

1 **AGREEMENT**

2 **(Superior Court Misdemeanor Contract – _____)**

3
4 THIS AGREEMENT (“Agreement”) is made and entered into this __ day of _____,
5 20____, by and between the **County of Imperial**, a political subdivision of the State of California
6 (“County”), and _____, licensed attorney(s) duly admitted to practice
7 before all the Courts of the State of California (“Contractor”) (individually, “Party;” collectively,
8 “Parties”).

9 **RECITALS**

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 defendants
18 in a criminal trial, proceeding or appeal, the Court shall assign other counsel to represent the defendant;
19 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 amount
22 of which shall be determined by the Court and paid out of the general fund of the County in which the
23 criminal case is pending; and

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

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1 **WHEREAS**, under California Government Code section 31000, County is authorized to enter into
2 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

5 **WHEREAS**, County wishes to employ Contractor to render legal services as part of its Indigent
6 Defense Program (“Program”) where the Public Defender has a conflict of interest or cannot otherwise
7 represent indigent defendants; and

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

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

13 **1. TERM OF AGREEMENT**

14 **1.1** This Agreement shall commence on the date set forth above and shall remain in effect for
15 a period of one (1) year, or until terminated sooner pursuant to this Agreement as set forth
16 in Paragraph 3.

17 **1.2 Renewal.** The term shall be automatically renewed for five (5) consecutive one (1) year
18 terms, unless terminated sooner pursuant to this agreement as set forth in Paragraph 3.

19 **2. COMPENSATION**

20 County shall compensation Contractor as set forth in **Exhibit “A”** and incorporated herein by this
21 reference.

22 **3. TERMINATION**

23 **3.1 Termination for Cause:** Upon material breach of this Agreement, County or Contractor
24 shall have the right to terminate this Agreement by giving written notice to the other Party
25 of such termination and specifying the effective date of such termination.

26 **3.2 Termination for Convenience:** County or Contractor may terminate this Agreement at
27 any time, with or without cause, by giving written notice to Contractor of such termination
28 and specifying the effective date thereof at least sixty (60) days before the effective date

1 of such termination. In that event, it is expressly agreed and understood that Contractor
2 shall provide assistance and advice to Contractor's successor to facilitate the transition
3 caused by such termination.

4 **4. SUSPENSION OF AGREEMENT**

5 County shall have the authority to suspend this Agreement, in whole or in part, for such period as
6 deemed necessary due to unfavorable conditions or to the failure on the part of Contractor to
7 perform any provision of this Agreement. Contractor will be paid the compensation due and
8 payable to the date of suspension.

9 **5. SCOPE OF SERVICES**

10 Contractor shall perform and be responsible for services as detailed in the Scope of Services
11 attached hereto as **Exhibit "B"** and incorporated herein by this reference.

12 **6. REPRESENTATIONS**

13 **6.1** Contractor understands that County considers the representations made herein to be
14 material and would not enter into this Agreement with Contractor if such representations
15 were not made.

16 **6.2** Contractor represents and warrants that Contractor and any employee, contractor, and/or
17 agent if applicable, possess at all times herein the requisite license, experience, training,
18 and skill to provide competent legal services and are willing to provide the services
19 described in this Agreement.

20 **6.3** Contractor shall provide adequate coverage to the Court, and ensure that the business of the
21 Court is not unreasonable delayed or impeded.

22 **6.4** Contractor understands and agrees that all attorneys performing legal services under this
23 Agreement shall at all times herein active members in good standing of the State Bar of
24 California. Contractor shall, during the term of this Agreement, report to the County any
25 pending disciplinary matter within twenty-four (24) hours of becoming aware of it.

26 **6.5** Contractor shall keep itself fully informed of all existing and proposed federal, state, and
27 local laws, ordinances, regulations, orders, and decrees which pertain to its performance
28 under this Agreement.

- 1 **6.6** Contractor understands and agrees that all attorneys performing legal services under this
2 Agreement shall obtain ongoing professional training at a level which does not fall below
3 minimum professional standards.
- 4 **6.7** Contractor shall have an operative office telephone number (cellular is acceptable) where
5 they can be reached during normal business hours. Contractor shall also have a working e-
6 mail address and fax number to a machine that can receive faxes even if the recipient is not
7 present.
- 8 **6.8** Contractor shall maintain an office location such that he/she is able to appear in court with
9 sixty (60) minutes notice.
- 10 **6.9** Contractor shall provide his/her own interpreters for non-English speaking clients at no cost
11 to the County.
- 12 **6.10** Contractor shall not commence any work under this Agreement or provide any other
13 services, or materials, in connection therewith until Contractor has received written
14 authorization from County to do so.
- 15 **6.11** Contractor understands and agrees not to discuss this Agreement or work performed
16 pursuant to this Agreement with anyone not a Party to this Agreement without the prior
17 permission of County. Contractor further agrees to immediately advise County of any
18 contacts or inquiries made by anyone not a Party to this Agreement with respect to work
19 performed pursuant to this Agreement.
- 20 **6.12** Contractor understands and agrees that in the course of performance of this Agreement
21 Contractor may be provided with information or data considered by the owner or the
22 County to be confidential. Contractor shall take all necessary steps necessary to maintain
23 such confidentiality, including but not limited to restricting the dissemination of all
24 material received to those required to have such data in order for Contractor to perform
25 under this Agreement.
- 26 **6.13** Contractor represents and warrants that it shall perform all obligations under this Agreement
27 in accordance with generally accepted professional standards and in an expeditious and
28 economical manner consistent with sound professional practices.

1 **7. NO CONFLICTS OF INTEREST**

2 **7.1** Contractor covenants that it presently has no interest, and shall not acquire any interest,
3 direct or indirect, financial or otherwise, which would conflict in any manner or degree
4 (“Conflict of Interest”) with the performance of the services hereunder.

5 **7.2** Contractor covenants that, in the performance of this Agreement, it will not employ, hire,
6 or otherwise retain any contractor, sub-contractor, or any other person who, to Vendor’s
7 knowledge, has a Conflict of Interest.

8 **7.3** Contractor certifies that it has not, and will not, employ, hire, or otherwise retain any
9 director, officer, manager, employee, or agent employed by County as of the date of this
10 Agreement.

11 **7.4** Contractor certifies that, if sharing office space with another attorney not a Party to this
12 Agreement, the Contractor must maintain professional independence. Contractor’s office
13 must be structured and managed in a way that does not allow for confidences to be shared
14 or conflicts to arise as a result of sharing office space.

15 **7.5** Except as required by law that cannot be waived, Contractor covenants that it will not
16 commence, maintain, initiate, or cause, encourage, assist, volunteer, advise or cooperate
17 with any other person to commence, maintain, or initiate any action, lawsuit, proceeding,
18 charge, petition, complaint, or claim before any court, agency, or tribunal against County
19 during the term of this Agreement.

20 **8. ANCILLARY SERVICES REQUEST**

21 Contractor shall comply with all Ancillary Services Request provisions set forth in **Exhibit “C”**
22 and incorporated herein by this reference.

23 **9. TARDINESS AND UNAVAILABILITY**

24 **9.1** It is Contractor’s responsibility to timely inform the Court, co-counsel (if any), and any
25 other involved parties, if he/she will be late for any court appearance.

26 **9.2** In the event of a short-term emergency:

27 **9.2.1** It shall be the responsibility of Contractor who is not able to appear to arrange for
28 an attorney substitute. Any attorney substitute shall also be a current active

1 member in the Program. Any attorney substitute shall also be equal or higher class
2 designation as that of the substituting Program panel member. Using another
3 current active member in the Program to make Contractor's appearances on a
4 regular basis is subject to review by County and suspension from the Program.

5 **9.2.2** In the event Contractor is not able to arrange for a substitute, Contractor shall
6 notify the Court sufficiently in advance of the scheduled appearance.

7 **9.3** In the event of a long-term emergency that will affect Contractor's ability to continue to
8 handle the case effectively and timely, Contractor must notify County as soon as practicable
9 after learning of the emergency.

10 **10. DECLINING APPOINTMENTS**

11 Contractor shall not decline court appointment in any cases except for legal conflict of interest or
12 other legal grounds. Declining appointments on a regular basis is subject to review by County and
13 suspension from the Program.

14 **11. RESIGNATION**

15 Contractor may withdraw from the Program with sixty (60) day written notice to County.
16 Contractor will be expected, whenever possible, to complete the case assignments to which he/she
17 has been appointed. Contractor shall remain in compliance with the provisions of this Agreement,
18 including the insurance requirements, until all assigned cases are completed or transition to
19 Contractor's successor is finalized.

20 **12. UNFINISHED CASES**

21 **12.1** Should this contract be terminated for cause, Contractor shall be entitled to receive
22 compensation after the effective termination date for work performed on unfinished cases
23 at a rate of Forty Dollars (\$40.00) per hour.

24 **12.2** Should this contract be terminated for convenience, by either Party, Contractor shall be
25 entitled to receive compensation after the effective termination date for work performed
26 on unfinished cases at a rate of Thirty Dollars (\$30.00) per hour.

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1 **12.3** Both Parties will make a good faith effort to achieve a smooth transition if notice of
2 termination of services is given by either Contractor or County. The transition specified
3 in this paragraph includes, but is not limited to, the releasing or acceptance of such files,
4 papers and records as may be required to carry out the provisions of this Agreement, and
5 any subsequent Agreement with the successor attorney or assumption of case loads as
6 otherwise required by County, and insuring the continued adequate legal representation
7 of persons eligible for the services herein set forth.

8 **13. ALLEGATIONS**

9 Immediately upon receipt of a complaint from a judicial officer concerning Contractor's
10 professional competence in representation of defendants, Contractor shall be placed on inactive
11 status, causing Contractor to be ineligible for new appointments to represent defendants.
12 Contractor's existing caseload shall not be affected by this action. County shall thereafter
13 investigate the matter and take such action as it deems appropriate, including but not limited to
14 termination under Paragraph 3 above, or reinstatement of Contractor's active status. County shall
15 communicate to the complaining judicial officer the results of its investigation and any action
16 taken by County in response to the complaint.

17 **14. REVIEW**

18 Contractor and County agree that there exists some uncertainty as to the number of cases and extent
19 of the work to be performed hereunder. Consequently, the Parties agree to annual meetings to
20 evaluate the case load and work performed under this Agreement. Contractor and County shall
21 make adjustments to the Agreement as necessary. Contractor, however, may request a meeting at
22 any other time during the Agreement period to discuss any matters related to this Agreement.

23 **15. PRIVILEGE**

24 No waiver of the attorney-client privilege and/or the attorney work product privilege shall be made
25 by any communications between Contractor and County, including but not limited to billing and
26 payment records and funding requests. All communications between Contractor and County
27 pertaining to attorney-client communications and/or attorney work product shall be confidential.

28 **16. RECORDS**

1 **16.1 Reports**

2 **16.1.1** Contractor shall maintain records of services provided on a form approved by the
3 Court Executive Officer. Such records shall include the number of cases worked
4 on during the month and a total of the hours expended during that month on work
5 that falls within the scope of this Agreement.

6 **16.1.2** Contractor shall provide County a duplicate of each report given to the Court
7 Executive Officer. Said duplicate can be submitted at 940 West Main Street, Suite
8 205, El Centro, California.

9 **16.2 Retention**

10 **16.2.1** Contractor shall maintain all ledgers, books of accounts, invoices, vouchers,
11 canceled checks, and other records relating to Contractor's charges for Services or
12 expenditures and disbursements charged to County for a minimum period of seven
13 (7) years, or for any longer period required by law, from the date of final payment
14 to Contractor pursuant to this Agreement.

15 **16.2.2** Any records or documents required to be maintained by Contractor pursuant to
16 this Agreement shall be made available to County for inspection or audit at any
17 time during Contractor's regular business hours. County will provide Contractor
18 with seven (7) calendar days advanced written or e-mail notice. Copies of such
19 documents shall, at no cost to County, be provided to County for inspection at
20 Contractor's address indicated for receipt of notices under this Agreement.

21 **16.3 Ownership**

22 **16.3.1** To the extent permitted by law, all data, reports, documents, or other work
23 products developed by Contractor hereunder are the exclusive property of County
24 and upon request of County shall be delivered to County upon completion of the
25 services authorized hereunder. In the event of termination, all finished or
26 unfinished documents and other materials, if any, at the option of County, and to
27 the extent permitted by law, shall become the property of County. Contractor may
28 retain copies thereof for its files and internal use.

1 **16.3.2** Any publication of information directly derived from work performed or data
2 obtained in connection with services rendered under this Agreement must be first
3 approved by County.

4 **17. INDEPENDENT CONTRACTOR**

5 **17.1** The Parties expressly intend and agree that Contractor is acting as an independent
6 contractor and not as an employee of County. Contractor retains sole and absolute
7 discretion, control and judgment in the manner and means of carrying out Contractor’s
8 responsibilities for the provision of services under this Agreement.

9 **17.2** Contractor understands and agrees that Contractor shall not be entitled to any of the rights
10 and privileges established for County’s employees (if any) including but not limited to the
11 following: retirement benefits, medical insurance coverage, severance pay benefits, paid
12 vacation and sick pay and overtime pay.

13 **17.3** Contractor understands and agrees that County will not pay or withhold from the
14 compensation paid to Contractor pursuant to this Agreement any sums customarily paid
15 or withheld on behalf of employees for income tax, employment insurance, social security,
16 worker’s compensation or any other withholding tax, insurance or payment pursuant to
17 any law or governmental requirement and all such payments as may be required by law
18 are the sole responsibility of Contractor.

19 **17.4** This Agreement shall not be construed as a partnership, and County shall have no
20 responsibility for any of Contractor’s debts, liabilities or other obligations
21 whatsoever. Contractor is an independent contractor and at all times during the term of
22 this Agreement shall represent and conduct himself/herself as an independent contractor,
23 not as an agent or employee of County. Contractor shall not have the authority, express
24 or implied, to bind or obligate County in any way.

25 **18. INSURANCE**

26 Contractor shall comply with all insurance provisions set forth in **Exhibit “D”** and incorporated
27 herein by this reference. Copies of certificates of insurance shall be attached hereto as **Exhibit**
28 **“E”** and incorporated herein by this reference.

1 **19. INDEMNIFICATION**

2 Contractor shall hold harmless, defend and indemnify County and its officers, officials,
3 employees and volunteers from and against any and all liability, loss, damage, expense, costs
4 (including without limitation costs and fees of litigation) of every nature arising out of or in
5 connection with Contractor's performance of work hereunder or its failure to comply with any of
6 its obligations contained in this Agreement, except such loss or damage which was caused by the
7 sole negligence or willful misconduct of the County.

8 **20. ASSIGNMENT**

9 **20.1** Neither this Agreement nor any rights, duties, or obligations hereunder shall be assignable
10 and/or subcontracted by Contractor without the prior written consent of County.

11 **20.2** Consent by County to an assignment or subcontract shall not release Contractor from its
12 primary liability under this Agreement, and County's consent to one assignment or
13 subcontract, shall not be deemed a consent to other assignments and/or subcontracts.

14 **20.3** Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement
15 without obtaining the prior written consent of County shall be void.

16 **21. NON-DISCRIMINATION**

17 **21.1** During the performance of the Agreement, Contractor, and its subcontractors if
18 applicable, shall not unlawfully discriminate, harass, or allow harassment against any
19 employee or applicant for employment because of sex, race, color, religion, gender,
20 gender identity, gender expression, sexual orientation, marital status, national origin,
21 ancestry, mental disability, physical disability (including HIV and AIDS), medical
22 condition, age, military or veteran status, pregnancy, denial of medical and family care
23 leave, pregnancy or disability leave.

24 **21.2** Contractor, and its subcontractors if applicable, shall take affirmative action to ensure that
25 the evaluation and treatment of their employees and applicants for employment are free
26 from such discrimination and harassment.

27 **21.3** Contractor, and its subcontractors if applicable, shall comply with the provisions of the
28 California Fair Employment and Housing Act (Government Code sections 12990 (a-f) et

1 seq.) and the applicable regulations promulgated thereunder (California Code of
2 Regulations, Title 2, Section 7285 et seq.)

3 **21.4** Contractor, and its subcontractors if applicable, shall comply with Title VII of the Civil
4 Rights Act of 1964 and the Americans with Disabilities Act Amendments Act of 2008.

5 **21.5** The applicable regulations of the Fair Employment and Housing Commission
6 implementing Government Code Sections 12990 (a-f), set forth in Chapter 5 of Division
7 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement
8 by reference and made a part hereof as if set forth in full.

9 **21.6** The applicable regulations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §
10 794(a)) are incorporated into this Agreement by reference and made a part hereof as if set
11 forth in full. Contractor and its subcontractors shall give written notice of their obligations
12 under this clause to labor organizations with which they have a collective bargaining or
13 other agreement.

14 **21.7** Contractor shall include the nondiscrimination and compliance provisions of the
15 Paragraph in all subcontracts to perform work under this Agreement.

16 **22. NOTICES**

17 **22.1** Any notice and report under this Agreement shall be in writing and may be given by
18 personal delivery or by mailing by certified mail, addressed as follows:

19
20 **COUNTY**
Imperial County
21 Clerk of the Board
940 W. Main Street
22 El Centro, CA 92243

CONTRACTOR

23 and
24 Imperial County
Office of County Counsel
25 940 W. Main Street, Suite 205
26 El Centro, CA 92243
27
28

1 **22.2** Notice shall be deemed to have been delivered only upon receipt by the Party, seventy-
2 two (72) hours after deposit in the United States mail, or twenty-four (24) hours after
3 deposit with an overnight carrier.

4 **22.3** The addressees and addresses for purposes of this paragraph may be changed to any other
5 addressee and address by giving written notice of such change. Unless and until written
6 notice of change of addressee and/or address is delivered in the manner provided in this
7 paragraph, the addressee and address set forth in this Agreement shall continue in effect
8 for all purposes hereunder.

9 **23. ENTIRE AGREEMENT**

10 This Agreement and any additional supplementary document(s) incorporated herein by specific
11 reference contain the entire Agreement between County and Contractor relating to the
12 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
13 understandings, provisions, negotiations, representations, or statements, either written or oral.

14 **24. CAPTIONS**

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

17 **25. MODIFICATION**

18 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid
19 unless the same is in writing and signed by both Parties.

20 **26. PARTIAL INVALIDITY**

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

24 **27. GENDER AND INTERPRETATION OF TERMS**

25 As used in this Agreement and whenever required by the context thereof, each number, both singular
26 and plural, shall include all numbers, and each gender shall include both genders. Contractor as used
27 in this Agreement or in any other document referred to in or made a part of this Agreement shall
28 likewise include the singular and the plural, a corporation, a partnership, individual, firm, or person

1 acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative
2 capacity, or any other entity. All covenants herein contained on the part of Contractor shall be joint
3 and several if more than one person, firm, or entity executes this Agreement.

4 **28. WAIVER**

5 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be
6 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach
7 of the same or any other covenant or condition.

8 **29. CHOICE OF LAW**

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

12 **30. ATTORNEY'S FEES**

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

16 **31. AUTHORITY**

17 **31.1** Each individual executing this Agreement on behalf of Contractor represents and warrants that:

18 **31.1.1** he/she is duly authorized to execute and deliver this Agreement on behalf of
19 Contractor;

20 **31.1.2** such execution and delivery is in accordance with the terms of the Articles of
21 Incorporation, By-laws and Minutes, an if applicable, any LLC Operating
22 Agreement or Partnership Resolutions of Contractor; and

23 **31.1.3** this Agreement is binding upon Contractor accordance with its terms and conditions.

24 **31.2** Contractor shall deliver to County evidence acceptable to County of the foregoing within
25 thirty (30) days of execution of this Agreement.

26 **32. COUNTERPARTS**

27 This Agreement (as well as any amendments hereto) may be executed in duplicate counterparts,
28 each of which when executed shall be an original, and all of which together shall constitute one

1 and the same Agreement. No counterparts shall be effective until all Parties have duly executed a
2 counterpart hereof.

3 **33. NON-ALLOCATION OF FUNDS**

4 The terms of this Agreement and the services to be provided hereunder are contingent upon the
5 approval of funds by the appropriating government agency. Should sufficient funds not be
6 allocated, the services provided may be modified, or this Agreement terminated, at any time by
7 giving the ATTORNEY thirty (30) days advance written notice.

8 **34. REVIEW OF AGREEMENT TERMS**

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

12
13 **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed the
14 day and year first above written.

15 **COUNTY OF IMPERIAL**

CONTRACTOR

16
17 By: _____
18 Adam G. Crook
19 County Counsel

By: _____

20 **APPROVED AS TO FORM:**

21
22 By: _____
23 Eric R. Havens
24 Assistant County Counsel