

1 **Contract for Superior Court Appointed Representation of Indigent Criminal Defendants**

2 **(Level 3, Hourly Appointments)**

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 \_\_\_\_\_, State Bar Number \_\_\_\_\_, an attorney admitted  
7 to practice law in the State of California ("CONTRACTOR") (individually, "Party;" collectively,  
8 "Parties").

9 **WITNESSETH:**

10 **WHEREAS**, in a criminal case the Court may determine that there is a need to appoint an  
11 attorney from the Imperial County Superior Court Appointment List to represent an indigent criminal  
12 defendant, and

13 **WHEREAS**, under California law, COUNTY is responsible for providing legal counsel  
14 appointed by the Court for defending indigent defendants in criminal cases; and

15 **WHEREAS**, the Court will first appoint the Imperial County Public Defender (Level 1) for such  
16 appointments however, when that office declares that there is a conflict preventing it from accepting  
17 such appointment the Court will appoint an attorney from a list of flat-rate attorneys (Level 2) who have  
18 agreed to provide legal defense and representation or when those attorneys have declared that there is a  
19 conflict preventing them from accepting such appointment, the Court will appoint from a list of hourly-  
20 rate attorneys who have agreed to provide legal defense and representation (Level 3); and

21 **WHEREAS**, CONTRACTOR represents that he/she possesses the requisite qualifications to  
22 provide Level 3 representation and hereby enters into this agreement with COUNTY to provide legal  
23 services to indigent criminal defendants when appointed to do so by the Superior Court as per the terms  
24 and conditions described herein.

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

26 **1.** Contractor agrees to the following conditions and covenants:

27 1.1. CONTRACTOR has read, understands, and agrees to be bound by the Criteria for Court  
28 Appointment of Indigent Defense Counsel approved by the Imperial County Superior

1 Court and by those that may be later adopted by the Imperial County Superior Court. The  
2 Program Rules are incorporated by reference and can be found at the following Web  
3 sites: <http://www.co.imperial.ca.us/countycounsel/> and  
4 <http://www.imperial.courts.ca.gov/PDFDocs/CrtApptListPolicy.pdf>.

5 1.2. CONTRACTOR is familiar with the State Bar Rules of Professional Conduct, especially  
6 Rule 3-110 relating to professional competence and shall abide by all State Bar Rules of  
7 Professional Conduct.

8 1.3. CONTRACTOR represents that he/she is an active member in good standing of the State  
9 Bar of California. CONTRACT shall notify COUNTY of any discipline imposed or if  
10 CONTRACTOR is not longer an active member in good standing.

11 1.4. CONTRACTOR agrees to indemnify and hold harmless the COUNTY, its Officers and  
12 employees, members of any program committees, and other related officials for any  
13 liability or loss arising from his/her representation of indigent criminal defendants under  
14 this agreement;

15 1.5. CONTRACTOR waives any and all claims against the COUNTY, its Officers and  
16 employees, members of the Program committees, and other related officials for any  
17 liability arising from the operation of the Program or from the referrals, assignments and  
18 appointments.

19 1.6. All disputes shall be resolved in accordance with the Criteria for Court Appointment of  
20 Indigent Defense Counsel set forth by the Imperial County Superior Court.

21 1.7. **AGREEMENT TO ARBITRATE.** In the event of any unresolved dispute against the  
22 Program or its employees, COUNTY, members of the Program committees, or other  
23 related officials regarding my participation in or removal from the Program, or any other  
24 dispute, CONTRACTOR agrees that such dispute shall be resolved by means of binding  
25 arbitration entitled to recover its expenses, including costs of the arbitration proceeding  
26 and arbitrator fees, and reasonable attorneys' fees. By executing this agreement,  
27 CONTRACTOR agrees to have any dispute arising out of participation in the Program  
28 decided by neutral arbitration as provided by California law and give up any right to have

1 the dispute litigated in a court or jury trial. By executing this AGREEMENT,  
2 CONTRACTOR gives up the judicial right to appeal. Initial: \_\_\_\_\_.

3 **2. PAYMENT.**

4 2.1. COUNTY will pay to CONTRACTOR according to the posted Criteria for Court  
5 Appointment of Indigent Defense Counsel set forth by the Imperial County Superior  
6 Court; CONTRACTOR shall bear all his/her own costs, including but not limited to,  
7 general office expenses, phone costs, duplicating/copying costs, travel costs and  
8 professional and general liability costs.

9 2.2. COUNTY shall pay CONTRACTOR within sixty (60) days upon complete and accurate  
10 submission of billing to COUNTY. If billing is incorrectly submitted or the Program  
11 rules are not submitted, COUNTY shall not be obligated to pay bill until proper billing is  
12 submitted.

13 **3. TERM.** The term of this Agreement shall be one (1) year from \_\_\_\_\_, 20\_\_\_\_.  
14 The term shall be automatically renewed annually, unless either party gives written notice of  
15 their intent to terminate the agreement at least sixty (60) days as set forth in accordance with the  
16 terms of this Agreement.

17 **4. INDEPENDENT CONTRACTOR.**

18 4.1. The Parties expressly intend and agree that CONTRACTOR is acting as an independent  
19 contractor and not as an employee of COUNTY. CONTRACTOR retains sole and  
20 absolute discretion, control and judgment in the manner and means of carrying out  
21 CONTRACTOR's responsibilities for the provision of services under this Agreement.

22 4.2. CONTRACTOR understands and agrees that CONTRACTOR shall not be entitled to any  
23 of the rights and privileges established for COUNTY's employees (if any) including but  
24 not limited to the following: retirement benefits, medical insurance coverage, severance  
25 pay benefits, paid vacation and sick pay, and overtime pay.

26 4.3. CONTRACTOR understands and agrees that COUNTY will not pay or withhold from  
27 the compensation paid to CONTRACTOR pursuant to this Agreement any sums  
28 customarily paid or withheld on behalf of employees for income tax, employment

1 insurance, social security, worker's compensation or any other withholding tax, insurance  
2 or payment pursuant to any law or governmental requirement and all such payments as  
3 may be required by law are the sole responsibility of CONTRACTOR.

4 4.4. This Agreement shall not be construed as a partnership, and COUNTY shall have no  
5 responsibility for any of CONTRACTOR's debts, liabilities or other obligations  
6 whatsoever. CONTRACTOR is an independent contractor and at all times during the  
7 term of this Agreement shall represent and conduct himself/herself as an independent  
8 contractor, not as an agent or employee of COUNTY. CONTRACTOR shall not have  
9 the authority, express or implied, to bind or obligate COUNTY in any way.

10 5. **INSURANCE.** CONTRACTOR hereby agrees to provide proof of insurance in the manner and  
11 in the amounts as listed in the Criteria for Court Appointment of Indigent Defense Counsel  
12 approved by the Imperial County Superior Court found at the following websites:  
13 <http://www.co.imperial.ca.us/countycounsel/> and  
14 <http://www.imperial.courts.ca.gov/PDFDocs/CrtApptListPolicy.pdf>.

15 6. **INDEMNIFICATION.**

16 6.1. CONTRACTOR agrees to the fullest extent permitted by law to indemnify, defend,  
17 protect and hold COUNTY and its representatives, officers, directors, designees,  
18 employees, agents, successors and assigns harmless from any and all claims, expenses,  
19 liabilities, causes of action, demands, losses, penalties, attorneys fees and costs, in law or  
20 equity, of every kind and nature whatsoever arising out of or in connection with  
21 CONTRACTOR's negligent acts and omissions or willful misconduct under this  
22 Agreement ("Claims"), whether or not arising from the passive negligence of COUNTY,  
23 but does not include Claims that are finally determined to be the result of the sole  
24 negligence or willful misconduct of COUNTY.

25 6.2. CONTRACTOR agrees to defend with counsel acceptable to COUNTY, indemnify and  
26 hold COUNTY harmless from all Claims.

27 7. **TERMINATION.**

28 7.1. TERMINATION FOR CAUSE: Upon material breach of this Agreement, COUNTY or

1 CONTRACTOR shall have the right to terminate this Agreement by giving written notice  
2 to the other Party of such termination and specifying the effective date of such  
3 termination.

4 7.2. TERMINATION FOR CONVENIENCE: COUNTY or CONTRACTOR may terminate  
5 this Agreement at any time, with or without cause, by giving written notice to the other  
6 Party of such termination and specifying the effective date thereof at least sixty (60) days  
7 before the effective date of such termination. Termination of this Agreement shall not be  
8 effective until CONTRACTOR has been relieved by the Imperial County Superior Court  
9 of all representation required under prior appointments made by the Court.

10 7.3. Removal of CONTRACTOR from the Court Appointment List is a separate action than  
11 termination of this Agreement. Relief from representation of any existing defendants may  
12 only be obtained through the Imperial County Superior Court. If CONTRACTOR is  
13 being paid for services provided as a result of prior appointments made by the Court, this  
14 Agreement shall remain in place.

15 8. **ASSIGNMENT.** CONTRACTOR shall not assign any interest in this Agreement, and shall not  
16 transfer any interest therein (whether by assignment or novation) without the prior written  
17 consent of COUNTY thereto.

18 9. **NOTICES AND REPORTS.**

19 9.1. All notices and reports under this Agreement shall be in writing and may be given by  
20 personal delivery or by mailing by U.S. mail, addressed as follows:

21 **COUNTY**

22 County of Imperial  
23 Attn: County Counsel  
24 940 W. Main St., Suite 205  
El Centro, CA 92243

**CONTRACTOR**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25 9.2. All notices and reports under this Agreement may be given by personal delivery or by  
26 mailing by U.S. Mail at such other address as either Party may designate in a notice to the  
27 other Party given in such manner.

28 9.3. Any notice given by mail shall be considered given when deposited in the U.S. Mail,

1 postage prepaid, addressed as provided herein.

2 **10. PARTIAL INVALIDITY.** If any provision in this Agreement is held by a court of competent  
3 jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless  
4 continue in full force without being impaired or invalidated in any way.

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

8 **12. COUNTERPARTS.** This Agreement may be executed in counterparts.

9 IN WITNESS THEREOF, COUNTY and CONTRACTOR have executed this Agreement as of  
10 the date first above written.

11 **CONTRACTOR:**

**COUNTY OF IMPERIAL:**

12  
13 By: \_\_\_\_\_

By: \_\_\_\_\_  
ERIC HAVENS  
COUNTY COUNSEL

14  
15  
16  
17 **APPROVED AS TO FORM:**

18  
19  
20 By: \_\_\_\_\_  
MISTELLE ABDELMAGIED  
ASSISTANT COUNTY COUNSEL