

MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE
COUNTY OF PLACER

TO: Honorable Board of Supervisors

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

DATE: June 17, 2014

SUBJECT: Contracts for Indigent Defense Services

Action Requested

Your Board is requested to approve and authorize the County Executive Officer to sign indigent defense services for FY 2014-2016 as described below:

1. Primary Indigent Defense services contract extension with Richard A. Ciummo & Associates in the amount of \$9,522,796, a \$510,696 or 5.7% increase from FY 2012-14 and;
2. First Level Conflict Indigent Defense services contract extension with the Law Offices of Mark A. Berg in the amount of \$3,065,486, a \$395,036 or 14.8% increase from FY 2012-14 and;
3. Second Level Conflict Indigent Defense services contract with the Law Office of Dan Koukol in the amount of \$636,000, a \$132,544 or 26.3% increase from FY 2012-14.

Background

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

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

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

1. County Department – where the attorneys and support staff are salaried public employees;
2. Contract Defenders – where private sector law firms or sole practitioners serve as independent contractors to the county;

3. Assigned Counsel – where cases are assigned directly by the court and are paid either a flat fee per case, or on an hourly basis.

Due to the high costs associated with operating a county department, many counties elect to contract with law firms from the private sector for their indigent defense services. Indigent Defense services in Placer County have been delivered through a contract model since June 1971. In the opinion of the County Executive Office, this delivery model remains the best approach in providing constitutionally required, efficient and effective indigent defense services. After consulting with the Superior Court, the County Executive Office recommends establishing the following contracts.

Primary and First Level Conflict Contracts

Current indigent defense service contracts with Richard A. Ciummo & Associates and the Law Offices of Mark A. Berg were initially established in July 2006 through a competitive Request for Proposal (RFP) process conducted by an interview panel of County staff and Court officials. The panel conducted a thorough evaluation process commensurate with procurement policies, in identifying the responses which best met the requirements of the County and the RFP solicitation criteria. The panel members unanimously agreed upon the final ranking and recommendations, and your Board approved the contract on June 13, 2006. The terms of those contracts allowed for two two-year extensions. The County Executive Office recommends your Board authorize an additional two-year extension from July 1, 2014 – June 30, 2016 for the primary and first level indigent defense services, in the amount of \$9,522,796 and \$3,065,486 respectively.

The County's indigent defense service providers have seen significant increases in felony filings over the past several years. In FY 2012-13, Richard A. Ciummo & Associates received 1,464 felony appointments. Current trends suggest this will increase approximately 60% to 2,400 in FY 2014-15. The firm has requested to reinstate an attorney position deleted in 2012, increasing total attorneys from 27 to 28. The firm is also experiencing increased health insurance costs and other operational expenses associated with the increases in felony filings. The FY 2014-16 total contract amount of \$9,522,796 represents a 5.7% increase over the FY 2012-14 cost of \$9,012,100.

Richard A. Ciummo & Associates				
	FY 12-13	Projected FY 13-14	Projected FY 14-15	% Change from FY 2012-13
Felony Appointed Cases	1,464	1,855	2,402	64.1%
2 - Year Contract Amount	\$9,012,100		\$9,522,796	5.7%

In FY 2012-13, the Law Offices of Mark A. Berg received 434 felony appointments. Current trends suggest this will increase approximately 48% to 643 in FY 2014-15. The firm has also requested to reinstate an attorney position deleted in 2010, increasing total attorneys from 7 to

8. The firm is also experiencing increases in operational expenses associated with the increasing felony filings. The FY 2014-16 total contract amount of \$3,065,486 represents a 14.8% increase over the FY 2012-14 cost of \$2,670,450.

Law Offices of Mark A. Berg				
	FY 12-13	Projected FY 13-14	Projected FY 14-15	% Change from FY 2012-13
Felony Appointed Cases	434	516	643	48.1%
2 - Year Contract Amount	\$2,670,450		\$3,065,486	14.8%

New Contract for Second Level Conflict

The FY 2012-14 contract for second level conflict services was held by the Law Offices of Balcom & Carbone. On January 7, 2014, your Board approved a professional services agreement with the Law Office of Toni Carbone, to conclude that contract cycle due to changes in the partnership structure. The County Executive Office in conjunction with County Procurement conducted a Request for Proposal process for this contract. One response was received from the Law Office of Dan Koukol, a previous defense services contractor for Placer County. The County Executive Office recommends establishing a two-year contract with this firm. The bid received for this service contract was 20.8% higher than the previous two-year contract extension – also attributable to rising felony filings - for a total contract amount of \$636,000.

Prior 2nd Level Conflict Firm				
	FY 12-13	Projected FY 13-14	Projected FY 14-15	% Change from FY 2012-13
Felony Appointed Cases	104	134	173	66.0%
2 - Year Contract Amount	\$503,456		\$636,000	26.3%

County Executive staff is of the opinion that the contract defense service model provides certain advantages to the criminal justice system such as reduced and predictable costs, streamlining of the defense counsel appointment process and development of defense counsel expertise. However, given the importance of this county's responsibility to a well-functioning justice system, County Executive staff, in collaboration with the Superior Court, plans to review the County service delivery model to determine if any modifications to the model should be considered. Anticipated topics for review include: method of service delivery; contract terms and elements; recommended caseloads for attorneys and investigators; supervision, professional development and evaluation; special case management and compensation. Upon conclusion of the review, any recommendations will be analyzed and considered for

implementation. A new Request for Proposals (RFP) for the County's indigent defense services is anticipated to occur in FY 2015-16.

Fiscal Impact

The combined two-year contract total for these three firms to provide Indigent Defense services in FY 2014-16 is \$13,224,282, an increase of \$1,038,276 or 8.5% over the current two-year contracts. Increased costs are related to a significant increase in felony filings and to staffing, health care and other operational costs associated with the rising number of felony filings. Indigent Defense Services are fully funded by the County General Fund.

Administering Agency: County Executive Office

Contract No.

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

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN PLACER COUNTY, Contract No. 12232 ("Contract") is made at Auburn, California, as of July 1, 2014, 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 Richard A. Ciummo & Associates, 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, all other terms and conditions set forth in the Contract No.12232, entered into June 13, 2006, Contract No. 12232A entered into July 1, 2010, and in Contract No. 12232B entered into July 1, 2012 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 up to nine million, five-hundred twenty-two thousand, seven-hundred ninety-six dollars (\$9,522,796) 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 case management system annual fee and maintenance reimbursement (\$70,000.00). All compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

2. **Staffing Requirements.** Section 23 is amended as follows: FY 2014-2016 minimum attorney staff shall be equivalent to (28) full time attorneys.

Executed on this ____ day of _____, 2014:

COUNTY OF PLACER

By: _____
County Executive Officer

ATTORNEY

By: _____
Name:
Title: President

Approved As to Form

County Counsel

Richard A. Ciummo & Associates
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2014 – June 30, 2015		\$4,656,550
July 1, 2014	\$388,045.83	\$4,268,504.17
August 1, 2014	\$388,045.83	\$3,880,458.34
September 1, 2014	\$388,045.83	\$3,492,412.51
October 1, 2014	\$388,045.83	\$3,104,366.68
November 1, 2014	\$388,045.83	\$2,716,320.85
December 1, 2014	\$388,045.83	\$2,328,275.02
January 1, 2015	\$388,045.83	\$1,940,229.19
February 1, 2015	\$388,045.83	\$1,552,183.36
March 1, 2015	\$388,045.83	\$1,164,137.53
April 1, 2015	\$388,045.83	\$776,091.70
May 1, 2015	\$388,045.83	\$388,045.87
June 1, 2015	\$388,045.87	\$0.00
	\$4,656,550.00	

Year Two - July 1, 2015 – June 30, 2016		\$4,796,246
July 1, 2015	\$399,687.16	\$4,396,558.84
August 1, 2015	\$399,687.16	\$3,996,871.68
September 1, 2015	\$399,687.16	\$3,597,184.52
October 1, 2015	\$399,687.16	\$3,197,497.36
November 1, 2015	\$399,687.16	\$2,797,810.20
December 1, 2015	\$399,687.16	\$2,398,123.04
January 1, 2016	\$399,687.16	\$1,998,435.88
February 1, 2016	\$399,687.16	\$1,598,748.72
March 1, 2016	\$399,687.16	\$1,199,061.56
April 1, 2016	\$399,687.16	\$799,374.40
May 1, 2016	\$399,687.16	\$399,687.24
June 1, 2016	\$399,687.24	\$0.00
	\$4,796,246.00	

Year 1

\$ 4,656,550.00	Payments
\$ 35,000.00	Case Management Service Contract
\$ 4,691,550.00	

Year 2

\$ 4,796,246.00	Payments
\$ 35,000.00	Case Management Service Contract
\$ 4,831,246.00	

Total Contract \$9,522,796.00

Administering Agency: County Executive Office

Contract No.

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

THIS AMENDMENT to the CONTRACT FOR LEGAL REPRESENTATION OF INDIGENT PERSONS IN PLACER COUNTY, Contract No. 12229 ("Contract") is made at Auburn, California, as of July 1, 2014, 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 Office of Mark A. Berg, 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; and

Whereas, all other terms and conditions set forth in the Contract No. 12229, entered into June 13, 2006, Contract No. 12229A entered into July 1, 2010, and in Contract No. 12229B entered into July 1, 2012 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 three million, sixty-five thousand, four hundred and eighty-six dollars (\$3,065,486) for a two (2) year service period. All other compensation will be payable in monthly installments in accordance with the payment schedule on Attachment A1.

2. **Compensation for Services.** Section 5C is hereby amended as follows: ATTORNEY agrees to defend up to one (1) non-capital homicide cases within a two (2) year time period. This decrease is due to ATTORNEY currently defending three (3) homicide cases in the prior contract period. Any additional non-capital homicide cases appointed by the Court, would be paid for by COUNTY as additional compensation

upon proper Court order for services in accordance with Court rules, and only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.

3. **Staffing Requirements.** Section 23 is amended as follows:
FY 2014-2016 minimum attorney staff shall be equivalent to (8) full time attorneys.

Executed on this ____ day of _____, 2014:

COUNTY OF PLACER

By: _____

County Executive Officer

ATTORNEY

By: _____

Name:

Title: President

Approved As to Form

County Counsel

The Law Offices of Mark A. Berg
PAYMENT FOR SERVICES RENDERED

Year One - July 1, 2014 - June 30, 2015		\$1,532,743.00
July 1, 2014	\$127,728.58	\$1,405,014.42
August 1, 2014	\$127,728.58	\$1,277,285.83
September 1, 2014	\$127,728.58	\$1,149,557.25
October 1, 2014	\$127,728.58	\$1,021,828.67
November 1, 2014	\$127,728.58	\$894,100.08
December 1, 2014	\$127,728.58	\$766,371.50
January 1, 2015	\$127,728.58	\$638,642.92
February 1, 2015	\$127,728.58	\$510,914.33
March 1, 2015	\$127,728.58	\$383,185.75
April 1, 2015	\$127,728.58	\$255,457.17
May 1, 2015	\$127,728.58	\$127,728.58
June 1, 2015	\$127,728.58	\$0.00
	<u>\$1,532,743.00</u>	

Year Two - July 1, 2015 - June 30, 2016		\$1,532,743.00
July 1, 2015	\$127,728.58	\$1,405,014.42
August 1, 2015	\$127,728.58	\$1,277,285.83
September 1, 2015	\$127,728.58	\$1,149,557.25
October 1, 2015	\$127,728.58	\$1,021,828.67
November 1, 2015	\$127,728.58	\$894,100.08
December 1, 2015	\$127,728.58	\$766,371.50
January 1, 2016	\$127,728.58	\$638,642.92
February 1, 2016	\$127,728.58	\$510,914.33
March 1, 2016	\$127,728.58	\$383,185.75
April 1, 2016	\$127,728.58	\$255,457.17
May 1, 2016	\$127,728.58	\$127,728.58
June 1, 2016	\$127,728.58	\$0.00
	<u>\$1,532,743.00</u>	

Total Payment \$3,065,486.00

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

THIS CONTRACT is made and entered into this day of 1st of July 2014 by and between the COUNTY OF PLACER ("COUNTY") and the Law Office of Dan Koukol ("ATTORNEY") or jointly referred to as "Parties":

WITNESSETH

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

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

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

WHEREAS, ATTORNEY has submitted a proposal pursuant to Request for Proposal (RFP) Number 10364 to perform second level conflict Public Defender services and related duties on a contractual basis for a period of two (2) years, with options to renew for two subsequent two-year extensions; and

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

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

NOW, THEREFORE, the Parties hereto agree:

1. **RFP NUMBER 10364:** - COUNTY's issuance of, and ATTORNEY's response to, RFP Number 10364 is hereby incorporated and made a part of this Contract, as are all Contract attachments referenced herein.
2. **SCOPE OF ATTORNEY SERVICES:**
 - A. ATTORNEY agrees to perform functions, duties, and professional legal services in accordance with Attachment A, ATTORNEY Scope of Service; and
 - B. Contractor agrees that County may adopt a registration fee in an amount up to \$50, as authorized by Penal Code Section 987.5, and that Contractor and County shall cooperate in the process of assessment and collection such fee, and therefore, legal representation of financially eligible accused persons is rendered without expense to the defendant except as provided by Section 987.8 and 987.5 of the Penal Code.

3. CONTRACT TERMS: TERMINATION:

A. Term: This Contract shall be for a period of two (2) years, with options to renew for two subsequent two-year extensions, unless extended by mutual written consent or terminated per this Section.

B. Termination:

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

4. REPRESENTATION OF CASES AFTER EXPIRATION:

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

5. **CONTRACT COMPENSATION:**

- A. COUNTY agrees to pay ATTORNEY, as full compensation for services herein, the total sum of Six Hundred and Thirty-Six Thousand dollars (\$636,000) for a two (2) year service period, payable in monthly installments in accordance with the payment schedule on Attachment B.
- B. Upon written agreement of the Parties, the payment schedule on Attachment B may be amended by COUNTY for the purpose of advancing funds, which may become necessary for ATTORNEY to procure new office space. Such payment schedule amendment shall in no way whatsoever mean, or imply to mean, that the reimbursable value of this contract has changed, unless changes are provided to the total contract value in this Section by written agreement of the Parties.
- C. ATTORNEY agrees to defend up to two (2) non-capital homicide cases within a two (2) year time period. Any additional non-capital homicide cases appointed by the Court, would be paid for by COUNTY as additional compensation upon proper Court order for services in accordance with Court rules, and only upon the submission of a proper claim by service provider in accordance with COUNTY procedures.
- D. 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 subsection (C) above, Section 7 or 10 herein.
- E. ATTORNEY failure to provide reports to COUNTY pursuant to Section 17 herein within twenty (20) calendar days following the end of each month will result in a monthly payment withholding of ten percent (10%) until such time as the reports are delivered. Upon delivery of reports, COUNTY will immediately prepare a payment document representing any amounts withheld pursuant to this Section, and to be processed by the Auditor/Controller.
- F. ATTORNEY agrees to accept appointment of cases outside this contract to assist with any transition involving primary public defense services, to the extent staff is available and caseloads permit. Attorney will be compensated on an hourly basis based upon the rates set forth in the local Court rules.

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

Parties agree to work cooperatively in the pursuit of additional funding that may become available for application by public defender programs; provided, however, that such additional revenue is not utilized to supplant existing funding for services. With Parties' prior written agreement, and at COUNTY's discretion, application of COUNTY resources related to this section may be invoiced to, and reimbursed by, ATTORNEY. Any funds pursuant to this section, which involve, as a condition of funding, a pass through from COUNTY to ATTORNEY, may correspondingly involve the assessment of an ongoing COUNTY administrative fee pursuant to any such grant application budget and award. Pass-through grants pursuant to this Section will require a written contract amendment pursuant to Section 34 herein, prior to transfer of any such funds from COUNTY to ATTORNEY.

7. **ADDITIONS TO COURT CALENDAR:**

COUNTY agrees to work with ATTORNEY to address any material changes to the court calendar which would impact ATTORNEY operations.

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

Costs for expert witnesses, investigations, tests, interpreters and reports from third parties, medical and psychiatric expenses and ancillary 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.

9. **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, travel, library, communications including information technology, equipment, and all other costs of operations of any kind or nature whatsoever.

10. **EXTRAORDINARY EXPENSES RELATED TO AN EXTRAORDINARY CASE:**

- A. An "Extraordinary Case" refers to capital cases, change of venue cases and those cases deemed by the Court to be extraordinary. Additional compensation for such cases may be provided in accordance with local Court rules.
- 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.

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

- A. As requested by the Court, ATTORNEY will participate in the determination of a defendant's financial ability to employ counsel pursuant to Government Code 27707: the court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Attachment A is financially able to employ counsel and qualifies for the services of the public defender; and
- B. ATTORNEY shall, however, render legal services as provided in Attachment A for any person the Court determines is not financially able to employ counsel until such time as a contrary determination is made by the Court. If a contrary determination is made, ATTORNEY thereafter may not render services for such person except in a

proceeding to review the determination of that issue or in an unrelated proceeding;
and

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

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

- A. ATTORNEY represents and warrants to the COUNTY that, while this Contract is in effect, the performance of the legal services under this Contract shall be its principal and first priority business; and
- B. ATTORNEY covenants to decline to advise or represent clients, or undertake cases or legal projects, which would, or in the foreseeable future could, conflict with services under this Contract.

13. **LEGAL CONFLICTS OF INTEREST:**

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

14. **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.

15. **DRUG-FREE WORKPLACE:**

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

16. **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.

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

- A. Should ATTORNEY be unable, ineligible or unavailable to provide services included in this Contract for any reason other than a documented legal conflict of interest in accordance with Section 12 herein, or is dilatory in providing such services, the Court may appoint other counsel; and
- B. If the Court should determine that other counsel must be appointed for any reason other than a documented conflict of interest, such as the granting of a Marsden motion, 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 effected.

18. **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 10364. ATTORNEY shall maintain records and reports:
 1. As required and requested by COUNTY including, but not limited to, reports to enable the Court, in appropriate proceedings, to determine the amount of reasonable attorney's fees for the purpose of assessment of costs pursuant to Penal Code 987.4 and 987.8; and
 2. To enable COUNTY to obtain reimbursement from the state of California under the provisions of Government Code 15200-15204; and
 3. As otherwise required by COUNTY to determine sufficient caseload management; and

4. At a minimum, such records shall be maintained for each case in accordance with the requirements of RFP Number 10364 and Attachment C, and shall include the number of hours spent by ATTORNEY, associate attorneys, support staff, investigators, associated charges, and any other related charges incurred in the defense of said case, provided that such disclosure shall not violate attorney-client privilege.
- B. ATTORNEY shall provide the Presiding Judge of the Superior Court with the names of the attorneys of the firm, their experience, qualifications, and areas of specialization, and shall update this information as applicable and necessary.
- C. ATTORNEY shall submit a monthly report to the COUNTY on the then-current COUNTY prescribed report (Attachment D) no later than the twentieth (20th) calendar day of each following month. Only those cases determined by the COUNTY and the Courts as fitting the Definition of a Case shall be reported.

19. RECORDS RETENTION AND COUNTY ACCESS:

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

20. STANDARDS OF REPRESENTATION:

- 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.

B. Attorney shall provide quality representation of indigent defendants consistent with constitutional and professional standards, providing diligent and conscientious services to clients.

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.

C. Parties agree that the application of standards contained in this Section shall not represent financial compensation to ATTORNEY over and above the amount stated in Section 5 herein.

21. CASE ASSIGNMENT AND REVIEW:

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

22. OVERSIGHT:

A. COUNTY and a representative of the Superior Court bench shall confer on at least a quarterly basis to maintain oversight and evaluation of public defender services. Such oversight shall include recommendations and related implementation review applicable to maintaining services in conformance with standards as set forth in this Contract, and generally acceptable practices by public defender programs in California; and

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

C. COUNTY may, at its discretion, appoint an Oversight Committee to satisfy the conditions in this Section.

23. OFFICE REQUIREMENTS:

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

24. STAFFING REQUIREMENTS:

A. ATTORNEY shall employ attorneys and administrative staff sufficient to provide coverage for the caseload set out in Exhibit A, and to competently and capably fulfill the requirements of this Contract, at a minimum as follows:

Minimum attorney staff shall be equivalent to two (2) full-time attorneys.

B. ATTORNEY'S failure to provide minimum staff levels as stated herein may result in payment deductions pursuant to Section 15 herein; and

25. SUPERVISION AND EVALUATION:

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

26. PROFESSIONAL DEVELOPMENT

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

B. ATTORNEY shall advise the COUNTY and Court at the beginning of each fiscal year as to ATTORNEY'S training plan and goals and objectives for all employees.

27. 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.

28. INDEPENDENT CONTRACTOR STATUS:

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

of the Contract, an employee of the COUNTY. Furthermore, this Contract shall not under any circumstances be construed or considered to be a joint venture. As an independent contractor, the following shall apply under this Contract:

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

29. **HOLD HARMLESS AND INDEMNIFICATION:**

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

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

30. **INSURANCE AND INDEMNITY REQUIREMENTS:**

Incorporated herein and made a part of this agreement are the Insurance Requirements specified in RFP Number 10364, Attachment E, Insurance and Indemnity Requirements.

31. 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.

32. 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.

33. INTERPRETATION OF CONTRACT:

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

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

- A. This Contract contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or likewise, regarding the subject matter of the Contract shall be deemed to exist or to bind either of the parties hereto; and
- B. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations to this Contract shall be effective unless in writing and signed by both parties.
- C. ATTORNEY specifically acknowledges that in entering into and executing this Contract, ATTORNEY relied solely upon the representations and agreements contained in RFP Number 10364, and this Contract, and no others.

Executed on this ____ day of _____, 2014:

COUNTY OF PLACER

By: _____
County Executive Officer

ATTORNEY

By: _____
Name: Dan Koukol
Title: President

Approved As to Form

County Counsel

- Attachment A: Attorney Scope of Service
- Attachment B: Contract Payment Schedule
- Attachment C: Attorney Case Records Requirement
- Attachment D: Indigent Public Defense Program Monthly Statistical Report
- Attachment E: Insurance and Indemnity Requirements
- Attachment F: Superior Court's Policy for Declaration of Conflicts of Interest in Criminal and Juvenile Cases

INDIGENT DEFENSE SERVICES
SCOPES OF WORK

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 1472 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 1 (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.

- 1.4 The Contractor shall maintain records on the cases assigned under the contract, including, but not limited to, the data elements listed in **Attachment C**.
- 1.5 The Contractor shall also submit a monthly report, as detailed in **Attachment D**, ad hoc reports as periodically requested by the County, an annual report, and other relevant workload and case related statistics as requested. Failure to provide the monthly report to the County within twenty (20) calendar days from the end of month and within thirty (30) calendar days of a quarterly or annual period may result in a monthly payment withholding of 10% until the reports are delivered. Upon delivery of reports, the County will immediately prepare a payment document to be processed by the Auditor/Controller. In addition, the offeror will be required to actively participate in any and all cost-recapture mechanisms for services provided as specified by statute, county policy or local court rule.

2.0 Category B – First Level Conflict Public Defender

- 2.1 Conflict Public Defender Services are utilized for the legal representation of accused persons as described under Category A where the Primary Public Defender has a legal conflict of interest or other lawful liability in accordance with Section 987.2 of the Penal Code. 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 Services

- 3.1 Second Level Conflict services will be utilized for the legal representation of accused persons where the primary and conflict public defenders have a legal conflict of interest. All legal services described in this RFP are from the time of appointment up to and including final adjudication or disposition and, as necessary, filing appeal or other legal documents pursuant to Penal Code Section 1240.1.
- 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.

Year One - July 1, 2014 - June 30, 2015 \$312,000.00

July 1, 2014	\$26,000.00	\$286,000.00
August 1, 2014	\$26,000.00	\$260,000.00
September 1, 2014	\$26,000.00	\$234,000.00
October 1, 2014	\$26,000.00	\$208,000.00
November 1, 2014	\$26,000.00	\$182,000.00
December 1, 2014	\$26,000.00	\$156,000.00
January 1, 2015	\$26,000.00	\$130,000.00
February 1, 2015	\$26,000.00	\$104,000.00
March 1, 2015	\$26,000.00	\$78,000.00
April 1, 2015	\$26,000.00	\$52,000.00
May 1, 2015	\$26,000.00	\$26,000.00
June 1, 2015	\$26,000.00	<u>\$0.00</u>
	\$312,000.00	

Year Two - July 1, 2015 - June 30, 2016 \$324,000.00

July 1, 2015	\$27,000.00	\$297,000.00
August 1, 2015	\$27,000.00	\$270,000.00
September 1, 2015	\$27,000.00	\$243,000.00
October 1, 2015	\$27,000.00	\$216,000.00
November 1, 2015	\$27,000.00	\$189,000.00
December 1, 2015	\$27,000.00	\$162,000.00
January 1, 2016	\$27,000.00	\$135,000.00
February 1, 2016	\$27,000.00	\$108,000.00
March 1, 2016	\$27,000.00	\$81,000.00
April 1, 2016	\$27,000.00	\$54,000.00
May 1, 2016	\$27,000.00	\$27,000.00
June 1, 2016	\$27,000.00	<u>\$0.00</u>
	\$324,000.00	

Total Payment \$636,000.00

INDIGENT DEFENSE SERVICES
DATA COLLECTION REQUIREMENTS

1. Client Records

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

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

2. Financial Records

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

INDIGENT PUBLIC DEFENSE CONFLICT CASE DECLARATIONS
2nd LEVEL CONFLICT PUBLIC DEFENDER

Name of Provider: _____

Month/Year: _____

Please use additional sheets if necessary

Reasons for Conflict Declaration:	# of Cases conflicted	*Case Name	Case #	Principal Charge	Cite section from Conflict Policy for each case listed (see left margin)
1. Due to private practice					
2. Specific Section From Conflict Policy:					
3. Multiple Party Cases					
4. Conflicts with current clients					
5. Former clients as witnesses or victims					
6. Other circumstances:					
b.i. - Substantial Appearance of Conflict					
b.ii. - Staff/Family					
b.iii. - Colorable Claim/Marsden					
b.iv. - Non-frivolous suit against counsel					
b.v. - Other					
7. F - Related Case					
7 generally. Non Disclosure/Basis Privileged or Proceedings In Camera					

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INDIGENT DEFENSE SERVICES
INDEMNIFICATION AND INSURANCE REQUIREMENTS

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

1. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

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

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

2. **INSURANCE:**

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

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

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

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

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

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

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

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

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

4. GENERAL LIABILITY INSURANCE:

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

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

B. One of the following forms is required:

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

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

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

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

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

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

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

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

E. Special Claims Made Policy Form Provisions:

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

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

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

5. ENDORSEMENTS:

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

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

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

6. AUTOMOBILE LIABILITY INSURANCE:

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

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

7. PROFESSIONAL LIABILITY INSURANCE (ERRORS & OMISSIONS):

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

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

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

8. ADDITIONAL REQUIREMENTS:

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

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

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

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

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

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

PLACER COUNTY SUPERIOR COURT
POLICY FOR DECLARATION OF CONFLICTS OF INTEREST
(Rev. 1/19/06)

The following policy is adopted for the purpose of giving guidance to the court and counsel regarding the circumstances under which a conflict of interest is to be declared regarding the representation of a criminal defendant.

1. **APPLICATION OF THE POLICY:**
The conflicts policy shall be applicable to declarations of conflict by any appointed counsel, whether such counsel is the Placer County Public Defendant, Conflicts Firm, or private attorney appointed by the court.

2. **CONSTRUCTION OF POLICY:**
Whenever possible, consistent with legal ethics and the fundamental right of any criminal defendant to be represented by counsel who is free of conflicts of interest, this policy shall be liberally construed to *avoid* a declaration of conflict so as to give full and appropriate effect to contractual arrangements between the County of Placer and appointed counsel.

3. **MULTIPLE DEFENDANT CASES:**
 - a. Counsel appointed by the court shall not represent different defendants involved in the same or related criminal conduct, whether or not the defendants are separately or jointly charged.
 - b. Privately retained counsel shall not represent multiple defendants charged in the same criminal proceeding unless a full and knowledgeable waiver is obtained from each defendant in writing and orally in open court after inquiry by the court.
 - c. Declarations of conflict in multiple defendant cases may be made by any attorney without the prior approval of a supervising attorney.
 - d. Whenever a conflict is declared, the Public Defendant shall retain the client having the more serious or complex case from that of the Conflicts Firm; the conflicts Firm shall retain the client having the more serious or complex case from that of private appointed counsel.

4. **CONFLICTS WITH CURRENT CLIENTS:**
 - a. Counsel appointed by the court shall not represent a defendant where an *adverse* witness or victim is a client currently being represented by such counsel. For the purposes of this policy, "currently being represented" means:
 1. A client who has an active, pending charge or violation of probation,
 2. A defendant for whom counsel is actively seeking post-judgment relief, or

3. Counsel currently is counsel of record for a minor in a juvenile delinquency or dependency proceeding, whether or not there currently is a pending petition in such juvenile proceeding.
 - b. Absent unusual circumstances, the fact that counsel represents a witness *supporting* the defendant will not disqualify counsel from representing the defendant.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
5. FORMER CLIENTS AS WITNESSES OR VICTIMS:
 - a. A declaration of conflict shall not be made merely from the fact that a former client is a victim or witness in the current action.
 - b. A declaration of conflict may be made if all of the following circumstances are present:
 1. Counsel is in possession of confidential information concerning the former client. "Confidential information" does not include information that is part of the public record or may readily be obtained by opposing counsel, such as records of conviction, employment and school records.
 2. The confidential information is relevant to the current proceeding.
 3. Counsel will or may be called upon to use the confidential information against the former client in the defense of the client in the current case.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
6. DECLARATION OF CONFLICT IN OTHER CIRCUMSTANCES:
 - a. Merely because a conflict existed in the past does not mean that there is a conflict in the current case. Each case is to be evaluated as to current conflicts. It is presumed, for example, that the Public Defender shall represent a defendant on a current probation violation, even though there had been a conflict in representation on the original case.
 - b. Counsel may declare a conflict in the following additional cases:
 1. Where there is a substantial appearance of conflict. Examples of such circumstances include former clients who were frequently represented by counsel, or cases where the former client has had a recent and substantial case with counsel.
 2. Where a witness or victim is a member of the office staff of counsel or a member of such staff's family. Merely having knowledge of or acquaintance with the witness or victim shall not be grounds for a declaration of conflict of the entire office of counsel, but may warrant re-assignment of the case within counsel's firm.
 3. Where a former client seeks to set aside a conviction and there is a colorable claim of ineffective assistance of counsel. "Colorable claim" means one which would credibly establish the possibility

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

4. Suit against counsel by the current client unless the suit is patently frivolous, the suit is based on grounds already determined by the court in a *Marsden* motion to be without merit, and there is no conflict of interest other than as reflected in the suit. (*People v. Horton (1995)* 11 Cal.4th 1068, 1104-1107.)
 5. Any other circumstance where counsel reasonable believes a conflict should be declared.
 - c. A declaration of conflict under this section shall require the approval of a senior or supervising attorney.
7. WHEN A CONFLICT IS DECLARED:
- a. Conflicts shall be declared as soon as discovered.
 - b. Notice of the declaration of conflict made by the Public Defender shall be immediately given to the Conflicts Firm, including a brief explanation of the nature of the conflict.
 - c. Counsel shall safeguard any confidential information obtained from a client to avoid any unnecessary "contamination" of other counsel.
 - d. The file, absent any confidential information, shall promptly be given to the next appointed counsel. The following procedure shall be used when conflicts are discovered in cases in Departments 8 and 13: If the conflict is declared in open court with Conflicts counsel present, the file shall be exchanged in open court. If Conflicts counsel is not present, the file shall be deposited in a box for that purpose located in the clerk's office for the department.
 - e. Whenever a conflict appears possible, particularly in a multiple defendant cases, counsel will conduct themselves in a manner to minimize conflicts in any realignment of counsel.
 - f. When a conflict is declared, the new attorney generally will assume representation of the client in all pending matters, even though no conflict exists as to the other matters.
 - g. The court shall inquire into the circumstances of the conflict, including, if necessary, holding proceedings in camera. Counsel, however, shall not be required to disclose confidential information, even to the court.

