

MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE
COUNTY OF PLACER

TO: Honorable Board of Supervisors
FROM: Holly L. Heinzen, Interim County Executive Officer
By: Bekki Riggan, CEO Principal Management Analyst
DATE: May 8, 2012
SUBJECT: Two-Year Contract Extensions for Indigent Defense Services

Action Requested

Your Board is requested to approve and authorize the County Executive Officer to sign two-year contract extensions with three law firms for the provision of indigent defense services from July 1, 2012 to June 30, 2014 totaling \$12,186,006 as described below:

- 1) Primary Indigent Defense services contract extension with Richard A. Ciummo & Associates in the amount of \$9,012,100;
- 2) First Level Conflict Indigent Defense services contract extension with the Law Offices of Mark A. Berg in the amount of \$2,670,450, and;
- 3) Second Level Conflict Indigent Defense services contract extension with the Law Offices of Balcom & Carbone in the amount of \$503,456.

Background

The Constitution of the United States and California statutory provisions guarantee the right to legal representation for those facing criminal charges, juvenile delinquency and other matters as described below for any person who is not financially able to retain counsel:

- Proceedings regarding the commission of any offense triable in Superior Court;
- Conservatorship and various mental health proceedings;
- Various juvenile delinquency and dependency court proceedings;
- Paternity cases in which the county or the state has filed suit (e.g., family support cases).

In California, the responsibility for providing and funding legal representation for those who cannot afford counsel falls to each individual county. California's fifty-eight counties meet this responsibility through a variety of service delivery models including:

1. County Departments – where the attorneys and support staff are salaried public employees;
2. Contract Defenders – where private sector law firms or sole practitioners serve as independent contractors to the county;
3. Assigned Counsel – where cases are assigned directly by the court and are paid either a flat fee per case or on an hourly basis.

Due to the comparatively high costs associated with operating a county department many counties contract with the private sector for indigent defense services. The most recent publication (Spring 2011), of Hiring Practices of California Public Defender Offices compiled by UC Davis School of Law identified that twenty-one California counties (36%) utilize private sector contracts for provision of primary indigent defense services. Indigent Defense services in Placer County have been delivered through a contract model since June 1971, and it remains the opinion of the County Executive Office that public sector contracts are the best approach to obtaining constitutionally effective legal representation when administered as follows:

1. Contracts are awarded on the basis of qualitative criteria rather than on a cost basis alone;
2. Contract services are subject to regular oversight and monitoring;
3. Contracts include provisions that allow supplemental funding of ancillary defense costs and costs associated with extraordinary cases through court review and orders.

Current indigent defense service contracts with these firms were initially established in July 2006 following a competitive Request for Proposals (RFP) process conducted by a interview panel of County staff and Court officials. The panel conducted a thorough evaluation process commensurate with prescribed procurement policies to identify the responses which best met the requirements of the County and RFP solicitation criteria, the panel members agreed unanimously upon the final ranking and recommendations.

On June 13, 2006, your Board approved contracts for first level and second level conflict indigent defense services with the law firms of Mark A. Berg and Balcom and Carbone, and on June 27, 2006, approved the primary public defense contract with Richard A. Ciummo & Associates, A Professional Law Corporation. The terms of those contracts allowed for two 2-year extensions. The first 2-year extension was approved by your Board on May 18, 2010 at a total cost of \$12,078,862 for the contract period of July 1, 2010 to June 30, 2012. The County Executive Office recommends your Board authorize the second extension at a total cost of \$12,186,006 for the effective dates of July 1, 2012 to June 30, 2014.

Fiscal Impact

These two-year Indigent Defense Services contract extensions for Primary, First and Second Level Conflict Services from July 1, 2012 to June 30, 2014 total \$12,186,006, a two-year contract increase of \$107,144 or 0.9%, to cover cost drivers related to liability insurance and technology related costs as detailed in Table 1. Indigent Defense Services are fully funded by the County General Fund.

Attachments:

Table 1 Contract Detail

Contract Amendment – Richard A. Ciummo & Associates

Contract Amendment – Law Offices of Mark A. Berg

Contract Amendment – Law Firm of Balcom & Carbone

**Table 1
Indigent Defense Contract Services**

Fiscal Year	Ciummo & Assoc.	% Change	Mark A. Berg	% Change	Balcom & Carbone	% Change	Total Contracts	% Change
2010-2011	\$4,472,450	3%	\$1,324,453	-3%	\$251,728	-30%	\$6,048,631	-0.2%
2011-2012	\$4,463,550	-0.2%	\$1,314,953	-0.7%	\$251,728	0%	\$6,030,231	-0.3%
FY 2010-2012 Two-Year Contract Extension Total							\$12,078,862	
2012-2013 Proposed	\$4,523,550	1.3%	\$1,335,225	1.5%	\$251,728	0%	\$6,110,503	1.3%
2013-2014 Proposed	\$4,488,550	-0.8%	\$1,335,225	0.0%	\$251,728	0%	\$6,075,503	-0.6%
FY 2012-2014 Two-Year Contract Extension Total							\$12,186,006	
Increase from Prior Two-Year Contract Extension							\$107,144	0.9%

*Ancillary & Base Cost Notes

Increase is due to covering cost drivers such as Employee Benefits, Liability Insurance and Primary Public Defender firm technology upgrades.

Administering Agency: County Executive Office

Contract No.

AMENDMENT EXTENDING CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE COUNTY OF PLACER

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12232 ("Contract") is made at Auburn, California, as of July 1, 2012, by and between the County of Placer, ("COUNTY"), and Richard A. Ciummo & Associates, a Professional Law Corporation ("ATTORNEY"), who agree as follows:

Whereas, the initial contract between the COUNTY and John A. Barker and Associates, and subsequently assigned to Richard A. Ciummo & Associates as successor in interest, was made and entered on June 27, 2006 for the term of July 1, 2006 through June 30, 2010, and authorizes extension of the contract by the mutual written consent; and

Whereas, COUNTY and ATTORNEY desire to provide for an extension of the Contract in order to continue the provision of legal services of ATTORNEY during the extended term of the contract, under the terms and conditions of this Amendment;

Whereas, except as herein provided all other terms and conditions set forth in the Contract No.12232, entered into June 27, 2006, and in Contract No. 12232A entered into July 1, 2010, for Primary Public Defense Services, shall remain in full force and effect;

Now Therefore, the parties agree to this Amendment which extends the Contract for an additional two (2) years on the following additional terms and conditions.

1. That Section 2, **Scope of Attorney Services**, is hereby amended by the addition of Section 1.6 to Attachment A as follows: Contractor agrees that County may adopt a registration fee in an amount up to \$50, as authorized by Penal Code Section 987.5, and that Contractor and County shall cooperate in the process of assessment and collection such fee, and therefore, legal representation of financially eligible accused persons is rendered without expense to the defendant except as provided by Section 987.8 and 987.5 of the Penal Code.

2. That Section 3.A., **Contract Terms**, is hereby amended to extend the term of the Agreement for an additional (2) year term from July 1, 2012 through June 30, 2014, on all terms and conditions set forth in this second amendment, the first amendment, Contract No. 12232A and the initial Agreement, Contract No. 12232.

3. **Contract Compensation**. Section 5.A is hereby amended as follows: COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of up to nine million, twelve thousand, ninety-nine dollars and ninety-two cents (\$9,012,099.92) for a two (2) year service period. This amount includes funding to be set aside in a separate account maintained by the COUNTY for reimbursement of technology upgrades (\$35,000.00); case management system annual fee and maintenance reimbursement (\$70,000.00) and reimbursement for Roseville office space (\$24,000.00). All other compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

4. **Staffing Requirements**. Section 23 is amended hereby as follows: FY 2012 – 2014 Staffing: minimum attorney staff shall be equivalent to twenty-six (26) full time attorneys (including one (1) contract attorney); two (2) certified law students; one (1) support services specialist; five (5) full time investigators; one (1) full time office manager and the equivalent of and five (5) full time clerical staff.”

5. **Insurance and Indemnity Requirements**, Section 29 is hereby amended by the inclusion of the updated Indigent Defense Services, Indemnification and Insurance Requirements, set out in Attachment E of this Amendment, replacing the prior Attachment E, as amended.

Executed on this ____ day of _____, 2012:

COUNTY OF PLACER

By: _____
County Executive Officer

ATTORNEY

By: _____
Name:
Title: President

PLACER COUNTY SUPERIOR COURT

By: _____
Judge of the Placer County Superior Court

Approved As to Form

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2012 - June 30, 2013

\$4,441,549.96

July 1, 2012	\$370,129.16	\$4,071,420.80
August 1, 2012	\$370,129.16	\$3,701,291.63
September 1, 2012	\$370,129.16	\$3,331,162.47
October 1, 2012	\$370,129.16	\$2,961,033.31
November 1, 2012	\$370,129.16	\$2,590,904.14
December 1, 2012	\$370,129.16	\$2,220,774.98
January 1, 2013	\$370,129.16	\$1,850,645.82
February 1, 2013	\$370,129.16	\$1,480,516.65
March 1, 2013	\$370,129.16	\$1,110,387.49
April 1, 2013	\$370,129.16	\$740,258.33
May 1, 2013	\$370,129.16	\$370,129.16
June 1, 2013	\$370,129.16	\$0.00
	\$4,441,549.96	

Year Two - July 1, 2013 - June 30, 2014

\$4,441,549.96

July 1, 2013	\$370,129.16	\$4,071,420.80
August 1, 2013	\$370,129.16	\$3,701,291.63
September 1, 2013	\$370,129.16	\$3,331,162.47
October 1, 2013	\$370,129.16	\$2,961,033.31
November 1, 2013	\$370,129.16	\$2,590,904.14
December 1, 2013	\$370,129.16	\$2,220,774.98
January 1, 2014	\$370,129.16	\$1,850,645.82
February 1, 2014	\$370,129.16	\$1,480,516.65
March 1, 2014	\$370,129.16	\$1,110,387.49
April 1, 2014	\$370,129.16	\$740,258.33
May 1, 2014	\$370,129.16	\$370,129.16
June 1, 2014	\$370,129.16	\$0.00
	\$4,441,549.96	

Total Payment

\$8,883,099.92

Year 1	Year 2
\$ 4,441,549.96 Payments	\$ 4,441,549.96 Payments
\$ 35,000.00 Case Management Services Contract	\$ 35,000.00 Case Management Services Contract
\$ 12,000.00 Roseville Office Space	\$ 12,000.00 Roseville Office Space
\$ 35,000.00 Technology Upgrades	
\$ 4,523,549.96	\$ 4,488,549.96

Total Contract **\$9,012,099.92**

Attachment A1
to Amendment Extending Contract

INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS

All Contractors and Subcontractors shall adhere to the following indemnification and insurance requirements:

1. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the COUNTY or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

2. **INSURANCE:**

CONTRACTOR shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing. Non-admitted insurance carriers need to be approved by Risk Management.

3. **WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws,

regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONTRACTOR.

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

4. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONTRACTOR carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

D. If CONTRACTOR carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONTRACTOR shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) aggregate for Products Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

- (2) The insurance coverage provided by CONTRACTOR shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

5. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

- B. "The insurance provided by the CONTRACTOR, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

6. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

7. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

If CONTRACTOR sub-contracts in support of CONTRACTORs work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the CONTRACTOR shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

8. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The CONTRACTOR shall be responsible for all deductibles in all of the CONTRACTOR's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

CONTRACTOR's Obligations - CONTRACTOR's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - CONTRACTOR shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be

received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the CONTRACTOR to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

Administering Agency: County Executive Office

Contract No.

AMENDMENT EXTENDING CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE COUNTY OF PLACER

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12229 ("Contract") is made at Auburn, California, as of July 1, 2012, by and between the County of Placer, ("COUNTY"), and the Law Offices of Mark A. Berg ("ATTORNEY"), who agree as follows:

Whereas, the initial contract between the COUNTY and the Law Offices of Mark A. Berg, was made and entered on June 13, 2006 for the term of July 1, 2006 through June 30, 2010, and authorizes extension of the contract by the mutual written consent; and,

Whereas, COUNTY and ATTORNEY desire to provide for an extension of the Contract in order to continue the provision of legal services of ATTORNEY during the extended term of the contract, under the terms and conditions of this Amendment;

Whereas, all other terms and conditions set forth in the Contract No.12229, entered into June 13, 2006, and in Contract No. 12229A entered into July 1, 2010, for first level conflict Public Defender Services, shall remain in full force and effect;

Now Therefore, the parties agree to this Amendment which extends the Contract for an additional two (2) years on the following additional terms and conditions.

1. That Section 2, **Scope of Attorney Services**, is hereby amended by the addition of Section 2.5 to Attachment A as follows: Contractor agrees that County may adopt a registration fee in an amount up to \$50, as authorized by Penal Code Section 987.5, and that Contractor and County shall cooperate in the process of assessment and collection such fee, and therefore, legal representation of financially eligible accused persons is rendered without expense to the defendant except as provided by Section 987.8 and 987.5 of the Penal Code.
2. That Section 3.A., **Contract Terms**, is hereby amended to extend the term of the Agreement for an additional (2) year term from July 1, 2012 through June 30, 2014, on all terms and conditions set forth in this second

amendment, the first amendment, Contract No. 12229A and the initial Agreement, Contract No. 12229.

3. **Compensation for Services.** COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of two million, six-hundred seventy thousand, four hundred fifty dollars and eight cents (\$2,670,450.08) for a two (2) year service period. All other compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.
4. **Extraordinary Expenses Related to an Extraordinary Case.** Section 10. is hereby amended to add a new subsection C as follows: In the event that the Conflict Firm is appointed on a Capital Case, and the Court, after an appropriate motion by Conflict Firm, fails to appoint an additional attorney who is qualified to represent defendants in Capital Cases as Keenan counsel, then the County shall provide supplemental funding to the Conflict Firm so that it may retain a qualified attorney to assist in the defense in that Capital Case.
5. **Insurance and Indemnity Requirements,** Section 30 is hereby amended by the inclusion of the updated Indigent Defense Services, Indemnification and Insurance Requirements, set out in Attachment E of this Amendment, replacing the prior Attachment E, as amended.

Executed on this ____ day of _____, 2012:

COUNTY OF PLACER

ATTORNEY

By: _____
County Executive Officer

By: _____
Name:

PLACER COUNTY SUPERIOR COURT

Approved As to Form

By: _____
Judge of the Placer County Superior Court

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2012 - June 30, 2013		\$1,335,225.04
July 1, 2012	\$111,268.75	\$1,223,956.29
August 1, 2012	\$111,268.75	\$1,112,687.53
September 1, 2012	\$111,268.75	\$1,001,418.78
October 1, 2012	\$111,268.75	\$890,150.03
November 1, 2012	\$111,268.75	\$778,881.27
December 1, 2012	\$111,268.75	\$667,612.52
January 1, 2013	\$111,268.75	\$556,343.77
February 1, 2013	\$111,268.75	\$445,075.01
March 1, 2013	\$111,268.75	\$333,806.26
April 1, 2013	\$111,268.75	\$222,537.51
May 1, 2013	\$111,268.75	\$111,268.75
June 1, 2013	\$111,268.75	\$0.00
	\$1,335,225.04	

Year Two - July 1, 2013 - June 30, 2014		\$1,335,225.04
July 1, 2013	\$111,268.75	\$1,223,956.29
August 1, 2013	\$111,268.75	\$1,112,687.53
September 1, 2013	\$111,268.75	\$1,001,418.78
October 1, 2013	\$111,268.75	\$890,150.03
November 1, 2013	\$111,268.75	\$778,881.27
December 1, 2013	\$111,268.75	\$667,612.52
January 1, 2014	\$111,268.75	\$556,343.77
February 1, 2014	\$111,268.75	\$445,075.01
March 1, 2014	\$111,268.75	\$333,806.26
April 1, 2014	\$111,268.75	\$222,537.51
May 1, 2014	\$111,268.75	\$111,268.75
June 1, 2014	\$111,268.75	\$0.00
	\$1,335,225.04	

Total Payment		\$2,670,450.08
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INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS

All Contractors and Subcontractors shall adhere to the following indemnification and insurance requirements:

1. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the COUNTY or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

2. **INSURANCE:**

CONTRACTOR shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing. Non-admitted insurance carriers need to be approved by Risk Management.

3. **WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws,

regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONTRACTOR.

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

4. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONTRACTOR carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence

→Two million dollars (\$2,000,000) aggregate

D. If CONTRACTOR carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONTRACTOR shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
- (2) The insurance coverage provided by CONTRACTOR shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of polices be different.

5. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

- B. "The insurance provided by the CONTRACTOR, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

6. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

7. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

If CONTRACTOR sub-contracts in support of CONTRACTORs work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

The insurance coverage provided by the CONTRACTOR shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

8. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The CONTRACTOR shall be responsible for all deductibles in all of the CONTRACTOR's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

CONTRACTOR's Obligations - CONTRACTOR's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - CONTRACTOR shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be

received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the CONTRACTOR to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

Administering Agency: County Executive Office

Contract No.

AMENDMENT EXTENDING CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE COUNTY OF PLACER

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12230 ("Contract") is made at Auburn, California, as of July 1, 2012, by and between the County of Placer, ("COUNTY"), and the Law Firm of Balcom & Carbone ("ATTORNEY"), who agree as follows:

Whereas, the initial contract between the COUNTY and the Law Firm of Balcom & Carbone, was made and entered on June 13, 2006 for the term of July 1, 2006 through June 30, 2010, and authorizes extension of the contract by the mutual written consent; and,

Whereas, COUNTY and ATTORNEY desire to provide for an extension of the Contract in order to continue the provision of legal services of ATTORNEY during the extended term of the contract, under the terms and conditions of this Amendment;

Whereas, all other terms and conditions set forth in the Contract No.12230, entered into June 13, 2006, and in Contract No. 12230A entered into July 1, 2010, for second level conflict Public Defender Services, shall remain in full force and effect;

Now Therefore, the parties agree to this Amendment which extends the Contract for an additional two (2) years on the following additional terms and conditions.

1. That Section 2, **Scope of Attorney Services**, is hereby amended by the addition of Section 3.4 to Attachment A as follows: Contractor agrees that County may adopt a registration fee in an amount up to \$50, as authorized by Penal Code Section 987.5, and that Contractor and County shall cooperate in the process of assessment and collection such fee, and therefore, legal representation of financially eligible accused persons is rendered without expense to the defendant except as provided by Section 987.8 and 987.5 of the Penal Code.
2. That Section 3.A., **Contract Terms**, is hereby amended to extend the term of the Agreement for an additional (2) year term from July 1, 2012 through June 30, 2014, on all terms and conditions set forth in this second amendment, the first amendment, Contract No. 12230A and the initial Agreement, Contract No. 12230.

3. **Compensation for Services.** COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of five hundred three thousand, four hundred fifty-five dollars and twenty cents (\$503,455.20) for a two (2) year service period. Should ATTORNEY identify a need for additional funding due to a significant, sustained increase in cases appointed or appointment of a serious and complex felony case requiring additional staffing needs, COUNTY will meet with ATTORNEY to review a request for supplemental indigent defense funding. All compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

4. **Insurance and Indemnity Requirements,** Section 30 is hereby amended by the inclusion of the updated Indigent Defense Services, Indemnification and Insurance Requirements, set out in Attachment E of this Amendment, replacing the prior Attachment E, as amended.

Executed on this ____ day of _____, 2012:

COUNTY OF PLACER

ATTORNEY

By: _____
County Executive Officer

By: _____
Name:

By: _____
Name:

PLACER COUNTY SUPERIOR COURT

By: _____
Judge of the Placer County Superior Court

Approved As to Form

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2012 - June 30, 2013 \$251,727.60

July 1, 2012	\$20,977.30	\$230,750.30
August 1, 2012	\$20,977.30	\$209,773.00
September 1, 2012	\$20,977.30	\$188,795.70
October 1, 2012	\$20,977.30	\$167,818.40
November 1, 2012	\$20,977.30	\$146,841.10
December 1, 2012	\$20,977.30	\$125,863.80
January 1, 2013	\$20,977.30	\$104,886.50
February 1, 2013	\$20,977.30	\$83,909.20
March 1, 2013	\$20,977.30	\$62,931.90
April 1, 2013	\$20,977.30	\$41,954.60
May 1, 2013	\$20,977.30	\$20,977.30
June 1, 2013	\$20,977.30	\$0.00
	\$251,727.60	

Year Two - July 1, 2013 - June 20, 2014 \$251,727.60

July 1, 2013	\$20,977.30	\$230,750.30
August 1, 2013	\$20,977.30	\$209,773.00
September 1, 2013	\$20,977.30	\$188,795.70
October 1, 2013	\$20,977.30	\$167,818.40
November 1, 2013	\$20,977.30	\$146,841.10
December 1, 2013	\$20,977.30	\$125,863.80
January 1, 2014	\$20,977.30	\$104,886.50
February 1, 2014	\$20,977.30	\$83,909.20
March 1, 2014	\$20,977.30	\$62,931.90
April 1, 2014	\$20,977.30	\$41,954.60
May 1, 2014	\$20,977.30	\$20,977.30
June 1, 2014	\$20,977.30	\$0.00
	\$251,727.60	

Total Payment \$503,455.20

INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS

All Contractors and Subcontractors shall adhere to the following indemnification and insurance requirements:

1. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The CONTRACTOR hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the CONTRACTOR. CONTRACTOR also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the COUNTY or to enlarge in any way the CONTRACTOR'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONTRACTOR'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

2. **INSURANCE:**

CONTRACTOR shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing. Non-admitted insurance carriers need to be approved by Risk Management.

3. **WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to CONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws,

regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONTRACTOR.

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

4. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If CONTRACTOR carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence

→Two million dollars (\$2,000,000) aggregate

D. If CONTRACTOR carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- One million dollars (\$1,000,000) for Products-Completed Operations
- Two million dollars (\$2,000,000) General Aggregate

- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

CONTRACTOR shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
- (2) The insurance coverage provided by CONTRACTOR shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

5. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

- B. "The insurance provided by the CONTRACTOR, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
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If CONTRACTOR sub-contracts in support of CONTRACTORs work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars (\$1,000,000) in aggregate.

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CONTRACTOR's Obligations - CONTRACTOR's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - CONTRACTOR shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be

received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the CONTRACTOR to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.