

**CONTRACT FOR LEGAL REPRESENTATION
OF INDIGENT PERSONS IN THE COUNTY OF YUBA**

THIS CONTRACT is made this 25 day of May, 2021 by and between the COUNTY OF YUBA, a political subdivision of the State of California (“County”), and BRIAN J. DAVIS (“Attorney”).

WITNESSETH

WHEREAS, the right of all persons against whom criminal prosecutions are brought to be represented by counsel is guaranteed by the Constitution of the United States and the Constitution of the State of California; and

WHEREAS, the expense of such counsel in the representation of indigent defendants is a proper and lawful charge upon the County; and

WHEREAS, Attorney represents and warrants that he is competent to render all legal services which are required by this Contract; and

WHEREAS, experience in handling criminal matters leads to effective representation and efficient handling of matters in the Courts; and

WHEREAS, it has been shown that a contract of a limited term without renewal rights makes it difficult to recruit and retain competent and experienced staff;

NOW THEREFORE, the parties hereto agree:

A. SCOPE OF ATTORNEY SERVICES

1.0 Attorney hereby agrees to provide legal representation for the following persons in Yuba County when appointed by the Superior Court of Yuba County:

- a) “Adults” deemed indigent by the appointing Courts who are defendants in criminal cases or who require legal representation in connection with police identification

or pre-statement counseling. Attorney shall be responsible for representation in all murder cases as defined in Penal Code section 187. In the event that Attorney is representing more than one capital case defendant at any given time, Attorney and County agree to meet and confer concerning additional compensation to defray the expense of hiring additional staff as may be needed.

b) "Conservatee" as classified under Welfare and Institution Code section 5000 and following, known and cited as the Lanterman-Petris-Short Act, or any other conservatee for whom an attorney may be appointed by the Court relating to the establishment or dissolution of a conservatorship or where counsel is otherwise required to represent the conservatee in a question of the scope of the conservator's authority.

c) "SB 90" cases (Sexually Violent Predator (SVP), Mentally Disordered Offender (MDO), Developmentally Disabled (Dev-Dis), and Not Guilty by Reason of Insanity (NGI).

d) Legal representation associated with revocation proceedings involving persons subject to state parole, pursuant to paragraph (3) of subdivision (c) of section 30027 of the Government Code.

2.0 Attorney shall provide competent and adequate legal representation for those persons described in Paragraph 1.0 and shall assume full responsibility for furnishing six (6) full-time attorneys, which include Attorney and five associate attorneys, to provide daily representation in the departments of the Superior Court of Yuba County. Attorney shall also provide all secretarial and other personnel and, except as otherwise be provided herein, office space and all materials, equipment, facilities and supplies necessary for the support of the personnel in the performance of the legal services specified herein.

2.1 During this contract, County shall review Attorney's compliance and performance under the contract and, at County's option, may at any time require Attorney to attend any meetings, interviews with County personnel or Judges to discuss such compliance and performance.

2.2 For the purpose of defining "full-time attorney" as required in paragraph 2.0, "full-time" shall include, but not necessarily be limited to:

- a) any time in which the Superior Court is in operation;
- b) any time when client representation is required;
- c) any additional time required to consult with clients or otherwise prepare in order to provide competent legal representation; or
- d) when case activity is occurring.

B. CHANGE OF VENUE

3.0 In the event of a change of venue to a location outside of Yuba County, County shall reimburse Attorney for mileage and other actual and necessary expenses incurred in traveling between the City of Marysville and the location to which venue has been changed as follows:

- a) For reasonable and necessary travel by Attorney, his investigator, any member(s) of his staff, not to exceed a total of three (3) persons, or by any witness when said witness does not receive a mileage allowance as a matter of law. Said reimbursement shall be at the rate reimbursed to the District Attorney's Office or, if no such rate is established, at the prevailing rate allowed private taxpayers by the IRS for each mile driven in the individual's privately owned automobile; provided, however, that in no case shall

the cost of travel exceed the cost of available public transportation plus necessary incidental expenses related to the use of such public transportation.

b) For the reasonable and necessary cost of lodging and meals during the course of the trial by Attorney, investigator or any member(s) of his staff not to exceed a total of three (3) persons per diem.

Except as provided immediately above, Attorney shall be entitled to no additional fee, compensation or reimbursement in such cases.

C. ADDITIONAL SERVICES

4.0 The following services may be performed by Attorney at his sole discretion and expense, at no charge to the County:

a) Intervention prior to appointment in criminal or quasi-criminal cases where professional judgment deems such intervention desirable.

b) Legal representation at the appellate level except as required by statute, rule or regulation.

c) Prosecution of extraordinary writs.

d) Other legal or quasi-legal proceedings including, but not restricted to, administrative hearings, civil contempt proceedings, sealing or expungement of records, or school disciplinary proceedings.

D. SPECIAL COUNSEL

5.0 County shall bear the cost of special counsel appointed by the Court where such appointments are occasioned by bringing mass criminal charges resulting from natural disaster or civil disorder. County shall also bear the cost of special counsel with an expertise in DNA when deemed reasonable and necessary by the Court.

6.0 Where special counsel is appointed by the Court as a result of:

a) The trial Judge's determination that the Attorney has not provided effective and adequate legal representation; or,

b) Attorney's failure or inability to appear, unless due to a conflict of interest; the fees assessed against the County of the payment of such counsel shall be charged to and reimbursed by Attorney. The parties agree that such fees will be deducted from future monies otherwise due Attorney under this contract.

E. RETENTION OF INVESTIGATOR

7.0 Attorney shall hire one full-time investigator or enter into a fixed sum contract with one full-time investigator, who shall provide investigations required by Attorney under provisions of this Agreement. If additional investigation services are necessary, Attorney shall comply with the provisions of 8.0. Compensation for investigative services in capital cases shall be provided pursuant to Penal Code section 987.9.

F. OTHER EXPENSES

8.0 Unless payable by the Court, County shall pay all required and necessary witness fees, including expert witnesses, and for the services of Court authorized laboratories, forensic services, medical or other technical experts, and any other Court ordered expenses deemed reasonable and necessary by the Court. The cost of discovery required by law or court order is not an additional charge against the County.

G. COMPENSATION

9.0 Compensation shall be provided monthly in the following manner:

a) From July 1, 2021 to June 30, 2022, County shall pay Attorney at the rate of Seventy Four Thousand, Eight Hundred, and Fifty Four Dollars (\$74,854).

b) From July 1, 2022 to June 30, 2023, County shall pay Attorney at the rate of Seventy Six Thousand, Three Hundred, and Fifty One Dollars (\$76,351).

c) From July 1, 2023 to June 30, 2024, County shall pay Attorney at the rate of Seventy Seven Thousand, Eight Hundred, and Seventy Eight Dollars (\$77,878).

d) Payment warrants shall be issued to BRIAN J. DAVIS, ESQ.

e) Said monthly amounts are payable in full on or before the eighth (8th) day of each month. Attorney shall submit an invoice to the County Administrator in the appropriate amount for all services and other charges under this contract which Attorney may have rendered during the pay period set forth herein by the twentieth (20th) day of the preceding month.

f) Attorney shall be entitled to no additional compensation or reimbursement for any cost(s) incurred by Attorney in providing services required by this contract other than as provided herein.

g) Attorney and County agree that the price of the Contract is based on current staffing needs. In the event that staffing needs change as a result of state initiative, Court modifications or adoptions of new programs not presently contemplated, the parties agree to negotiate regarding an adjustment to the price and terms of the Contract accordingly.

H. COPY MACHINE

10.0 Attorney shall have access to the County photocopy machines and shall reimburse County for all reproductions on said machine at the rate per page established by County for County departments.

I. RECORDS

11.0 Attorney shall keep such records and mail such application to Court as may be required (i) to enable the Court in appropriate proceedings to determine the amount of reasonable attorney's fees for the purposes of assessment of costs pursuant to section 987.8 of the Penal Code, (ii) to enable County to obtain reimbursement under the provisions of section 987.4 of the Penal Code for legal services furnished to certain minors, (iii) to enable County to obtain reimbursement from the State of California under the provisions of sections 15200 to 15204 of the Government Code and (iv) as otherwise required by County to determine caseload. Such records shall be provided for each case and shall include, but not limited to, an itemized accounting of hours spent by Attorney, support staff, investigators or other individuals, associated charges, and any other related charges incurred in the defense of said case. In addition, Attorney shall submit a monthly report to the County Administrator providing for the number of new assignments or appointments, cases closed that month, conflicts, revocation proceedings involving persons subject to state parole, amounts received for AB 109, and SB 90 cases.

J. AVOIDANCE OF CONFLICTS

12.0 Attorney represents and warrants to the County that, while this Contract is in effect, the performance of the legal services under Contract shall be the priority business of Attorney and any associates or employees of Attorney. Neither Attorney, associate nor any member of a new partnership office of which Attorney is a member will engage in private criminal practice in Yuba County, but may engage in private criminal practices in other counties. Attorney covenants to decline to advise or represent clients, or undertake cases or legal projects, which foreseeably could conflict with services under this Contract.

K. INSURANCE REQUIREMENTS

13.0 Attorney shall obtain, maintain in full force and effect at all times while performing services hereunder, and demonstrate proof of insurance with the limits referenced in Attachment A - Insurance Requirements.

L. INDEPENDENT CONTRACTOR

14.0 For all purposes arising under this Agreement, Attorney shall be an independent contractor as provided by law; and Attorney and each and every employee, agent, servant, partner, shareholder, contractor and subcontractor of Attorney shall not be, for any purpose of this Agreement, an employee of the County. Furthermore, this Agreement shall not under any circumstances be construed or considered to be a joint venture or a joint powers agreement as described in Government Code section 6000 et seq., or otherwise. As an independent contractor, the following shall apply under this agreement:

a) Attorney shall determine the method, details and means of performing the services to be provided by Attorney as described in this Agreement.

b) Attorney shall be responsible to County for the requirements and results specified by this Agreement and shall not be subject to County's control with respect to the means, method, physical actions or activities of Attorney in fulfillment of the requirements of this Agreement.

c) Attorney is not, and shall not be, entitled to receive from, or through County, and County shall not provide, or be obligated to provide Attorney with Workers Compensation coverage, Unemployment Insurance coverage or any other type of

employment of worker insurance or benefit coverage required by any federal, state, or local law or regulation for, or normally afforded to, any employee of County.

d) Attorney shall not be entitled to have County withhold or pay, and County shall not withhold pay, on behalf of Attorney, any tax or money relating to Social Security Old Age Pension Program, Social Security Disability program or any other type of pension, annuity or disability program required or provided by any federal, state, local law or regulation for, or normally afforded to, an employee of the County.

e) Attorney shall not be entitled to participate in, or receive any benefit from, or make any claim against, any County fringe benefit program, including, but not limited to, County's pension plan, medical and health care plan, dental plan, life insurance plan, vacation and leave program, plan or coverage designated for, provided to, or offered to County employees.

f) County shall not withhold or pay, on behalf of Attorney, any federal, state or local tax including, but not limited to, any personal income tax, owed by Attorney.

g) Attorney, at all times for the duration of the Agreement, shall represent and conduct himself as an independent contractor and not as an employee of the County.

h) Attorney shall not have the authority, express or implied, to act on behalf of, bind or obligate County or any County department, County agent or County employee in any way without the written consent of the County.

M. CONTINUATION OF REPRESENTATION

15.0 Attorney shall carry to conclusion all matters pending at the expiration or termination of this Contract as to which the Court refuses to relieve the Attorney, or his staff of representation. Compensation for such continued services shall be set by the Judge

in accordance with Penal Code section 987.3. As to all other cases then pending and for which the Court is willing to authorize a substitution of counsel for any new attorney providing Public Defender services, Attorney shall be relieved of his obligation to provide further representation at the expiration of this Agreement. At such expiration, Attorney agrees to assign all existing open and closed cases, files, and records to the successor Public Defender.

N. TERMS AND TERMINATION

16.0 This Contract shall take effect July 1, 2021 and shall continue until June 30, 2024. This Contract cannot be terminated at any time prior to its termination date except by mutual consent or by breach of either party. Such breach by Attorney for termination by County shall include, but shall not be limited to: the breach of any covenant; the refusal of the Courts to appoint Attorney or one of his associates to any case covered by this Contract for any reason other than a conflict of interest; the loss or suspension of the ability to practice law in this state for any reason. Such breach by County for termination by Attorney shall include, but shall not be limited to, failure of County to timely provide payment.

16.1 Attorney shall have the option to continue Contract for two (2) additional years upon agreement to terms by both parties. Attorney shall notify the County of Attorney's desire to continue Contract for the option period by notifying the Board of Supervisors in writing before the end of January of the year of the termination of Contract.

16.2 The parties understand and agree that during the term of this Contract, County may solicit proposals for the provision of Public Defender Attorney Services to continue at the conclusion of this Agreement.

O. COST OF SUIT

17.0 Attorney and County agree in the event that any action, suit or proceeding is commenced to compel the performance of this Contract or to seek damages for breach hereof, the prevailing party shall be entitled to reasonable attorney's fees to be awarded and fixed by the Court, to be taxed as costs and to be included in any judgment rendered.

P. ENTIRE AGREEMENT AND AMENDMENT

18.0 This Contract contains all of the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either of the parties hereto. Any contract currently in existence between the parties is hereby terminated and applicable notice provisions, if any, are waived. No addition or alteration of the terms of this Contract, whether written or verbal understanding of the parties, their officers, agents or employees, shall be valid unless made in the form of a written amendment of this Contract and formally approved by the parties by a document equal in dignity to the execution hereof.

Q. ASSIGNMENT

19.0 This Contract and the rights and duties hereunder shall not be assigned by Attorney, either in whole or in part, except as expressly provided herein without the prior express written consent of County.

R. NOTICE

20.0 Any notice required to be given hereunder shall be deemed given when deposited in the United States mail, postage fully prepaid, and addressed as follows:

COUNTY: County Administrator
915 8th Street, Suite 115
Marysville, CA 95901

ATTORNEY: Brian J. Davis
303 Sixth Street
Marysville, CA 95901

S. STANDARDS OF REPRESENTATION

21.0 Attorney shall provide for the maintenance of quality representation of indigent defendants consistent with constitutional and professional standards. Federal and State Constitutions require provision of competent counsel in criminal cases. In California, the test for determining competency of counsel in criminal cases is that of a “reasonably competent attorney acting as a diligent, conscientious advocate.” (*People v. Pope* (1979) 23 Cal 3d 412). Attorney agrees to provide competent legal services in conformity with the above standard. Specifically, the following duties and responsibilities of counsel as set forth in prior Court decisions and professional standards will be observed:

“Duty of careful, factual and legal investigation.” See *People v. Ibarra* (1963) 60 Cal 2d 460; *In re Saunders* (1970) 2 Cal 2d 1033; *ABA Standards on the Defense Function* (“ABA Standards”), section 4.1. Duty to take prompt action to protect a client’s legal rights. See ABA Standards, section 3.6(a). Duty to keep client informed. See ABA Standards, section 3.8. Duty to prepare for jury selection, examination of witnesses, submission of instructions and presentation of argument at trial. See ABA Standards, section 7.2(a) and (b). Duty to know and explore sentencing alternatives. See ABA Standards, section 8.1(b). Duty to Advise concerning appeals. See ABA Standards, section 8.2(a). Duty not to accept more cases than can be competently handled. See *Martin v. State Bar* (1978) 20 Cal 3d 717. Duty to not handle a legal matter which attorney knows or should know that he/she is not competent to handle. See ABA, Code of Professional


Responsibility, Canon 6, Disciplinary Rule 6-101(a). Duty to maintain client confidence and secrets.

T. INTERPRETATION OF AGREEMENT

22.0 No inference in the interpretation or construction of this Contract is to be drawn or given because of the fact that it has been drafted by County. Each party agrees and represents that this Contract resulted from an equal bargaining position and that it reflects the entire understanding and agreement between the parties on those matters to which it relates.


IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the date first above shown.

ATTEST




Rachel Ferris,
Clerk of the Board of Supervisors
Mary Pasillas, Board Clerk

COUNTY OF YUBA




Chairman
Board of Supervisors

APPROVED AS TO FORM



Michael J. Ciccozzi
County Counsel

ATTORNEY



Brian J. Davis

INSURANCE PROVISIONS APPROVED:



Jill Abel,
Human Resources Director and Risk Manager

ATTACHMENT A – INSURANCE PROVISIONS

ATTORNEY shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ATTORNEY, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if ATTORNEY has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

4. **Professional Liability (Errors and Omissions)** Insurance as appropriate to ATTORNEY’s profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains higher limits than the minimums shown above, ATTORNEY requires and shall be entitled to coverage for the higher limits maintained by ATTORNEY.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of ATTORNEY; and on the CGL policy with respect to liability arising out of work or operations performed by or on

behalf of ATTORNEY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ATTORNEY's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, ATTORNEY's **insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of ATTORNEY's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**

Waiver of Subrogation

ATTORNEY hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said ATTORNEY may acquire against COUNTY by virtue of the payment of any loss under such insurance. ATTORNEY agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require ATTORNEY to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

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

must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

ATTORNEY shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive ATTORNEY's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

ATTORNEY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

The foregoing is a true and correct
copy of the document on file
in this office
ATTEST: RACHEL FERRIS
Clerk of the Board of Supervisors of
the County of Yuba, State of California

By: May Parille

Date: 05-26-2021