

# County of Santa Barbara County Executive Office



Request for Proposals  
For

**Conflict Indigent Defense Services**  
**RFP NUMBER: 8010002**

Issued August 16, 2022

**RFP Due Date:**  
**September 23, 2022**

**Electronic submittal via the County Public Purchasing Portal**  
**(Submittal by mail, fax or email is not acceptable)**

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## SUMMARY

The County Executive Officer, on behalf of the Santa Barbara County Board of Supervisors, (hereinafter collectively referred to as "County"), is requesting proposals from qualified law firms and associations to provide conflict indigent defense services for the County of Santa Barbara. This Request for Proposals (RFP) outlines the proposal requirements and preferred formats and presents the selection timetable.

By submitting a proposal in response to this request, the proposer is indicating an interest in entering into a contract to provide the services described in Exhibit A of the sample contract attached hereto as Attachment A, in accordance with the terms and conditions described herein. The County anticipates that this solicitation will result in contracts with one or more proposers.

Each proposal received in response to this RFP will be evaluated on the criteria described herein.

All proposals must be electronically submitted through the County's Public Purchase Portal by the deadline, clearly marked "Proposal – Conflict Indigent Defense" and must include all elements described in the **CONTENT AND FORMAT REQUIREMENTS** section of this RFP. The proposal must be delivered before the date and time listed in the **CONTRACT AWARD SCHEDULE** section of this RFP. Submittal by mail, fax, or email is not acceptable. The County will not be responsible for proposals delivered other than that specified herein.

Questions or requests for clarification of this RFP must be submitted in writing. Any amendment or addendum to this RFP is valid only if issued in writing by the County Executive Office.

### 1. CONTRACT AWARD SCHEDULE

Publish RFP	August 16, 2022
Proposers' Written Questions Deadline	August 31, 2022
Addendum Answering Questions Posted	September 9, 2022
Submission Deadline	September 23, 2022
Contract Award	December 2022 (Tentative)
Contract Effective Date	January 1, 2023

### 2. GENERAL CONDITIONS

- 2.1 Prime Responsibility: The selected proposer(s) will be required to assume full responsibility for all services and activities offered in its/their proposal(s), whether or not provided directly. The County will consider the selected proposer(s) to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

- 2.2 Assurance: Any contract awarded under this RFP must be carried out in full compliance with Title VI and VII of the Civil Rights Act of 1964 as amended, and Section 504 of the Rehabilitation Act of 1973 as amended. The proposer(s) must guarantee that services provided will be performed in compliance with all applicable county, state and federal laws and regulations pertinent to the representation of indigent individuals. Prior to executing an agreement, the proposer will be required to provide evidence substantiating the necessary skill to perform the duties through the submission of references.
- 2.3 Independent Contractor: In performance of the work, duties and obligations assumed by the proposer, it is mutually understood and agreed that the proposer, including any and all of the proposer's officers, agents and employees, will at all times be acting and performing in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner or associate of the County of Santa Barbara.
- 2.4 The County prohibits discrimination in employment or in the provision of services because of race, color, religion, religious creed, sex, age, marital status, sexual orientation, gender expression, ancestry, national origin, political affiliation, physical disability or medical condition. This clause does not require the hiring of unqualified persons.
- 2.5 The County reserves the right to reject any and all proposals; to negotiate specific terms, conditions, compensation, and provisions on any contract(s) that may arise from this solicitation; to waive any informalities or irregularities in the proposals; and to accept the proposal(s) that appear(s) to be in the best interest of the County. In determining and evaluating the proposals, costs will not necessarily be controlling; the experience of those who will be providing services, quality, equality, efficiency, utility, suitability of the services offered, and the reputation of proposers will be considered, along with other relevant factors.
- 2.6 The County reserves the right to:
  - 2.6.1 Request clarification of any submitted information;
  - 2.6.2 Not enter into any agreement;
  - 2.6.3 Not to select any proposer;
  - 2.6.4 Amend or cancel this process at any time; and/or
  - 2.6.5 Interview proposers prior to appointment and request additional information during the interview.
- 2.7 Qualified proposers must be prepared to enter into an Independent Contractor Agreement, a sample of which is attached as Attachment A to this RFP. Please review the details of Attachment A carefully. By reference, it incorporates many standards, terms and conditions required as part of this RFP. The County intends to award contracts substantially in the form of the sample agreement to the selected proposer(s). Portions of this RFP and the vendor's proposal may be made part of any resultant contract and incorporated in the agreement.

- 2.8 Prior to commencement of services, the proposer must provide evidence of the following insurance coverages (naming the County of Santa Barbara as additional insured): Worker's Compensation, Commercial General Liability, Automobile Liability, and Professional Liability as outlined in Exhibit C of the sample contract. The proposer(s) will be required to maintain the required coverages, at his/her sole cost and expense, throughout the entire term and any subsequent renewal terms of the agreement.
- 2.9 Proprietary Information that the proposer does not wish to be disclosed beyond what is necessary for proposal evaluation or subsequent contract administration will be kept confidential to the extent permitted by the County as follows. Each page shall be identified by the proposer in bold face text at the top and bottom as "PROPRIETARY". Any section of the proposal that is to remain confidential shall also be so marked in boldface text on the title page of that section. Cost information may not be deemed proprietary. Despite what is labeled as confidential, proprietary, or trade secret, the determination as to whether or not certain material is confidential, proprietary or trade secret shall be determined by law. If a proposer designates any information in its proposal as proprietary pursuant to this provision, the proposer must also submit one copy of the proposal from which the proprietary information has been excised. The proprietary material shall be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the content of the proposal as possible.

### 3 BACKGROUND

- 3.1 The County is required by law to appoint attorneys in criminal matters and to furnish legal services in conservatorships, guardianships, and juvenile matters. Representation by the conflict attorney in indigent criminal cases ranges from first appearance date and pleas to re-trials, preliminary hearings, and jury trials. The cases for which the conflict attorney may be appointed include misdemeanors, felonies, LPS Conservatorship and other matters where juvenile and adult indigent legal services are required by law.
- 3.2 The provision of quality indigent defense services, coupled with cost containment, is in the best interest of the citizens of the County of Santa Barbara. The County desires to establish a relationship with attorneys that will function as alternate public defenders and will provide cost-efficient, quality indigent defense services.
- 3.3 Santa Barbara County is a large, diverse county that spans 2,774 square miles from Carpinteria to Santa Maria. Its government serves approximately 441,000 residents. Main communities include Buellton, Carpinteria, Goleta, Guadalupe, Lompoc, Santa Barbara, Santa Maria, Solvang and the unincorporated areas of Orcutt, Isla Vista, and the Cuyama and Santa Ynez Valleys.
- 3.4 Services are to be provided in all departments of the Superior Court and Juvenile Court, including:
- 3.4.1 Anacapa, Figueroa, and Juvenile Divisions in the South County area, and
  - 3.4.2 Santa Maria Divisions "Cook" and "Miller", including North County Juvenile Court and the Lompoc and Solvang Divisions of the Court in the North County area.
- 3.5 For reference purposes only, the number and types of cases for the past four years are shown below:

**Conflict Defenses Case Activity - Past Four Fiscal Years**

Case Type (Court Area)	2018-19		2019-20		2020-21		2021-22	
	South	North	South	North	South	North	South	North
Death Penalty	1	0	0	0	0	0	0	0
Other Felony - Adult	272	254	224	258	206	131	367	286
Misdemeanor - Adult	522	412	470	365	287	169	657	340
Probation Violation Hearings - Adult	159	115	113	94	81	46	68	107
Probation Violation Hearings - Juvenile	39	183	36	44	20	16	18	9
Adult - Other/Appeal	6	0	3	0	3	0	0	0
Witness in Jeopardy/Advisement	3	0	2	0	2	0	0	0
Parole Violation	0	0	0	0	2	0	0	0
PC1170.95 Petition Eligibility	0	0	0	0	3	0	1	0
Adult Infraction	0	0	0	0	1	0	0	0
Juvenile Misc	0	0	0	0	1	0	2	0
Juvenile Delinquency (W&I 600/602)	84	0	131	0	47	0	45	0
Juvenile - Other W&I's	0	0	0	0	0	0	0	0
Juvenile - Felony	0	75	0	71	0	10	0	85
Juvenile - Misdemeanor	0	80	0	27	0	16	0	86
<b>Total</b>	<b>1,086</b>	<b>1,119</b>	<b>979</b>	<b>859</b>	<b>653</b>	<b>388</b>	<b>1,158</b>	<b>913</b>

**4 DESCRIPTION OF SERVICES REQUIRED**

4.1 The County is seeking proposals from qualified law firms and associations to provide indigent defense services in Santa Barbara County for all criminal and quasi-criminal matters subject to appointment by a Santa Barbara County Superior Court Judge, including but not limited to the following:

- 4.1.1 Misdemeanor complaints and misdemeanor appeals;
- 4.1.2 Felony complaints and indictments;
- 4.1.3 Juvenile delinquency petitions pursuant to Welfare & Institutions Code Sections 601 and 602;
- 4.1.4 Drug Court and Proposition 36 cases;
- 4.1.5 Domestic violence cases;
- 4.1.6 Mental Health Court cases;
- 4.1.7 Sexually Violent Predator (SVP) cases
- 4.1.8 LPS and Probate Conservatorship cases;
- 4.1.9 Child Support contempt proceedings; and
- 4.1.10 All other matters for which indigent counsel is appointed or required.

**4.2 Compensation**

- 4.2.1 The County is seeking proposals which establish a fixed monthly rate for all services provided pursuant to this solicitation. The fixed rate shall be inclusive of all expenses, costs and travel.
- 4.2.2 Private Practice Attorneys providing indigent defenses services under a contract resulting from this solicitation will be allowed to maintain a private law practice; however, no private case, criminal or otherwise, shall be knowingly accepted, nor work done therewith, which would cause a conflict of interest to arise with a case currently assigned under contract with the County. Additionally, individual attorneys associated with the appointed entity shall not allow their private practice to, in any way, inhibit their ability to fulfill the obligations to the County, including that no indigent case handled under contract with the County shall be converted to a private case where the client or their family is represented by an attorney associated with the appointed entity.

## 5 CONTENT AND FORMAT REQUIREMENTS

Interested proposers must submit their proposal as indicated on Page 1 of this RFP and demonstrate the qualifications listed below. To be considered responsive to this solicitation, a proposal must address all of the following points, in the order presented below:

### 5.1 Personnel and qualifications

5.1.1 Each attorney providing services under contract with the County must be familiar with the practices and procedures of the California criminal courts and must meet each of the below requirements:

- 5.1.1.1 Be an active member in good standing of the State Bar of California and be an active trial practitioner with the requisite litigation experience in the field of criminal law (1 year for misdemeanors; 5 years for felonies and as further detailed in Attachment B: Requirements for Case Type Assignments to Conflict Panel Attorneys);
- 5.1.1.2 Have no previous state bar disciplinary action which led to the suspension or revocation of the attorney's license to practice law;
- 5.1.1.3 In those cases where required, have substantial prior experience as lead trial counsel in defending or prosecuting serious or violent felony-level cases;
- 5.1.1.4 In those cases where required, possess demonstrated skill in the use of expert witnesses and evidence, including familiarity with common areas of psychiatric and forensic evidence and investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
- 5.1.1.5 Possess demonstrated skill in the management and conduct of complex negotiations and litigation;
- 5.1.1.6 Possess demonstrated skill in legal research, analysis, and drafting of litigation documents;
- 5.1.1.7 Possess demonstrated skill in oral advocacy; and
- 5.1.1.8 Possess demonstrated skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, opening statements, and closing arguments.

### 5.2 Contents of proposal

5.2.1 A responsive proposal must include: 1) a resume or curriculum vitae for each attorney proposed to serve as lead Conflict Public Defender ("CPD") counsel and every attorney who will be assigned to make any court appearances for the firm on behalf of an accused, 2) responses to the items described in this Section, and 3) any other materials necessary to demonstrate the qualifications required for this position (no audio-visual or similar materials should be submitted). Proposers should be cognizant of the weighted scoring criteria of proposals in Section 6 of this RFP below, while preparing the proposal. In addition to describing how the proposer satisfies the criteria listed in Section 5.1, above, the proposal must address each of the items listed below, where appropriate to the types of cases.

5.2.1.1 How the following will be accomplished:

- 5.2.1.1.1 Coverage for all stages of proceedings;
- 5.2.1.1.2 Contact with clients prior to court appearances, including those in custody;

- 5.2.1.1.3 Availability to clients between court appearances, particularly those in custody;
  - 5.2.1.1.4 Coverage, if applicable, for sentence modification and probation revocation;
  - 5.2.1.1.5 Eligibility screening process to determine the client's financial eligibility for CPD services, including taking a financial declaration and referral back to court when necessary;
  - 5.2.1.1.6 Representation relative to complaints, writs, etc. arising from detention in County facilities, treatment, or punishment; and
  - 5.2.1.1.7 Representation at Appellate Court including, if applicable, misdemeanor appeals and appropriate writs.
- 5.2.1.2 Provide a statement addressing whether or not each attorney is admitted to practice law in the State of California, along with proof of active status and good standing. Additionally, provide a statement addressing whether or not any attorney is, or has in the past been, subject to disciplinary action by the State of California Bar Association; if so, explain.
- 5.2.1.3 Provide five (5) professional references, including names, addresses, and telephone numbers of each contact person, for every attorney identified to serve as proposed lead counsel or support counsel in response to Section 5.2.1 above.
- 5.2.1.4 Describe capability to provide case management statistics regarding caseload and workload.
- 5.2.1.5 Describe capability to distribute cases appropriately to attorneys based on professional experience and according to the seriousness of the offense(s) charged, in accordance with attorney class requirements indicated in Attachment B.
- 5.2.1.6 List the classifications of other staff that would support this agreement including paralegals, support or administrative staff, etc.
- 5.2.1.7 Provide proof of insurance coverage that meets the County's insurance requirements specified in Exhibit C of the attached Contract, including but not limited to professional malpractice insurance.
- 5.2.1.8 Describe capability to be a steward of County resources in minimizing costs, such as costs for investigations and experts, without compromising the defense of a client.

### 5.3 Location from which services will be provided

The conflict counsel must have an office in the County of Santa Barbara available to meet with clients. Please ensure that your proposal addresses the following questions:

- 5.3.1 What is the location(s) from which the proposed services will be provided?
- 5.3.2 Do you currently have office space that can be used in the County area? If not, when would office space be made available?
- 5.3.3 Does your office meet the requirements of the Americans with Disabilities Act (ADA) for accessibility? If not, do you have a location available off-site that would be ADA accessible for clients requiring such accessibility?

### 5.4 Monthly fixed rate for provision of all services under this solicitation.

## 5.5 Caseloads

- 5.5.1 Pursuant to State Bar of California Workload Standards, indigent defense providers shall not maintain excessive workloads that compromise the ability of the provider to provide appropriate and competent representation in a timely manner. Proposers must:
- 5.5.2 Include a plan or policy to track and monitor case assignments per attorney to ensure that no attorney is assigned more cases than he or she can effectively handle.
- 5.5.3 Utilize the historical caseload information provided in Section 3, its own projection of caseloads over the anticipated term of this proposal, its own investigation of the facts and circumstances surrounding the provision of indigent criminal defense services in the County, and its own experience in the criminal law field representing indigent criminal defendants to recommend a staffing level that will meet all the requirements of this RFP.
- 5.5.4 Fully describe the case assignment process that will be utilized to monitor the distribution and balancing of per attorney caseloads.

## 5.6 Management/Supervisory Structure/Administration:

- 5.6.1 Proposer must identify its management structure. Proposer must specify how each level of its operation will be supervised and administered. An organizational chart must be provided. Proposer shall describe the procedures for quality control and review of tasks, activities, and attorney performance. Clear lines of authority and responsibility should be shown for staff, associates, consultants, and any proposed subcontractors. Proposer will supply a financial plan of payment to all attorneys including Contractor.

## 6 SELECTION PROCEDURES

Proposals submitted will be reviewed by a panel of representatives from the County and the Court. Selection of proposers will be at the discretion of the Santa Barbara County Board of Supervisors, in consultation with the Court.

### 6.1 Evaluation Process

- 6.1.1 Members of an RFP Review Committee, consisting of two representatives of the County Executive Office, one representative of the Santa Barbara Superior Court and a representative of the Santa Barbara County Public Defender's Office, will review and score proposals submitted in response to this RFP independently of each other, based on the following rating scale:
  - 6.1.1.1 Responsiveness to the RFP (30 points)
    - 6.1.1.1.1 Requested information included and thoroughness of response.
    - 6.1.1.1.2 Demonstrated understanding of the responsibilities of being Conflict Public Defender for indigent defendants.
  - 6.1.1.2 Qualifications and Experience (45 points)
    - 6.1.1.2.1 Education (scholastic and CLE).
    - 6.1.1.2.2 Relevant legal experience, particularly as described in Attachment B of the RFP.
  - 6.1.1.3 Business Model (15 points)
    - 6.1.1.3.1 Availability to clients (e.g. working hours, office location, clients in custody).



6.1.1.3.2 Approach to handling caseload (e.g. office staff, backup when unavailable, various roles if multiple attorneys).

6.1.1.4 Overall Cost of Proposal (10 points)

6.1.2 References (pass/fail)

6.1.2.1.1 A proposal may be rejected if a reference provides significant negative feedback or if a reference cannot be contacted.

6.1.2.1.2 Proposers may provide one substitute reference if a reference cannot be contacted.

6.1.2.1.3 The County may contact proposers for whom references cannot be contacted.

6.1.3 Responsive proposals received by the deadline will be scored by each member of the evaluation panel, and then the scores will be averaged to award each proposer a total score of between 0 and 100. The County intends to award one contract for services countywide. After a selection is made, a contract will be developed and recommended to the Board of Supervisors for award.

## 6.2 Protests or Objections

Any protest or objection regarding the RFP procedures set forth in this document may be submitted in writing to Reese Ellestad, Fiscal and Policy Analyst in the County Executive Office. All protests must be submitted within 5 working days of the notification that a proposer has or has not been selected for recommendation to the Board of Supervisors to enter into a contract. Protests will be reviewed and considered by the County Executive Officer and County Counsel. Only proposers submitting proposals may submit protests.

## 6.3 Inquiries

Questions about this Request for Proposal shall be submitted in writing by September 30 to:

Direct all inquiries regarding the proposal process or proposal submissions to:  
[rellestad@countyofsb.org](mailto:rellestad@countyofsb.org)

Or:

County of Santa Barbara  
County Executive Office  
Reese Ellestad, Fiscal and Policy Analyst  
105 E. Anapamu St., Ste. 406  
Santa Barbara, California 93460  
Phone: (805) 568-3403  
Fax: (805) 568-3414

Questions will be answered in writing by September 9, 2022 as an addendum to this RFP, available to all potential proposers, without identifying the potential proposers who submitted the questions. Proposers cannot rely on any oral responses or representations regarding this RFP. Reference should be made to the attached proposed Contract for additional information regarding the services to be provided. Except for the above-named person, potential proposers should not contact Santa Barbara County officials, staff or evaluation panel members regarding any aspect of this RFP. If such contact is made, the County reserves the right to reject the proposal.

#### 6.4 Verbal Agreement or Conversation

No prior, current, or post award verbal conversations or agreements with any officer, agent, or employee of the County or any other person or entity shall affect or modify any terms or obligations of this RFP or any agreement resulting from this process.

**ATTACHMENT A  
INDEPENDENT CONTRACTOR AGREEMENT**

**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 and {ENTER BUSINESS} with an address at {ENTER ADDRESS} (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein in Exhibit A.

**WHEREAS**, the COUNTY has 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 persons 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; and

**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**, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires 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**

[COUNTY Representative] at phone number 805-568-3403 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. [CONTRACTOR Representative] at phone number xxx 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 facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:

[NAME]  
County Executive Office  
105 E. Anapamu St., Ste. 406  
Santa Barbara, CA 93101  
Fax (805) 568-3414

To CONTRACTOR:

[NAME]

[BUSINESS]

[ADDRESS]

[FAX]

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 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 January 1, 2023 and shall continue for all cases up to and including [To Be Determined]. This Contract may be extended at the same or different contract price for an additional year 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 not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY 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 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 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 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. 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, legal staff 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 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. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

#### **8. QUALIFICATIONS OF ATTORNEYS**

CONTRACTOR shall, at all times during the term of this Agreement, be in good standing with the State Bar of California. CONTRACTOR shall use their best professional efforts in performing these services, in conformance with all applicable laws, rules, and directives of the Court, and canons of ethics, and shall provide the services required with the level of care, skill, and expertise customarily exercised by licensed attorneys practicing criminal defense in the Central Coast and Southern California areas.

#### **9. DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY 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.

#### **10. 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.

**11. 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 retain the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY and COURT to CONTRACTOR in writing.

**12. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

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

**13. COUNTY PROPERTY AND INFORMATION**

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY 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 property, documents, or information without COUNTY's prior written consent.

**14. 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 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 as part of any audit of the COUNTY, 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 or the State, at no charge to COUNTY.

**15. INDEMNIFICATION AND INSURANCE**

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

**16. 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.

#### **17. NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY 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 desires.

#### **18. NON-ASSIGNMENT**

Except as described in this 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 any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

#### **19. TERMINATION**

A. This Contract may be cancelled at any time following a recommendation by the approval of the Board of Supervisors, whether for COUNTY's convenience, for non-appropriation of funds, or because of the failure of CONTRACTOR to fulfill the obligations herein. Following Board approval to cancel, the COUNTY 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 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, 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:

- i. Violation of any material provisions of the Contract;
- ii. Institution of proceedings by, or against, CONTRACTOR pursuant to the bankruptcy laws of the United States;
- iii. Discovery by the COUNTY that this Contract was obtained through fraud, by commission or omission;
- iv. Suspension of business operations, failure or receivership of CONTRACTOR;
- v. Assignment of the Contract without prior written approval;
- vi. The institution of disciplinary proceedings against CONTRACTOR's attorneys or staff by the California State Bar;
- vii. The commencement of criminal prosecution of CONTRACTOR's attorneys or staff;
- viii. Cancellation or other discontinuance of malpractice insurance liability coverage;
- ix. Disqualification of CONTRACTOR's attorneys or any of them from the practice of law.

3. **Vote of No Confidence law.** In the event of a vote of "no confidence" by a majority of the

judicial members of the Criminal Superior Court bench conducted at any time during the term of this contract, or any extension, CONTRACTOR shall be considered in default of its obligations under the contract. CONTRACTOR shall be notified of such vote of "no confidence" by the COUNTY and shall be provided a written statement of the deficiencies resulting in such vote. CONTRACTOR shall have a period of ninety (90) days to cure said deficiencies and comply with any plan of correction. CONTRACTOR shall meet with the COUNTY and Court after forty-five (45) days to review its progress in correcting the deficiencies. If CONTRACTOR fails to cure the deficiencies within the correction period, then COUNTY may terminate this agreement by providing thirty (30) days advance written notice.

4. **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 will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. 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.
  5. **By CONTRACTOR.** This Contract may be terminated by CONTRACTOR upon the service of sixty (60) days written notice to the COUNTY.
- B. Upon expiration or termination of this Agreement (by cancellation or otherwise), unless specifically relieved by the COUNTY 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 used by the Court to compensate counsel appointed to represent indigent defendants.
1. Upon termination, CONTRACTOR shall deliver to COUNTY 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 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 such financial information as in the judgment of COUNTY 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 shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

## **20. 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.

## **21. 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.

## **22. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to COUNTY 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.

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

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

## **24. NO WAIVER OF DEFAULT**

No delay or omission of COUNTY 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 shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

## **25. 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.

## **26. 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.

## **27. 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 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.

## **28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **{ENTER CONTRACTOR}**.

**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: \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

**{ENTER DEPARTMENT NAME}**

**CONTRACTOR:**

**{ENTER NAME OF CONTRACTOR}**

By: \_\_\_\_\_  
Department Head

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By: \_\_\_\_\_  
Deputy County Counsel

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

**APPROVED AS TO FORM:**

Risk Management

By: \_\_\_\_\_  
Risk Management

**EXHIBIT A****SCOPE OF WORK****I. SERVICES TO BE PROVIDED BY CONTRACTOR**

1. Contractor shall provide competent legal services in the defense of indigent clients charged with one or more misdemeanors (including appeals), felonies (including up to four capital), juvenile cases, drug cases, domestic violence cases, mental health court cases, sexually violent predator (SVP) cases, LPS and probate conservatorship cases, child support contempt proceedings, and all other matters for which indigent counsel is appointed or required, in the courts located in Santa Barbara County, in those cases in which the Public Defender has properly declared a conflict of interest, as assigned to Contractor by the Santa Barbara County Superior Court (hereafter "Court"). A charge of violating probation filed after the effective date of this contract, where the defendant on the case resulting in the grant of probation was defended by the Contractor or by conflict counsel previously contracted by the County, will be considered as a case falling within this contract.
2. Contractor agrees that he or she shall not accept appointments to matters for which he or she is not qualified. Contractor and all persons who perform services for or through Contractor shall exercise the care and judgment consistent with all applicable professional standards in the performance of the services required by this Agreement. In some cases, Contractor may not be available to represent a defendant in an assigned case because such representation would violate the Canons of Professional Ethics, and in such event, Contractor will notify the Court of the conflict and will request that the Court relieve the Contractor of the assignment in that case.
3. The parties recognize that the assignment of conflict indigent cases to attorneys is a matter entirely within the discretion of the Court. This Agreement is based on the understanding that the Court will endeavor to assign cases to those attorneys who have contracted with the County to provide conflict indigent defense services. Contractor agrees to accept conflict indigent defense assignments in the courts located in Santa Barbara County in return for compensation as provided herein, and agrees that this Agreement provides reasonable compensation in such cases.
4. Contractor and all of its subcontractors must perform all services in assigned cases according to the performance standards as set by the Judicial Council of California, the State Bar of California and American Bar Association Standards on Ethics, the State Bar of California Standards of Representation for Indigent Defense Services, the California Rules of Professional Conduct, and the California State Bar Act (Business & Professions Code sec's 6000, et seq.). Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.
5. In providing the legal services required by this Agreement, Contractor will provide, at his or her own expense, all appropriate office and legal staff as necessary to provide competent legal services in the cases covered by this Agreement. This staff may consist of such attorneys, paralegals, investigators, and any and all administrative services, as are necessary to fully discharge in a professional manner all obligations herein assumed by Contractor. Contractor represents and warrants that at all times personnel shall be competent and that all services rendered will be sufficient to meet all constitutional requirements relating to legal services. County expects that Contractor will provide the legal services required under this Agreement personally, and Contractor must appear personally at all mandatory appearances. Contractor may from time to time use other equally competent attorneys as temporary substitutes at non-mandatory appearances if acceptable to the Court.

6. In providing the legal services required by this Agreement, Contractor will bear the sole expense of all normal office costs, such as and including telephone, copy expenses, computerized legal research, in-state travel, malpractice and other insurance, etc. Contractor will be entitled to reimbursement from County for reasonable ancillary services such as the costs of experts, investigators, testing services, transcripts, etc.
7. 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:
  - Misdemeanor complaints and misdemeanor appeals;
  - Felony complaints and indictments;
  - Juvenile delinquency petitions pursuant to Welfare & Institutions Code Sections 601 and 602;
  - Drug Court and Proposition 36 cases;
  - Domestic violence cases;
  - Mental Health Court cases;
  - Sexually Violent Predator (SVP) cases
  - LPS and Probate Conservatorship cases;
  - Child Support contempt proceedings; and
  - All other matters for which indigent counsel is appointed or required
  - 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
  - Drafting of motions, briefs and other necessary legal documents
  - Defense-required court reporter transcripts not statutorily mandated or approved by the Court
  - Assistance to indigent clients in filing notice of appeal and other legal documents pursuant to Section 1240.1 of the Penal Code
  - Provision of 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
8. 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.
9. 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 COUNTY to any successor CONTRACTOR, to the State Public Defender or private counsel on appeal, or to the person represented.
10. CONTRACTOR shall not be permitted to decline appointment as counsel 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 as

counsel, not to exceed ten (10) 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 the 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 COUNTY in writing of any proposed changes in attorney staffing, and the COUNTY'S approval (after consultation with the Court) 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 COUNTY 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 any 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.

## III. MONITORING/EVALUATION

1. For each month in which services are performed, CONTRACTOR shall email documentation, in an understandable format, which includes the following data for each case appointed during the previous month by the fifteenth of each following month:
  - a. The name of the defendant represented.
  - b. The name 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 COUNTY 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. The COUNTY will be consulting with the Court regarding the performance of the CONTRACTOR.
3. COUNTY, through a representative of the County Executive Office and a representative of the Court shall confer on at least a quarterly basis to maintain oversight and evaluation of conflict indigent defense 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.

4. COUNTY and Court shall review and provide input concerning any changes to CONTRACTOR management staff.
5. At any time during the Contract term, the Court may advise COUNTY that a majority of its then current judicial members have conducted a vote of "no confidence" and seek to initiate the process described in Section 19. In such event, the COUNTY and Court shall meet to develop a statement of deficiencies and a plan of correction for CONTRACTOR. COUNTY shall cooperate with the Court in review and evaluation of the CONTRACTOR'S correction plan and in taking any further action required by the CONTRACTOR'S failure to satisfy said correction plan.

**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 \$ **xx** over the term of the Agreement.
- 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.
- C. **{ENTER PERIOD i.e., monthly, quarterly, annually}** CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.
- E. 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 County Executive Office 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 indigent clients 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 or proposals 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. 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 COUNTY. 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 COUNTY agrees, following review and approval by the court, that such payment is warranted and reasonable, supplemental appropriation will be considered. During any interim period of time, CONTRACTOR shall continue to provide services under the Contract unless CONTRACTOR terminates the contract as provided in Section 19, subsection 5 contained herein.

- H. CONTRACTOR shall be required to handle up to four (4) death penalty cases through disposition during the term of the agreement. 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 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 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 indigent clients 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 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 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 COUNTY 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 COUNTY a detailed accounting, to include receipts and supporting documentation of such expenses incurred. The COUNTY, 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). Additional funds granted by COUNTY shall be reimbursed to CONTRACTOR upon submittal and review of claims to the COUNTY with receipts and supporting documentation.

**EXHIBIT C****Indemnification and Insurance Requirements  
(For Professional Contracts)****INDEMNIFICATION**

**In General.** CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its 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 on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

**Employee Character and Fitness.** CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents, or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and periodic rechecks to the extent permitted by law. Notwithstanding anything in the contrary herein, CONTRACTOR shall hold County and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

**NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

CONTRACTOR shall notify COUNTY 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.
5. If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires 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.

B. Other Insurance Provisions

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

1. **Additional Insured** – COUNTY, its 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, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its 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.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY 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 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. The COUNTY 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 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 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 reserves 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 has 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 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 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:
  - 10.1.1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - 10.1.2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - 10.1.3. 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 reserves 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 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.

**ATTACHMENT B****REQUIREMENTS FOR CASE TYPE ASSIGNMENTS TO CONFLICT ATTORNEYS**

1. CLASS I ATTORNEYS (Misdemeanors)
  - a. MEMBER OF CALIFORNIA BAR
    - i. Has practiced criminal law for at least one (1) year
  - b. CRIMINAL LAW EXPERIENCE
    - i. Has handled at least twenty (20) misdemeanor cases, of which at least five (5) were tried to argument, verdict, or final judgment
    - ii. Has demonstrated proficiency in litigating evidentiary and non-evidentiary motions, including, but not limited to:
      1. Motions to dismiss pursuant to P.C. 995
      2. Non-statutory motions to dismiss (speedy trial, prosecutorial misconduct, delay of prosecution)
      3. Motions to sever counts and/or defendants
      4. Motions to suppress statements (Miranda and voluntariness grounds)
      5. Motions to suppress evidence pursuant to P.C. 1538.5
      6. Discovery motions
      7. Motions to strike prior "strike" convictions (Romero motions)
      8. Motions attacking prior convictions
      9. Motions to exclude prior acts (Evidence C. 1101, 1108, 1109 issues)
    - iii. Has demonstrated proficiency in sentencing matters, including but not limited to litigation of prior convictions and custody credit issues
  - c. CONTINUING LEGAL EDUCATION REQUIREMENTS
    - i. At least 12 hours of MCLE in the past year
2. CLASS II ATTORNEYS (Felonies)
  - a. MEMBER OF CALIFORNIA BAR
    - i. Has practiced criminal law for at least five (5) years
  - b. CRIMINAL LAW EXPERIENCE
    - i. Has met all requirements for lower panel attorney classification listed above
    - ii. Has handled at least 8 Class II or higher classification matters or their equivalent as principal defense counsel, of which at least five (5) were tried to argument, verdict, or final judgment
    - iii. Has demonstrated proficiency in sentencing matters, including but not limited to litigation of prior convictions (including "strikes"), sentencing in sex cases and custody credit issues
  - c. CONTINUING LEGAL EDUCATION REQUIREMENTS
    - i. 12 hours of MCLE in the past year including at least one course or seminar in forensics and pathology in the past year (participation at a day-long homicide seminar in the past year will satisfy this requirement)
3. CLASS III ATTORNEYS (Associate Counsel on Capital Case)
  - a. MEMBER OF CALIFORNIA BAR
    - i. Has practiced criminal law for at least six (6) years
  - b. CRIMINAL LAW EXPERIENCE
    - i. Has met all requirements for lower panel attorney classifications listed above
    - ii. Has fully met the requirements of California Rule of Court 4.117 for Associate Counsel on a capital case
    - iii. In addition to Class II requirements, has tried at least two (2) serious or violent felony jury trials as principal defense counsel, which were tried to argument, verdict, or final judgment (serving as second chair counsel or the

equivalent experience on prior Class III cases will be considered in lieu of one or more Class II trials)

- c. CONTINUING LEGAL EDUCATION REQUIREMENTS
  - i. Twelve (12) hours of MCLE in the past year, AND has attended a death penalty college/workshop or CACJ/CPDA capital case seminar or equivalent within the 3 years preceding the application AND a day-long homicide seminar within the 12 months preceding the application
4. CLASS VI ATTORNEY REQUIREMENTS (Lead Counsel on Capital Case)
  - a. MEMBER OF CALIFORNIA BAR
    - i. Has practiced criminal law for at least ten (10) years
  - b. CRIMINAL LAW EXPERIENCE
    - i. Has met all requirements for the lower panel attorney classifications listed above
    - ii. Has fully met the requirements of California Rule of Court 4.117
    - iii. Has prior experience as lead counsel in either:
      1. At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment  
OR
      2. At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment
  - c. CONTINUING LEGAL EDUCATION REQUIREMENTS
    - i. Twelve (12) hours of MCLE in the past year, AND has attended a death penalty college/workshop or CACJ/CPDA capital case seminar or equivalent within the 2 years preceding the application
  - d. ADDITIONAL REFERENCES
    - i. A list of attorneys with whom the proposer has practiced law
    - ii. A list of cases handled, including:
      1. Case number
      2. Name of defendant
      3. Charge
      4. Disposition
      5. Name of opposing counsel
      6. Name of judge
      7. Year case handled
    - iii. At least four (4) letters of recommendation, at least two (2) of which are from judges who have presided over the proposer's capital jury trials
5. JUVENILE DELINQUENCY ATTORNEY REQUIREMENTS
  - a. MEMBER OF CALIFORNIA BAR
    - i. Has practiced law for at least three (3) years
    - ii. Has handled Juvenile Court Matters (list cases by charges and approximate dates)  
OR
    - iii. Served 2 years on the Juvenile Delinquency Panel  
OR
    - iv. Served one (1) year as a Public Defender in Juvenile Court
  - b. CONTINUING LEGAL EDUCATION
    - i. Twelve (12) hours in the past year in relevant area
    - ii. Completed six (6) hours of Juvenile Delinquency MCLE in past 12 months
6. ATTORNEY REQUIREMENTS IN OTHER CIVIL MATTERS
  - a. MEMBER OF CALIFORNIA BAR

- i. Has practiced law for at least three (3) years
- OR
- ii. Has handled ten (10) trials
- OR
- iii. Served one (1) year as a Public Defender or prosecutor
- b. CONTINUING LEGAL EDUCATION
  - i. Twelve (12) hours in the past year in relevant area

THE COUNTY MAY EXERCISE ITS DISCRETION AND IN UNUSUAL CIRCUMSTANCES MAY WAIVE OR MODIFY CERTAIN REQUIREMENTS IF IT APPEARS A PROPOSER IS OTHERWISE QUALIFIED OR NOT QUALIFIED TO ACCEPT APPOINTMENTS IN THE SPECIFIC CASE CLASS UNDER CONSIDERATION.