

**CONTRACT BETWEEN THE COUNTY OF MONO  
AND \_\_\_\_\_  
FOR THE PROVISION OF INDIGENT DEFENSE SERVICES**

The County of Mono, a political subdivision of the State of California, hereinafter referred to as “the COUNTY,” and \_\_\_\_\_, referred to hereafter as “the CONTRACTOR,” agree to the provisions of indigent defense services as outlined below for the period April 1, 2020 through March 31, 2023. The COUNTY and the CONTRACTOR are sometimes referred to herein collectively as “the parties.”

**RECITALS**

- The COUNTY has a constitutionally mandated responsibility to provide indigent defense services.
- The COUNTY desires to have and agrees to pay for legal services performed for eligible persons entitled to public representation in Mono County by the CONTRACTOR, as authorized by law.
- The CONTRACTOR agrees that it will provide competent representation of clients as required by the controlling standards and rules of professional conduct.
- The COUNTY and the CONTRACTOR agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services, including the cost of administrative services, to eligible clients of the CONTRACTOR.

**TERMS AND CONDITIONS**

The parties AGREE as follows:

**I. DURATION OF CONTRACT**

This Contract shall commence on April 1, 2020 and terminate on March 31, 2023, unless extended or terminated earlier in a manner allowed by this Contract. The COUNTY may, in its sole discretion, extend the term of this Contract for an additional period of up to five years by providing notice to CONTRACTOR at least 180 days prior to the date of termination.

**II. DEFINITIONS**

The following definitions control the interpretation of this Contract:

A. Eligible Client:

Eligible client means a person who is or has been determined by the Superior Court of the State of California in and for the County of Mono (hereinafter “the Court”) to be entitled to a court-appointed attorney, pursuant to relevant state statute, court rule, and constitutional provision, and who is one of the following:

1. All persons whom the Court has deemed indigent and who are charged with the commission of a misdemeanor or felony triable in any court in the County.

2. All minors charged with a violation of Welfare and Institutions Code Section 601 or 602.
3. All persons the Court has deemed indigent, and for whom a petition for the appointment of an LPS conservator has been filed.
4. All persons the Court has deemed indigent seeking writs or appeals to the Superior Court in the type of cases described in this contract.
5. All persons the Court has deemed indigent and who are charged with a violation of misdemeanor probation.
6. All persons the Court has deemed indigent and who are charged with a violation of felony probation.
7. All persons the Court has deemed indigent and entitled to appointment of counsel in Welfare and Institutions Code Section 300 cases, and also any children who are the subject of such proceedings and who the Court has determined are entitled to appointed counsel. Note: under a separate Contract, the County currently receives compensation from the Courts for the provision of such legal services, and the County reserves the right to re-open and renegotiate the inclusion of such services in this Contract, and the compensation therefore, in the event that the courts ever refuse or cease to provide such compensation to the County.
8. All persons the Court has deemed indigent in probate or Lanterman-Petris Short Act (LPS Act) conservatorships and in which the Court appoints counsel.
9. All persons the Court has deemed indigent and subject to extradition.
10. All persons the Court has deemed indigent and subject to contempt.

B. Disposition:

Disposition in criminal cases shall mean and/or include:

1. The dismissal of charges;
2. The entering of an order of deferred prosecution;
3. An order or result requiring a new trial;
4. Imposition of sentence;
5. Deferral of any of the above coupled with any other hearing on that case number, including but not limited to felony or misdemeanor probation review;
6. A restitution hearing ordered at the time of original disposition.
7. The filing of a notice of appeal, if applicable.

Disposition in other cases shall mean:

In Welfare and Institutions Code Section 300 juvenile cases, termination of the proceedings; in Section 601 or 602 cases, disposition, unless there is an order for removal; or an order following a disposition hearing; in revocation of probation, a dismissal, or imposition of sentence; in all other cases, an adjudication in the trial court which constitutes a final order or judgment, unless reversed on appeal.

- C. Representational Services: The services for which the COUNTY is to pay the CONTRACTOR are representational services, including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other attorneys and court regarding possible dispositions, and preparation for and appearance at all court proceedings.

- D. Investigative Services: The services described in section IV.B.
- E. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the CONTRACTOR, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in Capital cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

### **III. INDEPENDENT CONTRACTOR**

The CONTRACTOR is, for all purposes arising out of this Contract, an independent contractor, and neither the CONTRACTOR nor its employees shall be deemed employees of the County. The CONTRACTOR shall complete the requirements of this Contract according to the CONTRACTOR'S own means and methods of work, which shall be in the exclusive charge and control of the CONTRACTOR and which shall not be subject to control or supervision by the COUNTY, except as specified herein.

### **IV. SCOPE OF SERVICES.**

- A. Together with other indigent defense counsel under direct contract to COUNTY, CONTRACTOR, shall provide representational services to all eligible clients in Mono County trial court actions or proceedings.
- B. CONTRACTOR may utilize the services of a licensed private investigator ("INVESTIGATOR") under Business and Professions Code section 7520 and 7521, with whom the COUNTY has entered into a separate contract for services, or of any other INVESTIGATOR upon appointment by the Court in a particular case. INVESTIGATOR SERVICES shall be used in the context of any of the representational services covered by this Contract, including but not limited to securing evidence to be used before the Courts of Mono County. INVESTIGATORS shall not perform services of a clerical or administrative nature and which do not require the services of a licensed private investigator, nor shall INVESTIGATORS be used for the purpose of serving subpoenas on witnesses or custodians of record. Notwithstanding the foregoing, an INVESTIGATOR may be used for the purpose of serving subpoenas on witnesses or custodians of record at no additional cost to the County and provided CONTRACTOR assumes the cost.

### **V. CONTRACTOR'S OFFICES, EMPLOYEES AND CONFLICT AVOIDANCE**

- A. CONTRACTOR shall have physically separate offices from any other attorney under contract with COUNTY to provide indigent defense services. CONTRACTOR shall

maintain an ethical and communications wall between CONTRACTOR and such attorney(s) about their respective cases, to maintain the confidences of clients.

- B. CONTRACTOR agrees not to accept compensation directly or indirectly from any source other than the COUNTY on cases assigned pursuant to this agreement.
- C. CONTRACTOR shall maintain the right to have private clients outside of this Contract; provided, however, that they shall structure their private practices in such a way as to avoid any conflicts with representational services provided pursuant to this agreement.
- D. CONTRACTOR further agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR'S performance of the work and services under this Contract. Specifically, CONTRACTOR agrees not to engage in any private legal representations of any matter which would conflict or interfere with CONTRACTOR'S ability to represent clients under this Contract.
- E. CONTRACTOR agrees that it has secured or will secure at its own expense, all persons, employees, office space within Mono County and equipment required to perform the service contemplated/required under this Contract.

#### **VI. MINIMUM QUALIFICATIONS FOR ATTORNEY PROVIDING INDIGENT DEFENSE SERVICES**

- A. CONTRACTOR shall be licensed to practice law in California (i.e., shall be an active member of the California State Bar), shall have been a practicing attorney in all of the courts of the State for at least the year preceding the date of appointment, and shall be in full compliance with any applicable mandatory continuing legal education (MCLE) requirements. CONTRACTOR will maintain for inspection on its premises records of CONTRACTOR compliance these requirements.
- B. Prior to representing a defendant accused of a homicide, CONTRACTOR must have served at least five years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in five felony cases that have been submitted to a jury.
- C. Prior to representing a defendant accused of a serious felony as defined by Penal Code section 1192.7, or of a violent felony as defined by Penal Code section 667.5, other than a homicide, CONTRACTOR must have served at least three years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in three felony cases, that have been submitted to a jury.

- D. CONTRACTOR representing a party in a juvenile case shall have the knowledge and experience in juvenile law as required by Welfare and Institutions Code section 317.6 and the standards established by the Judicial Council.
- E. CONTRACTOR shall have served at least three years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and/or been sole trial counsel of record in twenty misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in three felony criminal cases that have been submitted to a jury alone or of record with other trial counsel.
- F. Failure on the part of the CONTRACTOR to have or obtain the appropriate amount of experience shall be considered a material breach of this Contract.

## **VII. PERFORMANCE REQUIREMENTS**

- A. CONTRACTOR shall provide quality representational services to all eligible clients to whom the CONTRACTOR is appointed by the Court, consistent with any applicable rules of professional conduct and standards of care. Specifically, the following duties and responsibilities of CONTRACTOR as appointed by the Court shall be observed:
  - 1. Provide careful, factual and legal investigation.
  - 2. Take prompt action to protect client's legal rights.
  - 3. Make all necessary court appearances for motions, trials, adjudications, hearings, dispositions, and sentencing.
  - 4. Prepare for jury selections, examination of witnesses, submission of instructions, and presentation of argument at trial.
  - 5. Know and explore sentencing alternatives.
  - 6. Advise the client concerning appeals.
  - 7. Not accept more cases than can be competently handled.
  - 8. Not handle a legal matter which the CONTRACTOR knows or should know that it is not competent to handle.
  - 9. Maintain client confidences.
  - 10. Keep the client informed.
  - 11. Comply with all standards of performance set by the Courts and rules in juvenile cases.
  - 12. Not accept a matter in which a conflict of interest exists of which it would be otherwise prohibited from accepting under the Rules of Professional Conduct of the State Bar.
- B. Except as provided herein, the CONTRACTOR shall maintain an office in Mono County and appropriate staff to adequately perform the work and services provided in this Contract and to address the needs of CONTRACTOR's clients. CONTRACTOR will be timely available for all Court appearances, and meet all performance requirements of this Contract and of the Courts, and have available office space in Mono County for interviewing and consulting with clients.

- C. CONTRACTOR shall maintain adequate office space and hours during normal business hours for appointments with potential eligible clients who are not in custody. CONTRACTOR shall maintain published office addresses and phone numbers and telephone answering services or devices for the taking of telephone messages during non-business hours. CONTRACTOR shall make return calls within 24 hours of all calls from clients for which a message is left requesting a return call.
- D. In-custody eligible clients shall be interviewed within 72 hours, excluding weekends and holidays, of CONTRACTOR appointment. Out of custody eligible clients may make an appointment with CONTRACTOR who shall make available an appointment at an office in Mono County within five business days of CONTRACTOR appointment. In all cases, CONTRACTOR shall personally speak with the client prior to the date of the first court appearance following appointment by the Court.
- E. CONTRACTOR shall keep all courts informed of the status of pending cases to which it has been appointed and shall advise the courts at the earliest possible time as to whether cases will be settled or go to trial, whether continuances are needed, whether or when interpreters will be needed, and other such matters bearing on the scheduling of cases before the courts.
- F. CONTRACTOR shall adequately cover all courts within the County through which services are to be provided under this contract. "Adequately cover" means generally that the business of the court is not unreasonably delayed because of the absence of/or lack of preparation of the CONTRACTOR.
- G. In the event that CONTRACTOR is unable to appear for any matter to which he or she has been appointed, then he or she shall arrange for other counsel to appear on his or her behalf, at no cost to the COUNTY.

### **VIII. CONTRACTOR EVALUATION**

In June of each year during the term of this Contract, and any extension thereof, commencing June 2020, the County Counsel, County Finance Director and County Administrative Officer shall meet with the CONTRACTOR and the Judges of the court to ensure that the performance standards set forth herein are being met. If upon said evaluations, the COUNTY determines that the CONTRACTOR is failing to provide competent legal services based upon the above standards or has engaged in conduct that, if CONTRACTOR were an employee of the County, would violate the Mono County Personnel System, the COUNTY may terminate this Contract as provided in paragraph XV.

### **IX. COMPENSATION AND METHOD OF PAYMENT**

- A. For services provided under this contract, COUNTY shall pay CONTRACTOR \$\_\_\_\_\_ annually, for the period of April 1, 2020 through March 31, 2021. This amount shall be increased by two percent (2%) annually, commencing on April 1 of each year. These amounts shall be paid in monthly installments as follows, \_\_\_\_\_ payable within 5 days following the end of month in which services

are provided. In the event that this Contract is extended pursuant to Section I, annual increases shall continue to be 2%.

- C. The compensation payable under this section IX is the maximum amount which COUNTY must pay under this Contract, and the CONTRACTOR shall assume and pay all other expenses incurred in the performance of this Contract. The CONTRACTOR represents that CONTRACTOR is informed and has made its own independent investigation of the facts and circumstances surrounding the provision of public defense services in Mono County, including its own experience in providing such services and the issues involving the administration of this contract. The CONTRACTOR and COUNTY acknowledge that many factors outside the control of the parties can affect the ability of the CONTRACTOR to accurately project caseloads and work levels with certainty. Such factors as the length of time between arraignment and trial, local sentencing practices, and pleading negotiation practice are largely controlled by the courts and the prosecution. The parties recognize that during the term of this Contract, changes may occur in the operations of the County's criminal justice system which may cause additional expense to CONTRACTOR. Notwithstanding any such changes, the CONTRACTOR agrees to the compensation set forth in this Contract for services to be rendered.
- D. COUNTY shall receive all funds collected pursuant to Penal Code section 987.4, 987.6, and 987.8, Government Code section 27712, and any similar statute or Contract providing for reimbursement for the costs of legal services rendered under this Contract, and no portion of said funds inure for the benefit of CONTRACTOR or otherwise affect the amount specified to be paid to CONTRACTOR under this contract.
- E. Other litigation expenses, as defined in section II E, shall be paid by COUNTY upon CONTRACTOR submitting a county claim form, to which shall be attached an order of the Court fixing the expenses to be paid. Each claim shall include:
1. The name of the client and case number;
  2. The date and time the services were provided, in 10<sup>th</sup> hour increments;
  3. A description of the services provided on each date.

Any claim for which the above is not provided shall be deemed an insufficient claim.

- F. CONTRACTOR shall be solely responsible for providing and paying the cost of all utilities, photocopies, facsimiles, telephones, postage, office furniture, equipment, supplies, secretaries, clerks, staff attorneys, transportation, and other materials, services, and persons necessary to perform this Contract, except for the following: costs for expert witnesses, language translators, laboratory analysis, other forensic services, court reporter fees, filing fees, transcript fees, witness fees, and documents produced through discovery by the County in Welfare and Institutions Code section 300 cases and documents produced through discovery by the District Attorney in Criminal and Welfare and Institutions Code section 600 cases.

G. COUNTY has no obligation to withhold any taxes or other payments from the sums paid CONTRACTOR by COUNTY pursuant to this Contract. Payment of taxes as required by law is the sole responsibility of CONTRACTOR.

**X. REPORTS AND INSPECTIONS**

A. CONTRACTOR agrees to submit to the COUNTY the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the COUNTY withholding payment until the required reports are submitted and/or until invocation of the Corrective Action procedures in Section XIV (Corrective Action).

B. CONTRACTOR shall provide the County Administrative Officer (CAO) a quarterly report of services rendered by CONTRACTOR during the previous calendar quarter. The report shall be submitted within ten working days after the end of said calendar quarter and shall include:

1. The number of cases by type to which CONTRACTOR has been appointed during that quarter.
2. The number of open cases distinguished between misdemeanor, felony, juvenile, and other types of cases.
3. For each case closed, the type of case (felony, misdemeanor, etc.)
4. Disposition of cases by the following categories: Pleas, trials, diversions, dismissals, and other.
5. The number of cases in which CONTRACTOR has declared a conflict.

C. Bar Complaints: CONTRACTOR shall immediately notify the COUNTY in writing if the CONTRACTOR becomes aware that a complaint lodged with the State Bar Association has resulted in the public or private reproof, suspension, or disbarment of any attorney providing services under this Contract. In the event of a report of a private reproof, COUNTY shall maintain confidentiality of said report to the extent permitted by law.

D. Inspections: CONTRACTOR agrees to grant the COUNTY full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the COUNTY may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the CONTRACTOR shall provide to the COUNTY right of access to its facilities, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the CONTRACTOR in a way that allows access by the COUNTY without breaching such confidentiality or privilege. The CONTRACTOR agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the COUNTY agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the constitutional, statutory, and common law rights and privileges of any client are waived by this Contract. The COUNTY will respect the attorney-client privilege and attorney work-product privilege.

## **XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. CONTRACTOR shall prepare and maintain records sufficient to enable COUNTY and the courts to determine the cost of representing each person represented by CONTRACTOR, and CONTRACTOR shall provide the court with the total time of each case upon disposition or upon request of the court or the COUNTY.
- B. Records shall be maintained for a period of five years after termination of this Contract unless permission to destroy them is granted by the COUNTY.

## **XII. HOLD HARMLESS AND INDEMNIFICATION**

- A. The COUNTY assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the CONTRACTOR or its employees or others by reason of the Contract. CONTRACTOR shall protect, indemnify, and save harmless the COUNTY, its officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from CONTRACTOR's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the COUNTY'S wrongful withholding of funds due under this Contract.
- B. CONTRACTOR agrees that it is financially responsible and liable for and will repay the COUNTY for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the CONTRACTOR, its employees, representatives or agents.
- C. CONTRACTOR shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from or in connection with, the performance of this Contract by CONTRACTOR, or its agents, officers, or employees. CONTRACTOR's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, damage or destruction to tangible or intangible property, including the loss of use. CONTRACTOR's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs that are caused in whole or in part by any act or omission of a CONTRACTOR, its agents, employees, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

CONTRACTOR's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Contract for CONTRACTOR to procure and maintain a policy of insurance.

CONTRACTOR shall not claim, and/or do hereby knowingly and voluntarily waive, any right to defense or indemnification by COUNTY as a COUNTY employee or officer.

### **XIII. INSURANCE**

Certificates of insurance and requested endorsements, for all stated insurances, shall be provided to the Mono County Risk Management at least ten (10) days prior to the start of services to be performed by the CONTRACTOR. The policy/policies shall maintain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the County Risk Manager.

A. General Liability. CONTRACTOR shall procure, and maintain during the entire term of this Contract, a policy of general liability insurance which covers all the work and services to be performed by CONTRACTOR under this Contract. Such insurance policy will have a per occurrence combined single limit coverage of not less than \$1,000,000.00. Such policy will not exclude or except from coverage any of the services and work required to be performed by CONTRACTOR under this Contract. The required policy of insurance will be issued by an insurer authorized to sell such insurance by the State of California, and having at least a "Best's" policyholder's rating of "A" or "A+." County will be named as "an additional named insured" on this policy. CONTRACTOR will provide the County a copy of the policy, a certificate of insurance, and an additional insured form showing the County as "an additional named insured". The certificate of insurance shall indicate that the policy will not be terminated, canceled, or modified without thirty (30) days written notice to the County Risk Manager.

B. Business Vehicle. If CONTRACTOR, or any employee or agent thereof, utilizes a motor vehicle in performing any of the work or services identified in Attachment A (Scope of Work), the CONTRACTOR shall procure and maintain in force throughout the duration of this Contract, a business auto liability insurance policy with minimum coverage levels of \$300,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all CONTRACTOR-owned vehicles and all hired and non-owned vehicles used in performing under this Contract.

C. Workers' Compensation. CONTRACTOR shall provide worker's compensation insurance coverage, in the legally required amount, for the CONTRACTOR's employees utilized in providing work and services pursuant to this Contract. By executing a copy of this Contract CONTRACTOR acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that CONTRACTOR has complied with and will comply during the term of this Contract with all provisions of the California Labor Code with regard to its employees. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents, and subcontractors.

D. Professional Liability Insurance. CONTRACTOR shall provide professional liability insurance in the amount of not less than one million dollars (\$1,000,000.00) each occurrence/one million (\$1,000,000.00) policy aggregate. Proof of such insurance shall be provided to County at least ten (10) days prior to the start of any work by CONTRACTOR.

If professional liability coverage is written on a claims-made form:

1. The "retro Date" must be shown, and must be before the date of the contract of the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a "Retro 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.

E. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared and approved by Mono County Risk Manager. If possible, the Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Mono County, its officials, officers, employees and volunteers; or the CONTRACTOR shall provide evidence satisfactory to Mono County Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

#### **XIV. CORRECTIVE ACTION**

If the CAO reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The CAO will notify the CONTRACTOR in writing of the nature of the breach.
2. The CONTRACTOR shall respond in writing within five working days of receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The CAO will notify the CONTRACTOR in writing of the COUNTY'S determination as to the sufficiency of the CONTRACTOR'S corrective action plan. The determination of the sufficiency of the CONTRACTOR'S corrective action plan will be at the discretion of the CAO and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the CONTRACTOR does not concur with the determination, the CONTRACTOR may request a review of the decision by the Board of Supervisors. COUNTY agrees that it shall work with the CONTRACTOR to implement an appropriate corrective action plan accepted by the CAO or, if review has been requested, by the Board of Supervisors.

In the event that CONTRACTOR under this Contract does not respond to the CAO's notification within the appropriate time, or the CONTRACTOR'S corrective action plan for a substantial breach is determined by the CAO, following review by the Board of

Supervisors if requested to be insufficient, the COUNTY may commence termination of this Contract in whole or in part pursuant to Section XV (Termination and Suspension.)

In addition, the COUNTY reserves the right to withhold a portion of subsequent payments owed the CONTRACTOR which are directly related to the breach of the Contract until the COUNTY is satisfied that corrective action has been taken or completed as described in Section IX (Compensation and Method of Payment.)

## **XV. TERMINATION AND SUSPENSION**

- A. COUNTY may terminate this Contract in whole or in part upon 15 days written notice to the CONTRACTOR in the event that the CONTRACTOR under this contract:
1. Materially breaches any duty, obligation, or service required pursuant to this Contract;
  2. Engages in misappropriation of funds or misconduct as described in the Mono County Personnel System; or
  3. The duties, obligations, or services herein become illegal, or not feasible.

Before the COUNTY terminates this Contract pursuant to this Section XV, the COUNTY shall provide the CONTRACTOR written notice of termination, which shall include the reasons for termination and the effective date of termination. The CONTRACTOR shall have the opportunity to submit a written response to the COUNTY within ten working days from the date of the COUNTY'S notice. If the CONTRACTOR elects to submit a written response, the CAO will review the response and make a determination within ten days after receipt. In the event the CONTRACTOR does not concur with the determination of the CAO, the CONTRACTOR may request a review of the decision by the County Board of Supervisors. In the event the County Board of Supervisors reaffirms termination, the Contract shall terminate in ten days from the date of the final decision of the County Board of Supervisors. The Contract will remain in full force pending such termination. CONTRACTOR understands and agrees that any such decision shall be final and binding and shall not be appealable nor otherwise subject to judicial review of any kind.

- B. CONTRACTOR reserves the right to terminate this Contract with cause with 15 days written notice should the COUNTY materially breach any duty, obligation or service pursuant to this Contract. Prior to such termination, CONTRACTOR shall provide COUNTY with written notice of the alleged breach and COUNTY shall have 30 days in which to cure the breach. In the event that the CONTRACTOR terminates this Contract for reasons other than good cause resulting from a material breach of this Contract by the COUNTY, the CONTRACTOR shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the CAO that (i) no default actually occurred, or (ii) the failure to perform was without the CONTRACTOR'S control, fault or negligence.
- C. COUNTY or CONTRACTOR may terminate this Contract at will and without cause by providing one hundred and eighty (180) days' written notice to the other party of the intent to terminate.

- D. Following termination or suspension of this Contract, the CONTRACTOR shall continue to represent clients that were previously assigned, at an hourly rate determined by the Courts, and the COUNTY will be liable for any payments owed for the completion of that work. The CONTRACTOR shall remit to the COUNTY any monies paid for cases not yet assigned or work not performed under the Contract. The CAO may request that the CONTRACTOR attempt to withdraw from any case assigned and not completed, and in that event, CONTRACTOR shall use best efforts to so withdraw. Should a court require, after the CONTRACTOR has attempted to withdraw, the appearance of counsel from the CONTRACTOR on behalf of any client previously represented by the CONTRACTOR where such representation is no longer the obligation of the CONTRACTOR pursuant to the terms of this Contract, the COUNTY will honor payment to the CONTRACTOR upon judicial verification that continued representation is required.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the CONTRACTOR shall return to the COUNTY those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the CONTRACTOR by the COUNTY.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension as provided in Section I.
- G. The ability of the COUNTY to enter into this Contract is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources or is not appropriated, at any time during the term of this Contract County has the option without incurring any penalty or breaching this Contract to terminate, reduce, or modify this Contract, or any of its terms within ten (10) days of notifying CONTRACTOR of the termination, reduction, or modification of available funding. Upon receipt of such notice, CONTRACTOR may at its option terminate this Contract without incurring any penalty or breaching the Contract.

#### **XVI. FINANCIAL RESPONSIBILITY**

The CONTRACTOR shall remain financially solvent during the term of this Contract. Voluntary or involuntary bankruptcy proceedings by the CONTRACTOR, when not released within ten days, shall constitute a material breach of this Contract. Bankruptcy by the CONTRACTOR under this contract shall constitute a ground for termination of the Contract.

#### **XVII. ASSIGNMENT/SUBCONTRACTING**

- A. The CONTRACTOR shall not assign or subcontract any portion of this Contract without consent of the COUNTY. Any consent sought must be requested by the CONTRACTOR in writing not less than ten days prior to the date of any proposed assignment or subcontract, provided that this provision shall not apply to special appearances made on behalf of the CONTRACTOR under this Contract while he or she is on vacation or otherwise unavailable for limited periods of time. Any

individuals entering into subcontract (with written approval of COUNTY) shall meet all experience requirements imposed by this Contract. COUNTY shall be notified of any subcontracts which are renewed, extended or repeated at any time throughout the Contract. This provision is not intended to prohibit another attorney from making a special appearance on behalf of the CONTRACTOR under this contract.

- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the CONTRACTOR.
- C. Each subcontractor providing services under this Contract, prior to first providing such services, shall be required to sign a contract under which, at a minimum, the subcontractor agrees to comply with and be bound by the terms and conditions of this Contract. Such contract shall be in a form acceptable to the COUNTY. A fully executed copy of such contract shall be provided to the CAO before a subcontractor may begin to provide services under this Contract. The COUNTY shall have the right to interview all subcontractors before subcontractor may begin to provide services, and may reject any subcontractor which the COUNTY reasonably deems to be not qualified. Upon request of the CONTRACTOR, the COUNTY shall state in writing the reasons upon which it makes such determination, which may not be arbitrary or capricious.

### **XVIII. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing and addressed as follows:

If to CONTRACTOR:

If to COUNTY:  
County Administrative Officer  
PO Box 696  
Bridgeport, CA 93517  
lchapman@mono.ca.gov

With a copy to:  
Mono County Counsel  
PO Box 2415  
Mammoth Lakes, CA 93546  
ssimon@mono.ca.gov

### **IXX. TRANSFER OF CASES UPON TERMINATION OF CONTRACT**

Upon termination of this Contract, or upon expiration or pursuant to Section XV, CONTRACTOR shall cooperate fully with the COUNTY and with such persons as may be designated by COUNTY to succeed CONTRACTOR in order to effect the orderly transition of legal services from CONTRACTOR to his or her successor. The cooperation

specified in this paragraph includes, but is not limited to, the releasing of such files, papers, and records in good order as may be required in order to carry out the provisions of this contract and any subsequent Contract with a successor CONTRACTOR and to ensure the continued adequate legal representation of persons eligible for services herein set forth.

## **XX. NONDISCRIMINATION**

During the performance of this Contract, neither the CONTRACTOR nor any party subcontracting with the CONTRACTOR under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this Contract, nor on any other basis prohibited by state or federal law in effect during this Contract.

The CONTRACTOR shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

## **XXI. CONFLICT OF INTEREST**

No officer, employee, or agent of the COUNTY, or the State of California, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or CONTRACTOR. If required by state law or by the COUNTY's own conflict of interest code, CONTRACTOR shall comply with said laws and code, including but not limited to filing any required statement of economic interests.

## **XXII. MISCELLANEOUS PROVISIONS**

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. No other representations, covenants, undertakings or other prior or contemporaneous agreement, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the parties hereto. The parties, and each of them, further acknowledge that they have not executed this Contract in reliance on any such promise, representation or warranty.

Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this Contract unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

This Contract shall be binding upon the parties and upon their heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of the

parties and all related persons or entities, and each of them, and to their heirs, administrators, representatives, executors, successors and assigns.

The parties hereto, and each of them, acknowledge that this Contract is executed voluntarily by all of them, without duress or undue influence on the part or on behalf of any of them. The parties further acknowledge that they have been represented by counsel with respect to the negotiation and preparation of this settlement agreement or do hereby knowingly waive their right to do so, and that they are fully aware of the contents of this Contract and of its legal effect.

The parties have jointly participated in the preparation and drafting of this Contract. Thus, any ambiguity therein shall not be construed in favor of or against either party.

**EXECUTION**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS THROUGH THEIR AUTHORIZED REPRESENTATIVES THIS \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

**COUNTY OF MONO**

**CONTRACTOR**

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

APPROVED BY RISK MANAGEMENT:

\_\_\_\_\_