

**MASTER CONTRACT FOR LEGAL REPRESENTATION  
OF ELIGIBLE INDIGENTS**

This contract, which is effective upon execution by the Santa Barbara County Board of Supervisors, is between *North County Defense Team* referred to as "Contractor" and the Superior Court of the State of California for the County of Santa Barbara (for the Santa Maria Divisions "Cook" and "Miller", including North County juvenile court; and the Lompoc and Solvang Divisions of the Court) and the County of Santa Barbara, hereinafter referred to as "County." This contract supersedes any and all earlier contracts between these parties for the specified services.

**WHEREAS**, the Superior Court is required by law, pursuant to Penal Code Section 987.2(a), to appoint alternative counsel in cases in which the Court finds that, because of a legal conflict of interest or other failure to act, the Public Defender has properly refused to represent the person accused; and

**WHEREAS**, for reference purposes only, that the number and types of these cases for calendar year 2009 was approximately:

<u>Case Category</u>	<u>Approximate Number of Cases</u>
• *Death Penalty case (punishable by death ) .....	0
• Other Felony .....	325
• Misdemeanor.....	365
• Misdemeanor Appeals .....	10
• Probation Violation Hearings .....	275
(Felony or Misdemeanor including any cases where original appointed counsel was non-Contractor)	
• Witness in Jeopardy .....	5
• Other cases in which indigency representation is required by law but excluding cases under Soldiers & Sailors Relief Act .....	35
(Includes post-trial writ proceedings in the trial court)	

- Juvenile Delinquency .....285  
(including any and all periodic review hearings)

- All “Therapeutic Justice” cases including, but not limited to Juvenile Drug Court, Proposition 36, Substance Abuse Treatment Court (SATC), and Mental Health Treatment Court (MHTC).

\* Contractor shall be required to handle up to four (4) death penalty cases during the two-year contract period, before section III.4 of this contract is applicable.

**WHEREAS**, pursuant to Penal Code Section 987.2(b), the sum provided for in Penal Code Section 987.2(a) may be determined by contract between the County and responsible attorneys; and

**WHEREAS**, Contractor is an association of attorneys who are qualified by reason of education, professional accreditation, experience, preparation, equipment, organization, staffing and facilities to provide the services contemplated by this contract on behalf of the County; and

**WHEREAS**, the County has determined that the program contemplated herein to be performed by Contractor is within its legal authority to grant and will provide competent legal representation to indigent citizens financially unable to employ counsel; and

**WHEREAS**, it is in the public interest that the County contract with Contractor to render the usual and customary legal services where required by law to be provided to individuals, and in such circumstances where the Public Defender declares a legal conflict of interest or fails to act;

*NOW, THEREFORE, the parties hereto agree:*

### **I. DUTIES**

1. Contractor shall provide legal representation for accused indigents in the Santa Barbara Superior Court (Santa Maria Divisions “Cook” and “Miller”, including juvenile court) and the Lompoc and Solvang Divisions, when appointed as required by law, after a determination by the Court that the Public Defender is unable to represent the accused indigent due to a legal conflict of interest or other proper failure to act.
2. Contractor's legal representation shall be of sufficient quality to meet all constitutional, statutory and case law requirements.

3. Contractor shall complete all legal representation and support services for indigent persons if properly appointed to represent them, consistent with Section 27706(a) of the Government Code, but excluding post-trial appeals to the Appellate and Supreme courts. Such services shall include but not be limited to:
  - all necessary court appearances.
  - legal research.
  - investigative services (with access to Penal Code 987.9 funds if necessary).
  - services of an interpreter which are required outside of court.
  - defense requested medical, psychiatric, laboratory, and other diagnostic services and fees for testimony of percipient and expert witnesses not statutorily mandated.
  - preparation and necessary appearances in pretrial or during trial writ proceedings.
  - preparation of briefs and other necessary legal documents.
  - defense-required court reporter transcripts not statutorily mandated.
  - assistance to indigents in filing notice of appeal and other legal documents pursuant to Section 1240.1 of the Penal Code.
  - provision a second defense counsel pursuant to the California Supreme Court's ruling in *Keenan vs. Superior Court* (1982) 31 Cal.3d 424.
4. Contractor shall render all professional legal services reasonably required from the time of appointment to and including final adjudication or disposition in the Superior Court and, as necessary, filing notice of appeal, if any, and other legal documents pursuant to Penal Code Section 1240.1.
5. Contractor shall maintain all appropriate attorney case records and shall assure prompt inspection or transmission of copies of same upon order of the Court to any successor Contractor, to the State Public Defender or private counsel on appeal, or to the person represented.
6. Contractor will be required to assist represented indigents in any reimbursement hearings and in preparation and filing of any necessary financial documents to enable the Court to

determine reimbursement to the County for services under Penal Code Sections 987.4 and 987.8, (to be heard at the time of the probation and sentencing hearing or immediately following verdict or judgment of acquittal).

7. Contractor may be required to screen clients for indigence using approved Court forms which may be inspected by the Court solely for the purpose of determining indigency and the propriety of the appointment of counsel. The Court reserves the right to make the final determination of eligibility for appointment of counsel and of the defendant's financial ability to pay for the costs, or any portion of the costs, of the provision of legal services by such court appointed counsel.
8. Contractor shall also provide, in addition to those services specified in Section I, Paragraph 3 herein, all other personnel ancillary to the furnishing of legal services, and office space, all materials, equipment, facilities, document and tape copying, and supplies necessary for the support of personnel in the performance of the legal services under this contract.
9. Contractor shall not be required to assume the cost of Court-appointed interpreters for Court proceedings or for other service costs incurred strictly on the Court's own motion and without request of the represented indigent or Contractor.
10. Contractor shall not be permitted to decline Court appointment in any case, except for legal conflict of interest, other legal grounds, or lack of indigence; and Contractor shall be required to represent more than one conflict defendant, not to exceed five (5) such defendants, in any multiple defendant case. If Contractor has a legal conflict of interest in representing any of the above number of defendants in a given case and cannot provide separate counsel to avoid such conflict, Contractor's monthly payment may be reduced accordingly if Court has to appoint outside counsel.

## **II. STAFFING**

1. Contractor shall maintain sufficient staff to fulfill the terms of this Contract; to provide daily representation as necessary; and to avoid unnecessary delays and continuances.
2. Contractor shall notify the ranking Judicial Officer in the North county (either Assistant Presiding or Presiding Judge) and the Court Executive Officer in writing of any proposed changes in professional staffing, and the Court's approval of such professional staffing and changes shall be obtained by Contractor prior to any work being performed by such staff.
3. Contractor shall provide the following information to the Courts concerning the proposed staffing under this Contract as it now exists and as it may change during the duration of the Contract:
  - a. Name(s) of the lead attorney(s) who will assume responsibility for execution of the Contract and the obligations of the Contract.
  - b. Name; experience; and qualifications, including area(s) of specialization, of each attorney (who must be in good standing with the California State Bar), to be assigned and employed under the Contract.
4. The Superior Court shall be the sole determiner of whether a particular attorney or legal staff member of Contractor shall be permitted to represent an indigent accused in a particular case.

## **III. FISCAL MANAGEMENT**

1. The County shall pay Contractor the following sum for the Contractor's services under this Contract for each of the following contract years (July 1 through June 30 fiscal years):

2010-11	\$860,976
2011-12	\$860,976

Such payment shall be independent of Contractor's duty to represent those indigents that the Contractor is properly appointed to represent. Payments shall be made according to the following procedures: On or about the fifteenth day of each month following the month of service, the Contractor shall submit three (3) copies of a County General Claim Form (AC-

126) to the Superior Court Executive Officer requesting one-twelfth of the Contract amount. The Contractor shall include the Board Contract number on each claim for payment and said claim form shall be completed in form and detail satisfactory to the County Auditor-Controller. Within thirty (30) days after receipt of each monthly claim form, a County warrant shall be drawn in favor of the Contractor for the total amount of said monthly claim and forwarded to Contractor. The County reserves the right to withhold all or part of payment for the final month of the Contract, until all cases assigned to the Contractor have been adjudicated or otherwise disposed of in the Superior Court. Once properly appointed, Contractor shall represent those indigents to final adjudication of the case in the Superior Court.

2. Notwithstanding anything to the contrary herein, the County shall not be liable to pay Contractor any amount whatsoever, unless and until the Board of Supervisors budgets and appropriates funds therefor. Likewise, the Contractor shall not be required to perform any services whatsoever under this Contract, unless and until the Board of Supervisors budgets and appropriates funds therefore. County reserves the right to seek competitive bids for the provision of such conflict defense services in any fiscal year.
3. To the extent that Contractor's constitutional and necessary level of legal representation and financial experience under the Contract may tend to justify additional payment, such necessary services, in all but the most extreme circumstances, will be considered by the Contractor to be its *pro bono publico* contribution to the administration of justice, consistent with the obligations of an officer of the Court. However, if in the Contractor's estimation an extreme circumstance arises, due to justifiable extraordinary expenses or significant unforeseen increases in caseload or legal responsibilities, Contractor may request additional compensation from the Presiding Judge of the Superior Court. Extreme circumstances shall generally be limited to prolonged capital felony cases, extraordinary change of venue cases involving extreme expense, a mass arrest situation, multiple defendant cases where extraordinary investigation or other extraordinary costs are required such as for gang-related

cases, or an unforeseen increase in the number of trials because of laws such as AB 978 "Three Strikes" cases. Any such request by Contractor must include a complete justification of actual or anticipated extra expenses and a complete itemization of requested extraordinary payment. A financial statement of Contractor's experience to date under this contract shall also accompany the request. If the Presiding Judge of the Superior Court agrees that such payment is warranted and reasonable, the Presiding Judge of the Superior Court shall make such recommendation to the Board of Supervisors, which will be responsible for any supplemental appropriation. During any interim period of time, Contractor shall continue to provide services under the Contract unless Contractor terminates the contract as provided in Section VIII, paragraph 4 herein.

4. If the number of death penalty cases (four) in Section I of this contract is exceeded, Contractor shall not be required to accept appointment in such cases without additional compensation in accordance with established court policies. For purposes of this section, a death penalty case is defined as one in which the Court and the Contractor are notified by the District Attorney (or Attorney General), within a reasonable period of time following the filing of the Information, that the prosecution is seeking the punishment of death, as opposed to life without the possibility of parole. Should a dispute arise as to what constitutes a death penalty case, the parties agree to refer the dispute to the Superior Court to be determined pursuant to the procedures outlined in paragraph 3 above.
5. The Contractor shall not bear the additional cost of post-trial appeals to the Court of Appeal or to the Supreme Court except as necessary. Contractor shall be responsible for the cost of assisting indigents in filing notices of appeal and other legal documents pursuant to Section 1240.1 of the Penal Code.
6. Contractor shall maintain an adequate current accounting system in accordance with generally accepted accounting principles and standards. Contractor's accounting system shall separately reflect all expenditures and revenues under this Contract, and all expenditures shall be fully supported by vouchers, invoices, and other documentation. Such records shall

be available to the County for inspection on request for five (5) years after the expiration or termination of the Contract.

7. Contractor shall maintain proper records to enable the County to verify the separate types of costs of representing each category of indigent persons in Court proceedings, and shall make such records and/or copies thereof available to the County for inspection and/or use in any proceedings to recover such costs from the State, such as Senate Bill 90 costs, Penal Code §987.9 costs, or from whomever may otherwise be obligated to reimburse the County.
8. In any non-capital homicide case in which it is necessary for Contractor to incur costs for expert and investigation fees in excess of \$10,000, Contractor may petition the Court for additional compensation to cover such extraordinary costs above \$10,000. However, Contractor shall be required to cover the first \$10,000 of said expenses in any such case. The Court, in its discretion, may grant or deny such petition, in whole or in part, at an in-camera hearing based upon a declaration and motion by Contractor of the materiality and necessity of such expense(s).

#### **IV. MONITORING/EVALUATION**

1. For each fiscal year in which services are performed by the Contractor, commencing with the claim form to be submitted on or about August 15, 2010 , Contractor shall attach to the claim form, in triplicate, documentation in understandable format, the following data for each case appointed during the previous month. Such documentation for June of each fiscal year must be submitted-in triplicate to the Superior Court Executive Officer by July 15th of each succeeding fiscal year, before the final monthly payment can be made to Contractor. Thereafter, for the balance of cases assigned but not completed during each fiscal year of the contract, Contractor shall submit such documentation in triplicate to the Superior Court Executive Officer for each calendar month by the fifteenth of each following month:
  - a. The name of the defendant represented.
  - b. The names of all attorneys and legal staff providing services in the case.
  - c. Case number(s).



- d. Name of the Court in which charges were filed against the defendant.
  - e. Code section(s) under which the defendant is charged.
  - f. The name of each case which proceeds to trial or contested hearing, the name of the assigned attorney, the judge and department number in which the disposition occurs, and the nature of any disposition of the case.
  - g. The names of each case in which Contractor used an out-of-court interpreter or bi-lingual staff member or bi-lingual attorney to communicate with the defendant or parties involved in the case.
  - h. The names of each case in which investigative services or expert witness services were utilized by Contractor.
  - i. The amount of funds expended for the utilization of interpreters, investigators, or expert witnesses specified in subdivisions g and h above.
  - j. Any such other information, not violative of the attorney-client privilege, which may be required.
2. On the fifteenth day of each month, beginning on or about August 15, 2010, both during the term of and after expiration or termination of this contract, Contractor shall submit a report, in a format approved by the County, to the Superior Court Executive Officer, reflecting the status of all outstanding cases for which Contractor has been appointed under this Contract. Reports for cases assigned during each given fiscal year shall be made and kept separately. The report shall be provided in hard copy format, and on a CD computer disk or other appropriate digital medium via e-mail, written in Microsoft's Excel spreadsheet program.
  3. Contractor shall meet with the ranking judge (Presiding or Assistant Presiding Judge) of the Superior Court in the North county region on a regular basis to discuss the performance of contractor and any issues that arise that may impact upon the administration of conflict defense cases.

## **V. INDEPENDENT CONTRACTOR**

1. The parties agree that this contract does not create the relationship of attorney and client nor employee and employer between Contractor and the County. Contractor is an independent Contractor at all times.
2. Contractor is, and shall at all times be, deemed independent and shall be wholly responsible for the manner in which it performs the service required by the terms of this contract. Contractor exclusively assumes the responsibility for the acts of its subcontractors, associates and employees relative to the services provided during the term and scope of their employment.
3. Contractor represents that appointments, fees and profits will be distributed by the responsible lead attorney(s), and all services will be provided in such a manner as to avoid any legal conflicts of interest between clients represented by the Contractor.
4. Contractor shall not delegate or assign any, rights or obligations hereunder, either in whole or in part, without prior written consent of a majority of the judges in the court of jurisdiction.

## **VI. INDEMNIFICATION**

1. Contractor shall agree to indemnify, defend, and save harmless the County and to procure and maintain insurance in accordance with the provisions of Exhibit "A" attached hereto and incorporated herein by reference.

## **VII. GENERAL**

1. Contractor shall not be prohibited from engaging in the private practice of law, including the defense of those charged with crimes in any and all proceedings, provided that no private case shall be accepted which may cause a conflict of interest to arise wherein Contractor would be unable to represent an indigent person whom the Public Defender cannot represent in the Courts.
2. Should Contractor feel a defendant referred to it does not qualify for services under this contract, Contractor shall immediately advise the Superior Court having jurisdiction of the

matter and calendar the matter for the Court's determination. Contractor shall use any forms approved by the Court for determination of eligibility of services.

3. Contractor shall in no event accept anything of value from the indigent in consideration for services rendered under this contract.

#### **VIII. TERM AND CONDITIONS**

1. This contract shall become effective for all cases assigned on or after July 1, 2010, and shall continue for all cases up to and including June 30, 2012. This contract may be extended at the same or different contract price upon the consent of all Contract parties.
2. This Contract may be canceled at any time following a recommendation by a majority of the Judges of the Superior Court, and the approval of the Board of Supervisors. Following Board approval to cancel, the County will provide the Contractor with sixty (60) days written notice of said cancellation.
3. Notwithstanding Section VIII, paragraph 2 above, failure of the Contractor to comply with the terms of this contract and any reasonable directions by, or on behalf of the County, pursuant thereto, shall constitute a material breach of the contract by Contractor, and, in addition to any other remedy authorized by law, the County shall have the right to terminate the contract immediately. Failure to exercise this right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time. This contract may be terminated, at the option of the County, upon the occurrence of any of the following:
  - a. Violation of any material provisions of the contract;
  - b. Institution of proceedings by, or against, Contractor pursuant to the bankruptcy laws of the United States;
  - c. Discovery by the County that this contract was obtained through fraud, by commission or omission;
  - d. Suspension of business operations, failure or receivership of Contractor
  - e. Assignment of the contract without prior written approval;

- f. The institution of disciplinary proceedings against Contractor's attorneys or any of them by the California State Bar;
  - g. The commencement of criminal prosecution of Contractor's attorneys or any of them;  
or
  - h. Cancellation or other discontinuance of malpractice insurance liability coverage.
4. This contract may be terminated by Contractor upon the service of sixty (60) days written notice to the County.
  5. Upon expiration or termination (by cancellation or otherwise), unless specifically relieved by the Courts, Contractor shall be required to complete representation of all clients in all cases where previously appointed by the Court.

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**CONTRACT FOR LEGAL REPRESENTATION OF ELIGIBLE INDIGENTS**

**July 1, 2010 through June 30, 2012**

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective as of the date executed by County.

SANTA BARBARA COUNTY  
BOARD OF SUPERVISORS

By \_\_\_\_\_  
Chair

Date: \_\_\_\_\_

ATTEST:  
MICHAEL BROWN  
CLERK OF THE BOARD

SANTA BARBARA SUPERIOR COURT

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
ARTHUR A. GARCIA  
Superior Court Presiding Judge

DENNIS MARSHALL, COUNTY COUNSEL

NORTH COUNTY DEFENSE TEAM

By: \_\_\_\_\_  
STEPHEN UNDERWOOD  
Chief Assistant County Counsel

By: \_\_\_\_\_  
MICHAEL J. SCOTT  
Lead Attorney

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, C.P.A.

By: \_\_\_\_\_

APPROVED AS TO FORM:  
RAY AROMATORIO, Risk Program Administrator

By: \_\_\_\_\_