-listed transcript fee schedule.

E. Real Time Hookup (interactive realtime)

- Per diem appearance fee: \$100.00 per hour per hookup

\$60.00 per hour preparation time

- ii. Per page: Ordering of realtime hookup requires purchase of original and 1 copy of final transcript at above-listed transcript fee schedule.
- iii. Notes: Ordering party of realtime hookup will provide its own equipment. Realtime Court Reporter will provide the hookup cable only. Ordering party is responsible for troubleshooting realtime hookup.

F. NOTES PERTAINING TO ALL ABOVE-LISTED APPEARANCE FEES FOR CRIMINAL, JUVENILE, AND REAL TIME SERVICES:

- i. Minimum Per Diem Appearance Fee: At a minimum, Court Reporter shall be compensated for 2 consecutive hours of appearance time unless Court Reporter is required to change courtrooms in the afternoon (i.e., after the lunch break). Where Court Reporter is required to change courtrooms in the afternoon, Court Reporter shall be compensated, at a minimum, 2 consecutive hours of appearance time for the afternoon.
- ii. Daily Set Up Fee: Court Reporter shall be compensated ¼ hour or \$15.00 for daily setting up. Court Reporter may charge only one set up fee per day. Where Court Reporter is required to change courtrooms in the afternoon, Court Reporter may charge an additional set up fee for the afternoon.
- iii. All per diem appearance rates shall be rounded up to the next half hour after the minimum per diem appearance fee has been met.
- iv. Overtime rates will apply for all reporting services provided before 8:30 a.m. and after 5:00 p.m. at 1.5 times the regular per diem rates. Double time rates will apply after 9:00 p.m. until 7:00 a.m. and weekends and holidays.
- v. When a reporter is ordered by a presiding judge to “stand-by” status, that time shall be billed as in-court time.
- vi. Names from case file to be provided to vendor no less than one week prior to any scheduled realtime proceeding, to build job dictionary.

G. Other Reporting Services:

- i. Electronic Delivery of Transcript, in addition to per-page rate (DVD, CD, E-mail, floppies, or other electronic media)
 - \$25.00 per transcript or volume of transcript
- ii. Video Teleconference Costs
 - Local video room: \$150.00 per hour.
 - Connection charge: \$90.00 per hour.

- Because remote location charges are out of the control of the local provider, other charges for remote locations will be invoiced by providers of remote location services, and may include charges for room fees, connection charges, and cancellation and other fees. Documentation of remote services will be furnished with any invoices for video conferencing.
- These charges are in addition to any vendor per diem, transcript fees, videography services, and other ancillary fees covered under this Agreement.

iii. Word Indices: billed at the per page rate of the transcript.

iv. Postage: Minimum \$6.00 per mailing OR actual cost of postage or shipping fees. Copy of receipt to accompany invoice for any charges other than minimum \$6.00.

vii. Videography Services

- Per Diem: \$175.00 first hour
\$100.00 additional hours (billed to the next half hour)
(includes copy of video proceeding to party hiring video service)
- Video copy: \$25.00 per copy
- Video editing: \$50.00 per hour of editing

viii. Synchronized Video Transcripts

- Per tape of proceedings: \$100.00 per tape
(In addition to transcript fees and videography fees)
- This service synchronizes the transcript of a videotaped proceeding with the video footage; the transcript scrolls with the video and allows for easy searches of the proceedings.

H. Hourly rate for travel outside contract county:

- All of the above rates are for reporting services in Polk County. If reporting service is requested and provided in Hardee or Highlands Counties, travel time will be billed at the prevailing rate (regular, overtime, etc...) and will be charged for round-trip travel times.
- Expenses for out-of-circuit proceedings and/or change of venue cases will be subject to the above travel charges. Reimbursement for travel expenses will be billed as applicable under Florida Statute 112.061.

I. Other fees/charges: The Court may request additional court reporting services under this Agreement at any time. Vendor will be compensated for such additional services as mutually agreed by the parties.

4. **REPORT**: Vendor shall provide a written statistical report to the Court Operations Consultant in care of the CAO no more than once a month for services provided during the preceding month. The report shall be submitted no later than ten (10) days after the end of each month. The report will include, but not necessarily be limited to: quantity and type of

proceedings covered during the reporting period; number of pages, by type of proceeding transcribed; and other information as requested.

5. **INDEPENDENT CONTRACTOR:** No interest under this Agreement may be assigned and no duties hereunder may be subcontracted without prior written consent of the Court. Vendor shall perform under this agreement as an independent contractor, and nothing contained herein shall in any way be construed to imply that Vendor or Vendor's employees or subcontractors are agents, servants, employees, partners, or joint venturers of the Court or the State of Florida. Court Reporter is an independent contractor and is responsible for the manner in which he or she performs the services required by the terms of this Agreement. Court Reporter exclusively assumes the responsibility for the acts of his or her employees as they relate to the services to be provided during the course and scope of employment by the contractor. Court Reporter and his or her agents and employees shall not be entitled to rights or privileges of State employees and shall not be considered in any manner to be State employees.

6. **COMPLIANCE WITH LAWS:** The Vendor shall pay any and all applicable sales, consumer, use, income taxes, and any other similar taxes required by law. The Vendor will comply with all laws, ordinances, and regulations applicable to the work required by this Agreement. The Vendor is responsible for reviewing and complying with all state and federal laws including, but not limited to, the Fair Labor Standards Act and all other applicable state and federal employment laws. In providing services and otherwise performing obligations under this Agreement, the Vendor will comply with the Americans with Disabilities Act, the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, and all other federal or state laws that prohibit discrimination on the basis of race, color, national origin, religion, sex, age, marital status, or disability. The Vendor remains liable for any violation of such laws and all subsequent damages or fines.

7. **BILLING/PAYMENT:** Payment for all court reporting services that are to be paid from public funds shall concur with the schedule of fees agreed to by the parties to this Agreement. Prices will remain constant throughout the duration of the Agreement. No additional fees shall be permitted without the written amendment of the Agreement.

Morning and afternoon appearances shall be billed separately. Appearances that run beyond the half-hour mark shall be rounded up to the next half-hour for billing purposes. Additionally, for billing purposes, when an individual court reporter is ordered by the presiding judge to "stand-by" status, that time shall be billed as in-court time. And when filing for reimbursement of mileage, Court Reporter shall use a state approved reimbursement form. The link for travel information for vendors may be found at: <http://intranet.flcourts.org/osca/asd/generalservices/Contract%20Administration/index2.html>.

The Court will initiate payment procedures upon receipt of a completed State standardized invoice, submitted in detail sufficient for a proper pre-and post-audit. **Invoices must be submitted no more than once a week and no less than once a month for services provided in the preceding week or month.** The invoice must be signed by the Trial Coordinator or his/her designee and then will be submitted to the Court's Finance Department. The invoice will be processed and paid pursuant to section 215.422, Florida Statutes, which is incorporated as

Attachment A hereto. Invoices shall contain the Agreement number and the appropriate vendor identification number. The Court may require any other information from the Court Reporter that the Court deems necessary to verify any information in connection with the Agreement. Payment shall be made in accordance with sections 215.422 and 287.0585, Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to Court Reporter due to preparation errors will result in a delay in payments. Court Reporters may call (850) 488-3730, Monday through Friday, to inquire about the status of payments. The Court's failure to pay, or delay in payment, shall not constitute a breach of the Agreement and shall not relieve Court Reporter of his or her obligations to the Court.

8. **AVAILABILITY OF STATE FUNDS:** This Agreement is subject to the availability of State funds. If the legislature fails to appropriate funds specifically for the purpose of funding the services or demands a spending reduction in State budgets due to a revenue shortfall, the Court and the State will have no obligation to pay or perform under this Agreement. The Court's and the State's performances and obligations to pay under this Agreement are also contingent upon final spending approval from the Chief Justice of the Florida Supreme Court.

9. **SUPPLIES AND EQUIPMENT:** Vendor is responsible for supplying its own equipment for proceedings covered under this Agreement with no additional costs to the Court or the State of Florida, including connecting cables and any other equipment needed for realtime reporting in accordance with Supreme Court guidelines while the Court will provide equipment for the judge and defendant(s), and the attorneys will provide their own.

10. **ISSUANCE OF SECURITY BADGES:** Security badges will be issued to all court reporter employees of Court Reporter. When a new security badge is needed, Vendor shall send the employee to the CAO with a letter from Vendor on Vendor's letterhead so informing the Court.

11. **FACILITIES:** No office space will be provided to Vendor by the Court.

12. **RECORDS:** Vendor shall be responsible for ensuring compliance with Rule 2.430 and Rule 2.440 of the Florida Rules of Judicial Administration and with the procedures for record retention and safekeeping, if any, set forth by the CAO and the Clerk of the Circuit Court for Polk County.

Vendor will also maintain all records made or received in conjunction with the obligations imposed by this Agreement and in accordance with Rules 2.420, Florida Rules of Judicial Administration. Vendor shall retain all other records pertaining to this Agreement for five (5) years after the date of the termination of the Agreement. This includes records necessary to evaluate and substantiate payments made under this Agreement and any related employment records. Violation of this provision will be grounds for immediate termination of this Agreement.

13. **SUSPENSION OF WORK:** The Court may, in its sole discretion, suspend any or all activities under the Agreement at any time. The Court shall provide Court Reporter written notice outlining the particulars of the suspension. Reasons for suspension include, but are not

limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Court Reporter shall comply with the notice and shall not accept any assignments from the Court. Within ninety days or any longer period agreed to by Court Reporter, the Court shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Agreement. Suspension of work shall not entitle Court Reporter to any additional compensation except for work performed.

14. TERMINATION/CANCELLATION OF AGREEMENT:

- A. The Court, in its sole discretion, may terminate the Agreement in whole or in part at any time. Court Reporter shall not furnish any continued portion of the Agreement, if any. Court Reporter shall not be entitled to recover any cancellation charges or lost profits.
- B. If Court Reporter is unable to perform pursuant to this Agreement due to an injury or illness, or for other similar cause beyond Court Reporter's control, then Court Reporter may be released from any and all obligations under this Agreement.
- C. If Court Reporter fails to meet minimum performance standards as determined by the Trial Coordinator or CAO, violates existing policies, or is arrested or cited with a Notice to Appear, the Court may either immediately terminate this Agreement, or discontinue the services of said Court Reporter until such time as Court Reporter has received further training or Court Reporter has complied with any sanctions or directives.
- D. Aside from termination pursuant to the provisions of sections A, B, or C above, either party may terminate this Agreement upon thirty (30) days written notice to the other party. Upon notice of such termination, no further cases will be assigned to Court Reporter.
- E. In addition to all other legal remedies available, the Court reserves the right to cancel and obtain from another source, any items which have not been delivered within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time as determined by the Court.

15. GOVERNING LAW: This Agreement shall be construed under and be governed by the laws of the State of Florida. Any dispute concerning performance of the Agreement shall be decided by the Court's designated Contract manager, who shall reduce the decision to writing and provide a copy to Court Reporter. The exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be the appropriate state court in Polk County, Florida. The parties waive any right to jury trial.

16. NO THIRD PARTY BENEFICIARIES: Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

17. **INDEMNITY:** Court Reporter shall be fully liable for his or her actions, the actions of his or her agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the Court and its officers, agents, and employees, from suits, actions, damages, losses, claims, expenses, and costs of every name and description, including attorneys' fees, arising from, resulting from or relating to this Agreement. Court Reporter, however, shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Court. The Court may, in addition to other remedies available to it at law or equity and upon notice to Court Reporter, retain such monies from amounts due Court Reporter as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the Court. The Court may set off any liability or other obligation of Court Reporter to the Court against any payments due Court Reporter under any contract with the State or other State Court entity. Further, Court Reporter shall fully indemnify, defend, and hold harmless the Court from any suits, actions, damages, and costs of every name and description, including attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided that the Court shall give Court Reporter (1) written notice of any such action or threatened action, (2) the opportunity to take over and settle or defend any such action at Court Reporter's sole expense, and (3) assistance in defending the action at Court Reporter's sole expense. Court Reporter shall not be liable for any cost, expense, or compromise incurred or made by the Court in an infringement action without Court Reporter's prior written consent, which shall not be unreasonably withheld. If any product is the subject of an infringement lawsuit, or in Court Reporter's opinion is likely to become the subject of such a suit, Court Reporter may at his or her sole expense become non-fringing. If Court Reporter is not reasonably able to modify or otherwise secure the Court the right to continue using the product, Court Reporter shall remove the product and refund the Court the amounts paid in excess of a reasonable rental for past use. The Court shall not be liable for any royalties. Unless otherwise specifically enumerated in the Agreement or in the purchase order, no party shall be liable to another for special, indirect, or consequential damages, including lost data or records (unless the purchase order requires Court Reporter to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

18. **LIMITATION OF LIABILITY:** For all claims against Court Reporter, Court Reporter's liability for direct damages shall be limited to the greater of \$100,000, the dollar amount of the Agreement, or two times the charges rendered by Court Reporter. This limitation, however, does not apply to claims arising under the Indemnification paragraph contained in this Agreement. Unless otherwise specifically enumerated in the Agreement, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase requires Court Reporter to backup data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or institutional operating savings. The Court may, in addition to other remedies available to it at law or equity and upon notice to Court Reporter, retain such monies from the amounts due Court Reporter as may be necessary to satisfy any claim for damages, penalties, cost and the like asserted by or against it. The Court may set off any liability or other obligation of Court Reporter or his or her affiliates to the Court against any payments due Court Reporter under any Agreement with the State.

19. **NOTICE:** Any notice required or permitted to be given under this Agreement shall be sufficient if it is in writing and if sent by certified or registered mail, return receipt requested, to either of the parties at the addresses provided on the execution page.

20. **ATTORNEY'S FEES:** If either party enters into legal actions for enforcement of or damages for breach of this Agreement, the prevailing party will be entitled to recover from the non-prevailing party court costs and attorney's fees.

21. **WAIVER:** The delay or failure by the Court to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the Court's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. **GOVERNMENTAL RESTRICTIONS:** If Court Reporter believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the services offered under the Agreement, Court Reporter shall immediately notify the Court in writing, indicating the specific restriction. The Court reserves the right and the complete discretion to accept any such alteration or to cancel the Agreement at no further expense to the Court.

23. **LOBBYING AND INTEGRITY:**

A. The Court Reporter must comply with section 11.062, Florida Statutes, prohibiting use of state funds for lobbying purposes.

B. Court Reporter shall not, in connection with this or any other agreement with the Court, directly or indirectly, (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Court officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Court officer or employee. "Gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Court's Inspector General, or other authorized Court official, Court Reporter shall provide any type of information the Inspector General deems relevant to Court Reporter's integrity or responsibility. Such information may include, but shall not be limited to, Court Reporter's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. Court Reporter shall retain such records for the longer of (1) three years after the expiration of the Agreement or (2) the period required by Florida Rule of Judicial Administration 2.440. Court Reporter agrees to reimburse the Court for the reasonable cost of investigation incurred by the Inspector General or other authorized Court official for investigations of Court Reporter's compliance with the terms of this or any other agreement between Court Reporter and the Court which results in the suspension or debarment of Court Reporter. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime;

travel and lodging expenses; and expert witness and documentary fees. Court Reporter shall not be responsible for any cost of investigations that do not result in Court Reporter's suspension or debarment.

24. **ADVERTISING:** Subject to Florida Rule of Judicial Administration 2.420, Court Reporter shall not publicly disseminate any information concerning the Agreement without prior written approval from the Court, including, but not limited to mentioning the Agreement in a press release or other promotional material, identifying the Court or a Judge or otherwise linking Court Reporter's name and either a description of the Agreement or the name of the Court or a Judge in any material published, either in print or electronically, to any entity that is not a party to this Agreement.

25. **WARRANTY OF ABILITY TO PERFORM:** Court Reporter warrants that, to the best of his or her knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish his or her ability to satisfy the Agreement obligations. Court Reporter warrants that he or she is not currently on the convicted vendor list maintained pursuant to section 287.133, Florida Statutes, or on any similar list maintained by any other state or the federal government. Court Reporter shall immediately notify the Court in writing if his or her ability to perform is compromised in any manner during the term of the Agreement.

26. **SECURITY AND CONFIDENTIALITY:** Court Reporter shall comply fully with all security requirements and procedures of the Court and those agencies in control of courthouse security in performance of the Agreement. Court Reporter shall not divulge to third parties any confidential information obtained by Court Reporter in the course of performing contract work, including, but not limited to, personal information, security procedures, business operations information, or commercial proprietary information in the possession of the Court. Court Reporter shall not be required to keep confidential information or material that is publicly available through no fault of Court Reporter, material that Court Reporter developed independently without relying on the Court's confidential information, or material that is otherwise obtainable under State law as a public record. The warranties of this paragraph shall survive the Agreement.

27. **RULE OF INTERPRETATION:** All specific conditions will prevail over a general condition on the same subject.

28. **SEVERABILITY:** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

29. **GENERAL CONTRACT CONDITIONS:** This Agreement is bound by the General Contract Conditions of the Florida State Court System which can be found at http://www.flcourts.org/courts/crtadmin/general_contract_conditions.shtml. The terms and

conditions described as General Contract Conditions for Services at http://www.flcourts.org/courts/crtadmin/general_contract_conditions.shtml are incorporated herein as if fully recited in the Agreement/Contract except to the extent that any of those terms or conditions are in conflict with this Agreement/Contract in which case the terms and conditions of this document shall prevail.

30. TERM OF AGREEMENT AND RENEWAL: Services under this agreement shall begin on July 1, 2009, and shall terminate on June 30, 2010, unless canceled or terminated as provided herein. This Agreement may be renewed at the mutual agreement of both parties for two additional one-year terms after the initial contract period. The renewal option shall be exercised only if all prices, terms and conditions remain the same.

31. ENTIRETY OF AGREEMENT: This Agreement for Court Reporter Services constitutes the entire understanding of the parties. Any modifications to this Agreement must be in writing and signed by both parties. The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**THE TENTH CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

COURT:

Tenth Judicial Circuit Court of Florida

By: Nick Sudzina
Nick Sudzina
Trial Court Administrator

Date: 7/15/09


Approved as to Legal Form and Sufficiency

By: Crystal M. Hood-Lewis
Crystal Hood-Lewis
Senior Staff Attorney
Fla. Bar. #: 0483559

Date: 7/15/09

VENDOR:

McGill & Associates
Professional Reporting Services

By: Linda A. McGill 

Date: 7-10-2009

By: _____

Date: _____

FID

Address:

170 South Oak Avenue

Bartow FL 33830

Phone: 863.533.4642

Fax: _____

Email: _____

ATTACHMENT A

ATTENTION VENDOR

Pursuant to section 215.422(5), Florida Statutes (2008), you are hereby advised of your rights and the state's obligations regarding payment of invoices:

215.422 Payments, warrants, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.--

(1) An invoice submitted to an agency of the state or the judicial branch, required by law to be filed with the Chief Financial Officer, shall be recorded in the financial systems of the state, approved for payment by the agency or the judicial branch, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed. The Chief Financial Officer may establish dollar thresholds and other criteria for all invoices and may delegate to a state agency or the judicial branch responsibility for maintaining the official invoices and documents for invoices which do not exceed the thresholds or which meet the established criteria. Such records shall be maintained in accordance with the requirements established by the Secretary of State. The transmission of an approved invoice recorded in the financial systems of the state to the Chief Financial Officer shall constitute filing of a request for payment of invoices for which the Chief Financial Officer has delegated to an agency custody of official records. Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. If an invoice filed within the 20-day period is returned by the Department of Financial Services because of an error, it shall nevertheless be deemed timely filed. The 20-day filing requirement may be waived in whole or in part by the Department of Financial Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. For the purposes of determining the receipt of invoice date, the agency or the judicial branch is deemed to receive an invoice on the date on which a proper invoice is first received at the place designated by the agency or the judicial branch. The agency or the judicial branch is deemed to receive an invoice on the date of the invoice if the agency or the judicial branch has failed to annotate the invoice with the date of receipt at the time the agency or the judicial branch actually received the invoice or failed at the time the order is placed or contract made to designate a specific location to which the invoice must be delivered.

(2) The Department of Financial Services shall approve payment of an invoice no later than 10 days after the agency's filing of the approved invoice. However, this requirement may be waived in whole or in part by the Department of Financial

Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. If the 10-day period contains fewer than 6 working days, the Department of Financial Services shall be deemed in compliance with this subsection if the payment is approved within 6 working days without regard to the actual number of calendar days.

(3)(a) Each agency of the state or the judicial branch which is required by law to file invoices with the Chief Financial Officer shall keep a record of the date of receipt of the invoice; dates of receipt, inspection, and approval of the goods or services; date of filing of the approved invoice; and date of issuance of the warrant in payment thereof. If the invoice is not filed or the warrant is not issued within the time required, an explanation in writing by the agency head or the Chief Justice shall be submitted to the Department of Financial Services in a manner prescribed by it. Agencies and the judicial branch shall continue to deliver or mail state payments promptly.

(b) If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch shall pay to the vendor, in addition to the amount of the invoice, interest at a rate as established pursuant to s. 55.03(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the vendor. Such interest shall be added to the invoice at the time of submission to the Chief Financial Officer for payment whenever possible. If addition of the interest penalty is not possible, the agency or judicial branch shall pay the interest penalty payment within 15 days after issuing the warrant. The provisions of this paragraph apply only to undisputed amounts for which payment has been authorized. Disputes shall be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Financial Services or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies, provided that, for the purposes of ss. 120.569 and 120.57(1), no party to a dispute involving less than \$1,000 in interest penalties shall be deemed to be substantially affected by the dispute or to have a substantial interest in the decision resolving the dispute. In the case of an error on the part of the vendor, the 40-day period shall begin to run upon receipt by the agency or the judicial branch of a corrected invoice or other remedy of the error. For purposes of this section, the nonsubmittal of the appropriate federal taxpayer identification documentation to the Department of Financial Services by the vendor will be deemed an error on the part of the vendor, and the vendor will be required to submit the appropriate federal taxpayer documentation in order to remedy the error. The provisions of this paragraph do not apply when the filing requirement under subsection (1) or subsection (2) has been waived in whole by the Department of Financial Services. The various state agencies and the judicial branch shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount

of any interest paid by any agency or the judicial branch pursuant to this subsection. The temporary unavailability of funds to make a timely payment due for goods or services does not relieve an agency or the judicial branch from the obligation to pay interest penalties under this section.

(c) An agency or the judicial branch may make partial payments to a contractor upon partial delivery of goods or services or upon partial completion of construction when a request for such partial payment is made by the contractor and approved by the agency. Provisions of this section and rules of the Department of Financial Services shall apply to partial payments in the same manner as they apply to full payments.

(4) If the terms of the invoice provide a discount for payment in less than 30 days, agencies of the state and the judicial branch shall preferentially process it and use all diligence to obtain the saving by compliance with the invoice terms.

(5) All purchasing agreements between a state agency or the judicial branch and a vendor, applicable to this section, shall include a statement of the vendor's rights and the state's responsibilities under this section. The vendor's rights shall include being provided with the telephone number of the vendor ombudsman within the Department of Financial Services, which information shall also be placed on all agency or judicial branch purchase orders.

(6) The Department of Financial Services shall monitor each agency's and the judicial branch's compliance with the time limits and interest penalty provisions of this section. The department shall provide a report to an agency or to the judicial branch if the department determines that the agency or the judicial branch has failed to maintain an acceptable rate of compliance with the time limits and interest penalty provisions of this section. The department shall establish criteria for determining acceptable rates of compliance. The report shall also include a list of late invoices or payments, the amount of interest owed or paid, and any corrective actions recommended. The department shall perform monitoring responsibilities, pursuant to this section, using the Department of Financial Services' financial systems provided in s. 215.94. Each agency and the judicial branch shall be responsible for the accuracy of information entered into the Department of Management Services' procurement system and the Department of Financial Services' financial systems for use in this monitoring.

(7) There is created a vendor ombudsman within the Department of Financial Services who shall be responsible for the following functions:

- (a) Performing the duties of the department pursuant to subsection (6).
- (b) Reviewing requests for waivers due to exceptional circumstances.

(c) Disseminating information relative to the prompt payment policies of this state and assisting vendors in receiving their payments in a timely manner.

(d) Performing such other duties as determined by the department.

(8) The Department of Financial Services is authorized and directed to adopt and promulgate rules and regulations to implement this section and for resolution of disputes involving amounts of less than \$1,000 in interest penalties for state agencies. No agency or the judicial branch shall adopt any rule or policy that is inconsistent with this section or the Department of Financial Services' rules or policies.

(9) Each agency and the judicial branch shall include in the official position description of every officer or employee who is responsible for the approval or processing of vendors' invoices or distribution of warrants to vendors that the requirements of this section are mandatory.

(10) Persistent failure to comply with this section by any agency of the state or the judicial branch shall constitute good cause for discharge of employees duly found responsible, or predominantly responsible, for failure to comply.

(11) Travel and other reimbursements to state officers and employees must be the same as payments to vendors under this section, except payment of Class C travel subsistence. Class C travel subsistence shall be paid in accordance with the schedule established by the Chief Financial Officer pursuant to s. 112.061(5)(b). This section does not apply to payments made to state agencies, the judicial branch, or the legislative branch.

(12) In the event that a state agency or the judicial branch contracts with a third party, uses a revolving fund, or pays from a local bank account to process and pay invoices for goods or services, all requirements for financial obligations and time processing set forth in this section shall be applicable and the state agency or the judicial branch shall be responsible for paying vendors the interest assessed for untimely payment. The state agency or the judicial branch may, through its contract with a third party, require the third party to pay interest from the third party's funds.

(13) Notwithstanding the provisions of subsections (3) and (12), in order to alleviate any hardship that may be caused to a health care provider as a result of delay in receiving reimbursement for services, any payment or payments for hospital, medical, or other health care services which are to be reimbursed by a state agency or the judicial branch, either directly or indirectly, shall be made to the health care provider not more than 35 days from the date eligibility for payment of such claim is determined. If payment is not issued to a health care provider within 35 days after the date eligibility for payment of the claim is determined, the state agency or the judicial branch shall pay the health care

provider interest at a rate of 1 percent per month calculated on a calendar day basis on the unpaid balance from the expiration of such 35-day period until such time as payment is made to the health care provider, unless a waiver in whole has been granted by the Department of Financial Services pursuant to subsection (1) or subsection (2).

(14) The Chief Financial Officer may adopt rules to authorize advance payments for goods and services, including, but not limited to, maintenance agreements and subscriptions. Such rules shall provide objective criteria for determining when it is in the best interest of the state to make payments in advance and shall also provide for adequate protection to ensure that such goods or services will be provided.

(15) Nothing contained in this section shall be construed to be an appropriation. Any interest which becomes due and owing pursuant to this section shall only be payable from the appropriation charged for such goods or services.

(16) Notwithstanding the provisions of s. 24.120(3), applicable to warrants issued for payment of invoices submitted by the Department of the Lottery, the Chief Financial Officer may, by written agreement with the Department of the Lottery, establish a shorter time requirement than the 10 days provided in subsection (2) for warrants issued for payment. Pursuant to such written agreement, the Department of the Lottery shall reimburse the Chief Financial Officer for costs associated with processing invoices under the agreement.

§215.422 Fla. Stat. (2008).

The vendor ombudsman within the Department of Banking and Finance is an advocate for vendors who experience problems in obtaining timely payments from a state agency or the judicial branch. The vendor ombudsman may be contacted at (850) 410-9724 or by calling the State Chief Financial Officer's Hotline at 1-800-848-3792.