# AGREEMENT TO PROVIDE PRE – PLEA MISDEMEANOR PROGRAM

THIS AGREEMENT ("Agreement") is made on October \_\_\_, 2012 by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter referred to as "County") and Pacific Educational Services, Inc., a California corporation ("PES").

#### RECITALS

# THIS AGREEMENT is made with reference to the following:

- A. The County of Santa Barbara District Attorney's Office ("District Attorney") has determined it is in the best interest of the County to establish a Santa Barbara County District Attorney Office Pre Plea Misdemeanor Program (hereafter referred to as "PPMP" or the "Program") for certain misdemeanor cases; and
- B. The District Attorney has recommended that PES provide said Program; and
- C. The County desires to obtain the services of PES to provide the PPMP for certain misdemeanor cases; and
  - D. PES desires to provide to the County the PPMP within the County.

# NOW, THEREFORE, the parties agree as follows:

#### THE PROGRAM:

- In the PPMP, the District Attorney's decision to charge a defendant will be made in the conventional manner of evaluating a misdemeanor case. After the District Attorney has determined that a criminal misdemeanor case will be issued, then the District Attorney will determine if the Defendant is eligible for the PPMP and, if eligible, will offer the defendant the opportunity to participate in the PPMP.
- The District Attorney will notify the defendant by letter they can take a
  defined PES program and if they complete said program and pay any
  restitution ordered by the District Attorney and not commit any additional
  offenses before completing the PPMP, the defendant's case will not be
  filed with the court
- 3. If the defendant does not timely enroll in said program, pay the program fee, complete the program, pay restitution, if any, and/or commits an additional offense before completing the PPMP, the defendant will be terminated from the PPMP. For terminated defendants who have been offered the PPMP, the District Attorney will file the case with the Courts against such terminated defendants.
- 4. Successful completion of the program by the defendant shall include: (1) completing the appropriate PES educational program; (2) paying the PES educational program fee; (3) paying restitution required by the District Attorney, if any; and (4) not committing any additional offense while in the

PPMP.

- 5. The 6 hour PPMP classes cost \$250. The 12 hour PPMP classes cost \$450. All classes are held on weekends. Unless otherwise stated in this agreement, defendants will be liable for the cost PPMP classes.
- 6. In exchange for the DA's referral of voluntary diversion defendants to PES' program, PES agrees to remit to District Attorney, upon full payment by defendant of all class fees, \$50.00 per defendant to offset District Attorney's costs associated with review of cases, referrals to the program, monitoring participants' progress, and filing charges for defendants who fail to complete the program.

PES will remit this payment to the District Attorney monthly on the 1<sup>st</sup> of each month via a check payable to the Santa Barbara County Treasurer Tax Collector and sent to the District Attorney Business Manager at 1112 Santa Barbara Street, Santa Barbara, CA 93101.

- 7. Program topics will be Theft, Lifeskills, Drug & Alcohol, Anger and Driving. The DA will determine if the defendant must take 1 or 2 classes. If the defendant is required to take 2 classes they will be on different topics. Classes will regularly be held in English or Spanish.
- 8. To accommodate defendants getting through the PPMP in a timely fashion, if there are insufficient referrals to hold "classes with distinct topics", PES is authorized to hold combination classes where, for example, a class may be held for topics of both theft and lifeskills.
- The District Attorney will determine if restitution will be required. If restitution is required, District Attorney will assess only that amount which is reasonable and in accordance with applicable laws.
- The District Attorney will send to referral information to PES for defendants who are being sent the PPMP eligibility letter.
- 11. Defendants must register with PES and pay at least a portion of the class costs/fees, in an amount determined by PES, within 20 business days from the date PES receives the referral information, unless the Defendant qualifies as indigent. PES will waive all fees for Defendants who qualify as indigent.
- 12. After having been notified by the District Attorney of a defendant being referred to the PPMP, PES will contact defendants to enroll them.
- 13. PES will notify the District Attorney if a defendant does not timely enroll and PES will terminate those defendants from the program.
- 14. All defendants who are not indigent must pay full fees. PES will provide payment plans for defendants who cannot pay all of the fees at one time.
  - a. The District Attorney will make a determination of which defendants are indigent and will notify PES if said defendants cannot pay the

class fee of the PPMP. PES will provide the class to indigent defendants at no cost to the defendant and no participant payment to the District Attorney.

- 15. The classes must be paid for in full before the defendant attends the class.
- 16. Once defendants make payments for the PPMP, it is in the discretion of PES to make refunds of those payments if defendant is terminated from the program before completion. PES will remit to the District Attorney Business Manager a schedule of refunds provided; itemizing the defendants who were provided refunds.
- 17. PES will contact defendants at least twice to enroll them into the PPMP.
- 18. Statistics on the PPMP will be provided to the District Attorney by PES on a regular, scheduled basis, pursuant to the District Attorney's request. These statistics should include:
  - a. Fee's collected from defendants
  - b. Refunds provided
  - c. Defendants served/enrolled
  - d. Successful Completions
- 19. Classes will be held in Santa Barbara, Lompoc and Santa Maria, based on demand.
- 20. If the defendant cannot attend classes in Santa Barbara County, PES will make appropriate arrangements with the defendant to attend a class in his/her local jurisdiction and PES will collect from said defendants an additional \$50 monitoring fee for PES.
- 21. PES will notify defendants of the class schedules. If the defendants miss classes for which they were scheduled, PES will charge them a missed class fee of \$30 to re schedule the class.
- 22. PES will manage and collect the restitution, if any. The District Attorney will provide the victim information to PES.
- 23. PES will pay the restitution amounts to the victims and account to the District Attorney's Office for said payments.
- 24. Upon enrollment, PES will notify defendants of their program "complete by" date which will be approximately 90 days from the date of their enrollment with PES. The District Attorney will set this date upon referral of the defendant to the program.
- 25. Upon completion of the PPMP, PES will send a completion form to the District Attorney and defendant.
- 26. If a defendant needs an extension due to payments, class schedules, etc., PES is authorized to make reasonable extensions.

- 27. Once defendant is registered in the program, PES will not terminate a defendant before the completion date, unless the DA or the defendant requests PES terminate the defendant earlier.
- 28. If the defendant is terminated from the PPMP by PES, PES will send a termination notice to the DA and defendant.
- 29. Completions and terminations will be e-mailed or faxed by PES to the District Attorney and mailed or e-mailed to the defendants.
- 30. As requested by the District Attorney, PES will train all District Attorney's staff regarding the PPMP processes and procedures.
- 31. Any restitution ordered by the District Attorney to be paid by a defendant will be collected by PES and deposited into an account established exclusively for those purposes. Disbursements will be made monthly or quarterly to the victim, or as otherwise directed by the District Attorney. PES will collect \$25.00, per defendant, per month, for determining, monitoring and/or disbursing defendant's restitution, to defer the administrative costs of said monitoring and disbursing.

#### GENERAL:

- 32. All services under this Agreement will be provided by PES at no charge to the County or the District Attorney.
- 33. NONDISCRIMINATION: PES agrees to comply at all times with all state, federal and local laws and regulations designed to prevent unlawful discrimination, including the County of Santa Barbara's unlawful discrimination ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code).
- 34. BOOKS: PES will maintain its books pertaining to collection of the administrative fee and/or restitution in accordance with generally accepted accounting principles. These books and records will be maintained for a period not less than 5 years and made available to the District Attorney, or the County Auditor-Controller or their assigns at all reasonable times for inspection, audit and/or reproduction.
- 35. CONFIDENTIALITY OF RECORDS: PES agrees to maintain the confidentiality of all defendant records, unless disclosure is otherwise required by law or court order.
- 36. INDEPENDENT CONTRACTOR: It is expressly understood between the parties to this contract that no employer/employee relationship is intended or created by this Agreement. PES is at all times in performance of this Agreement an independent contractor. PES retain sole and independent contractor. PES retains sole and independent liability for the actions of its agents and employees as is set forth in more detail below. PES shall furnish all personnel, supplies, equipment, furniture, insurance, telephone, and facilities necessary for its performance of this Agreement.
- 37. INDEMNIFICATION PES agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its

authorized officers, employees, agents and volunteers from and against any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. PES's indemnification obligation applies to COUNTY's "active" as well as "passive" negligence but does not apply to COUNTY's "sole negligence" or "willful misconduct" within the meaning of California Civil Code Section 2782. PES shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement.

- 38. ADDITIONAL INSURED All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability and Automobile Liability policies, shall contain endorsements naming COUNTY and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 39. INSURANCE SPECIFICATIONS PES agrees to provide insurance set forth in accordance with the requirements herein. If PES uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, PES agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, PES shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers providing services on behalf of PES and all risks to such persons under this Agreement.

If PES has no employees, it may certify or warrant to COUNTY that is does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

- B. Commercial/General Liability Insurance PES shall carry General Liability Insurance covering all operations performed by or on behalf of PES providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit.
- C. Automobile Liability Insurance Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- If PES owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
- D. Umbrella Liability Insurance An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- 40. WAIVER OF SUBROGATION RIGHTS PES shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit PES and PES's employees or agents from waiving the right of subrogation prior to a loss or claim. PES hereby waives all rights of subrogation against COUNTY.
- 41. POLICIES PRIMARY AND NON-CONTRIBUTORY All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by COUNTY.
- 42. SEVERABILITY OF INTERESTS PES agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between PES and COUNTY or between COUNTY and any other insured or additional insured under the policy
- 43. PROOF OF COVERAGE PES shall furnish Certificates of Insurance to the COUNTY Department administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and PES shall maintain such insurance from the time PES commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, PES shall furnish a copy of the Declaration page for all applicable policies and will provide complete

- certified copies of the policies and endorsements immediately upon request.
- 44. FAILURE TO PROCURE COVERAGE In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by COUNTY will be promptly reimbursed by CONTRACTOR or COUNTY payments to CONTRACTOR will be reduced to pay for COUNTY purchased insurance.
- 45. ASSIGNMENT/SUCCESSION: PES shall not assign this Agreement in part or in whole, without the prior written consent of the County. Not withstanding the foregoing, Santa Barbara County and the District Attorney agree PES is authorized to subcontract with the Council on Alcoholism and Drug Abuse to provide the Drug and Alcohol classes hereunder. This Agreement shall inure to the benefit of, and be binding on, the successors and assignees of the parties hereto.
- 46. TERMINATION WITHOUT CAUSE: Either party can terminate this contract without cause, at the annual anniversary of this Agreement, by giving the other party notice of termination not later than 30 days prior to the annual anniversary of this Agreement. If this contract is not so terminated or is not terminated for cause, as set forth below, this Agreement shall terminate five (5) years after the date hereof.
- 47. TERMINATION FOR CAUSE: This Agreement can be terminated for cause by the District Attorney, upon 60 day notice, for any or all of the following reasons:
  - a. The failure of PES to provide an adequate number of classes for defendants to attend prior to the complete by date for the PPMP set by the District Attorney.
  - b. The failure of PES to enroll defendants after the defendants have contacted PES to enroll in the PPMP.
  - c. The failure of PES to collect and/or distribute the DA's cost recovery and/or restitution payments to victims.
  - d. The failure of PES to provide to the District Attorney timely and/or accurate completion and/or termination information.
- 48. OTHER TERMINATION: If the PPMP does not progress in the manner deemed necessary by the District Attorney, in its sole determination, the District Attorney can terminate the PPMP upon providing PES 60 days prior written notice to cure any issues to which the District Attorney's objects or the PPMP will terminate. PES shall have 30 days from such notice to cure said issues.

49. NOTICES: Notices to the parties in connection with this shall be given, in writing, by regular mail addressed, as follows:

If to the District Attorney:

The Honorable Joyce Dudley
District Attorney
District Attorney County of Santa Barbara
1112 Santa Barbara Street
Santa Barbara, CA 93101

If to PES:

Pacific Educational Services, Inc. Attention: Walter E. Stockman, President 11837 Kemper Road, Suite 2 Auburn, CA, 95603

50. GOVERNING LAW: This agreement shall be governed by and construed under the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by County.

COUNTY OF SANTA BARBARA

By: DOREEN FARR, CHAIR BOARD OF SUPERVISORS	
Date:	
ATTEST: CHANDRA L. WALLAR CLERK OF THE BOARD	PACIFACTOR Concestye:
By: Deputy Clerk	By: Water Stading Tax Id No Fed ID No.
Date:	TAX # O Date 94 - 28 29 555
	Octe: 9/25/12

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By Deputy County Counsel

Date: 1/1/2

APPROVED AS TO FORM:
DISTRICT ATTORNEY'S OFFICE
HONORABLE JOYCE DUDLEY

By DISTRICT ATTORNEY

Date: 9/2/1/2

APPROVED AS TO ACCOUNTING FOR ROBERT W. GEIS, CPA AUDITOR-CONTROLLER

Depuis

Date: \_

APPROVED AS TO INSURANCE FOF RAY AROMATORIO RISK MANAGER

Ву:

Date: 8



P.O. BOX 8192, PLEASANTON, CA 94588

#### CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 07-26-2012

GROUP: 000218
POLICY NUMBER: 0000536-2011
CERTIFICATE ID: 46
CERTIFICATE EXPIRES: 09-01-2012
09-01-2011/09-01-2012

THIS CERTIFICATE SUPERSEDES AND CORRECTS
CERTIFICATE # 45 DATED 07-06-2012

COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST SANTA BARBARA CA 93101-2008 NF

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period that will expire or did expire as indicated above.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - LINDA STOCKMAN P,S,T - EXCLUDED.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 09-01-2005 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

ENDORSEMENT #2570 ENTITLED WAIVER OF SUBROGATION EFFECTIVE 2012-07-26 IS ATTACHED TO AND FORMS A PART OF THIS POLICY. THIRD PARTY NAME: COUNTY OF SANTA BARBARA

**EMPLOYER** 

PACIFIC EDUCATIONAL SERVICES, INC AND/OR NF PES-EBS. INC 11837 KEMPER RD STE 2 AUBURN CA 95603

[CKS,CN]

PRINTED : 07-26-2012



P.O. BOX 8192, PLEASANTON, CA 94588

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ISSUE DATE: 07-26-2012

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POLICY NUMBER: 0000536-2011
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CERTIFICATE EXPIRES: 09-01-2012
09-01-2011/09-01-2012

THIS CERTIFICATE SUPERSEDES AND CORRECTS
CERTIFICATE # 45 DATED 07-06-2012

COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST SANTA BARBARA CA 93101-2008 NF

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period that will expire or did expire as indicated above.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - LINDA STOCKMAN P.S.T - EXCLUDED.

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**EMPLOYER** 

PACIFIC EDUCATIONAL SERVICES, INC AND/OR NF PES-EBS. INC 11837 KEMPER RD STE 2 AUBURN CA 95603

[CKS,CN]

PRINTED : 07-26-2012

# WAIVER OF SUBROGATION NOTICE

Enclosed is your copy of a certificate of insurance on which the certificate holder required a waiver of subrogation:

- 1. Please be advised that a waiver of subrogation requires that a 3% surcharge will be applied by State Fund ONLY to the premium assessed on the payroll of your employees earned while engaged in work for that certificate holder who requested the waiver. (Note: if you have no employee payroll on that job, then there is no charge.)
- 2. To apply the 3% surcharge, you must also agree to maintain accurately segregated payroll records for employees engaged in work on job/s for the certificate holder who has the waiver. The payroll records are subject to verification by an auditor.

### Example:

	4 C	ORD,	CERTIFIC	CATE OF LIABIL	ITY INS	URANCE		DATE (MM/DD/YYYY) 07/06/2012	
PRODUCER 800-736-3904 SEARCY INSURANCE CENTER, INC. 15152 OAK RANCH DR						THIS CERTIFICATE IS ISSUED AS A MATTER OF ONLY AND CONFERS NO RIGHTS UPON THE HOLDER. THIS CERTIFICATE DOES NOT AMEND ALTER THE COVERAGE AFFORDED BY THE POL			
VISALIA, CA 93292					INSURERS A	INSURERS AFFORDING COVERAGE			
INSL	INSURED					INSURER A: SCOTTSDALE INSURANCE COMPANY			
PACIFIC EDUCATIONAL SERVICES, INC.					INSURER 8:				
11837 KEMPER ROAD, STE. 2				TE. 2	INSURER C:	INSURER C:			
AUBURN, CA 95603					INSURER D:	INSURER D:			
	VED	AGES			INSURER E:	INSURER E:			
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Α	X	<del></del>	CIAL GENERAL LIABILITY	OPS0056493	06/26/2012	06/26/2013	DAMAGE TO RENTED PREMISES (Ea occurence)	s 300,000	
			IMS MADE X OCCUR				MED EXP (Any one person)	s 5,000	
		X PROFE	ESSIONAL LIAB				PERSONAL & ADV INJURY	s 1,000,000	
		CEN'I ACCRE	GATE LIMIT APPLIES PER:				GENERAL AGGREGATE	s 3,000,000	
		POLICY	PRO, LOC				PRODUCTS - COMP/OP AGG	s 3,000,000	
Α	х	ANY AUTO	LIABILITY	OPS0056493	06/18/2012	06/18/2013	COMBINED SINGLE LIMIT (Ea accident)	s 1,000,000	
		SCHEDUL	ED AUTOS .ED AUTOS				BODILY INJURY (Per person)	s	
		X HIRED AU	ITOS VED AUTOS				BODILY INJURY (Per accident)	s	
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COUNTY OF SANTA BARBARA 1112 SANTA BARBARA STREET SANTA BARBARA, CA 93101				TREET	DATE THEREOF NOTICE TO THE IMPOSE NO OB REPRESENTATI	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES 10 DAY NOTICE FOR NONPAYMENT AUTHORIZED REPRESENTATIVE			
					1	my rey			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

# Name of Person or Organization:

County of Santa Barbara, It's Officers, Agents, Employees and volunteers

Subrogation is waived as regards this agreement.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.