

1 **AGREEMENT**

2 (Superior Court Misdemeanor Contract - _____)

3
4 THIS AGREEMENT (“Agreement”) is made and entered into this _____ day of _____,
5 2015, by and between the County of Imperial, a political subdivision of the State of California
6 (“County”) and _____ (State Bar Number _____), a licensed attorney duly admitted to
7 practice before all the Courts of the State of California (“Contractor”) (individually, “Party;”
8 collectively, “Parties”).

9 **WITNESSETH:**

10 **WHEREAS**, persons charged with commission of a crime have a constitutional right to be
11 represented by competent defense counsel; and

12 **WHEREAS**, California Penal Code section 987 provides that if a defendant is unable to employ
13 counsel, the Court shall assign counsel to defend him or her; and

14 **WHEREAS**, County employs a Public Defender and deputies for representation of indigents
15 charged with the commission of crimes; and

16 **WHEREAS**, Penal Code section 987.2(a)(3) provides that in a case where the Court determines
17 that because of a conflict of interest or other reasons, the Public Defender is unable to represent
18 defendants in a criminal trial, proceeding or appeal, the Court shall assign other counsel to represent the
19 defendant; and

20 **WHEREAS**, Penal Code section 987.2(b) provides that counsel assigned pursuant to Penal Code
21 section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the
22 amount of which shall be determined by the Court and paid out of the general fund of the County in
23 which the criminal case is pending; and

24 **WHEREAS**, the sum provided for in Penal Code section 987.2(a) may be determined by
25 contract between the Court and one or more responsible attorneys after consultation with the County’s
26 Board of Supervisors as to the amount of compensation and expenses to be paid, which shall be within
27 the amount of funds allocated by the Board of Supervisors for the cost of assigned counsel in those
28 cases; and

1 **WHEREAS**, under California Government Code section 31000, County is authorized to enter
2 into a contract for legal services of attorneys; and

3 **WHEREAS**, Contractor is willing to and does possess requisite qualifications including, but not
4 limited to, training and experience and County wishes to employ Contractor to render legal services to
5 indigents where the Public Defender has a conflict of interest or cannot otherwise represent defendants;
6 and

7 **WHEREAS**, in Phillips v. Seeley [(1974) 43 Cal. App. 3d 104], the Appellate Court held that
8 the judicial act of assigning an attorney to represent an indigent defendant with knowledge of the
9 compensation contract between the Board of Supervisors and the attorney constitutes judicial approval
10 and ratification of the contract and recognition that the contract provides reasonable compensation to the
11 attorney;

12 **NOW THEREFORE, BE IT AGREED AS FOLLOWS:**

13 **1. SCOPE OF SERVICES.**

14 1.1. Contractor shall provide professional services, advice, and legal representation to
15 indigent defendants charged with a misdemeanor in cases set before the Superior Court in
16 which he/she is appointed during the term of this Agreement.

17 1.2. It is agreed that Contractor shall provide these services through one or more of its
18 attorneys who are properly licensed to practice law in California, who are competent to
19 represent defendants facing felony criminal charges, and who meet the minimum
20 qualifications as set forth in the Administrative Policy Memorandum issued by the
21 Superior Court of California County of Imperial on May 22, 2005 and as revised on
22 March 7, 2008 and January 15, 2013 entitled "Criteria for Court Appointment of Indigent
23 Defense Counsel".

24 1.3. In cases where Contractor represents a defendant who enters a plea of guilty to a
25 misdemeanor charge before preliminary hearing, it shall be the responsibility of
26 Contractor to continue to represent such defendant up to, and including, sentencing or
27 other disposition proceedings.
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- 1 1.4. In addition to misdemeanor cases, when necessary Contractor shall accept responsibility
2 for representation of indigent adults, minors and parents in cases set before the Superior
3 or Juvenile Courts (including proceedings pursuant to California Welfare and Institutions
4 Code sections 600 *et seq.* and California Government Code section 27706) and in all
5 other instances where the Public Defender is by law required to provide such
6 representation, where he/she is appointed by the Court to represent adults, minors or
7 parents.
- 8 1.5. Contractor shall perform legal services competently. To perform legal services
9 competently means diligently to apply the learning and skill necessary to perform the
10 duties of a member of the State Bar of California arising from employment or
11 representation. Contractor shall be mentally, emotionally and physically able to perform
12 legal services. All legal services must be provided in a manner fully consistent with all
13 applicable laws regarding the provision of competent legal defense and with the Rules of
14 Professional Conduct and other statutes, regulations and rules of practice applicable to
15 members of the State Bar of California.
- 16 1.6. Contractor shall be available to appear at any branch of the Imperial County Superior
17 Court on any day in which the Superior Court is open, from 8:30 a.m. until 5:00 p.m.
18 Contractor shall timely appear at all scheduled hearings in cases to which Contractor has
19 been appointed.
- 20 1.7. Contractor shall fully comply with all representations made by Contractor in Contractor's
21 Qualification Statement submitted to County in response to County's Request For
22 Qualifications Level 2 Misdemeanor and Felony Flat-Rate Contract Attorneys".
23 Contractor's Qualification Statement is attached hereto as **Attachment 1** and
24 incorporated by this reference.
- 25 1.8. ANCILLARY SERVICE REQUESTS. Contractor shall prepare any requests for
26 investigative services utilizing the form provided on the Office of County Counsel
27 website. All requests shall be prepared by Contractor and submitted directly to County
28 Counsel through electronic mail, fax, or personal delivery.

1 **2. APPOINTMENTS.**

2 2.1. The Public Defender or his/her deputies will notify the Court if he/she has a conflict of
3 interest. Upon being appointed to represent a defendant, Contractor shall notify the Court
4 Executive Officer in writing of the name of the client and case number within a
5 reasonable time after the appointment.

6 2.2. Upon appointment by the Court, Contractor shall promptly conduct a due diligence
7 search of its records to determine whether any potential conflicts exists.

8 2.3. Where, for good reason, Contractor has a conflict of interest that is approved by the
9 Court, which prevents him/her from representing any indigent client, County will
10 consider employment of another outside counsel.

11 2.4. Contractor recognizes that assignment of conflict indigent defense cases to attorneys is a
12 matter entirely within the discretion of the Court. This Agreement is based on the
13 understanding that the Court will endeavor to assign cases to those attorneys who have
14 contracted with County to provide conflict indigent defense services proportionately.

15 2.5. Contractor agrees to accept his/her proportionate share of conflict indigent defense
16 assignments in the Superior Court in return for the monthly flat rate compensation
17 provided herein, and agrees that this Agreement provides reasonable compensation in
18 each such case.

19 **3. ORDER OF APPOINTMENT.**

20 3.1. **MISDEMEANOR CASES.** In misdemeanor cases, the following procedure has been
21 set up for the appointment of counsel:

22 3.1.1. Where the court decides that an indigent defendant in a misdemeanor case is
23 entitled to representation by a court-appointed attorney, the Court will first
24 appoint the Public Defender to represent that defendant.

25 3.1.2. If the Public Defender has a conflict of interest or other reason that prevents
26 representation of such defendant by the Public Defender, the Court will appoint
27 one (1) or more of the attorneys contracted by the Court to handle misdemeanor
28 cases (“Misdemeanor Contract Attorneys”) to represent that defendant.

1 3.1.3. If the Public Defender and the Misdemeanor Contract Attorneys are unable to
2 represent the defendant because of a conflict of interest, the Court will appoint
3 one (1) or more of the attorneys contracted by the Court to handle felony cases
4 (“Felony Contract Attorneys”) to represent that defendant.

5 3.2. JUVENILE CASES. Contractor shall accept responsibility for representation of indigent
6 adults, minors and parents set before the Superior or Juvenile Courts, respectively,
7 including proceedings pursuant to California Welfare and Institutions Code section 600 *et*
8 *seq.* and California Government Code section 27706. The procedure for appointment in
9 these cases shall be as follows:

10 A. Where the Court decides that an individual is entitled to representation by
11 a court-appointed attorney, the court will first appoint the Public Defender
12 to represent that defendant.

13 B. If the Public Defender has a conflict of interest or other reason that
14 prevents representation of that individual by the Public Defender, the
15 Court will appoint one (1) or more Misdemeanor Contract Attorneys to
16 represent that defendant.

17 C. If the Public Defender and the Misdemeanor Contract Attorneys all have
18 conflicts of interest and are unable to represent the defendant because of a
19 conflict of interest, then the Court will appoint one (1) or more Felony
20 Contract Attorneys. If for any reason any attorney ceases to be appointed
21 by the Court in these cases, the Court reserves the right to replace that
22 attorney with another attorney.

23 **3. RECORDS.**

24 4.1. Contractor shall keep records of services provided on a form approved by the Court
25 Executive Officer. Such records shall include the number of cases worked on during the
26 month and a total of the hours expended during that month on work that falls within the
27 scope of this Agreement.

1 4.2. Contractor shall provide County's Office of the County Counsel a duplicate of each
2 report given to the Court Executive Officer. Said duplicate can be submitted at 940 West
3 Main Street, Suite 205, El Centro, California.

4 **4. PAYMENT.**

5 5.1. County will pay to Contractor a total of _____ Dollars (\$_____) monthly for services
6 pursuant to this Agreement. Payment will be made monthly, in arrears.

7 **5.2. Contractor shall bear all his/her own costs, including but not limited to, general
8 office expenses, phone costs, duplicating/copying costs, travel costs and professional
9 and general liability costs. Contractor agrees not to request these services through
10 Ancillary Service Requests and understands that County will not consider such
11 requests.**

12 5.3. In no event shall payments pursuant to this Agreement exceed _____ dollars
13 (\$_____) annually.

14 **6. SUPPLIES AND DUPLICATING.**

15 6.1. It being understood that all criminal files will ultimately be the property of County,
16 Contractor is to pay for the supplies that make up the file. Contractor may purchase said
17 supplies from County if Contractor so desires.

18 6.2. County agrees to provide Contractor with one (1) copy of all documents and police
19 reports that are relevant to this Agreement at no cost to Contractor.

20 **7. TERM.**

21 7.1. The term of this Agreement shall be from _____ through _____ unless
22 terminated sooner pursuant to this agreement as set forth in paragraph 11.

23 7.2. Renewal. The term shall be automatically renewed for five (5) consecutive one (1) year
24 terms, unless either party gives written notice of their intent to terminate the agreement at
25 least sixty (60) days before the termination date, in accordance with the terms of this
26 agreement.

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1 **8. INDEPENDENT CONTRACTOR.**

2 8.1. The Parties expressly intend and agree that Contractor is acting as an independent
3 contractor and not as an employee of County. Contractor retains sole and absolute
4 discretion, control and judgment in the manner and means of carrying out Contractor's
5 responsibilities for the provision of services under this Agreement.

6 8.2. Contractor understands and agrees that Contractor shall not be entitled to any of the rights
7 and privileges established for County's employees (if any) including but not limited to
8 the following: retirement benefits, medical insurance coverage, severance pay benefits,
9 paid vacation and sick pay, and overtime pay.

10 8.3. Contractor understands and agrees that County will not pay or withhold from the
11 compensation paid to Contractor pursuant to this Agreement any sums customarily paid
12 or withheld on behalf of employees for income tax, employment insurance, social
13 security, worker's compensation or any other withholding tax, insurance or payment
14 pursuant to any law or governmental requirement and all such payments as may be
15 required by law are the sole responsibility of Contractor.

16 8.4. This Agreement shall not be construed as a partnership, and County shall have no
17 responsibility for any of Contractor's debts, liabilities or other obligations whatsoever.
18 Contractor is an independent contractor and at all times during the term of this
19 Agreement shall represent and conduct himself/herself as an independent contractor, not
20 as an agent or employee of County. Contractor shall not have the authority, express or
21 implied, to bind or obligate County in any way.

22 **9. INSURANCE.**

23 9.1. Contractor hereby agrees at its own cost and expense to procure and maintain commercial
24 general liability insurance, employer's liability insurance, commercial automobile
25 liability insurance, professional liability insurance and property damage insurance during
26 the entire term of this Agreement in a sum acceptable to County and adequate to cover
27 potential liabilities arising in connection with the performance of this Agreement and in
28 any event not less than the minimum limit set forth as follows:

<u>Insurance</u>	<u>Minimum Limit</u>
Errors & Omissions Coverage	\$100,000
Worker's Compensation, Coverage A	Statutory
Automobile Liability	
(owned, hired & non-owned vehicles)	
Bodily Injury	\$300,000 per occurrence
Property Damage	\$300,000 per occurrence

9.2. Special Insurance Requirements. All insurance required under paragraph 9 shall:

9.2.1. Be procured from an insurer authorized to do business in California.

9.2.2. Be primary coverage as respects County and any insurance or self-insurance maintained by County shall be in excess of Contractor's insurance coverage and shall not contribute to it.

9.2.3. Name County as an additional insured on all policies, except Workers' Compensation, and provide that County may recover for any loss suffered by County by reason of Contractor's negligence.

9.2.4. State that it is primary insurance and regards County as an additional insured and contains a cross-liability or severability of interest clause.

9.2.5. Not be canceled, non-renewed or reduced in scope of coverage until after thirty (30) days written notice has been given to County. However, Contractor may not terminate such coverage until it provides County with proof that equal or better insurance has been secured and is in place. Cancellation or change without the prior written consent of County shall, at the option of County, be grounds for termination of this Agreement.

9.3. Additional Insurance Requirements.

9.3.1. Complete copies of certificates of insurance for all required coverages including additional insured endorsements and 30-day notice of cancellation clause endorsements shall be attached hereto as Exhibit A and incorporated herein.

1 9.3.2. County is to be notified immediately of all insurance claims. County is also to be
2 notified if any aggregate insurance limit is exceeded.

3 9.3.3. The comprehensive or commercial general liability shall contain a provision of
4 endorsements stating that such insurance:

5 A. Includes contractual liability;

6 B. Does not contain any exclusions as to loss or damage to property caused
7 by explosion or resulting from collapse of buildings or structures or
8 damage to property underground, commonly referred to by insurers as the
9 “XCU Hazards;”

10 C. Does not contain a “pro rata” provision which looks to limit the insurer’s
11 liability to the total proportion that its policy limits bear to the total
12 coverage available to the insured; and

13 D. Does not contain an “excess only” clause which requires the exhaustion of
14 other insurance prior to providing coverage.

15 9.4. Deposit of Insurance Policy. Promptly on issuance, reissuance, or renewal of any
16 insurance policy required by this Agreement, Contractor shall, if requested by County,
17 cause to be given to County satisfactory evidence that insurance policy premiums have
18 been paid together with a duplicate copy of the policy or a certificate evidencing the
19 policy and executed by the insurance company issuing the policy or its authorized agent.

20 9.5 Additional Insurance. Nothing in this, or any other provision of this Agreement, shall be
21 construed to preclude Contractor from obtaining and maintaining any additional insurance policies in
22 addition to those required pursuant to this Agreement.

23 **10. INDEMNIFICATION.**

24 10.1. Contractor agrees to the fullest extent permitted by law to indemnify, defend, protect and
25 hold County and its representatives, officers, directors, designees, employees, agents,
26 successors and assigns harmless from any and all claims, expenses, liabilities, causes of
27 action, demands, losses, penalties, attorneys fees and costs, in law or equity, of every
28 kind and nature whatsoever arising out of or in connection with Contractor’s negligent

1 acts and omissions or willful misconduct under this Agreement (“Claims”), whether or
2 not arising from the passive negligence of County, but does not include Claims that are
3 finally determined to be the result of the sole negligence or willful misconduct of County.

4 10.2. Contractor agrees to defend with counsel acceptable to County, indemnify and hold
5 County harmless from all Claims, including but not limited to:

6 10.2.1. Personal injury, including but not limited to bodily injury, emotional injury,
7 sickness or disease or death to persons including but not limited to County’s
8 representatives, officers, directors, designees, employees, agents, successors and
9 assigns, subcontractors and other third parties and/or damage to property of
10 anyone (including loss of use thereof) arising out of Contractor’s negligent
11 performance of, or willful misconduct surrounding, any of the terms contained in
12 this Agreement, or anyone directly or indirectly employed by Contractor or
13 anyone for whose acts Contractor may be liable;

14 10.2.2. Liability arising from injuries to Contractor and/or any of Contractor’s employees
15 or agents arising out of Contractor’s negligent performance of, or willful
16 misconduct surrounding, any of the terms contained in this Agreement, or anyone
17 directly or indirectly employed by Contractor or anyone for whose acts Contractor
18 may be liable;

19 10.2.3. Penalties imposed upon account of the violation of any law, order, citation, rule,
20 regulation, standard, ordinance or statute caused by the negligent action or
21 inaction, or willful misconduct of Contractor or anyone directly or indirectly
22 employed by Contractor or anyone for whose acts Contractor may be liable;

23 10.2.4. Infringement of any patent rights which may be brought against County arising
24 out of Contractor’s work;

25 10.2.5. Any violation or infraction by Contractor of any law, order, citation, rule,
26 regulation, standard, ordinance or statute in any way relating to the occupational
27 health or safety of employees; and
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1 national origin. This provision shall include, but not be limited to, the following: employment
2 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of
3 pay or other forms of compensation; and the selection for training including apprenticeship.

4 **15. CHANGES.**

5 County and Contractor may from time to time require changes in the scope of the services of
6 Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount
7 of Contractor's compensation which are mutually agreed upon by and between County and Contractor,
8 shall be effective when incorporated in written amendments to this Agreement.

9 **16. INTEREST OF CONTRACTOR.**

10 16.1. Contractor covenants that it presently has no interest, and shall not acquire any interest,
11 direct or indirect, financial or otherwise, which would conflict in any manner or degree
12 with the performance of the services hereunder.

13 16.2. Contractor covenants that, in the performance of this Agreement, no subcontractor or
14 person having such an interest shall be employed.

15 16.3. Contractor certifies that no one who has or will have any financial interest under this
16 Agreement is an officer or employee of County.

17 **17. SHARING OFFICE SPACE/CONFLICT OF INTEREST.**

18 If Contractor shares office space with another attorney, Contractor must maintain professional
19 independence. Contractor's office must be structured and managed in a way that does not allow for
20 confidences to be shared or conflicts to arise as a result of sharing office space.

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1 **18. NOTICES AND REPORTS.**

2 18.1. All notices and reports under this Agreement shall be in writing and may be given by
3 personal delivery or by mailing by U.S. mail, addressed as follows:

4 **COUNTY**

5 Imperial County
6 Clerk of the Board
7 940 W. Main Street
8 El Centro, CA 92243

CONTRACTOR

7 and

8 Imperial County
9 Office of County Counsel
10 940 W. Main Street, Suite 205
11 El Centro, CA 92243

12 18.2. All notices and reports under this Agreement may be given by personal delivery or by
13 mailing by U.S. mail at such other address as either Party may designate in a notice to the
14 other Party given in such manner.

15 18.3. Any notice given by mail shall be considered given when deposited in the United State
16 Mail, postage prepaid, addressed as provided herein.

17 **19. ENTIRE AGREEMENT.**

18 This Agreement contains the entire Agreement between County and Contractor relating to the
19 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
20 understandings, provisions, negotiations, representations, or statements, either written or oral.

21 **20. CAPTIONS.**

22 Captions in this Agreement are inserted for convenience of reference only and do not define,
23 describe or limit the scope or the intent of this Agreement or any of the terms thereof.

24 **21. PARTIAL INVALIDITY.**

25 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,
26 void, or unenforceable, the remaining provisions will nevertheless continue in full force without being
27 impaired or invalidated in any way.

28 **22. WAIVER.**

No waiver of any breach or of any of the covenants or conditions of this Agreement shall be

1 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of
2 the same or any other covenant or condition.

3 **23. CHOICE OF LAW.**

4 This Agreement shall be governed by the laws of the State of California. This Agreement is
5 made and entered into in Imperial County, California. Any action brought by either Party with respect
6 to this Agreement shall be brought in a court of competent jurisdiction within said County.

7 **24. ATTORNEY'S FEES.**

8 If either Party herein brings an action to enforce the terms thereof or declare rights hereunder, the
9 prevailing Party in any such action, on trial or appeal, shall be entitled to reasonable attorney's fees and
10 actual costs to be paid by the losing Party as fixed by the court.

11 **25. AUTHORITY.**

12 25.1. Each individual executing this Agreement on behalf of Contractor represents and
13 warrants that:

14 25.1.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
15 Contractor;

16 25.1.2. Such execution and delivery is in accordance with the terms of the Articles of
17 Incorporation or Partnership, any by-laws or Resolutions of Contractor; and

18 25.1.3. This Agreement is binding upon Contractor in accordance with its terms.

19 25.2. Contractor shall deliver to County evidence acceptable to County of the foregoing within
20 thirty (30) days of execution of this Agreement.

21 **26. COUNTERPARTS.**

22 This Agreement may be executed in counterparts.

23 **26. REVIEW OF AGREEMENT TERMS.**

24 This Agreement has been reviewed and revised by legal counsel for both County and Contractor,
25 and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to
26 the interpretation or enforcement of the same or any subsequent amendments thereto.

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