

**PROPOSED AGREEMENT**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR".

**RECITALS**

**Section 1 – DEFINITIONS**

- A. "ATTORNEY" shall mean \_\_\_\_\_, and includes staff attorneys, employees, agents, servants, representatives, assignees and subcontractors.
- B. "COUNTY" shall mean the County of Fresno, a Political Subdivision of the State of California.
- C. "Court" shall mean the Superior Court of California, County of Fresno, including the branch courts and Juvenile Courts of Fresno County, unless otherwise specifically indicated.
- D. "Glass Wall" shall mean the structure, policies, procedures and practices established by relevant case law, including *Castro v. Los Angeles County Board of Supervisors*, (1991) 232 Cal.App.3d 1432, which shall be implemented herein to ensure that no conflicts of interest shall exist or be possible between Level One Conflicts Office, the Level Two Conflicts Office and Wheel Attorneys.
- E. "Indigent" shall mean a person for whom the Court is required, by statute or case law, in effect during the term of the Agreement, to appoint counsel at public expense, but for whom the Public Defender is unable to provide representation by reason of a legal conflict of interest or other reason, and whom the Court has deemed to be an indigent person.
- F. "Level One Conflicts Office" shall mean that legal office within Attorney that shall handle those cases and/or indigent defendants for which the Public Defender has declared a conflict of interest. Such cases and representation shall be

1 assigned to the Level One Conflicts Office for assignment to its attorneys. The  
2 functions, responsibilities and duties of the Level One Conflicts Office shall be borne  
3 and carried out by CONTRACTOR's primary office.

4 G. "Level Two Conflicts Office" shall mean that legal office within  
5 ATTORNEY that, for the purposes of maintaining separate representation and  
6 avoidance of a conflict of interest, is separate and distinct from the Level One  
7 Conflicts Office and that shall handle those cases and/or indigent defendants for  
8 which the Public Defender and Level One Conflicts Office both have declared a  
9 conflict of interest. Such cases and/or defendants shall be assigned to the Level  
10 Two Conflicts Office for Assignment to its attorneys. The functions, responsibilities  
11 and duties of the Level Two Conflicts Office shall be carried out and borne by the  
12 ATTORNEY's second office.

13 H. "Public Defender" shall mean the Office of the Public Defender, County  
14 of Fresno.

15 I. "Stand In Attorney(s)" shall mean those independent attorneys under  
16 contract to ATTORNEY to accept appointments on behalf of ATTORNEY due to the  
17 unavailability of a Wheel Attorney.

18 J. "Wheel Attorney(s)" shall mean those independent attorneys under  
19 contract to ATTORNEY to provide legal defense services to cases and/or indigents  
20 where a conflict has been declared by the Public Defender, the Level One Conflicts  
21 Office, and the Level Two Conflicts Office. Wheel Attorneys maintain offices  
22 separate from the Public Defender, the Level One Conflicts Office, the Level Two  
23 Conflicts Office and such other attorneys that ATTORNEY engages to act as a  
24 Wheel Attorney. The use of separate Wheel Attorneys is to avoid conflicts of  
25 interest with the Level Once Conflicts Office, the Level Two Conflicts Office and  
26 other Wheel Attorneys. A "Glass Wall" shall separate contract Attorneys.

27

## 28 Section 2 - SCOPE OF WORK

### 29 A. General Duties

30 ATTORNEY agrees to provide competent and adequate legal representation  
31 of indigent defendants in the Court when appointed to do so by a judge of the Court.

1 ATTORNEY shall only accept appointments when the Court has previously  
2 determined that a conflict of interest or potential conflict of interest exists which  
3 causes the Public Defender to be unable to represent that defendant.

4 ATTORNEY's representation shall be of the kind usually and customarily  
5 provided by a public defender as a complete legal defense service in criminal cases  
6 for indigent defendants who the Court appoints ATTORNEY to represent. Such  
7 complete legal defense services shall include, without limitation, all necessary court  
8 appearances for arraignments, bail, motions, trials, adjudications, hearings,  
9 dispositions, and sentencing; preparation of writs, legal research and trial  
10 preparation; necessary support services, including, without limitation, investigative,  
11 paralegal and clerical support services; necessary ancillary services including,  
12 without limitation, polygraphs, expert witnesses, psychological evaluations,  
13 interpreter services, transcripts and court appearance clothing for defendants; all  
14 necessary motions and appearances to the conclusion of the proceeding, including  
15 without limitation, requests for modification of probation determined to be meritorious  
16 by the Court, review hearings, alleged violations of probation or failure in a  
17 diversionary program or other representation of a previously sentenced or  
18 adjudicated client not involving new criminal charges and collateral appearances for  
19 such actions as dismissals under Vehicle Code section 41500 or as part of a plea  
20 bargain agreement; all legal defense services reasonably and legally required  
21 therein from time of appointment through a final adjudication of the proceeding,  
22 including those duties required by Penal Code section 1240.1(a); and all other and  
23 such other legal representation or services necessary to provide complete legal  
24 defense services to disposition of a defendant's case.

25 B. Provide up to Seven Levels of Conflict Defense

26 ATTORNEY and COUNTY shall provide legal defense services for up to  
27 seven conflict levels for individual indigent defendants in a case. ATTORNEY shall  
28 employ that combination of the Level One Conflicts Office, the Level Two Conflicts  
29 Office and Wheel Attorneys as are necessary to ensure the delivery of complete  
30 legal defense services for up to seven defendants in a single case.

31 C. Attorney Staffing in Level One and Level Two Conflicts Offices

1 ATTORNEY shall deploy such attorneys in the Level One Conflicts Office and  
2 Level Two Conflicts Office in such sufficient numbers and with the requisite  
3 preparation, experience and availability as will provide the legal  
4 representation contemplated in this Agreement and as will ensure that the  
5 business of the Court is not unreasonably delayed or impeded. ATTORNEY  
6 shall provide a sufficient number of competent attorneys to staff the Level  
7 One Conflicts Office, presently estimated to be at least \_\_\_\_\_ full-time  
8 attorneys \_\_\_\_\_ part-time attorney, in order to deliver legal services to  
9 indigent defendants and provide adequate coverage to the Court.

10 ATTORNEY shall provide a sufficient number of competent attorneys to staff  
11 the Level Two Conflicts Office, presently estimated to be at least \_\_\_\_\_  
12 full-time attorneys, and \_\_\_\_\_ part-time attorney, in order to deliver legal  
13 defense services to indigent defendants and to provide adequate coverage to  
14 the Court.

15 D. Wheel Attorneys

16 ATTORNEY and COUNTY have the mutual objective to achieve a legal  
17 defense system that provides indigent defense services for up to seven (7) levels of  
18 conflict defense. ATTORNEY recognizes that a minimum of five (5) Wheel  
19 Attorneys are to be utilized to deliver legal services beyond the Level One Conflicts  
20 Office and the Level Two Conflicts Office. The five (5) Wheel Attorneys are  
21 designed to deliver legal defense services to indigent defendants for the third  
22 through seventh levels of conflict and to provide adequate coverage to the Court.  
23 Therefore, ATTORNEY shall maintain under contract a sufficient number of  
24 attorneys to ensure that five (5) Wheel Attorneys are available to provide legal  
25 defense services to indigent defendants. To enable ATTORNEY to meet its  
26 obligation to provide five (5) Wheel Attorneys, ATTORNEY may choose to use up to  
27 two (2) attorneys employed by ATTORNEY in any office of ATTORNEY other than  
28 those offices providing Level One and Level Two Conflicts services under this  
29 Agreement. The use of such employed attorneys shall be credited against the  
30 obligation to provide at least five (5) Wheel Attorneys on a case.

1           ATTORNEY recognizes COUNTY's objective to obtain legal services across  
2 all seven (7) levels of conflict defense. A Wheel Attorney declaring a conflict in  
3 representing an indigent defendant exposes COUNTY to increased costs for court-  
4 appointed attorneys to represent the indigent defendant. COUNTY desires that such  
5 conflicts be minimized so that the maximum number of indigent defendants receive  
6 representation under this Agreement instead of through court-appointed attorneys.  
7 To that end, and to the extent permitted by law, ATTORNEY shall endeavor to  
8 minimize the number of Wheel Attorneys who allege a conflict of interest.

9 ATTORNEY shall provide COUNTY with a monthly statistical report on the number  
10 of declared conflicts by Wheel Attorneys that resulted in court-appointed attorneys  
11 representing indigent defendants. In addition, ATTORNEY shall promptly initiate  
12 such procedures as will assist ATTORNEY in minimizing declared conflicts of  
13 interest. ATTORNEY shall also meet with COUNTY at least every six (6) months to  
14 consult over changes or refinements to the Agreement or the parties' implementation  
15 thereto that are reasonably needed to minimize the number of conflicts resulting in  
16 court appointments of private attorneys. However, ATTORNEY shall meet with  
17 COUNTY at times earlier than every six (6) months if the circumstances warrant and  
18 upon COUNTY's request. An important purpose of the reports, meetings and  
19 consultation is to avoid causing COUNTY to incur additional costs from a Court  
20 appointment of private counsel at COUNTY expense.

21           ATTORNEY's contracts with private attorneys shall be in writing and shall  
22 contain provisions that: (1) prohibit them from seeking court appointment directly  
23 from the Court to represent any indigent defendant ATTORNEY previously assigned  
24 to them; (2) prohibit them from converting any indigent defendant ATTORNEY  
25 previously assigned to them into a private criminal defense client; (3) identify  
26 COUNTY as an intended beneficiary to the contract between ATTORNEY and the  
27 private attorney and that COUNTY has the power and authority to enforce said  
28 contract to protect COUNTY's interest; (4) prohibit the private attorney from  
29 receiving compensation from any source other than ATTORNEY in providing legal  
30 defense services to the indigent defendant that ATTORNEY assigned to them; (5)  
31 require all Wheel Attorneys to obtain the insurance policies required of ATTORNEY

1 in Section 17 of this Agreement, and to name COUNTY as an additional insured in  
2 each such insurance policy; notwithstanding the foregoing, the minimum required  
3 aggregate professional liability coverage for each Wheel Attorney shall be  
4 \$1,000,000 per year; (6) require all Wheel Attorneys to notify ATTORNEY a  
5 minimum of sixty (60) days prior notice of an intention to terminate the contract and  
6 provide that Wheel Attorney(s) representation of indigent defendant(s) must continue  
7 until case(s) are completed or transferred, before said contract may be terminated;  
8 and (7) ATTORNEY shall include in each contract with a private attorney the  
9 provisions set forth in this Section 2.D.

10 E. Stand In Attorney

11 If permissible, attorneys from either of the two (2) offices described herein  
12 shall specially appear to accept appointment on a case on behalf of a Wheel  
13 Attorney if the assigned Wheel Attorney cannot respond within one half (1/2) hour of  
14 the Court's request. If said staff attorneys cannot appear, ATTORNEY shall make  
15 arrangements to have another attorney specially appear to accept appointment on a  
16 case; the cost of said appearance shall be borne by ATTORNEY. ATTORNEY shall  
17 establish a clear policy regarding the acceptance of appointments on behalf of  
18 another attorney that includes how Wheel Attorney shall be accepted and notified.  
19 Stand In Attorney shall accept the responsibility to notify the firm or Wheel  
20 Attorney(s) of the appointment in a timely manner. ATTORNEY shall maintain a list  
21 of attorneys committed to making such special appearances on behalf of the Wheel  
22 Attorneys in the circumstances described above.

23 F. Appointment Process

24 The Court will first appoint the Public Defender to represent an indigent  
25 defendant. Whenever the Public Defender declares a conflict of interest, the Court  
26 will appoint ATTORNEY to represent the indigent defendant through its Level One  
27 Conflicts Office. Whenever the Public Defender and the Level One Conflicts Office  
28 declare a conflict of interest, the Court shall appoint ATTORNEY to represent the  
29 indigent defendant through its Level Two Conflicts Office. If the Public Defender, the  
30 Level One Conflicts Office and the Level Two Conflicts Office declare a conflict of

1 interest, the Court will appoint ATTORNEY to represent indigent defendants through  
2 Wheel Attorneys.

3 G. Office Appointments

4 ATTORNEY shall maintain two separate and adequate Fresno offices open  
5 during normal business hours for indigent defendants' appointments with Level One  
6 Conflicts Office and Level Two Conflicts Office who are not in custody. ATTORNEY  
7 shall maintain published office addresses and telephone numbers and a telephone  
8 answering service or devices for the taking of telephone messages during non-  
9 business hours. ATTORNEY shall employ adequate numbers of Spanish-speaking  
10 staff in order to service Spanish-speaking clients. In-custody clients generally shall  
11 be interviewed within thirty-six (36) hours of ATTORNEY's appointment. Out-of-  
12 custody clients generally shall be interviewed within seventy-two (72) hours of  
13 ATTORNEY's appointment.

14 H. Obligation to Keep Courts Informed

15 ATTORNEY shall keep all courts informed of the status of pending cases for  
16 which ATTORNEY has been appointed and shall advise the Court at the earliest  
17 possible time as to whether cases will be settled or go to trial, whether continuances  
18 are needed, whether and when interpreters will be needed, and other such matters  
19 bearing on the scheduling of cases before the courts. At the commencement of this  
20 Agreement, ATTORNEY shall submit to the Presiding Judge of the Court written  
21 plans setting forth the deployment of attorneys in the Level One Conflicts Office,  
22 Level Two Conflicts Office and Wheel Attorneys. ATTORNEY shall submit to the  
23 Court updates of the deployment plans as soon as is reasonably possible to reflect  
24 changes in the deployment of attorneys.

25 The staffing maintained by the Level One Conflicts Office and the Level Two  
26 Conflicts Office shall be sufficient to assure the timely appearance of attorneys of  
27 those offices when requested by the Courts to accept appointment on a case.  
28 ATTORNEY shall make all efforts to assure the timely appearance of the Wheel  
29 Attorneys upon request of the Courts to accept appointment on a case. If  
30 permissible, attorneys from either of the two (2) offices described herein shall  
31 specially appear to accept appointment on a case on behalf of a Wheel Attorney if

1 the assigned Wheel Attorney cannot respond within one half (1/2) hour of the Court's  
2 request. If said staff attorneys cannot appear, ATTORNEY shall make  
3 arrangements to have another attorney specially appear to accept appointment on a  
4 case.

5 In the event the Court notifies ATTORNEY of any proposed changes in the  
6 Court calendars or other operational changes which may impact the deployment  
7 plans, ATTORNEY shall promptly notify all Level One Conflicts Offices, Level Two  
8 Conflicts Offices and Wheel Attorneys of said operational changes to assure  
9 adequate coverage. ATTORNEY shall submit to the Court updates of the  
10 deployment plans as soon as reasonably possible to reflect changes in the  
11 deployment of attorneys.

12 I. Administration of Attorneys

13 ATTORNEY shall generate written practices and procedures to govern the  
14 Level One Conflicts Office, the Level Two Conflicts Office and Wheel Attorneys. The  
15 written practices and procedures will regulate conduct in the above offices as to  
16 avoid conflicts of interest or the appearance of a conflict of interest that would  
17 impede or negate legal representation by assigned attorneys. The written practices  
18 and procedures are attached thereto as *Exhibit "A"* and are incorporated herein by  
19 this reference. ATTORNEY shall provide copies of the written practices and  
20 procedures, as well as necessary instruction, to each attorney in the Level One  
21 Conflicts Office and the Level Two Conflicts Office, as well as to each Wheel  
22 Attorney and Stand-in Attorneys.

23 J. Covered Proceedings

24 ATTORNEY agrees to accept appointments to represent such indigent  
25 defendants regarding any case, which for this Agreement is defined to encompass  
26 any and all of the proceedings enumerated below, and in which the Public Defender  
27 is unable to or has refused to provide representation because of a conflict of interest  
28 or other reason. ATTORNEY shall defend, without expense to the defendant, an  
29 indigent defendant at any and all stages of a Covered Proceeding.

30 a. Representation in criminal matters pursuant to Penal Code  
31 Section 683, including all changes, counts or cases pending against a



1 single individual and disposed of at one time, excluding matters involving  
2 special circumstances and those cases where a co-defendant or co-  
3 defendants is/are charged with murder under special circumstances.

4 b. Representation of an adult defendant, including a juvenile tried  
5 as an adult, or juvenile ward in any misdemeanor or felony matter in the  
6 Court continuing to final disposition or adjudication.

7 c. Representation of an Adult defendant or juvenile ward in a  
8 matter that commenced as a misdemeanor and was subsequently  
9 reduced to an infraction pursuant to Penal Code Section 19.6, where the  
10 Court has determined that the individual is legally entitled to  
11 representation.

12 d. Representation of a juvenile ward in a Juvenile Court  
13 proceeding pursuant to Welfare and Institutions Code Sections 601 or  
14 602.

15 e. Representation of a parent in a Juvenile Court proceeding  
16 pursuant to Welfare and Institutions Code section 634 in sections 601 and  
17 602 proceedings.

18 f. Review hearings, violation of probation hearings detention or  
19 commitment hearings, supplemental modification, set aside and/or  
20 termination petitions, and other related hearings pursuant to Welfare and  
21 Institutions Code sections 601, 602, 625, 775, 777, 779, 780, 781, 782,  
22 and/or 785 held within eighteen (18) months of disposition; except that  
23 ATTORNEY's representation under this subsection I.f shall not extend  
24 beyond six (6) months following the expiration or termination of this  
25 agreement, it being the intent of the parties that ATTORNEY's successor  
26 take over such representation after the six (6) month period.

27 g. Representation of a witness in the prosecution of an adult  
28 defendant, including a juvenile tried as an adult, or of a juvenile ward  
29 where the Court has determined that the witness is legally entitled to  
30 appointed counsel and the Public Defender has declared a conflict of  
31 interest in that matter or as to the witness.

1           h.     Pre-trial appeals and extraordinary writs to the Court, or the  
2     District Court of Appeals, related to proceedings referred to in subsections  
3     a. through g. above, provided that ATTORNEY may decline appellate  
4     appointments when ATTORNEY has represented the client in related trial  
5     court proceeding such that conflict of interest exists, but subject to  
6     appointment to a higher level of conflict of interest exists as to that higher  
7     level.

8           i.     ATTORNEY will in all cases of appointment assist assigned  
9     indigent defendant or ward in perfecting his or her right to appeal.

10    K.    Excluded Proceedings

11        This Agreement does not require ATTORNEY to accept appointments  
12    regarding the following actions:

- 13           a. Contempt citations, including, but not limited to, Family Support  
14           proceedings;  
15           b. Conservatorships or guardianships;  
16           c. Determination of motions for new trial alleging including incompetence  
17           of former counsel;  
18           d. Appointments caused by Public Defender unavailability;  
19           e. Special Circumstances cases; and  
20           f. Any other action not specified in this Agreement.

21    L.    Ancillary Services

22        ATTORNEY shall provide such ancillary and supportive services as may be  
23    necessary to provide adequate representation, including but not limited to,  
24    investigative services, expert witnesses, polygraph examinations where deemed  
25    necessary by ATTORNEY, and such other services properly required by  
26    ATTORNEY designed to assist the indigent defendant in the preparation and  
27    presentation of his or her case. ATTORNEY shall retain a sufficient number of  
28    investigators on staff at all times for each of the Level One Conflicts Office and the  
29    Level Two Conflicts Office. ATTORNEY shall employ at least two (2) full-time  
30    investigators at all times in the Level One Conflict Office to provide investigative  
31    services adequate to service the projected caseload. ATTORNEY shall employ at

1 least one (1) full-time investigator for the Level Two Conflicts Office. ATTORNEY  
2 shall utilize office staff to provide interpreter services. At least three (3) office staff  
3 members shall be English/Spanish bilingual in the Level One conflicts Office. At  
4 least one (1) office staff member shall be English/Spanish bilingual in the Level Two  
5 Conflicts Office. Non-Spanish interpreter services will be provided on a fee-for-  
6 service basis. The following services shall be provided by ATTORNEY on a fee-for-  
7 service basis, to be paid from the Reimbursable Services Fund provided in Section  
8 7.B of this Agreement:

- 9 a. All interpreter services not provided by ATTORNEY's bilingual staff;
- 10 b. Expert witness fees;
- 11 c. Depositions and transcripts;
- 12 d. Polygraph services;
- 13 e. Clothing for court appearances for incarcerated defendants as  
14 required; and
- 15 f. Other specialized services which cannot be reasonably be provided by  
16 ATTORNEY's staff.

17 M. Private Practice of Law

18 ATTORNEY shall be allowed to engage in the private practice of law,  
19 including the defense of those charged with crimes, provided that no private case  
20 may cause a conflict of interest which would prevent the ATTORNEY from providing  
21 the contracted services. ATTORNEY shall not accept any compensation or other  
22 material benefit for providing legal defense services to any indigent defendant in a  
23 case that is a Covered Proceeding under this Agreement. Under no circumstances  
24 shall ATTORNEY receive compensation for providing legal defense services to an  
25 indigent defendant in a Covered Proceeding except pursuant to this Agreement.  
26 ATTORNEY shall also refrain from any actions resulting in a referral of an indigent  
27 defendant, subsequently determined to be eligible to receive legal defense services  
28 under this Agreement in a Covered Proceeding, to a different attorney already  
29 employed by ATTORNEY's Level One Conflicts Office, Level Two Conflicts Office or  
30 Wheel Attorney, for compensation other than from this Agreement. For purposes of  
31 this subsection 2.M., the use of the term "ATTORNEY" is specifically intended to

1 include attorneys in the Level One Conflicts Office, the Level Two Conflicts Office,  
2 and Wheel Attorneys.

3

4 **Section 3 – TERM; RENEWAL OPTIONS; DURATION OF REPRESENTATION**

5 A. The term of this Agreement shall be from July 1, 2012 through and  
6 including June 30, 2015. ATTORNEY shall accept appointments for such cases  
7 assigned, whether newly appointed or transferred from the previous provider, within  
8 the term of this Agreement beginning on July 1, 2007.

9 B. The Agreement may be extended by COUNTY, at COUNTY's option,  
10 for no more than two (2) consecutive one-year terms (the "Renewal Term(s)"),  
11 subject to one hundred eighty (180) days written notice to ATTORNEY prior to the  
12 expiration of the then-existing term. .

13 C. Upon termination or expiration of this Agreement, whichever and  
14 whenever occurring, ATTORNEY shall transfer any misdemeanor case without a set  
15 trial date immediately to the new provider(s). Any misdemeanor case set for trial  
16 shall remain with ATTORNEY until the case is concluded within the meaning of this  
17 Agreement. Any felony case assigned to ATTORNEY with a set preliminary hearing  
18 date shall remain with ATTORNEY through preliminary hearing, if said case involves  
19 the defendant entering a guilty plea at the preliminary hearing, the case shall remain  
20 with ATTORNEY through sentencing. If the outcome at said preliminary hearing is  
21 Held To Answer, the Court will appoint new counsel (new provider) at the time the  
22 defendant is arraigned on information. If a felony case is scheduled for a Jury Trial,  
23 the case shall remain with ATTORNEY through the trial or until the case file is  
24 closed as defined in Section 13 of this Agreement. ATTORNEY shall use its best  
25 efforts to transfer all cases to the new provider(s) of services as soon as possible,  
26 provided however, in the event ATTORNEY's representation to such conclusion of  
27 cases describe above will, despite such best efforts, need to continue beyond the  
28 termination or expiration of this Agreement so that ATTORNEY may wind up its  
29 performance of legal services to such affected clients, the terms and conditions of  
30 this Agreement (except Section 4(C) [termination without cause] shall continue to  
31 apply to such cases, but only such cases (collectively, "Holdover Cases").

1           Should ATTORNEY be required to provide legal services in such Holdover  
2 Cases, ATTORNEY shall, not later than five (5) days after the termination or  
3 expiration of this Agreement, give COUNTY written notice of the Holdover Cases  
4 [and specify the names and general nature of the relevant Holdover Cases, e.g.,  
5 misdemeanor, felony].

6           In the event of a transition between ATTORNEY and another  
7 provider(s) the transition process shall be monitored through Justice partner  
8 meetings during the transition period and shall be chaired by the Court. Said  
9 meetings shall address any issues or concerns with the new provider(s) or the  
10 transition process. Justice partners shall consist of representatives of the Court,  
11 District Attorney's Office, Public Defender's Office, Alternate Indigent Defense  
12 Provider, Probation, and the Sheriff's Department. Said meetings shall be held  
13 biweekly during the first month of transition, monthly during the following two (2)  
14 months, and quarterly thereafter.

15

#### 16 **Section 4 – TERMINATION**

17           A.     Non-Allocation of Funds - The terms of this Agreement, and the services  
18 to be provided thereunder, are contingent on the approval of funds by the appropriating  
19 government agency. Should sufficient funds not be allocated, the services provided  
20 may be modified, or this Agreement terminated, at any time by giving the  
21 CONTRACTOR thirty (30) days advance written notice.

22           B.     Breach of Contract - The COUNTY may immediately suspend or  
23 terminate this Agreement in whole or in part, where in the determination of the  
24 COUNTY there is:

- 25                   1)     An illegal or improper use of funds;  
26                   2)     A failure to comply with any term of this Agreement;  
27                   3)     A substantially incorrect or incomplete report submitted to  
28 COUNTY;  
29                   4)     Improperly performed service.

30           In no event shall any payment by the COUNTY constitute a waiver by the

1 COUNTY of any breach of this Agreement or any default which may then exist on the  
2 part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy  
3 available to the COUNTY with respect to the breach or default. The COUNTY shall  
4 have the right to demand of the CONTRACTOR the repayment to the COUNTY of any  
5 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of  
6 the COUNTY were not expended in accordance with the terms of this Agreement. The  
7 CONTRACTOR shall promptly refund any such funds upon demand.

8 C. Without Cause - Under circumstances other than those set forth above,  
9 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days  
10 advance written notice of an intention to terminate to CONTRACTOR.

11

## 12 **Section 5 – FINANCIAL ELIGIBILITY DETERMINATION**

13 The determination of financial eligibility or indigence is the sole responsibility  
14 of the Court. Non-privileged information subsequently obtained by ATTORNEY that  
15 suggests that a client is not eligible for appointment of counsel, shall be provided to  
16 the Court. At the request of the Court, ATTORNEY shall attend, as a witness, any  
17 hearing regarding the client's ability to reimburse COUNTY for the value of  
18 ATTORNEY's services. ATTORNEY's participation in such a hearing remains  
19 subject to appropriate claims of privilege. Upon commencement of representation,  
20 ATTORNEY shall advise client of the requirements of this section.

21

## 22 **Section 6 - FINANCIAL ELIGIBILITY RECORDS**

23 Determination of financial eligibility or indigence is the sole responsibility of  
24 the Court. ATTORNEY shall nevertheless prepare and maintain records sufficient to  
25 enable County to determine the cost of representing each person represented by  
26 ATTORNEY and shall make such records available to COUNTY upon COUNTY's  
27 request. ATTORNEY shall obtain from each and every person ATTORNEY is  
28 appointed to represent, a completed questionnaire verifying the person's eligibility  
29 for conflict Public Defender services. At no additional expense ATTORNEY shall  
30 participate and assist the County in the preparation of any questionnaire and shall  
31 provide the applicable courts with a copy of each such completed questionnaire

1 upon disposition of each case for which ATTORNEY is appointed. ATTORNEY's  
2 participation and disclosure remains subject to appropriate claims to privilege.

3

4 **Section 7 – CONTRACT PRICE**

5 A. Total Contract Price:

6 The Total Contract Price to be paid ATTORNEY by COUNTY is not to exceed  
7 \_\_\_\_\_, consisting of \_\_\_\_\_ for the services to be provided  
8 hereunder, including the work to be performed hereunder, for all of the  
9 administration, management and supervision, attorney services, support services,  
10 ancillary services, and other services identified in ATTORNEY's Proposal to  
11 COUNTY's RFP, and \_\_\_\_\_ for those enumerated Reimbursable Services  
12 which are set forth in subsection B below, all as further defined and specified in this  
13 Agreement (hereinafter referred to as "Total Contract Price.") The Total Contract  
14 Price includes all of the prices, fees, charges and expenses necessary in  
15 accordance with this Agreement to provide the services hereunder and to meet the  
16 requirements of ATTORNEY to provide the services hereunder and to meet the  
17 requirements of ATTORNEY's Proposal and the COUNTY's RFP. The Total  
18 Contract Price is the sole consideration to be paid to ATTORNEY hereunder, and  
19 includes provision for all out-of-pocket costs, such as computer time, freight, long  
20 distance telephone charges, travel expenses, copying, telecopying, faxing and  
21 postage, and for all items or services necessary to deliver the services described  
22 herein. Accordingly, no amounts not specified in this Section 7 shall be billed to or  
23 paid by COUNTY, except pursuant to the Agreement or amendment hereto  
24 authorized by COUNTY's Board of Supervisors. ATTORNEY shall not assign any  
25 payments or portions of payments without prior written consent of COUNTY.

26 ATTORNEY's agreement to this Flat Fee is based upon ATTORNEY's  
27 Proposal and ATTORNEY's independent investigation and review of the statistical  
28 information set forth in COUNTY's RFP and ATTORNEY's Proposal. The parties  
29 agree and represent to each other that the Flat Fee basis of compensation has been  
30 established after consideration of the facts set forth in California Penal Code Section  
31 987.3.

1           The parties to this Agreement acknowledge that the compensation for  
2 ATTORNEY is based in part on the number of judicial positions existing in the Court  
3 as of the date of this Agreement. In the event additional judicial positions(s) are  
4 created in the Court during the term of this Agreement, the parties agree to meet  
5 and confer regarding the impact of such additional positions(s). If ATTORNEY's  
6 duties and responsibilities are materially impacted by such additional positions(s),  
7 the parties shall negotiate in good faith to increase ATTORNEY's compensation so  
8 that ATTORNEY will continue to be able to meet its obligations under this  
9 Agreement. In the event the parties cannot agree upon such increase in  
10 ATTORNEY's compensation within sixty (60) days of the commencement of such  
11 negotiations, then either party may terminate this contract by giving ninety (90) days'  
12 written notice of intent to terminate to the other party.

13           B.     Reimbursable Service Fund:

14           For the purposes of this Agreement, there are two classes of ancillary  
15 services. The first class is the Spanish interpreter and investigative services to be  
16 provided by the in-house staff of ATTORNEY. The second class in Reimbursable  
17 Services is limited to non-Spanish interpreter services, expert witness fees, court  
18 reporters utilized in depositions, transcript services, polygraph services, defendant  
19 clothing for courtroom appearances of incarcerated defendants, and other  
20 specialized services which cannot reasonably be provided by ATTORNEY's own  
21 staff. To provide funds for the purpose of reimbursement of the reasonably  
22 necessary charges for these Reimbursable Services, the parties agree to hereby  
23 identify and segregate a portion of the Total Contract Price to serve as a fund from  
24 which ATTORNEY may seek reimbursement, and to operate that fund (hereinafter  
25 referred to as "Fund") as follows:

26           1.     The parties agree and understand that the funds to be appropriated by  
27 COUNTY for identification and use in the Fund are included within and are a part of  
28 the Total Contract price.

29           2.     COUNTY will appropriate \_\_\_\_\_ each fiscal year of the  
30 Agreement. The total three-year appropriation by COUNTY for the Fund shall not  
31 exceed \_\_\_\_\_.



1           3.     ATTORNEY shall submit an invoice for up to Ten Thousand Dollars  
2 (\$10,000) as a first draw on these funds for each of the Level One and Level Two  
3 Conflicts Offices. ATTORNEY shall place said monies in a trust fund which shall be  
4 equally accessible to the attorneys to whom an indigent defendant case is assigned.  
5 When the initial payment has been drawn down to an amount of \_\_\_\_\_ or  
6 less, ATTORNEY may request up to an additional Ten Thousand Dollars (\$10,000)  
7 drawn down by invoice, supported by such accounting and reporting as specified in  
8 section 12, submitted to COUNTY.

9           4.     Any part of the annually appropriated Fund which is not used or utilized  
10 for payment of invoices for charges incurred in that year, shall revert to COUNTY  
11 and is not subject to further charges hereunder.

12           5.     Charges in any year, which exceed the annual amount appropriated by  
13 COUNTY for that year, will be applied against the appropriation for the succeeding  
14 year or years remaining in the Agreement.

15           6.     ATTORNEY shall have no personal interest in the funds appropriated  
16 by COUNTY for use in the Fund, and ATTORNEY agrees and understands that the  
17 sole purposed of the Fund is reimbursement of the reasonable and necessary  
18 charges incurred by ATTORNEY in the provision of Reimbursable Services.

19           7.     In the event that the total appropriations to the Fund for the three year  
20 period of this Agreement have been fully exhausted hereunder by ATTORNEY  
21 through invoices for reasonable and necessary charges for the provision of  
22 Reimbursable Services, the parties agree that they will mutually review the amounts  
23 and funding levels set forth in this subsection and explore an adjustment thereof  
24 through agreement renegotiations and agreement modification.

25           C.     Payment:

26           ATTORNEY shall receive payment according to the following schedule: [*to*  
27 *be delineated upon determination of annual amounts but generally expected to be*  
28 *1/12<sup>th</sup> of the annual amount for services, excluding Reimbursable Services noted*  
29 *above*].

30           Payment for services, other than Reimbursable Services, shall occur within  
31 ten (10) days after the end of each month in which services were rendered.

1           The compensation payable under this subsection is the maximum amount  
2 which COUNTY shall pay ATTORNEY for providing legal defense services to  
3 indigent defendants under this Agreement, and ATTORNEY shall assume and pay  
4 all other expenses incurred in ATTORNEY's performance of this Agreement.

5           COUNTY shall receive all funds collected pursuant to Penal Code sections  
6 987.4, 987.6, and 987.8, Government Code section 27712, and any other statutes or  
7 case law providing for reimbursement for the cost of legal defense services rendered  
8 under this Agreement, and no portion of said funds shall inure to ATTORNEY's  
9 benefit or otherwise affect the amounts specified in this Section 7 of this Agreement.

#### 10 11 **Section 8 – CASELOAD AND WORK LEVELS**

12           County has disclosed to ATTORNEY all information it possesses concerning  
13 the type and number of cases handled by County's prior contractor for these  
14 services for the three years immediately preceding the Agreement. The information  
15 derives from reports submitted by the current provider to COUNTY concerning the  
16 type and number of cases handled by ATTORNEY during the term of the current  
17 Agreement. ATTORNEY represents to COUNTY that it is experienced as an  
18 attorney in the representation of indigent defendants, and that its projections are  
19 based upon its independent investigation and consideration of the circumstances,  
20 policies and practices within Fresno County and has recommended a flat rate fee for  
21 the provision of services hereunder. ATTORNEY and COUNTY acknowledge that  
22 many factors outside the control of the parties can affect the ability of ATTORNEY to  
23 accurately project caseloads and work levels with certainty. The court and the  
24 prosecution largely control such factors and the length of time between arraignment  
25 and trial, local sentencing practices, and pleading negotiation practice. ATTORNEY  
26 has anticipated and liquidated in its flat fee rate, to the extent possible, all additional  
27 expenses arising from such changes, and ATTORNEY assumes the risk of and  
28 hereby waives any claim(s) to additional compensation for expenses which may be  
29 incurred by reason of such or similar circumstances.

30           These representations by ATTORNEY are a significant and substantial  
31 inducement to COUNTY to enter into this Agreement with ATTORNEY, and

1 COUNTY relies upon ATTORNEY's experience and understanding of the criminal  
2 justice system, as well as ATTORNEY's understanding of the circumstances likely to  
3 occur during the term of the Agreement.

4 Notwithstanding the foregoing, extraordinary changes beyond the reasonable  
5 expectation of the parties may give rise to a need to modify this Agreement to ensure  
6 that ATTORNEY will be able to perform the obligations of the Agreement and to  
7 provide adequate legal representation. In the event of extraordinary events or  
8 conditions, ATTORNEY may request COUNTY to modify this Agreement, upon  
9 reasonable notice and satisfactory proof thereof, to provide for such extraordinary  
10 events or conditions to allow ATTORNEY to perform the obligations of this  
11 Agreement.

12

### 13 **Section 9 – MINIMUM PROFESSIONAL QUALIFICATIONS**

14 ATTORNEY shall maintain two (2) full-time offices within the COUNTY, and  
15 shall ensure that all attorneys performing legal services under this Agreement are  
16 active members in good standing of the State Bar of California. ATTORNEY shall  
17 maintain ongoing communications with the local Bar Association and other  
18 interested professional groups to assure that ATTORNEY's operations meet the  
19 established professional standard for adequate representation.

20 ATTORNEY shall provide to COUNTY names of all attorneys performing legal  
21 defense services under this Agreement, their experience, qualifications, and areas of  
22 specialization, and shall update this information promptly as necessary.

23 ATTORNEY shall develop and establish categories of minimum special  
24 qualifications and categories of cases which each attorney is eligible to handle.

25 The legal representation provided by ATTORNEY and all attorneys  
26 performing services under this Agreement shall be of such high quality as will meet  
27 all constitutional, statutory, case law, and professional standards and requirements.  
28 Federal and State Constitutions require provision of competent counsel in criminal  
29 cases. In California, the recently adopted test for determining competence of  
30 counsel in criminal cases is that of a "reasonably competent attorney acting as a  
31 diligent, conscientious advocate" (*People v. Pope* (1979) 23 Cal.3d.412.)

1 ATTORNEY agrees to provide competent legal services in conformity with the above  
2 standards. Specifically, the following duties and responsibilities of counsel as set  
3 forth in prior court decisions and professional standards will be observed. These  
4 include:

5 1. The duty of careful, factual and legal investigation. (See *People v.*  
6 *Ybarra* (1983) 60 Cal.2d 480 – duty to research the law and raise objections; *In re*  
7 *Saunders* (1970) 2 Cal.3d 1033 – duty to investigate medical reports and conduct  
8 psychiatric examinations to support a diminished capacity defense; and American  
9 Bar Association Standard of Defense Function (hereinafter referred to as “ABA  
10 Standard”), section 4.1)

11 2. The duty to take prompt action to protect a client’s legal rights. (ABA  
12 Standards, section 3.6a (includes procedural steps such as moving for pre-trial  
13 release, obtain psychiatric examination, moving for change of venue or continuance,  
14 suppression of illegally obtained evidence, severance from jointly charged  
15 defendants, or dismissal)).

16 3. The duty to keep a client informed. (ABA Standards, section 3.8.)

17 4. The duty to prepare for jury selection, examination of witnesses,  
18 submission of instructions and presentation of argument at trial. (ABA Standards  
19 sections 7.2(a) and 7.2(b).)

20 5. The duty to know and explore sentencing alternatives. (ABA  
21 Standards section 8.1(b).)

22 6. The duty to advise concerning appeals. (ABA Standards section  
23 8.2(a).)

24 7. The duty not to accept more cases than can be competently handled.  
25 (See *Martin v. State Bar* (1978) 20 Cal.3d 717.)

26 8. The duty not to handle a legal matter which the attorney knows or  
27 should know that he or she is not competent to handle. (Code of Responsibility,  
28 Canon 6, disciplinary rule no. 6-101(a).)

29 9. The duty to maintain confidence and secrets.

30 10. The duty to administer the Level One and Level Two Conflicts Offices  
31 in full compliance with any and all constitutional, legal, ethical, professional

1 obligations, duties and responsibilities governing such conflict as required under this  
2 Agreement, as specified in Exhibit "A". (*ATTORNEY's policies, procedures and*  
3 *practices for multiple conflicts services*)

4 This Agreement shall be construed so no breach occurs if ATTORNEY's  
5 conduct is dictated by constitutional or statutory requirement, ATTORNEY's duties to  
6 the courts, clients rules of professional responsibility, or considerations of  
7 professional ethics.

8 ATTORNEY, in the performance of this Agreement, shall comply with all  
9 applicable federal, state and local laws, and the regulations, guidelines, procedures  
10 and standards that are promulgated thereunder, as well as applicable professional  
11 standards.

12

### 13 **Section 10 – PROFESSIONAL TRAINING AND DEVELOPMENT**

14 ATTORNEY shall ensure that each attorney providing services under this  
15 Agreement shall be provided professional training, and ATTORNEY agrees that the  
16 compensation to be provided to ATTORNEY includes the amount to defray such  
17 training expense. ATTORNEY shall require all attorneys performing services under  
18 this Agreement or any subcontract thereto, to obtain ongoing professional training at  
19 a level and cost which does not fall minimum professional standards. ATTORNEY  
20 shall also be responsible for reasonable professional training of non-attorney  
21 professional staff.

22

### 23 **Section 11 – CONFLICTS OF INTEREST AND APPEARANCE OF IMPROPRIETY**

24 The parties recognize that ethical considerations such as those referred to in  
25 the California Rules of Professional Conduct may prohibit attorneys in the Level One  
26 Conflicts Office from accepting some appointments normally included in the contract  
27 caseload. ATTORNEY agrees to establish a system for screening appointments  
28 upon intake to discover potential conflicts of interest and make appropriate referrals  
29 to the Level Two Conflicts Office or to Wheel Attorneys to provide legal defense  
30 services.

1           Upon the discovery of a conflict of interest or other ethical consideration  
2 precluding further representation, ATTORNEY shall immediately notify the affected  
3 client and refer the case to the Level Two Conflicts Office, or to Wheel Attorneys or  
4 to the Court as necessary.

5           ATTORNEY's Level One Conflicts Office shall not decline to represent any  
6 eligible person except for a conflict of interest or disqualification pursuant to written  
7 order from the Court.

8

### 9   **Section 12 – REPORTS**

10           ATTORNEY shall provide to the Presiding Judge of the Court notice of the attorneys  
11 so designated by Attorney for services provided under the Agreement, and ATTORNEY  
12 agrees to promptly notify the courts on any additions or deletions to the attorneys so  
13 employed with a copy of such correspondence or notice provided to COUNTY's Contract  
14 Administrator.

15           A.     Required Reports: ATTORNEY shall provide COUNTY's Contract  
16 Administrator each month with a case report on each case handled as shown in *Exhibits*  
17 *"C1 and C2"* in Excel format on an electronic file or as shall be specified by the COUNTY.  
18 Additionally, ATTORNEY shall provide Monthly reports as shown in *Exhibit "D"* or as shall  
19 be specified by the COUNTY. Monthly reports must be accompanied by an accounting of  
20 the reimbursable services funds spent during that month including any and all receipts,  
21 invoices or other billing documents with each defendant's name and case numbers  
22 referenced on each invoice for the Ancillary services rendered as shown in *Exhibit "D"*  
23 attached to this Agreement. Monthly reports shall be filed on or before the 15<sup>th</sup> day of the  
24 month following the month of activity reported. In addition, ATTORNEY will submit an  
25 annual narrative and statistical report as shown in *Exhibit "E"* or as shall be specified by the  
26 COUNTY. The annual report shall be filed with COUNTY's Contract Administrator and the  
27 Court's Executive Officer no later than July 31<sup>st</sup> of each year. Failure to provide the case,  
28 monthly or annual reports shall be cause to withhold payment to ATTORNEY until such  
29 time as the required reports are filed.

30           B.     Examination of Records: While conforming with Section 14 of this  
31 Agreement, ATTORNEY shall at any time during the normal business hours and as often

1 as COUNTY may deem necessary, make available to COUNTY for examination of its  
2 records and data with respect to all matters covered by this Agreement and shall permit  
3 COUNTY to audit and inspect all invoices, materials, payrolls, records of personnel,  
4 conditions of employment and other data relating to all matters covered by this Agreement.

5 ATTORNEY shall maintain the confidentiality of records pursuant to all federal, state  
6 and local laws and professional ethics and standards.

7

### 8 **Section 13 – RETENTION OF FILES**

9 All files, including time records, for any legal services provided under this Agreement  
10 shall be the responsibility of ATTORNEY. ATTORNEY shall maintain all misdemeanor files  
11 and time records for each misdemeanor case for a period of five (5) years following closure  
12 of the file. ATTORNEY shall maintain all felony files and time records for each felony case  
13 for a period of at least ten (10) years following closure of the file. Closure of the file is  
14 defined as the last date ATTORNEY renders legal defense service to an indigent defendant  
15 in an assigned case. ATTORNEY shall take all necessary steps to ensure that any  
16 successor counsel to this Agreement shall be under the same obligations as stated herein.  
17 ATTORNEY shall furnish safe and secure storage for all of ATTORNEY's files for the  
18 respective five (5) and ten (10) year time period prescribed above. ATTORNEY shall notify  
19 COUNTY within thirty (30) days prior to any changes in storage location. Neither COUNTY  
20 nor any other person or entity shall be permitted to access any such file without the written  
21 consent of ATTORNEY, or upon Court order. Prior to closing each file, ATTORNEY shall  
22 exercise due diligence to notify the indigent defendant of ATTORNEY's obligations under  
23 this Section 13.

24

### 25 **Section 14 – AUDITS AND INSPECTIONS**

26 ATTORNEY shall at any time during business hours, and as often as the  
27 COUNTY may deem necessary, make available to the COUNTY for examination all of  
28 its records and data with respect to the matters covered by this Agreement. The  
29 ATTORNEY shall, upon request by the COUNTY, permit the COUNTY to audit and  
30 inspect all of such records and data necessary to ensure ATTORNEY's compliance  
31 with the terms of this Agreement. ATTORNEY shall be subject to the examination

1 and audit of the Auditor General for a period of three (3) years after final payment  
2 under contract (Government Code Section 8546.7).

3

4 **Section 15 – INDEPENDENT CONTRACTORS**

5 ATTORNEY shall employ attorneys to provide representation necessary to fulfill  
6 ATTORNEY's case obligations under this Agreement in Court or any other court where  
7 trial is held in the event of a change of venue.

8 In performance of the work, duties and obligations assumed by ATTORNEY  
9 under this Agreement, it is mutually understood and agreed that ATTORNEY, including  
10 any and all of the ATTORNEY's officers, agents, subcontractors, and employees will at  
11 all times be acting and performing as an independent contractor, and shall act in an  
12 independent capacity and not as an officer, agent, servant, employee, joint venturer,  
13 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to  
14 control or supervise or direct the manner or method by which ATTORNEY shall  
15 perform its work and function including but not limited to legal defense services.  
16 However, COUNTY shall retain the right to administer this Agreement so as to verify  
17 that ATTORNEY is performing its obligations in accordance with the terms and  
18 conditions thereof. ATTORNEY and COUNTY shall comply with all applicable  
19 provisions of law and the rules and regulations, if any, of governmental authorities  
20 having jurisdiction over matters the subject thereof.

21 Because of its status as an independent contractor, ATTORNEY and ATTORNEY's  
22 staff shall have absolutely no right to employment rights and benefits available to COUNTY  
23 employees. ATTORNEY shall be solely liable and responsible for providing to, or on behalf  
24 of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be  
25 solely responsible and save COUNTY harmless from all matters relating to payment of  
26 ATTORNEY's employees, including compliance with Social Security withholding and all  
27 other regulations governing such matters. It is acknowledged that during the term of this  
28 Agreement, ATTORNEY may be providing services to others unrelated to the COUNTY or  
29 to this Agreement. This aforementioned indemnification provision shall survive the  
30 expiration or termination of this Agreement.

31



1 **Section 16 – HOLD HARMLESS**

2 ATTORNEY agrees to indemnify, save, hold harmless, and at COUNTY'S request, or  
3 the Court's request, or both, defend the COUNTY and the Court, its officers, agents, and  
4 employees from any and all costs and expenses, damages, liabilities, claims, and losses  
5 occurring or resulting to COUNTY in connection with the performance, or failure to perform, by  
6 ATTORNEY, its officers, agents, contractors, employees or attorneys, including attorneys in  
7 the Level One Conflicts Office and the Level Two Conflicts Office, as well as Wheel Attorneys,  
8 and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or  
9 resulting to any person, firm, or corporation who may be injured or damaged by the  
10 performance, or failure to perform, of ATTORNEY, its officers, agents, contractors or  
11 employees under this Agreement, including attorneys in the Level One Conflicts Office and  
12 Level Two Conflicts Office, as well as Wheel Attorneys. The provisions of this section shall  
13 survive the expiration or termination of this Agreement.

14

15 Section 17 - INSURANCE; **ESCROW/LETTER OF CREDIT/PERFORMANCE BOND.**

16 Without limiting the COUNTY's right to obtain indemnification from ATTORNEY  
17 or any third parties, ATTORNEY, at its sole expense, shall maintain in full force and  
18 effect, the following insurance policies or a program of self-insurance, including but not  
19 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA)  
20 throughout the term of the Agreement:

21 A. Commercial General Liability: Commercial General Liability Insurance  
22 with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an  
23 annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a  
24 per occurrence basis. COUNTY may require specific coverages including completed  
25 operations, products liability, contractual liability, Explosion-Collapse-Underground, fire  
26 legal liability or any other liability insurance deemed necessary because of the nature  
27 of this contract.

28 B. Automobile Liability: Comprehensive Automobile Liability Insurance with  
29 limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars  
30 (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident  
31 and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or

1 such coverage with a combined single limit of Five Hundred Thousand Dollars  
2 (\$500,000.00). Coverage should include owned and non-owned vehicles used in  
3 connection with this Agreement.

4 C. Attorney at Law Professional Liability and Errors and Omissions: Such  
5 program of insurance shall be in the amount of not less than One Million Dollars  
6 (\$1,000,000) per occurrence, One Million (\$1,000,000) annual aggregate, and such  
7 insurance shall be primary to any other similar insurance maintained by COUNTY.  
8 This coverage shall be issued on a per claim basis. ATTORNEY agrees that it shall  
9 maintain, as its sole expense, in full force and effect for a period of three (3) years  
10 following the termination of this Agreement, one or more policies of professional liability  
11 insurance with limits of coverage as specified herein.

12 D. Worker's Compensation: A policy of Worker's Compensation insurance  
13 as may be required by the California Labor Code.

14 ATTORNEY shall obtain endorsements to the Commercial General Liability  
15 insurance naming the County of Fresno, its officers, agents, and employees,  
16 individually and collectively, as additional insured, but only insofar as the operations  
17 under this Agreement are concerned. Such coverage for additional insured shall apply  
18 as primary insurance and any other insurance, or self-insurance, maintained by  
19 COUNTY, its officers, agents and employees shall be excess only and not contributing  
20 with insurance provided under ATTORNEY's policies herein. This insurance shall not  
21 be cancelled or changed without a minimum of thirty (30) days advance written notice  
22 given to COUNTY.

23 Within Thirty (30) days from the date ATTORNEY signs and executes this  
24 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as  
25 stated above for all of the foregoing policies, as required herein, to COUNTY stating  
26 that such insurance coverage have been obtained and are in full force; that the County  
27 of Fresno, its officers, agents and employees will not be responsible for any premiums  
28 on the policies; that such Commercial General Liability insurance names the County of  
29 Fresno, its officers, agents and employees, individually and collectively, as additional  
30 insured, but only insofar as the operations under this Agreement are concerned; that  
31 such coverage for additional insured shall apply as primary insurance and any other

1 insurance, or self-insurance, maintained by COUNTY, its officers, agents and  
2 employees, shall be excess only and not contributing with insurance provided under  
3 ATTORNEY's policies herein; and that this insurance shall not be cancelled or  
4 changed without a minimum of thirty (30) days advance, written notice given to  
5 COUNTY.

6 In the event ATTORNEY fails to keep in effect at all times insurance coverage  
7 as herein provided, the COUNTY may, in addition to other remedies it may have,  
8 suspend or terminate this Agreement upon the occurrence of such event.

9 All policies shall be issued by admitted insurers licensed to do business in the  
10 State of California, and such insurance shall be purchased from companies possessing  
11 a current A.M. Best, Inc. rating of A FSC VII or better.

12 E. Escrow Account: Within sixty (60) days from the date ATTORNEY  
13 executes this Agreement, ATTORNEY shall, at ATTORNEY's sole cost and expense,  
14 secure and file with COUNTY's Contract Administrator an escrow account with the  
15 COUNTY approved format in the amount of One Hundred Thousand Dollars  
16 (\$100,000) naming COUNTY as the beneficiary to secure the full and faithful  
17 performance thereof by ATTORNEY of all the terms, covenants and conditions of this  
18 Agreement (and if this Agreement is renewed, then also any renewal hereof). Said  
19 monies shall be deposited into said escrow with the County of Fresno Auditor-  
20 Controller/Treasurer-Tax Collector in an interest bearing trust fund. ATTORNEY  
21 agrees interest earned from the principal shall contribute to the principal amount in the  
22 escrow account until such time as the account reaches a maximum amount of One  
23 Hundred Fifty Thousand Dollars (\$150,000). If interest accumulates to a principal  
24 amount in excess of One Hundred Fifty Thousand (\$150,000), any interest thereof  
25 shall be paid to ATTORNEY. If any conduct of ATTORNEY deemed by COUNTY to  
26 constitute a breach of any provision of this Agreement, including any of the  
27 circumstances allowing COUNTY to terminate this Agreement pursuant to Section 4.BI,  
28 causes COUNTY unanticipated cost(s) or expense(s), then COUNTY may draw upon  
29 said escrow account for reimbursement of said cost(s) or expense(s). The provisions  
30 of this section are intended to provide reimbursement for such cost(s) and expense(s)  
31 actually incurred by COUNTY. The provisions of this section are not intended to be

1 punitive.

2 Should COUNTY intend to draw upon said escrow account pursuant to the  
3 provisions of this Agreement, COUNTY shall notify ATTORNEY in writing of said intent  
4 at least fifteen (15) days prior to actually drawing on said account. During this fifteen  
5 (15) day period, ATTORNEY and COUNTY shall consult to explore if there are other  
6 alternative means to resolve the problem(s). If at the expiration of the fifteen (15) days  
7 the problem(s) cannot be resolved, COUNTY may draw upon said escrow account for  
8 reimbursement. This shall not prejudice ATTORNEY's right to legal action to contest  
9 COUNTY's action as hereinafter provided.

10 In the event of a transition to new provider(s) upon termination or expiration of  
11 this Agreement, failure of ATTORNEY to perform to the standards as stated in section  
12 3 may result in COUNTY drawing on said escrow fund to recover additional expenses  
13 incurred through providing services through court appointed hourly attorneys.

14 In the event COUNTY executes or draws or calls upon the escrow account  
15 provided to COUNTY hereunder, ATTORNEY agrees it shall not take or cause any  
16 other person or entity to take any action, including legal action, to prevent or restrain  
17 COUNTY from executing or drawing or calling upon such escrow account, provided,  
18 however, that ATTORNEY shall not be prevented from bring any legal action against  
19 COUNTY after COUNTY receives funds from such escrow account, on the grounds  
20 that (a) COUNTY wrongfully executed or drew or called upon such escrow account; or  
21 (b) COUNTY wrongfully withheld payment to ATTORNEY under this Agreement for  
22 services already provided pursuant to the terms and conditions thereof.

23 In the event of expiration or termination of this Agreement, any unused portions  
24 of said monies, including interest earned shall revert back to ATTORNEY.

25

## 26 **Section 18 – NON-ASSIGNMENT**

27 Neither party shall assign, transfer or subcontract this Agreement, either in  
28 whole or in part, nor their rights or duties under this Agreement without the prior written  
29 consent of the other party or unless specifically provided for in this Agreement.

30

31 Section 19 – ENTIRE AGREEMENT

1 This Agreement constitutes the entire agreement between the CONTRACTOR  
2 and COUNTY with respect to the subject matter hereof and supersedes all previous  
3 Agreement negotiations, proposals, commitments, writings, advertisements,  
4 publications, and understanding of any nature whatsoever unless expressly included in  
5 this Agreement. *[If applicable, add the following: In the event of any inconsistency in  
6 interpreting the documents which constitute this Agreement, the inconsistency shall be  
7 resolved by giving precedence in the following order of priority: (1) the text of this  
8 Agreement (excluding Attachment "A", the COUNTY'S Request for Quotation No.  
9 [click here to enter RFQ No.] and the CONTRACTOR'S Quote in response thereto);  
10 (2) Attachment "A"; (3) the COUNTY'S Request for Quotation No.  
11 [click here to enter RFQ No.]; and (4) the CONTRACTOR'S quotation made in  
12 response to COUNTY'S Request for Quotation No. [click here to enter RFQ No.].]*

#### 13

#### 14 **Section 20 – MODIFICATION**

15 Any matters of this Agreement may be modified from time to time by the written  
16 consent of all the parties without, in any way, affecting the remainder.

#### 17

#### 18 **Section 21 – GOVERNING LAW**

19 Venue for any action arising out of or related to this Agreement shall only be in  
20 Fresno County, California. The rights and obligations of the parties and all  
21 interpretation and performance of this Agreement shall be governed in all respects by  
22 the laws of the State of California.

#### 23

#### 24 **Section 22 – ENFORCEABILITY**

25 In the event any clause, paragraph, or language in this Agreement is held to  
26 be void, unenforceable, or unconstitutional, COUNTY may, at its sole option, strike  
27 such void, unenforceable, or unconstitutional clause, paragraph or language from  
28 this Agreement and the remainder of this Agreement shall continue to be in full force  
29 and effect, the same as if such clause, paragraph or language had never been  
30 contained in this Agreement.

31

1 **Section 23 – INCORPORATION**

2 ATTORNEY's Proposal for providing indigent conflict defense services, in  
3 addition to COUNTY's RFP for Indigent conflict defense services, are incorporated  
4 herein by this reference and become thereby part of this Agreement as if fully set  
5 forth herein.

6

7 **Section 24 – NOTICES**

8 The persons and their addresses having authority to give and receive notices  
9 under this Agreement include the following:

COUNTY:

COUNTY OF FRESNO  
County Administrative Office  
2281 Tulare Street, Room 304  
Fresno, California 93721

ATTORNEY:

Contractor Name  
Attn: Contractor Official  
Contractor Address  
Contractor City/State/Zip

10 Any and all notices between the COUNTY and the CONTRACTOR provided for  
11 or permitted under this Agreement or by law shall be in writing and shall be deemed  
12 duly served when personally delivered to one of the parties, or in lieu of such personal  
13 services, when deposited in the United States Mail, postage prepaid, addressed to  
14 such party.

15

16 **Section 25 – NON-DISCRIMINATION**

17 No person shall, on the grounds of race, sex creed, color, age handicapped  
18 status or national origin, be excluded from participation in, be refused the benefits of,  
19 or otherwise be subjected to discrimination in any activities, programs, or  
20 employment under this Agreement.

21

22 **Section 26 – OTHER COMPENSATION PROHIBITED**

23 In no event shall ATTORNEY, including ATTORNEY's Level One Conflict  
24 Office, Level Two Conflict Office and any Wheel Attorney, accept anything of value  
25 as consideration for services rendered to any indigent defendant ATTORNEY has  
26 been appointed to represent pursuant to this Agreement, except from COUNTY as  
27 prescribed by the terms of the Agreement.

1           If an appointed Indigent is subsequently determined to be ineligible for  
2 representation hereunder, ATTORNEY is prohibited from subsequently representing  
3 such person on a fee for service basis in matters included within the original  
4 appointment or referring the indigent defendant to an ATTORNEY already receiving  
5 compensation, either directly or indirectly from this Agreement.

6  
7 **Section 27 – QUALITY ASSURANCE**

8           ATTORNEY shall comply with those procedures, processes and conventions  
9 necessary to assure the quality of service to be rendered hereunder as set forth in  
10 *Exhibit “B”*, which is attached hereto and made a part of this Agreement.

11  
12 **Section 28 – SELF DEALING DISCLOSURE**

13           This provision is only applicable if ATTORNEY is operating as a corporation (a  
14 for-profit or non-profit corporation) or if during the term of this Agreement, ATTORNEY  
15 changes its status to operate as a corporation.

16           Members of ATTORNEY’s Board of Directors shall disclose any self-dealing  
17 transactions that they are a party to while ATTORNEY is providing goods or performing  
18 services under this Agreement. A self-dealing transaction shall mean a transaction to  
19 which ATTORNEY is a party and in which one or more of its directors has a material  
20 financial interest. Members of the Board of Directors shall disclose any self-dealing  
21 transactions that they are a party to by completing and signing a Self-Dealing  
22 Transaction Disclosure Form (*Exhibit G*) and submitting it to COUNTY prior to  
23 commencing with the self-dealing transaction or immediately thereafter.

24  
25 **Section 29 – CONTRACT ADMINISTRATOR**

26           COUNTY’s Contract Administrator for this Agreement is the Fresno County  
27 Administrative Officer or designee. Such designee can be made from time to time  
28 as necessary by letter to ATTORNEY from the County Administrative Officer.

29  
30 **Section 30 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND**  
31 **OTHER RESPONSIBILITY MATTERS**

1           ATTORNEY must sign an appropriate Certification Regarding Debarment,  
2 Suspension, and Other Responsibility Matters. Additionally, the ATTORNEY must  
3 immediately advise COUNTY in writing if, during the term of the agreement: (1)  
4 ATTORNEY, or any attorney, employed or subcontracted, becomes suspended,  
5 debarred, excluded or ineligible for participation in federal or state funded  
6 programs or from receiving federal funds as listed in the excluded parties list  
7 system (<http://www.epls.gov>); or (2) during the applicable term of this Agreement,  
8 ATTORNEY, including employees, agents and subcontractors, is convicted or, or  
9 had a civil judgment rendered against them for:

- 10       1. Fraud or a criminal offense in connection with obtaining, attempting to obtain  
11       or performing a public (federal, state, or local) transaction or contract under  
12       a public transaction;
- 13       2. Violation of a federal or state antitrust statute;
- 14       3. Embezzlement, theft, forgery, bribery, falsification, or destruction of records;
- 15       4. False statements or receipt of stolen property; or
- 16       5. Any State Bar discipline or discipline by the Department of Consumer  
17       Affairs, Bureau of Security and Investigative Services, current or prior  
18       license revocations and suspension, and any other criminal history.

19           The Bidder will indemnify, defend and hold the County harmless for any loss  
20 or damage resulting from a conviction, debarment, exclusion, ineligibility or other  
21 matter listed in the signed Certification Regarding Debarment, Suspension, and  
22 Other Responsibility Matters.