

# **ATTACHMENT J**

**AGREEMENT FOR SERVICES FOR LEGAL REPRESENTATION OF ELIGIBLE INDIGENTS**

# AGREEMENT FOR SERVICES FOR LEGAL REPRESENTATION OF ELIGIBLE INDIGENTS

THIS AGREEMENT (hereafter Agreement or Contract) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY), the Superior Court of California, County of Santa Barbara (hereafter COURT), and Criminal Defense Associates with an address at 140 East Figueroa Street, Santa Barbara, CA 93101 and lead attorneys Douglas R. Hayes and William Duval (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY and COURT agrees to accept the services specified herein. This contract supersedes any and all earlier contracts between these parties for the specified services.

WHEREAS, the 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, based on current experience, it is estimated for reference purposes only, that the number and type of cases for the period of July 1, 2013 through June 30, 2014 was approximately:

<u>Case Category</u>	<u>Approximate Number of Cases</u>
• Death Penalty (case punishable by death) .....	0
• Other Felony .....	395
• Misdemeanor .....	347
• Probation Violation Hearings .....	194
(Felony or Misdemeanor including any cases where original appointed counsel was non-Contractor)	
• Witness in Jeopardy .....	1
• Other cases in which indigence representation is required by law but excluding cases under Soldier & Sailors Relief Act .....	0
(Includes post-trial writ proceedings in the trial court)	
• Juvenile Delinquency .....	95
• Juvenile Probation Violation Hearings .....	76
(Including any and all periodic review hearings)	
• "Therapeutic Justice" cases including, but not limited to Juvenile Drug Court, Proposition 36, Substance Abuse Treatment Court (SATC), Mental Health Treatment Court (MHTC), Veterans Treatment Court, and Restorative Court.	

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, COURT, 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 COURT; and

WHEREAS, the COUNTY and COURT have determined that the program contemplated herein to be performed by CONTRACTOR is within their 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's interest that the COUNTY and COURT 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;

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COURT, and COUNTY and COURT desire to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. DESIGNATED REPRESENTATIVE**

Darrel E. Parker at phone number 805-614-6594 is the representative of COURT and will administer this Agreement for and on behalf of COURT and COUNTY. James Crowder at phone number 805-966-9788 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

**2. NOTICES**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COURT:

Darrel E. Parker  
Superior Court of Santa Barbara County  
1100 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

To CONTRACTOR:

James Crowder  
Criminal Defense Associates  
140 East Figueroa Street  
Santa Barbara, CA 93101

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

**3. SCOPE OF SERVICES**

CONTRACTOR agrees to provide services to COUNTY and COURT in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

**4. TERM**

This Contract shall become effective for all cases assigned on or after December 1, 2014, and shall continue for all cases up to and including June 30, 2016. This Contract may be extended at the same or different contract price for an additional year (through June 30, 2017) upon the consent of all Contract parties.

## 5. COMPENSATION OF CONTRACTOR

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

## 6. INDEPENDENT CONTRACTOR

- A. It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to COUNTY and COURT and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY or COURT. Furthermore, COUNTY and COURT shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY and COURT shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY or COURT employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY and COURT harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY, COURT, or to this Agreement.
- B. The parties agree that this Contract does not create the relationship of attorney and client nor employee and employer between CONTRACTOR and the COUNTY or COURT. CONTRACTOR is an independent contractor at all times.
- C. 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.
- D. 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.
- E. 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.

## 7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY or COURT pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any

errors or omissions, at COUNTY'S or COURT'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

#### **8. DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY and COURT that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

#### **9. TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

#### **10. CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. COUNTY and COURT retain the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY and COURT determine it to be immaterial, and such waiver is only effective if provided by COUNTY and COURT to CONTRACTOR in writing.

#### **11. NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's or COURT's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's or COURT's name or logo in any manner that would give the appearance that the COUNTY or COURT is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY or COURT. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY, the COURT, or their projects, without obtaining the prior written approval of COUNTY or COURT.

#### **12. COUNTY AND COURT PROPERTY AND INFORMATION**

All of COUNTY's and COURT's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's or COURT's property, and CONTRACTOR shall return any such items whenever requested by COUNTY or COURT and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY or COURT property, documents, or information without COUNTY's or COURT's prior written consent.

#### **13. RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least five (5) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY and COURT shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this

Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or COURT or as part of any audit of the COUNTY or COURT, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY, COURT or the State, at no charge to COUNTY or COURT.

**14. INDEMNIFICATION AND INSURANCE**

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

**15. NONDISCRIMINATION**

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

**16. NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY and COURT shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY and COURT desire.

**17. NON-ASSIGNMENT**

Except as described in the Agreement, CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and COURT and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**18. TERMINATION**

A. This Contract may be cancelled at any time following a recommendation by a majority of the Judges of the COURT, and the approval of the Board of Supervisors, whether for COUNTY's or COURT's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein. Following the Board of Supervisors approval to cancel, the COUNTY or COURT will provide the CONTRACTOR with sixty (60) days written notice of said cancellation.

1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon sixty (60) days written notice under the approval by the majority of the Judges of the COURT, and the approval of the Board of Supervisors.
2. **For Cause.** Notwithstanding Section 18, paragraph A above, failure of the CONTRACTOR to comply with the terms of this Contract and any reasonable directions by, or on behalf of the COUNTY or COURT, pursuant thereto, shall constitute a material breach of the Contract by CONTRACTOR, and, in addition to any other remedy authorized by law, the COUNTY or COURT 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 or COURT, 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 or COURT 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.
3. **For Non-appropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or county governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY or COURT will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, upon the service of thirty (30) days written notice to CONTRACTOR. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.
4. **By CONTRACTOR.** This Contract may be terminated by CONTRACTOR upon the service of sixty (60) days written notice to the COUNTY and COURT.
- B. Upon expiration or termination of this Agreement (by cancellation or otherwise), unless specifically relieved by the COURT from their representation of indigent defendant clients, if CONTRACTOR is required to complete representation of such clients, CONTRACTOR shall be compensated by COUNTY at the rate of pay customarily approved by the COURT to compensate counsel appointed to represent indigent defendants.
1. Upon termination, CONTRACTOR shall deliver to COUNTY and COURT all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY and COURT may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY or COURT such financial information as in the judgment of COUNTY or COURT is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY and COURT shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY or COURT may have in law or equity.

#### **19. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

## **20. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## **21. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to COUNTY or COURT is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

## **22. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

## **23. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY or COURT to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY or COURT shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY or COURT.

## **24. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

## **25. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **26. COMPLIANCE WITH LAW**

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY or COURT is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY or COURT.

## **27. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.



## **28. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

## **29. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entities, person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

## **30. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

## **31. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

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Agreement for Services for Legal Representation of Eligible Indigents between the County of Santa Barbara, the Superior Court of California, County of Santa Barbara and Criminal Defense Associates and lead attorneys Douglas R. Hayes and William Duval.

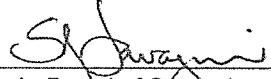
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

**COUNTY OF SANTA BARBARA:**


By:   
Deputy Clerk

By:   
Chair, Board of Supervisors

Date: 12/9/14

**CONTRACTOR**

Criminal Defense Associates and  
William Duval

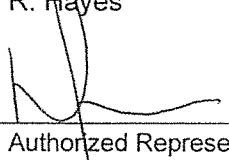
By:   
Authorized Representative

Name: William Duval

Title: Lead Attorney

**CONTRACTOR:**

Criminal Defense Associates and  
Douglas R. Hayes


By:   
Authorized Representative

Name: Douglas R. Hayes

Title: Lead Attorney

**COURT**

Santa Barbara Superior Court

By:   
Arthur A. Garcia  
Superior Court Presiding Judge

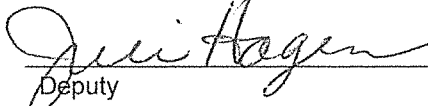
APPROVED AS TO FORM:

Michael C. Ghizzoni  
County Counsel

By:   
Deputy County Counsel

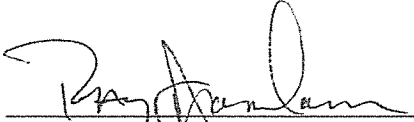
APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, CPA  
County Auditor-Controller

By:   
Deputy

APPROVED AS TO FORM:

County Risk Management

By:   
Risk Management

## EXHIBIT A

### SCOPE OF SERVICES

This EXHIBIT A is attached hereto and is incorporated herein by reference.

#### I. DUTIES

1. CONTRACTOR shall provide legal representation for accused indigents in the Santa Barbara Superior Court (Anacapa, Figueroa, and Juvenile 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 which exceed \$10,000 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 or approved by COURT
  - 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, if deemed necessary by CONTRACTOR and COURT
4. CONTRACTOR shall render all professional legal services reasonably required from the time of appointment up 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 unless specifically relieved by the COURT.
5. CONTRACTOR shall maintain all appropriate attorney case records in accordance with the rules of the State Bar of California 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 indigence 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 does not have a legal conflict of interest in representing any of the above number of defendants in a given case and declines appointment, 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 South County (either Assistant Presiding or Presiding Judge) and the Court Executive Officer in writing of any proposed changes in attorney staffing, and the COURT's approval of such attorney 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 COURT 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 COURT shall be the sole determiner of whether a particular attorney staff member of CONTRACTOR shall be permitted to represent an indigent accused in a particular case.

### III. MONITORING/EVALUATION

1. For each month in which services are performed by the CONTRACTOR, commencing with the claim form to be submitted on or about January 15, 2015, Contractor shall email documentation in an understandable format, the following data for each case appointed during the previous month. Such documentation for June of each fiscal year must be emailed to the Superior Court Finance Department 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 to the Superior Court Finance Department for each calendar month by the fifteenth of each following month:
  - a. The name of the defendant represented.
  - b. The names of the attorney providing services in the case.
  - c. Case number(s).
  - d. Name of the Division (*Criminal or Juvenile*), 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.
  - g. An accounting of funds expended for the utilization of interpreters, investigators, or expert witnesses when CONTRACTOR is seeking additional funds for ancillary services.
  - h. Any such other information, not violative of the attorney-client privilege, which may be required.
2. CONTRACTOR shall meet with the ranking judge (Presiding or Assistant Presiding Judge) of the Superior Court in the South 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.

EXHIBIT B

PAYMENT ARRANGEMENTS  
Periodic Compensation

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$504,384.89 for the remaining seven (7) months of fiscal year 2014-2015 which shall consist of a monthly sum for services in the amount of \$72,054.98 for the first seven (7) months of this Agreement. Total payments for Fiscal Year 2014-2015 to Contractor shall not exceed \$841,802.64 which includes amounts paid under this Agreement and \$337,417.75 paid under Contract No. BC-14-048. For fiscal year 2015-2016, CONTRACTOR shall be paid \$841,802.64 plus the California Consumer Price Index (CPI) adjustment, not to exceed a 2% increase. If the contract is extended through June of 2017, then CONTRACTOR shall be paid the fiscal year 2015-2016 amount plus the CPI adjustment not to exceed a 2% increase.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A as determined by COUNTY and COURT.
- C. CONTRACTOR shall submit to the COURT DESIGNATED REPRESENTATIVE a monthly invoice for the service performed over the period specified. These invoices must cite the assigned Board Contract Number. COURT REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices for satisfactory work within 30 days of receipt by COUNTY of correct and complete invoices from CONTRACTOR.
- D. COUNTY's or COURT's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's or COURT's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.
- E. The COUNTY shall pay CONTRACTOR the following sum for the CONTRACTOR's services under this Contract and Contract No. BC-14-048 for each of the following terms (July 1 through June 30 fiscal years):

July – Nov 2014	\$337,417.75 paid under Contract No. BC-14-048
Dec 2014– June 2015	\$504,384.89
FY 2014-15	<u>\$841,802.64</u> Total payments under both Agreements
FY2015-16	<u>\$841,802.64</u> plus CPI adjustment not to exceed 2%
Option FY 2016-17	FY 2015-16 amount plus CPI adjustment not to exceed 2%

Increases in fiscal year 2015-16 shall be based upon the annual increase in the California Consumer Price Index (CPI) for the Los Angeles-Anaheim-Riverside area for urban wage earners and clerical workers as published by the United States Department of Labor, but not to exceed two (2) percent in each fiscal year, nor to be less than zero percent, in each such fiscal year. The formula shall be implemented commencing in FY 2015-16. The formula shall be based on the June 2015 CPI Index applied to the prior year's payment amount. 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 an

invoice to the Superior Court's Finance Department in either electronic or hard copy format requesting one-twelfth of the Contract amount. The CONTRACTOR shall include the Board Contract number on each invoice for payment and said invoice shall be completed in form and detail satisfactory to the COUNTY Auditor-Controller. Within thirty (30) days after receipt by COUNTY of each monthly invoice, a COUNTY warrant shall be drawn in favor of the CONTRACTOR for the total amount of said monthly invoice 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.

- F. 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 therefore. 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.
- G. 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 new laws. 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 COURT agrees that such payment is warranted and reasonable, the Presiding Judge of the 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 18, subsection 4 contained herein.
- H. CONTRACTOR shall be required to handle up to four (4) death penalty cases through disposition during fiscal years 2014-15 and 2015-16. If the number of death penalty cases 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 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 COURT to be determined pursuant to the procedures outlined in paragraph G above.

- I. 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.
- J. 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 invoices, and other documentation. Such records shall be available to the COUNTY and COURT for inspection on request for five (5) years after the expiration or termination of the Contract.
- K. CONTRACTOR shall maintain proper records to enable the COUNTY and COURT 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 and COURT 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.
- L. 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. CONTRACTOR shall provide to the COURT a detailed accounting, to include receipts and supporting documentation of such expenses incurred. 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).

## EXHIBIT C

### Indemnification and Insurance Requirements (For Professional Contracts)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY and COURT) and hold harmless COUNTY and COURT and their officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY or COURT on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's and COURT's active as well as passive negligence but does not apply to COUNTY's or COURT's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY and COURT immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, his agents, representatives, employees or subcontractors.

##### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY and COURT require and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY and COURT.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, COURT, their officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, COURT, their officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, COURT, their officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY and COURT.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY and COURT a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY or COURT by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY or COURT has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY and COURT. The COUNTY or COURT may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY and COURT with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY and COURT 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 CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY and COURT reserve the right to require

complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY and COURT have the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY or COURT as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY and COURT is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of Contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of Contract work.
11. **Special Risks or Circumstances** – COUNTY and COURT reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY or COURT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY or COURT.