

CONTRACT FOR FIRST LEVEL CONFLICT LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE
COUNTY OF PLACER

THIS CONTRACT ("CONTRACT") is made and entered into on **July 1, 2022** by and between the COUNTY OF PLACER ("COUNTY") and COHEN DEFENSE GROUP ("ATTORNEY"), each a "Party" and collectively, "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 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, ATTORNEY was awarded a contract as a result of Request for Proposals (RFP) Number 10717 in FY 2017-18 to perform 1st Level Conflict Services and related duties on a contractual basis for a period of four years; and

WHEREAS, said contract expires June 30, 2022; and

WHEREAS, Parties are desirous of continuing this contractual relationship; and

WHEREAS, it is in the public interest that COUNTY employ private counsel to render the usual and customary legal services of a 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:

1. RFP NUMBER 10717:

COUNTY'S issuance of, and ATTORNEY'S response to, RFP Number 10717 is hereby incorporated and made a part of this Contract, as are all Contract attachments referenced herein.

2. SCOPE OF ATTORNEY SERVICES

ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with 2.0 CATEGORY B- FIRST LEVEL CONFLICT PUBLIC DEFENDER contained in Attachment A, Scope of Service.

3. CONTRACT TERMS

A. Term

This Contract shall become effective July 1, 2022 and shall remain in effect through June 30, 2026. The contract may be extended by two four-year options to renew upon mutual written agreement of the parties. The term of this contract is subject to the provisions regarding termination per this Section.

B. Termination

- 1) This Contract may be terminated by either Party upon the provision of no less than one hundred twenty (120) calendar days' written notice to the other Party.

- 2) COUNTY may terminate this Contract by providing no less than thirty (30) calendar days advance written notice to ATTORNEY 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;
 - e. Undertaking to represent at COUNTY expense persons who are not in fact indigent and thus are not entitled to ATTORNEY services, if such an undertaking is made with ATTORNEY's actual knowledge that a represented person is not indigent.
 - f. Refusal of the Placer County Superior Court (COURT) to appoint ATTORNEY as public defender in criminal cases; or
- 3) Disqualification from the practice of law.
 - a. In the event of a vote of "no confidence" by a majority of the judicial members of the Superior Court bench conducted at any time during the term of this contract, or any extension, ATTORNEY shall be considered in default of its obligations under the contract. ATTORNEY shall be notified of such vote of "no confidence" by the Oversight Committee and shall be provided a written statement of the deficiencies resulting in such vote. ATTORNEY shall have a period of ninety (90) days to cure said deficiencies and comply with any plan of correction. ATTORNEY shall meet with the Oversight Committee after forty-five (45) days to review its progress in correcting the deficiencies. If ATTORNEY fails to cure the deficiencies within the correction period, then COUNTY may terminate this agreement by providing thirty (30) days advance written notice.
- 4) The Parties acknowledge that ATTORNEY may incur significant expense and liability in retaining the facilities, equipment, and personnel necessary for ATTORNEY to perform its obligations under Contract. See Sections 9, 23, and 25 below. Therefore, if COUNTY terminates the Contract under Section 3(B)(1) of this contract, COUNTY shall pay ATTORNEY \$300,000 (three hundred thousand dollars) in liquidated damages, and upon written evidence of demonstrated liability for bullets i and ii below, the cost of ATTORNEY's:
 - i. Termination of office lease (not to exceed 24 months);
 - ii. Reimbursement of employee's unused vacation time (not to exceed \$200,000);

Such payment shall be made within ninety (90) calendar days after termination of this contract by COUNTY.

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, pursuant to the terms of this contract.

- B. Compensation for services under this Section as mandated by the Court shall be based upon the terms of this Contract.
- C. As to pending cases where the Courts are willing to authorize a substitution of counsel to a new provider of COUNTY 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 first level conflict public defender as described in Attachment F.
 - 2) ATTORNEY shall execute any and all documents necessary to effect this provision.

5. CONTRACT COMPENSATION

- A. COUNTY shall pay ATTORNEY, as compensation for services herein, the total sum of \$9,731,663.68 (Nine million, seven hundred thirty-one thousand, six hundred sixty-three dollars and sixty-eight cents) shall be paid over the four-year contract term. Compensation will be payable in installments in accordance with the payment schedule on Attachment B.
- B. The Parties acknowledge that the compensation set forth in Section 5(A) above is based upon the Court locations, and the Court calendars, in existence on the date of this Contract. If, during the term of this Contract:
 - 1) COURT opens additional Court locations or branches,
 - 2) COURT adds additional Court calendars which require coverage by ATTORNEY,
 - 3) New legislation increases ATTORNEY's obligations or workload under the terms of this Contract, or
 - 4) New voter initiative increases ATTORNEY's obligations or workload under the terms of this Contract,

COUNTY and ATTORNEY shall renegotiate the compensation set forth in Section 5(A) above, to compensate ATTORNEY for the additional obligations and workload under this Contract. The Parties agree to commence such negotiations in good faith, within thirty (30) days of written notice by ATTORNEY to COUNTY.

- C. 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.
- D. ATTORNEY shall accept appointment of up to one (1) non-death penalty murder case or Keenan Counsel cases during the Contract term. If ATTORNEY has been appointed said case during the contract term, additional murder case representation, if accepted by ATTORNEY, will be separately compensated at an agreed upon negotiated rate or fee as indicated in Attachment G.
- E. ATTORNEY shall be entitled to no additional compensation or reimbursement for any cost incurred in the provision of services required by this Contract unless additional compensation is authorized pursuant to Section 9 herein.
- F. ATTORNEY failure to provide reports to COUNTY pursuant to Section 17 herein within twenty (20) calendar days following the end of each month, and within thirty (30) calendar days from the end of each quarterly or annual period 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.

6. PARTIES' COOPERATIVE APPROACH TO NEW PROGRAMS AND GRANT

Parties shall 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 35 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, 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 except as provided in Section 9 herein.

9. EXTRAORDINARY EXPENSES RELATED TO AN EXTRAORDINARY CASE

- A. An "Extraordinary Case" refers to capital cases (see section 22.A.1 for definition of capital case), change of venue cases, and cases involving extraordinarily voluminous discovery materials, where court ordered costs for expert witnesses, special investigations, medical and psychiatric expenses and ancillary costs may supplement the services to be provided under this contract at the rates described in Attachment G.
- B. Application for funds under this Section shall be by affidavit, and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. Application shall also include the specific facts or circumstances that make the application necessary, along with cost detail and an estimate of total funds expected to be sought for the case.
 - 1) The application shall be heard by a Judge of the Court and certified by said Judge as an "Extraordinary Case" prior to application to COUNTY by ATTORNEY for funds under this Section.
 - 2) Such application for funds shall include a copy of the "Extraordinary Case" certification from the Court.

- 3) If a case has been certified an "Extraordinary Case," ATTORNEY shall be compensated by COUNTY for attorney, investigator, and clerical time expended on such case in addition to any other incidental costs.
 - C. In the event ATTORNEY is appointed on a capital case, and the Court, after an appropriate motion by ATTORNEY, 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 ATTORNEY so that ATTORNEY may retain a qualified attorney to assist in the defense in that capital case,
10. DETERMINATION OF CLIENT FINANCIAL ELIGIBILITY
- A. As requested by the Court, ATTORNEY will cooperate 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.
 - 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.
 - C. In order to assist the Court or ATTORNEY in making the determination, the Court or ATTORNEY may require a defendant or person requesting 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 as required to be submitted.
11. 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.
 - 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.
12. LEGAL CONFLICTS OF INTEREST
- A. ATTORNEY shall adhere to the Placer County Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases 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.
 - 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 services as required by this contract as to such proceeding.
13. 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.

14. DRUG-FREE WORKPLACE

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

15. 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.

16. 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, or is dilatory in providing such services, the Court may appoint other counsel;
- B. If the Court should determine that other counsel must be appointed, 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.
- D. Provided that Paragraphs (B) and (C) of this Section shall not apply if other counsel must be appointed due to:
 - 1) A documented conflict of interest in accordance with Placer County Superior Court Local Rule 40.7; or
 - 2) The granting of a Marsden motion

17. 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 10717. ATTORNEY shall maintain existing and new 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 as permitted by law;
 - 2) To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204, and as otherwise required by COUNTY to determine caseload; and
 - 3) At a minimum, such records shall, be maintained for each case in accordance with 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 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 no later than the twentieth (20th) calendar day of each following month.
 - 1) Only those cases determined by the COUNTY and the Courts as fitting the Definition of a Case shall be reported.

18. 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.
- B. ATTORNEY shall maintain existing and new 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.

19. STANDARDS OF REPRESENTATION

- A. ATTORNEY agrees to follow applicable public defender standards of representation published by the American and California Bar Associations, including the California Bar Association's Rules of Professional Conduct; prevailing local court rules; and applicable provisions of California law.
- 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 result in financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

20. OVERSIGHT

- A. COUNTY, through a representative of the County Executive Office and a representative of the Superior Court Executive Committee 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.
- B. COUNTY and Courts shall review and provide input concerning any changes to ATTORNEY management staff.

- C. At any time during the Contract term, the Superior Court Executive Committee may advise COUNTY that a majority of its then current judicial members have conducted a vote of "no confidence" and seek to initiate the process described in Section 3. In such event, the Oversight Committee shall meet to develop a statement of deficiencies and a plan of correction for ATTORNEY. COUNTY shall cooperate with the Executive Committee in review and evaluation of the ATTORNEY'S correction plan and in taking any further action required by the ATTORNEY'S failure to satisfy said correction plan.

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 this Contract.

22. STAFFING REQUIREMENTS

- A. ATTORNEY shall employ attorneys, investigators, law clerks, interviewers and support 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 full-time (full time defined as averaging at least forty (40) hours per week) ATTORNEY staff shall be equivalent to
 - ten (10) attorneys (including contract attorneys);
 - other staff ATTORNEY deems necessary.
 - 1) ATTORNEY shall be entitled to petition the COURT for additional compensation pursuant to Section 9 of this Agreement. A "capital case" as used in this contract is a murder case in which the District Attorney or the Prosecutor has alleged a special circumstance pursuant to Penal Code Section 190.2(a). Note: Death Penalty cases are specifically excluded under this contract.
- B. ATTORNEY's failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 16 herein.
- C. Changes to ATTORNEY management staff require consent of COUNTY, which COUNTY shall not unreasonably withhold.

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 Lead 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.
- 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 Worker's 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; and
- 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

Incorporated herein and made a part of this Contract as Attachment D, Indemnification and Insurance Requirements.

28. INSURANCE AND INDEMNITY REQUIREMENTS

Incorporated herein and made a part of this Contract as Attachment D, Indemnification and Insurance 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.

30. 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.

31. INTERPRETATION OF CONTRACT

No inference in the interpretation of construction of this Contract is to be drawn or given because it 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.

32. INTELLECTUAL PROPERTY OWNERSHIP

COUNTY acknowledges that all intellectual property created in whole or in part by, or utilized by ATTORNEY before, during and after the term of this agreement, is the sole property of ATTORNEY. COUNTY shall not assert any right, claim or interest to such property.

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.
- 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.

COUNTY OF PLACER, "COUNTY"

By: _____

Jane Christenson, Acting County Executive Officer

ATTESTED BY:

Placer County Clerk of the Board

Approved as to Form:

By: _____ Dated: _____

Karin Schwab, County Counsel

Cohen Defense Group "ATTORNEY"

By: _____ Dated: _____

David G. Cohen, Owner

Attachment A - Attorney Scope of Service

Attachment B - Contract Payment Schedule

Attachment C - Attorney Case Records Requirement

Attachment D - Indemnification and Insurance Requirements

Attachment E - Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases

Attachment F – Transition Process

Attachment G - Above-Quota Murder, PC 1170.95, PC3051, and PC1170(d)/PC1170.03 Case Compensation

ATTACHMENT A
SCOPE OF SERVICE

1.0 CATEGORY A – PRIMARY PUBLIC DEFENDER

- 1.1 Primary Public Defender services are utilized for the legal representation of financially eligible accused persons without expense to the defendant except as provided by Section 987.8 of the Penal Code. Any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the courts is eligible for indigent defense services at all stages of the proceedings, including the preliminary examination. The primary public defender gives counsel and advice to an accused about any charges against the accused upon which he is conducting defense. In addition, the primary public defender shall prosecute all appeals to a higher -court or courts of any person who has been convicted where, in the opinion of the primary public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction. All legal services described in this RFP are from the time of appointment to final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 1.2 Services related to juvenile dependency and family law proceedings are contracted directly by the Courts, with the exception of: "Appointed Counsel" for Termination of Parental Rights in Adoption proceedings (Family Code, Chap 5, Section 7660-7730 and; "Appointed Counsel" for Minor Child to Declare Free from Parental Custody and Control (Family Code Part 4, Chap 1, 7800-7895, and; "Appointed Counsel" for Guardianship, Conservatorship, and Other Protective Proceedings (Probate Code, Chap 4, Section 1471,1472. Also, per Probate Code section 1471 and 14 72 the court can appoint counsel for a proposed conservatee or a proposed ward (i.e. the minor), and; "Appointed Counsel" for Contempt proceedings in either Civil or Family cases where criminal charges could be preferred. These would be covered under GC 77003.
- 1.3 Additional primary public defender services include:
- (a) Prosecution of actions for the collection of wages and other demands of any person who is not financially able to employ counsel where the sum involved does not exceed One Hundred Dollars (\$100), and where, in the judgment of the primary public defender, the claim urged is valid and enforceable in the Courts.
 - (b) Representation of any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the primary public defender, the person is being persecuted or unjustly harassed.
 - (c) Representation of any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code.
 - (d) Representation of any person who is not financially able to employ counsel in proceedings under Part I (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, relating to the Lanterman-Petris-Short Act.

- (e) Representation of any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to Juvenile Court Law, when such proceedings are concerned with a person alleged to be or who has been found to be within the description of the provisions of Sections 601 and 602 thereof.
- (f) Representation of any indigent person who requires counsel pursuant to Section 686.1 of the Penal Code (capital cases).
- (g) Representation of any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile delinquency proceedings.
- (h) Representation of all indigent persons in paternity cases in which the County or the state has filed suit against such indigent individual.
- (i) Representation of any indigent person falling under mental health proceedings, including attending these hearings at any court or other location as specified by the Court.
- (j) Representation of all indigent persons in Habeas Corpus proceedings pertinent to underlying criminal cases.
- (k) In those cases in which a change of venue is ordered transferring a case from Placer County to another county, the primary public defender shall defend such defendant in such other county.

2.0 CATEGORY B – FIRST LEVEL CONFLICT PUBLIC DEFENDER

- 2.1 Conflict Public Defender Services will be utilized for the legal representation of accused persons where the primary and level two 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.
- 2.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 2.3 The Contractor 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.
- 2.4 The Contractor will be responsible for all felony conflict cases that originate in the Tahoe court once the case has been transferred out of the Tahoe court. The majority of these cases will be post preliminary hearing, however, on occasion, some cases will be prior to preliminary hearing. The Contractor will not carry any misdemeanor cases that originate in the Tahoe Court.

3.0 CATEGORY C – SECOND LEVEL CONFLICT PUBLIC DEFENDER

- 3.1 Second level conflict services will be utilized for the legal representation of accused persons where the primary and level two 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.
- 3.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 3.3 The Contractor 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.

ATTACHMENT B
CONTRACT PAYMENT SCHEDULE

One-time payment: Due upon execution of this contract, and no later than July 31, 2022, will be a one-time payment in the amount of \$50,600 to purchase computer equipment necessary to store, distribute and back-up the digital client files including law enforcement media currently being received.

Year 1

July 1, 2022 through June 30, 2023

Date	Payment
July 1, 2022	\$192,980.27
August 1, 2022	\$192,980.27
September 1, 2022	\$192,980.27
October 1, 2022	\$192,980.27
November 1, 2022	\$192,980.27
December 1, 2022	\$192,980.27
January 1, 2023	\$192,980.27
February 1, 2023	\$192,980.27
March 1, 2023	\$192,980.27
April 1, 2023	\$192,980.27
May 1, 2023	\$192,980.27
June 1, 2023	\$192,980.27

Year 2

July 1, 2023 through June 30, 2024

Date	Payment
July 1, 2023	\$198,673.19
August 1, 2023	\$198,673.19
September 1, 2023	\$198,673.19
October 1, 2023	\$198,673.19
November 1, 2023	\$198,673.19
December 1, 2023	\$198,673.19
January 1, 2024	\$198,673.19
February 1, 2024	\$198,673.19
March 1, 2024	\$198,673.19
April 1, 2024	\$198,673.19

May 1, 2024	\$198,673.19
June 1, 2024	\$198,673.17

Year 3

July 1, 2024 through June 30, 2025

Date	Payment
July 1, 2024	\$204,534.05
August 1, 2024	\$204,534.05
September 1, 2024	\$204,534.05
October 1, 2024	\$204,534.05
November 1, 2024	\$204,534.05
December 1, 2024	\$204,534.05
January 1, 2025	\$204,534.05
February 1, 2025	\$204,534.05
March 1, 2025	\$204,534.05
April 1, 2025	\$204,534.05
May 1, 2025	\$204,534.05
June 1, 2025	\$204,534.01

Year 4

July 1, 2025 through June 30, 2026

Date	Payment
July 1, 2025	\$210,567.80
August 1, 2025	\$210,567.80
September 1, 2025	\$210,567.80
October 1, 2025	\$210,567.80
November 1, 2025	\$210,567.80
December 1, 2025	\$210,567.80
January 1, 2026	\$210,567.80
February 1, 2026	\$210,567.80
March 1, 2026	\$210,567.80
April 1, 2026	\$210,567.80
May 1, 2026	\$210,567.80
June 1, 2026	\$210,567.82

ATTACHMENT C
INDIGENT DEFENSE SERVICES
ATTORNEY CASE RECORDS REQUIREMENTS

1. Client Records

ATTORNEY must maintain reliable records to permit COUNTY to audit billings, workload and performance, including client records that identify:

- A. Name of Client
- B. Date assigned to the case
- C. Financial eligibility of client
- D. Category of representation:
 - 1) Juvenile Delinquency
 - 2) Adult Misdemeanor
 - 3) Adult Felony
 - 4) Paternity
 - 5) Adult Probation
 - 6) LPS/Conservatorship
 - 7) Drug Court
 - 8) Modifications:
 - From Juvenile Dependency
 - To Juvenile Dependency
 - 9) Other
- E. Case number
- F. The charge or nature of the case
- G. Applicable code section(s)
- H. Hours worked, by case and major task; e.g. investigations, court appearances
- I. Name(s) of attorney staff
- J. Other staff
- K. Outside personnel or expert witnesses uses
- L. Disposition of cases
- M. Judge of court disposing of case
- N. Record of court appearances
- O. Date case closed
- P. 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 ATTORNEY 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. ATTORNEY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the ATTORNEY. 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 PLACER COUNTY from liability for damages or injuries to third persons or property arising from ATTORNEY'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

ATTORNEY 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.

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 ATTORNEY'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:

A. 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".

B. 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 ATTORNEY.

ATTORNEY 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 ATTORNEY, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below.

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 ATTORNEY 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 ATTORNEY 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:

ATTORNEY 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 ATTORNEY 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 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 an additional 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 ATTORNEY, 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 nonpayment 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 one million dollars (\$1,000,000). If ATTORNEY sub-contracts in support of ATTORNEY's work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate. The insurance coverage provided by ATTORNEY 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

A. Premium Payments - The insurance companies shall have no recourse against 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.

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

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

D. Verification of Coverage - ATTORNEY shall furnish 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 ATTORNEY's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

ATTACHMENT E - RESERVED
SUPERIOR COURT'S POLICY FOR DECLARATION OF CONFLICTS
OF INTEREST IN CRIMINAL AND JUVENILE CASES

ATTACHMENT F
TRANSITION PROCESS

To facilitate continuity of representation and an appropriate ramp-up of services provided by the incoming provider that is not pursuant to a succession plan, a six-month phase-out process will be implemented commencing upon the conclusion of the contract term and concluding 180 days thereafter.

- Phase 1 shall commence at the conclusion of the First Level Contract.
- Phase 2 shall commence thirty (30) days thereafter.
- Phase 3 shall commence sixty (60) days thereafter.
- Phase 4 shall commence ninety (90) days thereafter.
- Phase 5 shall commence one hundred and twenty days (120) thereafter.
- Phase 6 shall commence one hundred and fifty days (150) thereafter and shall conclude one hundred and eighty (180) days thereafter.

The incoming provider is to be assigned cases during the first four phases as follows:

Phase 1: All existing cases and new cases being arraigned on or after the commencement of phase 1 excepting all pending and new Tahoe cases and misdemeanors arraigned on or after the commencement of Phase 1 which will be assigned to the incoming provider.

Phase 2: All existing cases and new cases being arraigned on or after the commencement of phase 2 excepting Phase 1 cases and driving under the influence (misdemeanor and felony), domestic violence (misdemeanor and felony) and elder abuse (misdemeanor and felony) arraigned on or after the commencement of Phase 2, which will be assigned to the incoming provider.

Phase 3: All existing cases and new cases being arraigned on or after the commencement of phase 3 excepting Phase 1 and 2 cases and general felonies arraigned on or after the commencement of Phase 3, which will be assigned to the incoming provider.

Phase 4: All existing cases and new cases being arraigned on or after the commencement of phase 4 excepting Phase 1, 2, and 3 and Juvenile cases Proposition 36, Drug Court track 3, Veterans Court cases arraigned on or after January 1, 2017, which will be assigned to the incoming provider.

ATTORNEY shall continue representation as follows:

Phase 5: All remaining cases will be handled by ATTORNEY during this thirty (30) day period.

Phase 6: All remaining cases will be handled by ATTORNEY during this thirty (30) day period.

At the conclusion of phase 6 (one hundred and eighty (180) days after commencement of Phase 1) ATTORNEY'S residual cases will be assigned to an attorney designated and compensated by COUNTY. In the event COUNTY fails to designate such designee attorney, ATTORNEY will be compensated, at the rate defined for handling such cases in the Placer County Rules of Court.

Compensation shall be paid to ATTORNEY for performance under the transition terms as follows:

Phase	Compensation
Phase 1	100 % of base
Phase 2	90 % of base
Phase 3	80 % of base
Phase 4	70 % of base
Phase 5	60 % of base
Phase 6	50 % of base

“Base” shall be defined as the monthly compensation paid by COUNTY to ATTORNEY under this contract during the final (non-transition) month of this contract.

ATTACHMENT G

ABOVE-QUOTA MURDER, PC1170.95, PC3051, AND PC 1170(d)/PC1170.03 CASE
COMPENSATION

The hourly rate for attorneys, investigators, paralegals and legal assistants providing service on murder cases after the contracted quota for murder cases has been reached by ATTORNEY, and PC1170.95, PC3051, AND PC 1170(d)/PC1170.03 cases whether directly appointed by the Court or appointed after the Primary Public Defender declares a conflict or is relieved on a Marsden motion.

A defendant is charged with “murder” if the defendant is charged with having violated Penal Code sections 187(a), 190, 190.03, 190.05, 190.5, or 190.25.

ATTORNEY may either accept or decline appointments to represent defendants charged with murder after having reached their quota. When ATTORNEY accepts a new appointment after having reached quota, ATTORNEY will notify COUNTY, and the COUNTY will pay ATTORNEY additional compensation at the following hourly rates:

<i>Service</i>	<i>Hourly Rate</i>
Attorney	\$120 per hour
Investigator	\$65 per hour
Paralegal / Legal Assistant	\$55 per hour

ATTORNEY will be paid at these rates regardless of the disposition of the case—if, for example, the charges are dismissed or reduced pursuant to a plea bargain, or if the District Attorney unilaterally dismisses the murder charge or charges against a defendant.

ATTORNEY will pay the costs of operations required for the competent and effective performance of attorney for the defendant, including office space, utilities, supplies, library, communications including information technology, equipment, and related costs of operations. However, the costs to be paid by ATTORNEY exclude (1) the above referenced costs for Attorney, Investigator, and Paralegal costs (2) ancillary defense services such as expert witnesses, special investigations, tests, interpreters, reports from third parties, and medical and psychiatric expenses; and (3) extraordinary expenses that would not ordinarily be incurred for operation of the attorney’s office. Extraordinary expenses include the cost of travel to and from locations outside of Placer County from ATTORNEY’s office at 80% of the normal rate, overnight accommodations, expenses incurred while traveling, and the costs incurred for extraordinarily voluminous discovery materials.

COUNTY acknowledges that ATTORNEY’s professional ethical obligations may require ATTORNEY to seek to be relieved as attorney for a defendant. In addition, ATTORNEY may voluntarily seek to be relieved if the primary agreement by which ATTORNEY provides indigent criminal services is terminated, or expires and is not renewed. If ATTORNEY is relieved, ATTORNEY will not be liable to COUNTY for any expenses incurred to retain or substitute counsel, or for any increase in the cost for attorney fees charged by newly-appointed counsel.

If ATTORNEY’s primary agreement with COUNTY for provisions of indigent criminal defense services is renewed, ATTORNEY will continue representation in the murder cases undertaken in accordance with this agreement for the additional compensation described in the memorandum, unless otherwise agreed.

Defense firms are neither required to, nor prohibited from hiring additional employees beyond current staffing levels, or to retain independent contractors to fulfill their obligations in cases accepted pursuant to this memorandum.

CONTRACT FOR SECOND LEVEL CONFLICT LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE
COUNTY OF PLACER

THIS CONTRACT ("CONTRACT") is made and entered into on **July 1, 2022** by and between the COUNTY OF PLACER ("COUNTY") and KOUKOL & ASSOCIATES, INC. ("ATTORNEY"), each a "Party" and collectively, "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 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, said contract expires June 30, 2022; and

WHEREAS, Parties are desirous of continuing this contractual relationship; and

WHEREAS, it is in the public interest that COUNTY employ private counsel to render the usual and customary legal services of a 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:

1. SCOPE OF ATTORNEY SERVICES

ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with 2.0 CATEGORY C- SECOND LEVEL CONFLICT PUBLIC DEFENDER contained in Attachment A, Scope of Service.

2. CONTRACT TERMS

A. Term

This Contract shall become effective July 1, 2022 and shall remain in effect through June 30, 2026. The contract may be extended by two four-year options to renew upon mutual written agreement of the parties. The term of this contract is subject to the provisions regarding termination per this Section.

B. Termination

- 1) This Contract may be terminated by either Party upon the provision of no less than one hundred twenty (120) calendar days' written notice to the other Party.
- 2) COUNTY may terminate this Contract by providing no less than thirty (30) calendar days advance written notice to ATTORNEY 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;
 - e. Undertaking to represent at COUNTY expense persons who are not in fact indigent and thus are not entitled to ATTORNEY services, if such an undertaking is made with ATTORNEY's actual knowledge that a represented person is not indigent.
 - f. Refusal of the Placer County Superior Court (COURT) to appoint ATTORNEY as public defender in criminal cases; or
- 3) Disqualification from the practice of law.
- a. In the event of a vote of "no confidence" by a majority of the judicial members of the Superior Court bench conducted at any time during the term of this contract, or any extension, ATTORNEY shall be considered in default of its obligations under the contract. ATTORNEY shall be notified of such vote of "no confidence" by the Oversight Committee and shall be provided a written statement of the deficiencies resulting in such vote. ATTORNEY shall have a period of ninety (90) days to cure said deficiencies and comply with any plan of correction. ATTORNEY shall meet with the Oversight Committee after forty-five (45) days to review its progress in correcting the deficiencies. If ATTORNEY fails to cure the deficiencies within the correction period, then COUNTY may terminate this agreement by providing thirty (30) days advance written notice.
- 4) The Parties acknowledge that ATTORNEY may incur significant expense and liability in retaining the facilities, equipment, and personnel necessary for ATTORNEY to perform its obligations under Contract. See Sections 9, 23, and 25 below. Therefore, if COUNTY terminates the Contract under Section 3(B)(1) of this contract, COUNTY shall pay ATTORNEY \$300,000 (three hundred thousand dollars) in liquidated damages, and upon written evidence of demonstrated liability for bullets i and ii below, the cost of ATTORNEY's:
- i. Termination of office lease (not to exceed 24 months);
 - ii. Reimbursement of employee's unused vacation time (not to exceed \$200,000);

Such payment shall be made within ninety (90) calendar days after termination of this contract by COUNTY.

3. 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, pursuant to the terms of this contract.
- B. Compensation for services under this Section as mandated by the Court shall be based upon the terms of this Contract.
- C. As to pending cases where the Courts are willing to authorize a substitution of counsel to a new provider of COUNTY 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 second level conflict public defender as described in Attachment F.
- 2) ATTORNEY shall execute any and all documents necessary to effect this provision.

4. CONTRACT COMPENSATION

- A. COUNTY shall pay ATTORNEY, as compensation for services herein, the total sum of \$1,847,500 (one million, eight hundred forty-seven thousand, five hundred dollars) shall be paid over the four-year contract term. Compensation will be payable in installments in accordance with the payment schedule on Attachment B.
- B. The Parties acknowledge that the compensation set forth in Section 5(A) above is based upon the Court locations, and the Court calendars, in existence on the date of this Contract. If, during the term of this Contract:
 - 1) COURT opens additional Court locations or branches,
 - 2) COURT adds additional Court calendars which require coverage by ATTORNEY,
 - 3) New legislation increases ATTORNEY's obligations or workload under the terms of this Contract, or
 - 4) New voter initiative increases ATTORNEY's obligations or workload under the terms of this Contract,

COUNTY and ATTORNEY shall renegotiate the compensation set forth in Section 5(A) above, to compensate ATTORNEY for the additional obligations and workload under this Contract. The Parties agree to commence such negotiations in good faith, within thirty (30) days of written notice by ATTORNEY to COUNTY.

- C. 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.
- D. ATTORNEY shall accept appointment of up to one (1) non-capital murder case or Keenan Counsel cases during the Contract term. If ATTORNEY has been appointed said case during the contract term, additional murder case representation, if accepted by ATTORNEY, will be separately compensated at an agreed upon negotiated rate or fee as indicated in Attachment G.
- E. ATTORNEY shall be entitled to no additional compensation or reimbursement for any cost incurred in the provision of services required by this Contract unless additional compensation is authorized pursuant to Section 9 herein.
- F. ATTORNEY failure to provide reports to COUNTY pursuant to Section 17 herein within twenty (20) calendar days following the end of each month, and within thirty (30) calendar days from the end of each quarterly or annual period 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.

5. PARTIES' COOPERATIVE APPROACH TO NEW PROGRAMS AND GRANT

Parties shall 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 35 33 herein, prior to transfer of any such funds from COUNTY to ATTORNEY.

6. INCIDENTAL EXPENSES: COST TO COUNTY

Costs for expert witnesses, special investigations, tests, interpreters and reports from third parties, 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.

7. 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 except as provided in Section 9 herein.

8. EXTRAORDINARY EXPENSES RELATED TO AN EXTRAORDINARY CASE

A. An "Extraordinary Case" refers to capital cases (see section 22.A.1 for definition of capital case), change of venue cases, and cases involving extraordinarily voluminous discovery materials, where court ordered costs for expert witnesses, special investigations, medical and psychiatric expenses and ancillary costs may supplement the services to be provided under this contract at the rates described in Attachment G.

B. Application for funds under this Section shall be by affidavit, and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. Application shall also include the specific facts or circumstances that make the application necessary, along with cost detail and an estimate of total funds expected to be sought for the case.

1) The application shall be heard by a Judge of the Court and certified by said Judge as an "Extraordinary Case" prior to application to COUNTY by ATTORNEY for funds under this Section.

2) Such application for funds shall include a copy of the "Extraordinary Case" certification from the Court.

3) If a case has been certified an "Extraordinary Case," ATTORNEY shall be compensated by COUNTY for attorney, investigator, and clerical time expended on such case in addition to any other incidental costs.

C. In the event ATTORNEY is appointed on a capital case, and the Court, after an appropriate motion by ATTORNEY, 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 ATTORNEY so that ATTORNEY may retain a qualified attorney to assist in the defense in that capital case.

9. DETERMINATION OF CLIENT FINANCIAL ELIGIBILITY

- A. As requested by the Court, ATTORNEY will cooperate 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.
 - 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.
 - C. In order to assist the Court or ATTORNEY in making the determination, the Court or ATTORNEY may require a defendant or person requesting 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 as required to be submitted.
10. PERFORMANCE UNDER CONTRACT TO BE PRINCIPAL BUSINESS OF ATTORNEY; LIMITED PRIVATE PRACTICE PERMISSIBLE
- A. Unless approved by COUNTY in writing and in advance on a case-by case basis, ATTORNEY's Lead Attorney shall, during the period this Contract is in effect, serve in a full-time capacity providing second level conflict defense services in Placer County, ATTORNEY staff shall be permitted to engage in the private representation of any person charged with a criminal offense in Placer County.
 - 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 Placer County Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases 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.
 - 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 services as required by this contract as to such 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, or is dilatory in providing such services, the Court may appoint other counsel;
- B. If the Court should determine that other counsel must be appointed, 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.
- D. Provided that Paragraphs (B) and (C) of this Section shall not apply if other counsel must be appointed due to:
 - 1) A documented conflict of interest in accordance with Placer County Superior Court Local Rule 40.7; or
 - 2) The granting of a Marsden motion

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 10717. ATTORNEY shall maintain existing and new 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 as permitted by law;
 - 2) To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204, and as otherwise required by COUNTY to determine caseload; and
 - 3) At a minimum, such records shall, be maintained for each case in accordance with 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 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 no later than the twentieth (20th) calendar day of each following month.

1) 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.

B. ATTORNEY shall maintain existing and new 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 of representation published by the American and California Bar Associations, including the California Bar Association's Rules of Professional Conduct; prevailing local court rules; and applicable provisions of California law.

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 result in financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

19. OVERSIGHT

A. COUNTY, through a representative of the County Executive Office and a representative of the Superior Court Executive Committee 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.

B. COUNTY and Courts shall review and provide input concerning any changes to ATTORNEY management staff.

C. At any time during the Contract term, the Superior Court Executive Committee may advise COUNTY that a majority of its then current judicial members have conducted a vote of "no confidence" and seek to initiate the process described in Section 3. In such event, the Oversight Committee shall meet to develop a statement of deficiencies and a plan of correction for ATTORNEY. COUNTY shall cooperate with the Executive Committee in review and evaluation of the ATTORNEY'S correction

plan and in taking any further action required by the ATTORNEY'S failure to satisfy said correction plan.

20. OFFICE REQUIREMENTS

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

21. STAFFING REQUIREMENTS

- A. ATTORNEY shall employ attorneys, investigators, law clerks, interviewers and support 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 full-time (full time defined as averaging at least forty (40) hours per week) ATTORNEY staff shall be equivalent to
- two (2) attorneys;
 - other staff ATTORNEY deems necessary.
- 1) ATTORNEY shall be entitled to petition the COURT for additional compensation pursuant to Section 9 of this Agreement. A "capital case" as used in this contract is a murder case in which the District Attorney or the Prosecutor has alleged a special circumstance pursuant to Penal Code Section 190.2(a). Note: Death Penalty cases are specifically excluded under this contract.
- B. ATTORNEY's failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 16 herein.
- C. Changes to ATTORNEY management staff require consent of COUNTY, which COUNTY shall not unreasonably withhold.

22. 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 Lead Attorney and shall be augmented by regular, formalized comments by judges, other defense lawyers and clients.

23. 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.
- B. ATTORNEY shall provide at the beginning of each fiscal year a written training plan that includes specific goals and objectives for all employees.

24. 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.

25. 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 Worker's 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; and
- 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.

26. HOLD HARMLESS AND INDEMNIFICATION

Incorporated herein and made a part of this Contract as Attachment D, Indemnification and Insurance Requirements.

27. INSURANCE AND INDEMNITY REQUIREMENTS

Incorporated herein and made a part of this Contract as Attachment D, Indemnification and Insurance Requirements.

28. 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.

29. 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.

30. INTERPRETATION OF CONTRACT

No inference in the interpretation of construction of this Contract is to be drawn or given because it 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.

31. INTELLECTUAL PROPERTY OWNERSHIP

COUNTY acknowledges that all intellectual property created in whole or in part by, or utilized by ATTORNEY before, during and after the term of this agreement, is the sole property of ATTORNEY. COUNTY shall not assert any right, claim or interest to such property.

32. 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.
- 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.

COUNTY OF PLACER, "COUNTY"

By: _____

Jane Christenson, Acting County Executive Officer

ATTESTED BY:

Placer County Clerk of the Board

Approved as to Form:

By: _____ Dated: _____

Karin Schwab, County Counsel

Koukol & Associates, Inc. "ATTORNEY"

By: _____ Dated: _____

Dan Koukol, Owner

Attachment A - Attorney Scope of Service

Attachment B - Contract Payment Schedule

Attachment C - Attorney Case Records Requirement

Attachment D - Indemnification and Insurance Requirements

Attachment E - Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases

Attachment F – Transition Process

Attachment G - Above-Quota Murder Case Compensation

ATTACHMENT A
SCOPE OF SERVICE

1.0 CATEGORY A – PRIMARY PUBLIC DEFENDER

- 1.1 Primary Public Defender services are utilized for the legal representation of financially eligible accused persons without expense to the defendant except as provided by Section 987.8 of the Penal Code. Any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the courts is eligible for indigent defense services at all stages of the proceedings, including the preliminary examination. The primary public defender gives counsel and advice to an accused about any charges against the accused upon which he is conducting defense. In addition, the primary public defender shall prosecute all appeals to a higher -court or courts of any person who has been convicted where, in the opinion of the primary public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction. All legal services described in this RFP are from the time of appointment to final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 1.2 Services related to juvenile dependency and family law proceedings are contracted directly by the Courts, with the exception of: "Appointed Counsel" for Termination of Parental Rights in Adoption proceedings (Family Code, Chap 5, Section 7660-7730 and; "Appointed Counsel" for Minor Child to Declare Free from Parental Custody and Control (Family Code Part 4, Chap 1, 7800-7895, and; "Appointed Counsel" for Guardianship, Conservatorship, and Other Protective Proceedings (Probate Code, Chap 4, Section 1471,1472. Also, per Probate Code section 1471 and 14 72 the court can appoint counsel for a proposed conservatee or a proposed ward (i.e. the minor), and; "Appointed Counsel" for Contempt proceedings in either Civil or Family cases where criminal charges could be preferred. These would be covered under GC 77003.
- 1.3 Additional primary public defender services include:
- (a) Prosecution of actions for the collection of wages and other demands of any person who is not financially able to employ counsel where the sum involved does not exceed One Hundred Dollars (\$100), and where, in the judgment of the primary public defender, the claim urged is valid and enforceable in the Courts.
 - (b) Representation of any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the primary public defender, the person is being persecuted or unjustly harassed.
 - (c) Representation of any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code.
 - (d) Representation of any person who is not financially able to employ counsel in proceedings under Part I (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, relating to the Lanterman-Petris-Short Act.

- (e) Representation of any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to Juvenile Court Law, when such proceedings are concerned with a person alleged to be or who has been found to be within the description of the provisions of Sections 601 and 602 thereof.
- (f) Representation of any indigent person who requires counsel pursuant to Section 686.1 of the Penal Code (capital cases).
- (g) Representation of any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile delinquency proceedings.
- (h) Representation of all indigent persons in paternity cases in which the County or the state has filed suit against such indigent individual.
- (i) Representation of any indigent person falling under mental health proceedings, including attending these hearings at any court or other location as specified by the Court.
- (j) Representation of all indigent persons in Habeas Corpus proceedings pertinent to underlying criminal cases.
- (k) In those cases in which a change of venue is ordered transferring a case from Placer County to another county, the primary public defender shall defend such defendant in such other county.

2.0 CATEGORY B – FIRST LEVEL CONFLICT PUBLIC DEFENDER

- 2.1 Conflict Public Defender Services will be utilized for the legal representation of accused persons where the primary and level two 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.
- 2.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 2.3 The Contractor 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.
- 2.4 The Contractor will be responsible for all felony conflict cases that originate in the Tahoe court once the case has been transferred out of the Tahoe court. The majority of these cases will be post preliminary hearing, however, on occasion, some cases will be prior to preliminary hearing. The Contractor will not carry any misdemeanor cases that originate in the Tahoe Court.

3.0 CATEGORY C – SECOND LEVEL CONFLICT PUBLIC DEFENDER

- 3.1 Second level conflict services will be utilized for the legal representation of accused persons where the primary and level two 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.
- 3.2 The responsibility to defend the individual extends to change of venue cases. Special payment arrangements will be made for death penalty offenses.
- 3.3 The Contractor 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.
- 3.4 The Contractor will be responsible for all felony conflict cases that originate in the Tahoe court once the case has been transferred out of the Tahoe court. The majority of these cases will be post preliminary hearing, however, on occasion, some cases will be prior to preliminary hearing. The Contractor will not carry any misdemeanor cases that originate in the Tahoe Court.

ATTACHMENT B

CONTRACT PAYMENT SCHEDULE

One-time payment: Due upon execution of this contract, and no later than July 31, 2022, will be a one-time payment in the amount of \$47,500 to purchase computer equipment necessary to store, distribute and back-up the digital client files including law enforcement media currently being received.

Year 1

July 1, 2022 through June 30, 2023

Date	Payment
July 1, 2022	\$35,333.33
August 1, 2022	\$35,333.33
September 1, 2022	\$35,333.33
October 1, 2022	\$35,333.33
November 1, 2022	\$35,333.33
December 1, 2022	\$35,333.33
January 1, 2023	\$35,333.33
February 1, 2023	\$35,333.33
March 1, 2023	\$35,333.33
April 1, 2023	\$35,333.33
May 1, 2023	\$35,333.33
June 1, 2023	\$35,333.37

Year 2

July 1, 2023 through June 30, 2024

Date	Payment
July 1, 2023	\$36,666.67
August 1, 2023	\$36,666.67
September 1, 2023	\$36,666.67
October 1, 2023	\$36,666.67
November 1, 2023	\$36,666.67
December 1, 2023	\$36,666.67
January 1, 2024	\$36,666.67
February 1, 2024	\$36,666.67
March 1, 2024	\$36,666.67
April 1, 2024	\$36,666.67

May 1, 2024	\$36,666.67
June 1, 2024	\$36,666.63

Year 3

July 1, 2024 through June 30, 2025

Date	Payment
July 1, 2024	\$38,333.33
August 1, 2024	\$38,333.33
September 1, 2024	\$38,333.33
October 1, 2024	\$38,333.33
November 1, 2024	\$38,333.33
December 1, 2024	\$38,333.33
January 1, 2025	\$38,333.33
February 1, 2025	\$38,333.33
March 1, 2025	\$38,333.33
April 1, 2025	\$38,333.33
May 1, 2025	\$38,333.33
June 1, 2025	\$38,333.37

Year 4

July 1, 2025 through June 30, 2026

Date	Payment
July 1, 2025	\$39,666.63
August 1, 2025	\$39,666.67
September 1, 2025	\$39,666.67
October 1, 2025	\$39,666.67
November 1, 2025	\$39,666.67
December 1, 2025	\$39,666.67
January 1, 2026	\$39,666.67
February 1, 2026	\$39,666.67
March 1, 2026	\$39,666.67
April 1, 2026	\$39,666.67
May 1, 2026	\$39,666.67

ATTACHMENT C
INDIGENT DEFENSE SERVICES
ATTORNEY CASE RECORDS REQUIREMENTS

1. Client Records

ATTORNEY must maintain reliable records to permit COUNTY to audit billings, workload and performance, including client records that identify:

- A. Name of Client
- B. Date assigned to the case
- C. Financial eligibility of client
- D. Category of representation:
 - 1) Juvenile Delinquency
 - 2) Adult Misdemeanor
 - 3) Adult Felony
 - 4) Paternity
 - 5) Adult Probation
 - 6) LPS/Conservatorship
 - 7) Drug Court
 - 8) Modifications:
 - From Juvenile Dependency
 - To Juvenile Dependency
 - 9) Other
- E. Case number
- F. The charge or nature of the case
- G. Applicable code section(s)
- H. Hours worked, by case and major task; e.g. investigations, court appearances
- I. Name(s) of attorney staff
- J. Other staff
- K. Outside personnel or expert witnesses uses
- L. Disposition of cases
- M. Judge of court disposing of case
- N. Record of court appearances
- O. Date case closed
- P. 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 ATTORNEY 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. ATTORNEY agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the ATTORNEY. 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 PLACER COUNTY from liability for damages or injuries to third persons or property arising from ATTORNEY'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

ATTORNEY 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.

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 ATTORNEY'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:

A. 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".

B. 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 ATTORNEY.

ATTORNEY 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 ATTORNEY, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below.

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 ATTORNEY 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 ATTORNEY 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:

ATTORNEY 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 ATTORNEY 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 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 an additional 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 ATTORNEY, 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 nonpayment 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 one million dollars (\$1,000,000). If ATTORNEY sub-contracts in support of ATTORNEY's work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the subcontractor in an amount not less than one million dollars (\$1,000,000) in aggregate. The insurance coverage provided by ATTORNEY 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

A. Premium Payments - The insurance companies shall have no recourse against 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.

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

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

D. Verification of Coverage - ATTORNEY shall furnish 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 ATTORNEY's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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

ATTACHMENT E - RESERVED
SUPERIOR COURT'S POLICY FOR DECLARATION OF CONFLICTS
OF INTEREST IN CRIMINAL AND JUVENILE CASES

ATTACHMENT F
TRANSITION PROCESS

To facilitate continuity of representation and an appropriate ramp-up of services provided by the incoming provider that is not pursuant to a succession plan, a six-month phase-out process will be implemented commencing upon the conclusion of the contract term and concluding 180 days thereafter.

- Phase 1 shall commence at the conclusion of the Second Level Contract.
- Phase 2 shall commence thirty (30) days thereafter.
- Phase 3 shall commence sixty (60) days thereafter.
- Phase 4 shall commence ninety (90) days thereafter.
- Phase 5 shall commence one hundred and twenty days (120) thereafter.
- Phase 6 shall commence one hundred and fifty days (150) thereafter and shall conclude one hundred and eighty (180) days thereafter.

The incoming provider is to be assigned cases during the first four phases as follows:

Phase 1: All existing cases and new cases being arraigned on or after the commencement of phase 1 excepting all pending and new Tahoe cases and misdemeanors arraigned on or after the commencement of Phase 1 which will be assigned to the incoming provider.

Phase 2: All existing cases and new cases being arraigned on or after the commencement of phase 2 excepting Phase 1 cases and driving under the influence (misdemeanor and felony), domestic violence (misdemeanor and felony) and elder abuse (misdemeanor and felony) arraigned on or after the commencement of Phase 2, which will be assigned to the incoming provider.

Phase 3: All existing cases and new cases being arraigned on or after the commencement of phase 3 excepting Phase 1 and 2 cases and general felonies arraigned on or after the commencement of Phase 3, which will be assigned to the incoming provider.

Phase 4: All existing cases and new cases being arraigned on or after the commencement of phase 4 excepting Phase 1, 2, and 3 and Juvenile cases Proposition 36, Drug Court track 3, Veterans Court cases arraigned on or after January 1, 2017, which will be assigned to the incoming provider.

ATTORNEY shall continue representation as follows:

Phase 5: All remaining cases will be handled by ATTORNEY during this thirty (30) day period.

Phase 6: All remaining cases will be handled by ATTORNEY during this thirty (30) day period.

At the conclusion of phase 6 (one hundred and eighty (180) days after commencement of Phase 1) ATTORNEY'S residual cases will be assigned to an attorney designated and compensated by COUNTY. In the event COUNTY fails to designate such designee attorney, ATTORNEY will be compensated, at the rate defined for handling such cases in the Placer County Rules of Court.

Compensation shall be paid to ATTORNEY for performance under the transition terms as follows:

Phase	Compensation
Phase 1	100 % of base
Phase 2	90 % of base
Phase 3	80 % of base
Phase 4	70 % of base
Phase 5	60 % of base
Phase 6	50 % of base

“Base” shall be defined as the monthly compensation paid by COUNTY to ATTORNEY under this contract during the final (non-transition) month of this contract.

ATTACHMENT G
ABOVE-QUOTA MURDER CASE COMPENSATION

The hourly rate for attorneys, investigators, paralegals and legal assistants providing service on murder cases after the contracted quota for murder cases has been reached by ATTORNEY.

A defendant is charged with “murder” if the defendant is charged with having violated Penal Code sections 187(a), 190, 190.03, 190.05, 190.5, or 190.25.

ATTORNEY may either accept or decline appointments to represent defendants charged with murder after having reached their quota. When ATTORNEY accepts a new appointment after having reached quota, ATTORNEY will notify COUNTY, and the COUNTY will pay ATTORNEY additional compensation at the following hourly rates:

<i>Service</i>	<i>Hourly Rate</i>
Attorney	\$120 per hour
Investigator	\$65 per hour
Paralegal / Legal Assistant	\$55 per hour

ATTORNEY will be paid at these rates regardless of the disposition of the case—if, for example, the charges are dismissed or reduced pursuant to a plea bargain, or if the District Attorney unilaterally dismisses the murder charge or charges against a defendant.

ATTORNEY will pay the costs of operations required for the competent and effective performance of attorney for the defendant, including office space, utilities, supplies, library, communications including information technology, equipment, and related costs of operations. However, the costs to be paid by ATTORNEY exclude (1) the above referenced costs for Attorney, Investigator, and Paralegal costs (2) ancillary defense services such as expert witnesses, special investigations, tests, interpreters, reports from third parties, and medical and psychiatric expenses; and (3) extraordinary expenses that would not ordinarily be incurred for operation of the attorney’s office. Extraordinary expenses include the cost of travel to and from locations outside of Placer County from ATTORNEY’s office at 80% of the normal rate, overnight accommodations, expenses incurred while traveling, and the costs incurred for extraordinarily voluminous discovery materials.

COUNTY acknowledges that ATTORNEY’s professional ethical obligations may require ATTORNEY to seek to be relieved as attorney for a defendant. In addition, ATTORNEY may voluntarily seek to be relieved if the primary agreement by which ATTORNEY provides indigent criminal services is terminated, or expires and is not renewed. If ATTORNEY is relieved, ATTORNEY will not be liable to COUNTY for any expenses incurred to retain or substitute counsel, or for any increase in the cost for attorney fees charged by newly-appointed counsel.

If ATTORNEY’s primary agreement with COUNTY for provisions of indigent criminal defense services is renewed, ATTORNEY will continue representation in the murder cases undertaken in accordance with this agreement for the additional compensation described in the memorandum, unless otherwise agreed.

Defense firms are neither required to, nor prohibited from hiring additional employees beyond current staffing levels, or to retain independent contractors to fulfill their obligations in cases accepted pursuant to this memorandum.