

**MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE
COUNTY OF PLACER**

TO: Honorable Board of Supervisors

FROM: David Boesch, County Executive Officer
By: Bekki Riggan, Principal Management Analyst

DATE: January 7, 2014

SUBJECT: Second Level Conflict Indigent Defense Services Contract

ACTION REQUESTED

Approve a professional services agreement with the Law Offices of Toni Carbone to provide second level conflict indigent defense services from January 1, 2014 through June 30, 2014, in the maximum amount of \$125,864, funded in the FY 2013-14 CEO Criminal Justice – Other Programs budget, with no additional Net County Cost, and authorize the CEO to sign the resulting contract.

BACKGROUND

The County Executive Office contracts with three law firms to provide primary, first and second-level conflict indigent defense services. Due to personal circumstances of one of the firm's partners, the second-level conflict contract with the Law Offices of Balcom & Carbone was cancelled effective December 31, 2013.

The Purchasing Policy Manual, Section 1.3(a), allows for an exception to the competitive bidding process for expert and professional services. Due to the anticipated three month timeline for conducting a competitive solicitation process for these services, staff recommends developing a contract with Ms. Carbone, (a partner in the original contract) in order to facilitate continuity of contract terms and services and to bridge the remaining six months of the current contract cycle.

Ms. Carbone is familiar with the scope of work for indigent defense contract services and has effectively provided these services to the Courts and the County for the past 7.5 years. This contract approach will ensure uninterrupted services while the County and the Courts work together to develop an updated scope of work and to conduct a formal competitive solicitation process that allows for all interested and qualified firms to respond.

This contract has been developed in coordination with the Placer County Superior Courts.

FISCAL IMPACT

Upon your Board's approval, a contract will be awarded to Law Offices of Toni Carbone in the maximum amount of \$125,864, for the period of January 1, 2014 through June 30, 2014. These services are fully funded in the FY 2013-14 CEO Criminal Justice – Other Programs Final Budget. There is no additional fiscal impact to the General Fund

Attachments:
Second Level Indigent Defense Services Contract
Interest Letter – Law Offices of Toni Carbone

**CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE
COUNTY OF PLACER**

THIS CONTRACT is made and entered into this 7th day of January 2014, by and between the COUNTY OF PLACER ("COUNTY") and the Law Offices of Toni Carbone ("ATTORNEY"), or jointly referred to as "Parties":

WITNESSETH

WHEREAS, the right of all persons against whom criminal prosecutions are brought to be represented by counsel is guaranteed by the Constitution of the United States and the Constitution of the state of California; and

WHEREAS, COUNTY is obligated by law to provide legal services in certain cases for persons financially unable to retain counsel; and

WHEREAS, the cost and expense of such counsel in the representation of indigent defendants is a proper and lawful charge upon COUNTY; and

WHEREAS, the COUNTY'S Second Level Indigent Defense services contract with the Law Offices of Balcom & Carbone was terminated for cause effective December 31, 2013; and

WHEREAS, ATTORNEY has expressed interest and remains committed to providing required services, for the duration of the original contract; and

WHEREAS, the COUNTY'S Purchasing Policy Manual allows for an exception to the competitive bidding process for expert and professional services; and

WHEREAS, it is in the public interest that COUNTY employ private counsel to render the usual and customary legal services of a conflict public defender, and the parties desire to contract with respect thereto; and

WHEREAS, ATTORNEY represents and warrants that it is competent to render all legal services required by the Contract.

NOW, THEREFORE, the Parties hereto agree:

2. **SCOPE OF ATTORNEY SERVICES:** ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with Attachment A, ATTORNEY Scope of Service.
3. **CONTRACT TERMS: TERMINATION:**
 - A. Term: This Contract shall be for a period of six (6) months, with no options for renewal.

B. Termination:

1. This Contract may be terminated by the Parties upon the provision of no less than one hundred twenty (120) calendar days' written notice.
2. COUNTY may terminate this Contract by providing no less than thirty (30) calendar days' advance written notice for any of the following actions or in-actions by ATTORNEY:
 - a. Pleading no contest to, or being found guilty of, a felony or a crime involving moral turpitude;
 - b. Persistent failure to perform the duties of this Contract, including failure to provide required information and reports;
 - c. Disability that substantially interferes with the performance of duties and is permanent or is likely to become permanent;
 - d. Conduct prejudicial to the administration of justice which brings the ATTORNEY into disrepute; or
 - e. Undertaking to represent at COUNTY expense persons who are not, in fact, indigent and, thus, are not entitled to ATTORNEY services;
 - f. Refusal of the Placer County Superior Court (Court) to appoint ATTORNEY as conflict counsel in criminal cases;
 - g. Disqualification from the practice of law.

4. **REPRESENTATION OF CASES AFTER EXPIRATION:**

- A. At the expiration of this Contract, ATTORNEY shall carry to conclusion all cases pending at that time unless relieved by the Court.
- B. Compensation for services under this Section as mandated by the Court shall be based upon the rates set forth in the then-effective Court rules and in accordance with Penal Code Section 987.3. A prerequisite to any payment for such services shall be the submission by ATTORNEY to COUNTY of full documentation of services rendered, rates charged, and activities billed.
- C. As to pending cases where the Courts are willing to authorize a substitution of counsel to a new provider of COUNTY conflict public defender services, at the expiration of the Contract, ATTORNEY shall be relieved of the obligation to provide further representation.
 1. At the expiration of this Contract, ATTORNEY agrees to assign all existing open assigned cases and closed case files and other applicable records to the successor conflict public defender.
 2. Attorney shall execute any and all documents necessary to effect this provision.

5. **CONTRACT COMPENSATION:**

- A. COUNTY agrees to pay ATTORNEY, as full compensation for services herein, the total sum of One Hundred Twenty Five Thousand Eight Hundred and Sixty Four Dollars (\$125,864) for a six (6) month service period, payable in monthly installments in accordance with the payment schedule on Attachment B; and
- B. Upon written agreement of the Parties, the payment schedule on Attachment B may be amended by COUNTY for the purpose of advancing funds, which may become necessary for ATTORNEY to procure new office space. Such payment schedule amendment shall in no way whatsoever mean, or imply to mean, that the reimbursable value of this contract has changed, unless changes are provided to the total contract value in this Section by written agreement of the Parties; and
- C. ATTORNEY agrees to carry up to one (1) non-capital homicide cases within a two (2) year time period. Any additional non-capital homicide cases appointed by the Court, would be paid for by COUNTY as additional compensation upon proper Court order for services in accordance with Court rules, and only upon the submission of a proper claim by service provider in accordance with COUNTY procedures; and
- D. ATTORNEYS' failure to provide reports to COUNTY pursuant to Section 16 herein within twenty (20) calendar days following the end of each month will result in a monthly payment withholding of ten percent (10%) until such time as the reports are delivered. Upon delivery of reports, COUNTY will immediately prepare a payment document representing any amounts withheld pursuant to this Section, and to be processed by the Auditor/Controller; and
- E. ATTORNEY agrees to accept appointment of cases outside this contract to assist with any transition involving primary public defense services, to the extent staff is available and caseloads permit. ATTORNEY will be compensated on an hourly basis in accordance with local Court rules; and
- F. COUNTY is not obligated to compensate ATTORNEY for any month in which the Court, for any reason, fails or refuses to appoint ATTORNEY second level conflict cases.

6. **PARTIES' COOPERATIVE APPROACH TO NEW PROGRAMS AND GRANT FUNDING:**

Parties agree to work cooperatively in the pursuit of additional funding that may become available for application by public defender programs; provided, however, that such additional revenue is not utilized to supplant existing funding for services. With Parties' prior written agreement, and at COUNTY's discretion, application of COUNTY resources related to this section may be invoiced to, and reimbursed by, ATTORNEY. Any funds pursuant to this section, which involve, as a condition of funding, a pass through from COUNTY to ATTORNEY, may correspondingly involve the assessment of an ongoing COUNTY administrative fee pursuant to any such grant application budget and award. Pass-through grants pursuant to this Section will require a written contract amendment pursuant to Section 33 herein, prior to transfer of any such funds from COUNTY to ATTORNEY.

7. **INCIDENTAL EXPENSES: COST TO COUNTY:**

Costs for expert witnesses, special investigations, tests, interpreters and reports from third parties, and the cost of non-capital homicide investigations, medical and psychiatric expenses and ancillary costs may supplement the services to be provided under this contract. Such costs shall be borne by COUNTY only upon proper Court order for services in accordance with Court rules, and paid by COUNTY only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.

8. **INCIDENTAL EXPENSES: COST TO ATTORNEY:**

ATTORNEY shall provide, at ATTORNEY's expense, all costs of operations required for the competent and effective performance of ATTORNEY, including but not limited to office space, utilities, supplies, attorneys, support staff, investigators, travel, library, communications including information technology, equipment, and all other costs of operations of any kind or nature whatsoever.

9. **DETERMINATION OF CLIENT FINANCIAL ELIGIBILITY:**

A. As requested by the Court, ATTORNEY will participate in the determination of a defendant's financial ability to employ counsel pursuant to Government Code 27707: the court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Attachment A is financially able to employ counsel and qualifies for the services of the public defender; and

B. ATTORNEY shall, however, render legal services as provided in Attachment A for any person the Court determines is not financially able to employ counsel until such time as a contrary determination is made by the Court. If a contrary determination is made, ATTORNEY thereafter may not render services for such person except in a proceeding to review the determination of that issue or in an unrelated proceeding; and

C. In order to assist the Court or ATTORNEY in making the determination, the Court or ATTORNEY may require a defendant or person requesting representation to file a financial statement under penalty of perjury. The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted. The financial statement shall not be confidential and privileged in a proceeding under Section 987.8 of the Penal Code.

10. **PERFORMANCE UNDER CONTRACT TO BE PRINCIPAL BUSINESS OF ATTORNEY; LIMITED PRIVATE PRACTICE PERMISSIBLE:**

A. ATTORNEY represents and warrants to the COUNTY that, while this Contract is in effect, the performance of the legal services under this Contract shall be its principal and first priority business; and

B. ATTORNEY covenants to decline to advise or represent clients, or undertake cases or legal projects, which would, or in the foreseeable future could, conflict with services under this Contract.

11. **LEGAL CONFLICTS OF INTEREST:**

- A. ATTORNEY shall adhere to the Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases (Attachment F) in its then-current form, for determining which cases to decline in the event that a conflict of interest requires ATTORNEY to continue representation of one client while seeking relief from further representation of another; and
- B. If a Court determines that a conflict of interest exists which would prevent ATTORNEY from representing one or more eligible defendants in a pending criminal proceeding, ATTORNEY shall be relieved of providing legal services in that proceeding.

12. **DISCRIMINATORY CONDUCT PROHIBITED:**

ATTORNEY and its subcontractors shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, color, sex, religion, national origin, age, disability, sexual orientation, political beliefs, veteran's status, other non-merit factors unrelated to job duties, or any other legally protected characteristic in: hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; and accepting or terminating representation of any client.

13. **DRUG-FREE WORKPLACE:**

ATTORNEY and its subcontractors shall comply with the provisions of a Drug-Free Workplace in accordance with Government Code Section 8355.

14. **SEXUAL HARASSMENT AND HOSTILE WORKPLACE PROHIBITION:**

ATTORNEY shall maintain an organization and workplace free of legally defined harassment, including but not limited to: Quid Pro Quo or unwelcome sexual advances made either explicitly or implicitly as a term or condition of employment, advancement used as the basis for employment decisions, or determination of service level; a hostile or offensive environment unreasonably interfering with an individual's work or performance; harassment by non-employees; and any related retaliation.

15. **APPOINTMENT OF OTHER COUNSEL; COSTS TO BE BORNE BY ATTORNEY:**

- A. Should ATTORNEY be unable, ineligible or unavailable to provide services included in this Contract for any reason other than a documented legal conflict of interest in accordance with Section 11 herein, or is dilatory in providing such services, the Court may appoint other counsel; and
- B. If the Court should determine that other counsel must be appointed for any reason other than a documented conflict of interest, ATTORNEY shall be responsible for all costs associated with such court-appointed counsel; and
- C. Compensation provided in Section 5 shall be offset by an amount equivalent to the cost COUNTY incurs as a result of services provided by such other counsel as described in this Section. COUNTY shall provide cost detail to ATTORNEY concerning any such payment offsets at the time an offset is affected.

16. RECORDS AND REPORTS:

- A. ATTORNEY shall maintain a case reporting and management information system to provide COUNTY with financial, caseload and performance data and management, and workload and statistical reports as set forth in RFP Number 9554. ATTORNEY shall maintain records and reports:
1. As required and requested by COUNTY including, but not limited to, reports to enable the Court, in appropriate proceedings, to determine the amount of reasonable attorney's fees for the purpose of assessment of costs pursuant to Penal Code 987.4 and 987.8; and
 2. To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204; and
 3. As otherwise required by COUNTY to determine sufficient caseload management; and
 4. At a minimum, such records shall be maintained for each case in accordance with the requirements of RFP Number 9554 and Attachment C, and shall include the number of hours spent by ATTORNEY, associate attorneys, support staff, investigators, associated charges, and any other related charges incurred in the defense of said case, provided that such disclosure shall not violate attorney-client privilege.
- B. ATTORNEY shall provide the Presiding Judge of the Superior Court with the names of the attorneys of the firm, their experience, qualifications, and areas of specialization, and shall update this information as applicable and necessary.
- C. ATTORNEY shall submit a monthly report to the COUNTY on the then-current COUNTY prescribed report (Attachment D) no later than the twentieth (20th) calendar day of each following month. Only those cases determined by the COUNTY and the Courts as fitting the definition of a Case shall be reported.

17. RECORDS RETENTION AND COUNTY ACCESS:

- A. ATTORNEY shall maintain, in safe storage, all significant administrative files, i.e. personnel and financial, including time records and billing reports, for at least seven (7) years; and
- B. ATTORNEY shall maintain case records in accordance with a Records Management Retention schedule, or longer as necessary for compliance with applicable sections of California law.
1. Death penalty and homicide case records shall be retained for at least the life of the individual sentenced, with documents copied and mailed to COUNTY pertaining to any records released to other entities per Court order; and
 2. County shall have access to such files as necessary for administration of this Contract or a successor Contract. COUNTY guarantees confidential treatment of such files. COUNTY shall not be permitted access to any case file without a Court order or the written consent of ATTORNEY.

18. STANDARDS OF REPRESENTATION:

- A. ATTORNEY agrees to follow applicable public defender standards published by the American and California Bar Associations, including the California Bar Association's Rules of Professional Conduct; and applicable provisions of California law; and
- B. ATTORNEY shall provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients.
- C. Parties agree that the application of standards contained in this Section shall not represent financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

19. CASE ASSIGNMENT AND REVIEW:

Case assignment shall be based on counsel's experience and/or training in order to provide ethical, high-quality representation.

20. OVERSIGHT:

- A. COUNTY and a representative of the Superior Court bench shall confer on at least a quarterly basis to maintain oversight and evaluation of public defender services. Such oversight shall include recommendations and related implementation review applicable to maintaining services in conformance with standards as set forth in this Contract, and generally acceptable practices by public defender programs in California; and
- B. COUNTY and Courts shall review and provide input concerning any changes to ATTORNEY staff; and
- C. COUNTY may, at its discretion, appoint an Oversight Committee to satisfy the conditions in this Section.

21. OFFICE REQUIREMENTS:

Business Office: ATTORNEY shall maintain a publicly accessible office within Placer County as necessary to competently and capably fulfill the requirements of the Contract.

22. STAFFING REQUIREMENTS:

- A. ATTORNEY shall employ attorneys, investigators, law clerks, interviewers and administrative staff sufficient to provide coverage for all Courts located throughout Placer County, and, as necessary, to competently and capably fulfill the requirements of this Contract, at a minimum as follows:
Minimum attorney staff shall be equivalent to two (2) full-time attorneys.
- B. ATTORNEY'S failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 15 herein; and
- C. Changes to ATTORNEY staff included in the RFP response shall involve input from COUNTY and the Court bench.

23. **SUPERVISION AND EVALUATION:**

ATTORNEY shall maintain a procedure for internal systematic supervision and evaluation of staff performance. Performance evaluations are to be based upon personal monitoring by the ATTORNEY's Director or Chief Attorney and shall be augmented by regular, formalized comments by judges, other defense lawyers and clients.

24. **PROFESSIONAL DEVELOPMENT**

A. ATTORNEY shall provide funds and sufficient staff-time to permit systematic and comprehensive training to attorneys and professional staff at least in accordance with the State Bar's Minimum Continuing Legal Education (MCLE) requirements. Resources shall include continuing legal education programs, attendance at local training programs, and the opportunity to review training and professional publications and tapes; and

B. ATTORNEY shall provide at the beginning of each fiscal year a written training plan that includes specific goals and objectives for all employees.

25. **MENTORING:**

ATTORNEY shall maintain a process by which the most skilled attorneys are available to assist in the development of new attorneys and to those ready to begin handling more difficult cases.

26. **INDEPENDENT CONTRACTOR STATUS:**

A. Nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint-venture relationship, or to allow COUNTY to exercise direction or control over the professional manner in which ATTORNEY performs the services under this Contract; provided always that the services to be provided herein by ATTORNEY are in a manner consistent with the standards governing such services and the provisions of this Contract. For all purposes arising under this Contract, ATTORNEY shall be an independent contractor as provided by law; and ATTORNEY and each and every member, employee, agency, servant, partner, shareholder, contractor or subcontractor of ATTORNEY shall not be, for any purpose of the Contract, an employee of the COUNTY. Furthermore, this Contract shall not under any circumstances be construed or considered to be a joint venture. As an independent contractor, the following shall apply under this Contract:

1. ATTORNEY shall determine the method, details and means of performing the services to be provided as described in this Contract;
2. ATTORNEY shall be responsible to COUNTY for the requirements and results specified by this Contract and shall not be subject to COUNTY's control with respect to the means, method, physical actions or activities of ATTORNEY in fulfillment of the requirements of the Contract;
3. ATTORNEY is not, and shall not, be entitled to receive from or through COUNTY, and COUNTY shall not provide, or be obligated to provide, ATTORNEY with Workers' Compensation coverage, unemployment insurance coverage or any other type of employment or worker insurance or benefit required by any federal, state or local law or regulation for, or normally afforded to, any COUNTY employee;
4. ATTORNEY shall not be entitled to participate in, or receive any benefit from, or make any claim against, any COUNTY employee benefit program, including, but not limited to coverage required or provided by and federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY;

5. COUNTY shall not withhold or pay, on behalf of ATTORNEY, any federal, state or local tax, including but not limited to, any personal income tax owed by ATTORNEY;
6. ATTORNEY shall not have the authority, express or implied, to act on behalf of, bind or obligate COUNTY or any COUNTY department, COUNTY agent, or COUNTY employee in any way.

27. **HOLD HARMLESS AND INDEMNIFICATION:**

- A. ATTORNEY and its subcontractors agree to protect, defend, indemnify, and hold 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 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. ATTORNEY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at its sole expense. ATTORNEY 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 ATTORNEY or the COUNTY, or to enlarge in any way the ATTORNEY'S liability but is intended solely to provide for indemnification of COUNTY from liability for damages or injuries to third persons or property arising from ATTORNEY'S performance pursuant to this Contract.
- B. As used above, the term COUNTY means Placer County or its officers, agents, employees, and volunteers.

28. **INSURANCE AND INDEMNITY REQUIREMENTS:**

Incorporated herein and made a part of this agreement are the Insurance Requirements specified in Attachment D, Insurance and Indemnity Requirements.

29. **NON ASSIGNMENT OF CONTRACT:**

Inasmuch as this Contract is intended to secure the specialized services of ATTORNEY, ATTORNEY shall not assign, transfer, or subcontract this Contract or any part thereof, without the written consent of COUNTY; nor shall ATTORNEY assign any monies due or to become due herein without the written consent of COUNTY. COUNTY consents to the following attorneys being utilized in this contract, Dan Koukol (SBN 122526), Tasha Paris Chalfant (SBN 207055), and Christine Morse Galves (SBN 192044) as referenced in Attachment F.

30. **SUBCONTRACTORS REPRESENTED IN ATTORNEY RFP RESPONSE:**

ATTORNEY represents and COUNTY hereby consents, contingent upon the delivery of certificates of insurance for each contracted attorney, in the type and amount specified in Section 28, prior to the effective date of this Contract, to the utilization of contracted attorneys.

31. **COVENANT:**

This Contract has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the state of California. All duties and obligations of the parties created herein are performable in Placer County, which shall

be the venue for any action, or proceeding that may be brought, or arise out of, in connection with, or by reason of this Contract.

32. INTERPRETATION OF CONTRACT:

No inference in the interpretation of construction of this Contract is to be drawn or given because of the fact that is has been drawn by the COUNTY. The parties agree and represent that this Contract resulted from an equal bargaining position and that it reflects the entire understanding and agreement between the parties on those matters to which it relates.

33. NO TERMS NOT INCLUDED, ENTIRE CONTRACT, AND MODIFICATION:

- A. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or likewise, regarding the subject matter of the Contract shall be deemed to exist or to bind either of the parties hereto; and
- B. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations to this Contract shall be effective unless in writing and signed by both parties.
- C. ATTORNEY specifically acknowledges that in entering into and executing this Contract, ATTORNEY relied solely upon the representations and agreements contained in RFP Number 9554, and this Contract, and no others.

Executed on this ____ day of _____, 2014

COUNTY OF PLACER

ATTORNEY

David Boesch
Placer County Executive Officer

Toni Carbone
Attorney at Law

PLACER COUNTY SUPERIOR COURT

Honorable Alan Pineschi, Presiding Judge
Placer County Superior Court

Approved as to Form:

Gerald O. Carden, County Counsel

- Attachment A: Attorney Scope of Service
- Attachment B: Contract Payment Schedule
- Attachment C: Attorney Case Records Requirement
- Attachment D: Insurance and Indemnity Requirements
- Attachment E: Superior Court's Rule for Declaration of Conflicts of Interest in Criminal and Juvenile Cases
- Attachment F: Toni Carbone, Attorney at Law Letter of Interest

Attachment A

**INDIGENT DEFENSE SERVICES
SCOPE OF WORK**

1.0 Category C – Second Level Conflict Public Defender Services

- 1.1 Second Level Conflict services will be utilized for the legal representation of accused persons where the primary and conflict public defenders have a legal conflict of interest. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 1.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 1.3 ATTORNEY will also be responsible for providing the County with relevant workload and case-related statistics, as required, and to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, County policy or local court rules. ATTORNEY will be responsible for providing at least one offender education class to the adult offender population in Placer County, at a time and location to be mutually agreed upon at a later date.
- 1.4 ATTORNEY 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.

Attachment B

PAYMENT FOR SERVICES RENDERED

Year One - January 1, 2014 - June 20, 2014		\$125,863.80
January 15, 2014	\$20,977.30	\$104,886.50
February 15, 2013	\$20,977.30	\$83,909.20
March 15, 2013	\$20,977.30	\$62,931.90
April 15, 2013	\$20,977.30	\$41,954.60
May 15, 2013	\$20,977.30	\$20,977.30
June 15, 2013	\$20,977.30	\$0.00
	\$125,863.80	
Total Payment		\$125,863.80

Attachment C

INDIGENT DEFENSE SERVICES DATA COLLECTION REQUIREMENTS

1. Client Records

The Attorney must maintain reliable records to permit the County to audit billings, workload and performance, including client records that identify:

1. Name of Client
2. Date assigned to the case
3. Financial eligibility of client
4. Category of representation:
 - a. Juvenile Delinquency
 - b. Adult Misdemeanor
 - c. Adult Felony
 - d. Paternity
 - e. Adult Probation
 - f. LPS/Conservatorship
 - g. Drug Court
 - h. Modifications:
 - From Juvenile Dependency
 - To Juvenile Dependency
 - i. Other
5. Case number
6. The charge or nature of the case
7. Applicable code section(s)
8. Hours worked, by case and major task; e.g. investigations, court appearances
9. Name(s) of attorney staff
10. Other staff
11. Outside personnel or expert witnesses used
13. Disposition of cases
14. Judge of court disposing of case
15. Record of court appearances
16. Date case closed
17. Attorney shall refer client to Revenue Services for evaluation of ability to pay as provided in the process approved by the County and Courts. Attorney shall keep sufficient records to account for hours dedicated to the case for use in any subsequent hearings held by the court.

2. Financial Records

Financial records shall comply with Generally Accepted Accounting Principles (GAAP), and shall be capable of capturing costs by case.

Attachment D

**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.

Attachment E

PLACER COUNTY SUPERIOR COURT RULE FOR DECLARATION OF CONFLICTS OF INTEREST

The following rule is to guide the Court and counsel regarding the circumstances under which a conflict of interest is to be declared concerning the representation of a criminal defendant.

- A. Application of the Rule: The conflicts rule shall be applicable to declarations of conflict by any appointed counsel, whether such counsel is the Placer County Public Defender, Conflicts Firm, or private attorney appointed by the Court.
- B. Construction of Rule: Whenever possible, consistent with legal ethics and the fundamental right of any criminal defendant to be represented by counsel who is free of conflicts of interest, this rule shall be liberally construed to *avoid* a declaration of conflict so as to give full and appropriate effect to contractual arrangements between the County of Placer and appointed counsel.
- C. Multiple Defendant Cases:
 - 1. Counsel appointed by the Court shall not represent different defendants involved in the same or related criminal conduct, whether or not the defendants are separately or jointly charged.
 - 2. Privately retained counsel shall not represent multiple defendants charged in the same criminal proceeding unless a full and knowledgeable waiver is obtained from each defendant in writing and orally in open court after inquiry by the Court.
 - 3. Declarations of conflict in multiple defendant cases may be made by any attorney without the prior approval of a supervising attorney.
 - 4. Whenever a conflict is declared, to the extent possible, the Public Defender shall retain the client having the more serious or complex case from that of the Conflicts Firm; the Conflicts Firm shall retain the client having the more serious or complex case from that of private appointed counsel.
- D. Conflicts with Current Clients:
 - 1. Counsel appointed by the Court shall not represent a defendant where an *adverse* witness or victim is a client currently being represented by such counsel. For the purposes of this rule, “currently being represented” means:
 - a. A client who has an active, pending charge or violation of probation,
 - b. A defendant for whom counsel is actively seeking post- judgment relief, or
 - c. Counsel currently is counsel of record for a minor in a juvenile delinquency or dependency proceeding, whether or not there currently is a pending petition in such juvenile proceeding.

2. Absent unusual circumstances, the fact that counsel represents a witness *supporting* the defendant will not disqualify counsel from representing the defendant.
3. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.

E. Former Clients as Witnesses or Victims:

1. A declaration of conflict shall not be made merely from the fact that a former client is a victim or witness in the current action.
2. A declaration of conflict may be made if all of the following circumstances are present:
 - a. Counsel is in possession of confidential information concerning the former client. "Confidential information" does not include information that is part of the public record or may readily be obtained by opposing counsel, such as records of conviction, employment and school records.
 - b. The confidential information is relevant to the current proceeding.
 - c. Counsel will or may be called upon to use the confidential information against the former client in the defense of the client in the current case.
3. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.

a. Declaration of Conflict in Other Circumstances:

(1) Merely because a conflict existed in the past does not mean that there is a conflict in the current case. Each case is to be evaluated as to current conflicts. It is presumed, for example, that the Public Defender shall represent a defendant on a current probation violation, even though there had been a conflict in representation on the original case.

(2) Counsel may declare a conflict in the following additional cases:

aa. Where there is a substantial appearance of conflict. Examples of such circumstances include former clients who were frequently represented by counsel, or cases where the former client has had a recent and substantial case with counsel.

bb. Where a witness or victim is a member of the office staff of counsel or a member of such staff's family. Merely having knowledge of or acquaintance with the witness or victim shall not be grounds for a declaration of conflict of the entire office of counsel, but may warrant re-assignment of the case within counsel's firm.

cc. Where a former client seeks to set aside a conviction and there is a colorable claim of ineffective assistance of counsel. "Colorable claim" means one which would credibly establish the possibility that the prior

counsel had failed to perform with reasonable diligence and that, in absence of counsel's failings, the conviction would not have resulted. The colorability of the claim may be determined in a procedure generally in the style of a *Marsden* motion.

dd. Suit against counsel by the current client unless the suit is patently frivolous, the suit is based on grounds already determined by the Court in a *Marsden* motion to be without merit, and there is no conflict of interest other than as reflected in the suit. (*People v. Horton (1995)* 11 Cal.4th 1068, 1104-1107.)

ee. Any other circumstance where counsel reasonable believes a conflict should be declared.

(3) A declaration of conflict under this section shall require the approval of a senior or supervising attorney.

F. When a conflict is declared:

1. Conflicts shall be declared as soon as discovered.
2. Notice of the declaration of conflict made by the Public Defender shall be immediately given to the Conflicts Firm, including a brief explanation of the nature of the conflict.
3. Counsel shall safeguard any confidential information obtained from a client to avoid any unnecessary "contamination" of other counsel.
4. The file, absent any confidential information, shall promptly be given to the next appointed counsel. The following procedure shall be used when conflicts are discovered in cases in any department: If the conflict is declared in open court with Conflicts counsel present, the file shall be exchanged in open court. If Conflicts counsel is not present, the file shall be deposited in a box for that purpose located in the clerk's office for the department. (Effective 7/1/08)
5. Whenever a conflict appears possible, particularly in a multiple defendant cases, counsel will conduct themselves in a manner to minimize conflicts in any realignment of counsel.
6. When a conflict is declared, the new attorney generally will assume representation of the client in all pending matters, even though no conflict exists as to the other matters.

The Court shall inquire into the circumstances of the conflict, including, if necessary, holding proceedings *in camera*. Counsel, however shall not be required to disclose confidential information, even to the Court. [Effective date 7/1/08]

Attachment F

Toni Carbone
Attorney at Law

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530-885-6244
Fax 530-885-8245

December 20, 2013

Bekki Riggan, Principal Management Analyst
Placer County Executive Office
175 Fulweiler Avenue
Auburn CA 95603

Dear Ms. Riggan,

Thank you for the opportunity to continue providing indigent defense services as 2nd level conflict counsel. I am in the position to provide these services under the same terms and conditions as the previous contract. My approach consists of hiring between one and three additional attorneys, on a subcontract basis, as needed. The attorneys that I plan to hire for adult coverage are as follows:

- 1.) Dan Koukol (SBN 122526), whom I believe to be a former vendor in good standing with the County and courts, would be my first hire and primary attorney. I worked under Mr. Koukol early on in my career and I observed him to be an excellent lawyer. As you may know, with over 27 years of experience, Mr. Koukol is qualified to handle felony cases of all levels;
- 2.) Tasha Paris Chalfant (SBN 207055), who is currently on the Placer County panel, is experienced in felony cases having been admitted to the Bar over 13 years ago; and
- 3.) Christine Morse Galves (SBN 192044) who may be used for court coverage purposes as necessary. Ms. Galves was admitted to the bar 16 years ago and worked under me in my private practice.

I am also in the unique position, arising out of my link to the Ascend program, to potentially expand the scope of services by providing an offender education class to the adult offender population in Placer. I am open to discussions about that possibility. Should you need any further information as to these requests, please do not hesitate to ask.

Sincerely,

/s/

Toni Carbone
Attorney at Law

