

MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE
COUNTY OF PLACER

TO: Honorable Board of Supervisors
FROM: Thomas M. Miller, County Executive Officer
By: Bekki Riggan, CEO Principal Management Analyst
DATE: May 18, 2010
SUBJECT: Approval of Two-Year Contract Extensions for Primary, 1st and 2nd Level Conflict Indigent Defense Services

Action Requested

Your Board is requested to approve and authorize the County Executive Officer to sign two-year contract extensions with three law firms for the provision of indigent defense services from July 1, 2010 to June 30, 2012 totaling \$12,078,861 as described below:

- 1) Primary Indigent Defense services contract extension with Richard A. Ciummo & Associates in the amount of \$8,936,000;
- 2) First Level Conflict Indigent Defense services contract extension with the Law Offices of Mark A. Berg in the amount of \$2,639,406, and;
- 3) Second Level Conflict Indigent Defense services contract extension with the Law Offices of Balcom & Carbone in the amount of \$503,455.

Background

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

- Proceedings regarding the commission of any offense triable in Superior Court;
- Proceedings relating to the nature of conditions of detention, or other restrictions prior to adjudication of treatment or of punishment;
- Conservatorship and various mental health proceedings;
- Various juvenile delinquency and dependency court proceedings;
- Collecting wages and other demands that do not exceed \$100;
- Civil litigation in which the Public Defender believes the person is being persecuted or unjustly harassed;
- Paternity cases in which the county or the state has filed suit (e.g., family support cases).

In California, the responsibility for providing legal representation for those who cannot afford counsel falls to each individual county. California's fifty-eight counties meet this responsibility through the use of at least one of the following service delivery models:

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

Due to the comparatively high costs associated with operating a county department versus a private contract many counties, including Placer County, have determined it is cost-effective to contract with the private sector, rather than to create a county department for indigent defense services. In April 2008, The California Commission on the Fair Administration of Justice reported that twenty-four California counties (41%) are utilizing private sector contracts for provision of primary indigent defense services. It remains the opinion of the County Executive Office that public sector contracts are the best approach to obtaining constitutionally effective legal representation when awarded on the basis of qualitative criteria rather than on cost basis alone, and when the services provided are subject to regular oversight and monitoring.

Public Defense services in Placer County have been delivered through a contract model since June 1971. Since that time, the primary services contract has been held by four different firms. The most recent shift in providers at the primary level occurred in July 2006 as the result of a competitive Request for Proposals (RFP) process with an interview and evaluation panel consisting of County and Court staff. The interview panel conducted a thorough evaluation process commensurate with prescribed procurement policies to identify the responses which best met the requirements of the County and the criteria set forth in the RFP solicitation documents. The panel members agreed unanimously upon the final ranking and recommendations. On June 13, 2006, your Board approved contracts for first level and second level conflict indigent defense services with the law firms of Mark A. Berg and Balcom and Carbone, and on June 27, 2006, approved the primary public defense contract with Richard A. Ciummo & Associates, A Professional Law Corporation. The terms of those contracts allowed for two 2-year extensions. The County Executive Office recommends your Board authorize the first of those extensions.

Fiscal Impact

The two-year contract extensions for primary, first and second level conflict indigent defense services from July 1, 2010 to June 30, 2012 total \$12,078,861 and are detailed in the attached Table 1. Indigent defense services are provided by County General Fund. Consumer fees for indigent defense are assessed on an ability-to-pay basis and average \$80,000 per year, and partially offset General Fund expense.

**Table 1
Indigent Defense Contract Services**

Fiscal Year	Costs	Ciummo & Assoc.	% Change	Mark A. Berg	% Change	Balcom & Carbone	% Change	Total Contracts	% Change
2009-2010	Base	\$4,333,650	5%	\$1,364,953	4%	\$359,611	5%	\$6,058,214	5%
	Ancillary	\$0		\$0		\$0		\$0	
	Sub-Total	\$4,333,650	5%	\$1,364,953	4%	\$359,611	5%	\$6,058,214	5%
2010-2011 Proposed	Base	\$4,416,550	2%	\$1,314,953	-4%	\$251,728	-30%	\$5,983,231	-1%
	Ancillary *	\$55,900		\$9,500		\$0		\$65,400	
	Sub-Total	\$4,472,450	3%	\$1,324,453	-3%	\$251,728	-30%	\$6,048,631	-0.2%
2011-2012 Proposed	Base	\$4,416,550	0%	\$1,314,953	0%	\$251,728	0%	\$5,983,231	0%
	Ancillary **	\$47,000		\$0		\$0		\$47,000	
	Sub-Total	\$4,463,550	-0.2%	\$1,314,953	-0.7%	\$251,728	0%	\$6,030,231	-0.3%
2 Year Contract Extension Total								\$12,078,861	

Notes:

* **Ciummo FY 10-11**
 \$ 35,000 case management service contract
 \$ 12,000 Roseville office space
 \$ 8,900 IT equipment

Berg FY 10-11
 \$ 9,500 IT equipment

** **Ciummo FY 11-12**
 \$ 35,000 case management service contract
 \$ 12,000 Roseville office space

Administering Agency: County Executive Office

Contract No. 12232A

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

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12232 ("Contract") is made at Auburn, California, as of July 1, 2010, by and between the County of Placer, ("COUNTY"), and Richard A. Ciummo & Associates, a Professional Law Corporation ("ATTORNEY"), who agree as follows:

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

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

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

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

1. **Scope of Attorney Services.** Section 2 is hereby amended to modify the Primary Public Defense services set out in **Attachment A** Section 1.1, "Primary Public Defense 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 court of any person who has been

convicted of a misdemeanor. In the case of a felony conviction, the primary public defender shall perfect a client's right to appeal by filing a notice of appeal with the appropriate court. Except for this requirement, the primary public defender shall not be responsible to prosecute an appeal of a felony 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.

2. **Contract Compensation.** Section 5.A is hereby amended as follows: COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of up to eight million, nine hundred thirty-five thousand, nine hundred ninety-nine dollars and ninety-two cents (\$8,935,999.92) for a two (2) year service period. This amount includes funding to be set aside in a separate account maintained by the COUNTY for reimbursement of IT equipment and set-up (\$8,900.00); case management system annual fee and maintenance reimbursement (\$70,000.00) and reimbursement for Roseville office space should the firm decide to operate a Roseville location (\$24,000.00). All other compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.
3. **Legal Conflicts of Interest.** Section 13 is hereby amended to add a new subsection C as follows: If a Marsden motion is granted against Attorney, unless the court rules that the violation creates a disabling conflict of the entire office, the case should be reassigned with the office. This provision recognizes that case law has provided that disqualification of public sector attorneys should proceed with caution since such disqualifications can result in increased public expenditures for legal representation. In light of the high price paid for disqualifying whole offices of government funded attorneys, use of internal screening procedures or "ethical walls" to avoid conflicts should be considered by the Court. The representation of each defendant should not be imputed to other lawyers in the office.
4. **Additional Records and Reports.** To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 17561 for the reimbursement of state mandated costs, ATTORNEY shall submit a report of the reimbursable costs with supporting data to the COUNTY within 45 days of the end of each fiscal year. Specific eligible cases for reimbursement are sexually violent predators, not guilty by reason of insanity II, developmentally disabled persons, and mentally disordered offenders' extended commitment proceedings. The cost of court appointed attorneys and clerical support, including case preparation and representation at the proceeding is a reimbursable cost. Actual costs must be traceable and supported by source documents that demonstrate the validity of such costs, when incurred and their relationship to the reimbursable activities.
5. **Standards of Representation.** Section 20 is hereby amended as follows:

A. ATTORNEY agrees that each of its employees, subcontractors and agents assigned to perform any services under this agreement shall have the skills, training and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. ATTORNEY agrees to provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients. ATTORNEY agrees that the services provided shall be performed in a competent and timely manner consistent with professional standards for such work and will conform to the requirements of this agreement. In addition, ATTORNEY shall, and shall cause its employees, agents and subcontractors to:

- (1) Comply with applicable provisions of California law and any applicable Local Rules of the Placer County Superior Court;
- (2) Comply with the recommended performance standards for indigent defense services set forth in the "Guidelines On Indigent Defense Services Delivery Systems," published by the State Bar of California in 2006, insofar as those guidelines may be applicable to contract, or non-institutional, providers of public defense services (for example excluding the institutional public defender provisions of Section IX of said recommendations and the provisions of said section with regard to compensation parity with institutional providers);
- (3) Comply with the "California Attorney Guidelines of Civility and Professionalism," approved by the State Bar of California, and as referred to in Placer County Superior Court Rule 10.17;
- (4) Comply with the Rules of Professional Conduct governing attorneys in the State of California.

ATTORNEY shall make all reasonable efforts to contact any in-custody client within forty-eight (48) hours of appointment by the Court. ATTORNEY shall make all reasonable efforts to contact out-of-custody clients within seventy-two (72) hours of appointment by the Court. ATTORNEY shall reasonably endeavor to maintain contact with the client thereafter until such time as ATTORNEY no longer represents the client.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet with clients sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances without unnecessary delays and continuances.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet and confer with the prosecuting

attorney sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances for ATTORNEY's clients and to avoid unnecessary delays and continuances of court proceedings. These communications may be telephonic or by email.

- B. 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 1 herein.

6. **Oversight and Monitoring.** Section 21 is hereby amended as follows:

- A. ATTORNEY shall meet with the Presiding Judge of the Superior Court, or a designee Judge, and the County Executive Office contract administrator on a quarterly basis to discuss and address any issues that arise and to discuss any other issues brought by ATTORNEY, Superior Court Bench, or the County Executive Office relating to the performance of the standards set forth in this Amendment. Prior to this meeting, the Presiding Judge or designee, shall survey the Superior Court Bench, and the County Executive Office contract administrator shall survey relevant criminal justice partners, for any issues that require discussion. The County Executive Office contract administrator shall prepare and distribute an agenda for each meeting in advance.
- B. ATTORNEY shall provide the Superior Court Executive Officer and the County Executive Office contract administrator with a current statement of management staff contacts and shall update that statement when any changes occur. This statement shall include a comprehensive job description, telephone number and email address.
- 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 (B)(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.

7. **Lease Cancellation Penalty.** The landlord of the main office in Auburn, California has agreed to grant a rent concession for the next two years (FY 2010-2012). If COUNTY does not award ATTORNEY an additional two year extension of their Contract (FY 2012-2014), COUNTY agrees to pay the equivalent of a one month lease payment up to \$15,000 if the landlord exercises a lease cancellation penalty.

8. **Roseville Office.** In addition to its main office in Auburn, California, ATTORNEY may decide to maintain an office in the City of Roseville for the purpose of meeting clients residing in or around that city. Should this office be established, it shall be open for the purpose of meeting with clients at least four (4) regularly scheduled half days per week and shall be located in proximity to public transportation. Should this office be opened and thereafter closed, after consultation with COUNTY, then COUNTY'S obligation to reimburse ATTORNEY for said office shall terminate.

9. **Staffing Requirements.** Section 23 is amended as follows: to enable ATTORNEY to commence electronic storage of closed files and the scanning of closed files into the JCATS system, ATTORNEY wishes to hire two (2) additional part-time employees. To mitigate the cost of the addition of this proposed staff, they would be part-time employees, working less than 30 hours per week. The estimated cost of \$34,000 annually is included as part of the contract increases FY 2010 – 2012 minimum attorney staff shall be equivalent to twenty-eight (28) full time attorneys (including two (2) contract attorneys); two (2) certified law students; five (5) full time investigators; one (1) full time office manager and the equivalent of and five (5) full time clerical staff.”

10. **Insurance and Indemnity Requirements.** Section 29 is hereby amended to modify the professional liability insurance requirements set out in **Attachment E.** Section 2.3 of Attachment E is hereby amended to read: “Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance coverage provided by the contractor shall contain language providing coverage up to six (6) months 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.”

Executed on this _____ day of _____, 2010:

COUNTY OF PLACER

By: _____
County Executive Officer

ATTORNEY

By: _____
Name: _____
Title: President

PLACER COUNTY SUPERIOR COURT

By: _____
Judge of the Placer County Superior Court

Approved As to Form

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2010 - June 30, 2011		\$4,416,549.96
July 1, 2010	\$368,045.83	\$4,048,504.13
August 1, 2010	\$368,045.83	\$3,680,458.30
September 1, 2010	\$368,045.83	\$3,312,412.47
October 1, 2010	\$368,045.83	\$2,944,366.64
November 1, 2010	\$368,045.83	\$2,576,320.81
December 1, 2010	\$368,045.83	\$2,208,274.98
January 1, 2011	\$368,045.83	\$1,840,229.15
February 1, 2011	\$368,045.83	\$1,472,183.32
March 1, 2011	\$368,045.83	\$1,104,137.49
April 1, 2011	\$368,045.83	\$736,091.66
May 1, 2011	\$368,045.83	\$368,045.83
June 1, 2011	\$368,045.83	\$0.00
	\$4,416,549.96	

Year Two - July 1, 2011 - June 30, 2012		\$4,416,549.96
July 1, 2011	\$368,045.83	\$4,048,504.13
August 1, 2011	\$368,045.83	\$3,680,458.30
September 1, 2011	\$368,045.83	\$3,312,412.47
October 1, 2011	\$368,045.83	\$2,944,366.64
November 1, 2011	\$368,045.83	\$2,576,320.81
December 1, 2011	\$368,045.83	\$2,208,274.98
January 1, 2012	\$368,045.83	\$1,840,229.15
February 1, 2012	\$368,045.83	\$1,472,183.32
March 1, 2012	\$368,045.83	\$1,104,137.49
April 1, 2012	\$368,045.83	\$736,091.66
May 1, 2012	\$368,045.83	\$368,045.83
June 1, 2012	\$368,045.83	\$0.00
	\$4,416,549.96	

Year 1	
\$ 4,416,549.96	Payments (includes \$34,000/2 PT clerical)
\$ 35,000.00	Case Management Service Contract
\$ 12,000.00	Roseville Office Space
\$ 8,900.00	IT equipment & set up
\$ 4,472,449.96	

Year 2	
\$ 4,416,549.96	Payments (includes \$34,000/2 PT clerical)
\$ 35,000.00	Case Management Service Contract
\$ 12,000.00	Roseville Office Space
\$ 4,463,549.96	

Total Contract **\$8,935,999.92**

Administering Agency: County Executive Office

Contract No. 12229A

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

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12229 ("Contract") is made at Auburn, California, as of July 1, 2010, by and between the County of Placer, ("COUNTY"), and the Law Offices of Mark A. Berg ("ATTORNEY"), who agree as follows:

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

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

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

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

1. **Compensation for Services.** COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of two million, six-hundred thirty-nine thousand, four hundred six dollars and eight cents (\$2,639,406.08) for a two (2) year service period. This amount includes funding to be set aside in a separate account maintained by the COUNTY for reimbursement of IT equipment and set-up in an amount not to exceed (\$9,500.00). All other compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

2. **Legal Conflicts of Interest.** Section 13 is hereby amended to add a new sub-section C as follows: If a Marsden motion is granted against Attorney, unless the court rules that the violation creates a disabling conflict of the entire office, the case should be reassigned within the office. This provision recognizes that case law has

provided that disqualification of public sector attorneys should proceed with caution since such disqualifications can result in increased public expenditures for legal representation. In light of the high price paid for disqualifying whole offices of government funded attorneys, use of internal screening procedures or "ethical walls" to avoid conflicts should be considered by the Court. The representation of each defendant should not be imputed to other lawyers in the office.

3. **Standards of Representation.** Section 20 is hereby amended as follows:
 - A. ATTORNEY agrees that each of its employees, subcontractors and agents assigned to perform any services under this agreement shall have the skills, training and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. ATTORNEY agrees to provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients. ATTORNEY agrees that the services provided shall be performed in a competent and timely manner consistent with professional standards for such work and will conform to the requirements of this agreement. In addition, ATTORNEY shall, and shall cause its employees, agents and subcontractors to:
 - (1) Comply with applicable provisions of California law and any applicable Local Rules of the Placer County Superior Court;
 - (2) Comply with the recommended performance standards for indigent defense services set forth in the "Guidelines On Indigent Defense Services Delivery Systems," published by the State Bar of California in 2006, insofar as those guidelines may be applicable to contract, or non-institutional, providers of public defense services (for example excluding the institutional public defender provisions of Section IX of said recommendations and the provisions of said section with regard to compensation parity with institutional providers);
 - (3) Comply with the "California Attorney Guidelines of Civility and Professionalism," approved by the State Bar of California, and as referred to in Placer County Superior Court Rule 10.17;
 - (4) Comply with the Rules of Professional Conduct governing attorneys in the State of California

ATTORNEY shall make all reasonable efforts to contact any in-custody client within forty-eight (48) hours of appointment by the Court. ATTORNEY shall make all reasonable efforts to contact out-of-custody clients within seventy-two (72) hours of appointment by the Court. ATTORNEY shall reasonably endeavor to maintain contact with the client thereafter until such time as ATTORNEY no longer represents the client.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet with clients sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances without unnecessary delays and continuances.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet and confer with the prosecuting attorney sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances for ATTORNEY's clients and to avoid unnecessary delays and continuances of court proceedings. These communications may be telephonic or by email.

- B. 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 1 herein.

4. **Staffing Requirements.** Section 24.A.2. is hereby amended as follows: "FY 2010 – 2012 minimum attorney staff shall be equivalent to eight (8) full time attorneys; one (1) part-time law clerk; three (3) investigators; and three (3) full-time support staff."

5. **Insurance and Indemnity Requirements.** Section 30 is hereby amended to modify the professional liability insurance requirements set out in **Attachment E**. Section 2.3 of Attachment E is hereby amended to read: "Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance coverage provided by the contractor shall contain language providing coverage up to six (6) months 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."

Executed on this ____ day of _____, 2010:

COUNTY OF PLACER

ATTORNEY

By: _____
County Executive Officer

By: _____
Name: _____

PLACER COUNTY SUPERIOR COURT

Approved As to Form

By: _____
Judge of the Placer County Superior Court

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2010 - June 30, 2011		\$1,314,953.04
July 1, 2010	\$109,579.42	\$1,205,373.62
August 1, 2010	\$109,579.42	\$1,095,794.20
September 1, 2010	\$109,579.42	\$986,214.78
October 1, 2010	\$109,579.42	\$876,635.36
November 1, 2010	\$109,579.42	\$767,055.94
December 1, 2010	\$109,579.42	\$657,476.52
January 1, 2011	\$109,579.42	\$547,897.10
February 1, 2011	\$109,579.42	\$438,317.68
March 1, 2011	\$109,579.42	\$328,738.26
April 1, 2011	\$109,579.42	\$219,158.84
May 1, 2011	\$109,579.42	\$109,579.42
June 1, 2011	\$109,579.42	\$0.00
	\$1,314,953.04	

Year Two - July 1, 2011 - June 30, 2012		\$1,314,953.04
July 1, 2011	\$109,579.42	\$1,205,373.62
August 1, 2011	\$109,579.42	\$1,095,794.20
September 1, 2011	\$109,579.42	\$986,214.78
October 1, 2011	\$109,579.42	\$876,635.36
November 1, 2011	\$109,579.42	\$767,055.94
December 1, 2011	\$109,579.42	\$657,476.52
January 1, 2012	\$109,579.42	\$547,897.10
February 1, 2012	\$109,579.42	\$438,317.68
March 1, 2012	\$109,579.42	\$328,738.26
April 1, 2012	\$109,579.42	\$219,158.84
May 1, 2012	\$109,579.42	\$109,579.42
June 1, 2012	\$109,579.42	\$0.00
	\$1,314,953.04	

Year One

\$1,314,953.04	Contract Payments
\$ 9,500.00	IT equipment & set up
\$1,324,453.04	

Year Two

\$1,314,953.04	Contract Payments
\$1,314,953.04	

Total Contract \$2,639,406.08

Administering Agency: County Executive Office

Contract No. 12230A

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

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN THE COUNTY OF PLACER, Contract No. 12230 ("Contract") is made at Auburn, California, as of July 1, 2010, by and between the County of Placer, ("COUNTY"), and the Law Firm of Balcom & Carbone ("ATTORNEY"), who agree as follows:

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

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

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

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

1. **Compensation for Services.** COUNTY agrees to pay ATTORNEY as full compensation for services herein, the total sum of five hundred three thousand, four hundred fifty-five dollars and twenty cents (\$503,455.20) for a two (2) year service period. The new contracted amount represents a reduction of thirty percent equal to \$107,883.40 annually from the current fiscal year. This reduction is based upon a reduction in the number of cases appointed from that anticipated in the initial contract. Should ATTORNEY identify a need for additional funding due to a significant, sustained increase in cases appointed or appointment of a serious and complex felony case requiring additional staffing needs, COUNTY will meet with ATTORNEY to review a request for supplemental indigent defense funding. All compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

2. **Legal Conflicts of Interest.** Section 11 is hereby amended to add a new sub-section C as follows: If a Marsden motion is granted against Attorney, unless the court rules that the violation creates a disabling conflict of the entire office, the case should be reassigned within the office. This provision recognizes that case law has provided that disqualification of public sector attorneys should proceed with caution since such disqualifications can result in increased public expenditures for legal representation. In light of the high price paid for disqualifying whole offices of government funded attorneys, use of internal screening procedures or "ethical walls" to avoid conflicts should be considered by the Court. The representation of each defendant should not be imputed to other lawyers in the office.

3. **Standards of Representation.** Section 18 is hereby amended as follows:

A. ATTORNEY agrees that each of its employees, subcontractors and agents assigned to perform any services under this agreement shall have the skills, training and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. ATTORNEY agrees to provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients. ATTORNEY agrees that the services provided shall be performed in a competent and timely manner consistent with professional standards for such work and will conform to the requirements of this agreement. In addition, ATTORNEY shall, and shall cause its employees, agents and subcontractors to:

- (1) Comply with applicable provisions of California law and any applicable Local Rules of the Placer County Superior Court;
- (2) Comply with the recommended performance standards for indigent defense services set forth in the "Guidelines On Indigent Defense Services Delivery Systems," published by the State Bar of California in 2006, insofar as those guidelines may be applicable to contract, or non-institutional, providers of public defense services (for example excluding the institutional public defender provisions of Section IX of said recommendations and the provisions of said section with regard to compensation parity with institutional providers);
- (3) Comply with the "California Attorney Guidelines of Civility and Professionalism," approved by the State Bar of California, and as referred to in Placer County Superior Court Rule 10.17;
- (4) Comply with the Rules of Professional Conduct governing attorneys in the State of California.

ATTORNEY shall make all reasonable efforts to contact any in-custody client within forty-eight (48) hours of appointment by the Court. ATTORNEY shall make all reasonable efforts to contact out-of-custody clients within seventy-two (72) hours of appointment by the Court. ATTORNEY shall reasonably endeavor to maintain contact with the client thereafter until such time as ATTORNEY no longer represents the client.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet with clients sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances without unnecessary delays and continuances.

In the performance of services under this agreement, ATTORNEY shall make all reasonable efforts to meet and confer with the prosecuting attorney sufficiently in advance of court appearances to be prepared to proceed at scheduled court appearances for ATTORNEY's clients and to avoid unnecessary delays and continuances of court proceedings. These communications may be telephonic or by email.

- B. 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 1 herein.

4. **Staffing Requirements.** Section 22.A. is hereby amended as follows: "Minimum attorney staff shall be equivalent to two (2) full-time attorneys."

5. **Insurance and Indemnity Requirements.** Section 28 is hereby amended to modify the professional liability insurance requirements set out in **Attachment E.** Section 2.3 of Attachment E is hereby amended to read: "Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance coverage provided by the contractor shall contain language providing coverage up to six (6) months 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."

Executed on this ____ day of _____, 2010:

COUNTY OF PLACER

ATTORNEY

By: _____
County Executive Officer

By: _____
Name:

By: _____
Name:

PLACER COUNTY SUPERIOR COURT

By: _____
Judge of the Placer County Superior Court

Approved As to Form

County Counsel

Attachment A1
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2010 - June 30, 2011		\$251,727.60
July 1, 2010	\$20,977.30	\$230,750.30
August 1, 2010	\$20,977.30	\$209,773.00
September 1, 2010	\$20,977.30	\$188,795.70
October 1, 2010	\$20,977.30	\$167,818.40
November 1, 2010	\$20,977.30	\$146,841.10
December 1, 2010	\$20,977.30	\$125,863.80
January 1, 2011	\$20,977.30	\$104,886.50
February 1, 2011	\$20,977.30	\$83,909.20
March 1, 2011	\$20,977.30	\$62,931.90
April 1, 2011	\$20,977.30	\$41,954.60
May 1, 2011	\$20,977.30	\$20,977.30
June 1, 2011	\$20,977.30	\$0.00
	\$251,727.60	

Year Two - July 1, 2011 - June 30, 2012		\$251,727.60
July 1, 2011	\$20,977.30	\$230,750.30
August 1, 2011	\$20,977.30	\$209,773.00
September 1, 2011	\$20,977.30	\$188,795.70
October 1, 2011	\$20,977.30	\$167,818.40
November 1, 2011	\$20,977.30	\$146,841.10
December 1, 2011	\$20,977.30	\$125,863.80
January 1, 2012	\$20,977.30	\$104,886.50
February 1, 2012	\$20,977.30	\$83,909.20
March 1, 2012	\$20,977.30	\$62,931.90
April 1, 2012	\$20,977.30	\$41,954.60
May 1, 2012	\$20,977.30	\$20,977.30
June 1, 2012	\$20,977.30	\$0.00
	\$251,727.60	

Total Contract \$503,455.20

