

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 6th day of June, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Richard A. Ciummo and Associates, a professional law corporation, whose address is 123 East Fourth Street, Madera, CA 93638, hereinafter referred to as "ATTORNEY".

WITNESSETH:

1. DEFINITIONS

A. "ATTORNEY" shall mean Richard A. Ciummo and Associates, and includes its staff attorneys, employees, agents, servants, representatives, assignees and subcontractors.

B. "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.

C. "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 the Level One Conflict Office, the Level Two Conflict Office and Wheel Attorneys (as the foregoing terms are defined hereinbelow).

D. "Indigent" shall mean a person for whom the Court is required, by statute or case law, in effect during the term of this 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.

E. "Level One Conflict Office" shall mean that legal office within ATTORNEY that shall handle those cases and/or represent indigent defendants for which the Public Defender has declared a conflict of interest. Such cases and

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

4 F. "Level Two Conflict 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 Conflict
7 Office and that shall handle those cases and/or indigent defendants for which the Public
8 Defender and Level One Conflict Office both have declared a conflict of interest. Such
9 cases and/or defendants shall be assigned to the Level Two Conflict Office for
10 assignment to its attorneys. The functions, responsibilities and duties of the Level Two
11 Conflict Office shall be carried out and borne by the ATTORNEY's second office.

12 G. "Public Defender" shall mean the Office of the Public Defender,
13 County of Fresno.

14 H. "Special Circumstance" shall apply to indigent persons as
15 defined in this Agreement requiring representation in cases in which the death penalty is
16 sought pursuant to Penal Code 190.2.

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

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

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1 2. OBLIGATIONS OF THE ATTORNEY

2 A. General Duties – ATTORNEY agrees to provide competent and
3 adequate legal representation of indigent defendants in the Court when appointed to do
4 so by a judge of the Court. ATTORNEY shall only accept appointments when the Court
5 has previously determined that a conflict of interest or potential conflict of interest exists
6 causing the Public Defender to be unable to represent that defendant.

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

27 B. Provide up to Seven Levels of Conflict Defense – ATTORNEY
28 shall provide legal defense services for up to seven conflict levels for individual indigent
defendants in a case. ATTORNEY shall employ that combination of the Level One
Conflict Office, the Level Two Conflict Office and Wheel Attorneys as are necessary to

1 ensure the delivery of complete legal defense services for up to seven defendants in a
2 single case.

3 C. Attorney Staffing in Level One and Level Two Conflict Offices -

4 ATTORNEY shall deploy such attorneys in the Level One Conflict Office and Level Two
5 Conflict Office in such sufficient numbers and with the requisite preparation, experience
6 and availability as will provide the legal representation contemplated in this Agreement
7 and as will ensure that the business of the Court is not unreasonably delayed or
8 impeded. ATTORNEY shall provide a sufficient number of competent attorneys to staff
9 the Level One Conflicts Office, presently estimated to be at least (17) seventeen full-
10 time attorneys, and (1) one part-time attorney, in order to deliver legal services to
11 indigent defendants and provide adequate coverage to the Court. ATTORNEY shall
12 provide a sufficient number of competent attorneys to staff the Level Two Conflicts
13 Office, presently estimated to be at least (7) seven full-time attorneys, and (1) one part-
14 time attorney, in order to deliver legal defense services to indigent defendants and to
15 provide adequate coverage to the Court.

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

1 ATTORNEY recognizes COUNTY's objective to obtain legal services across all
2 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 numbers of indigent defendants receive
6 representation under this Agreement instead of through court-appointed attorneys. To
7 that end, and to the extent permitted by law, ATTORNEY shall endeavor to minimize the
8 number of Wheel Attorneys who allege a conflict of interest. ATTORNEY shall provide
9 COUNTY with a monthly statistical report on the number of declared conflicts by Wheel
10 Attorneys that resulted in court-appointed attorneys representing indigent defendants.
11 In addition, ATTORNEY shall promptly initiate such procedures as will assist
12 ATTORNEY in minimizing declared conflicts of interest. ATTORNEY shall also meet
13 with COUNTY upon COUNTY's request and as needed to consult over changes or
14 refinements to the Agreement or the parties' implementation thereto that are reasonably
15 needed to minimize the number of conflicts resulting in court appointments of private
16 attorneys. An important purpose of the reports, meetings and consultation is to avoid
17 causing COUNTY to incur additional costs from a Court appointment of private counsel
18 at COUNTY expense.

18 ATTORNEY's contracts with private attorneys shall be in writing and shall contain
19 provisions that: (1) prohibit them from seeking court appointment directly from the Court
20 to represent any indigent defendant ATTORNEY previously assigned to them; (2)
21 prohibit them from converting any indigent defendant ATTORNEY previously assigned
22 to them into a private criminal defense client; (3) identify COUNTY as an intended
23 beneficiary to the contract between ATTORNEY and the private attorney and that
24 COUNTY has the power and authority to enforce said contract to protect COUNTY's
25 interest; (4) prohibit the private attorney from receiving compensation from any source
26 other than ATTORNEY in providing legal defense services to the indigent defendant
27 that ATTORNEY assigned to them; (5) require all Wheel Attorneys to obtain the
28 insurance policies required of ATTORNEY in Section 22 of this Agreement, and to
name COUNTY as an additional insured in each such insurance policy; notwithstanding
the foregoing, the minimum required aggregate professional liability coverage for each

1 Wheel Attorney shall be \$1,000,000 per year; (6) require all Wheel Attorneys to notify
2 ATTORNEY a minimum of sixty (60) days prior notice of an intention to terminate the
3 contract and provide that Wheel Attorney(s) representation of indigent defendant(s)
4 must continue until case(s) are completed or transferred, before said contract may be
5 terminated; and (7) ATTORNEY shall include in each contract with a private attorney
6 the provisions set forth in this Section 2.D.

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

19 F. Appointment Process - The Court will first appoint the Public
20 Defender to represent an indigent defendant. Whenever the Public Defender declares a
21 conflict of interest, the Court will appoint ATTORNEY to represent the indigent
22 defendant through its Level One Conflict Office. Whenever the Public Defender and the
23 Level One Conflict Office declare a conflict of interest, the Court shall appoint
24 ATTORNEY to represent the indigent defendant through its Level Two Conflict Office. If
25 the Public Defender, the Level One Conflict Office and the Level Two Conflict Office
26 declare a conflict of interest, the Court will appoint ATTORNEY to represent indigent
defendants through Wheel Attorneys.

27 G. Office Meetings With Clients - ATTORNEY shall maintain two
28 separate and adequate Fresno offices open during normal business hours to allow

1 indigent defendants who are not in custody to meet with their attorneys from the Level
2 One Conflict Office and Level Two Conflict Office. ATTORNEY shall maintain published
3 office addresses and telephone numbers and a telephone answering service or devices
4 for the taking of telephone messages during non-business hours. ATTORNEY shall
5 employ adequate numbers of Spanish-speaking staff in order to service Spanish-
6 speaking clients. In-custody clients generally shall be interviewed within thirty-six (36)
7 hours of ATTORNEY's appointment. Out-of-custody clients generally shall be
8 interviewed within seventy-two (72) hours of ATTORNEY's appointment.

9 H. Obligation to Keep Courts Informed - ATTORNEY shall keep all
10 courts informed of the status of pending cases for which ATTORNEY has been
11 appointed and shall advise the Court at the earliest possible time as to whether cases
12 will be settled or go to trial, whether continuances are needed, whether and when
13 interpreters will be needed, and other such matters bearing on the scheduling of cases
14 before the courts. At the commencement of this Agreement, ATTORNEY shall submit
15 to the Presiding Judge of the Court written plans setting forth the deployment of
16 attorneys in the Level One Conflict Office, Level Two Conflict Office and Wheel
17 Attorneys. ATTORNEY shall submit to the Court updates of the deployment plans
18 reflecting changes in the deployment of attorneys, as soon as reasonably possible.

18 Staffing maintained by the Level One Conflict Office and the Level Two Conflict
19 Office shall be sufficient such to assure the timely appearance of attorneys of those
20 offices when requested by the Courts to accept appointment on a case. ATTORNEY
21 shall make all efforts to assure the timely appearance of the Wheel Attorneys upon
22 request of the Courts to accept appointment on a case. If permissible, attorneys from
23 either of the two (2) offices described herein shall specially appear to accept
24 appointment on a case on behalf of a Wheel Attorney, if the assigned Wheel Attorney
25 cannot respond within one half (1/2) hour of the Court's request. If said staff attorneys
26 cannot appear, ATTORNEY shall make arrangements to have another attorney
27 specially appear to accept appointment on a case.

27 In the event the Court notifies ATTORNEY of any proposed changes in the Court
28 calendars or other operational changes which may impact the deployment plans,

1 ATTORNEY shall promptly notify all Level One Conflict Offices, Level Two Conflict
2 Offices and Wheel Attorneys of said operational changes to assure adequate coverage.

3 I. Administration of Attorneys - ATTORNEY shall generate, and
4 maintain and update as necessary, written practices and procedures to govern the
5 Level One Conflict Office, the Level Two Conflict Office and Wheel Attorneys. The
6 written practices and procedures will regulate conduct in the above offices so as to
7 avoid conflicts of interest or the appearance of a conflict of interest that would impede or
8 negate legal representation by assigned attorneys. The written practices and
9 procedures are attached hereto as Exhibit "A" and incorporated herein by this reference.
10 ATTORNEY shall provide copies of the written practices and procedures, as well as
11 necessary instruction, to each attorney in the Level One Conflict Office and the Level
12 Two Conflict Office, as well as to each Wheel Attorney and Stand-in Attorneys.

13 J. Covered Proceedings – ATTORNEY agrees to accept
14 appointments to represent indigent defendants regarding any case, which for this
15 Agreement is defined to encompass any and all of the proceedings enumerated below
16 (the "Covered Proceedings"), and in which the Public Defender is unable to or has
17 refused to provide representation because of a conflict of interest or other reason.
18 ATTORNEY shall defend, without additional expense outside the terms of this
19 Agreement to the defendant, an indigent defendant at any and all stages of a Covered
20 Proceeding.

21 Covered Proceedings are as follows:

22 1) Representation in criminal matters pursuant to Penal
23 Code Section 683, including all charges, counts or cases pending against a single
24 individual and disposed of at one time.

25 2) Representation of an adult defendant, including a juvenile
26 tried as an adult or juvenile ward in any misdemeanor or felony matter in the Court
27 continuing to final disposition or adjudication.

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

1 4) Representation of a juvenile ward in a Juvenile Court
2 proceeding pursuant to Welfare and Institutions Code Sections 601 or 602.

3 5) Representation of a parent in a Juvenile Court
4 proceeding pursuant to Welfare and Institutions Code Section 634 in Sections 601 and
5 602 proceedings.

6 6) Review hearings, violation of probation hearings
7 detention or commitment hearings, supplemental modification, set aside and/or
8 termination petitions, and other related hearings pursuant to Welfare and Institutions
9 Code Sections 601, 602, 625, 775, 777, 779, 780, 781, 782, and/or 785 held within
10 eighteen (18) months of disposition; except that ATTORNEY's representation under this
11 subsection J- 6 shall not extend beyond six (6) months following the expiration or
12 termination of this Agreement, it being the intent of the parties that ATTORNEY's
13 successor take over such representation after the six (6) month period.

14 7) Representation of a witness in the prosecution of an adult
15 defendant, including a juvenile tried as an adult, or of a juvenile ward where the Court
16 has determined that the witness is legally entitled to appointed counsel and the Public
17 Defender has declared a conflict of interest in that matter or as to the witness.

18 8) Pre-trial appeals and extraordinary writs to the Court, or
19 the District Court of Appeals, related to proceedings referred to in subsections 1 through
20 7 above, provided that ATTORNEY may decline appellate appointments when
21 ATTORNEY has represented the client in related trial court proceeding such that a
22 conflict of interest exists, but subject to appointment to a higher level of conflict defense.

23 9) Representation in any criminal matters arising from
24 Public Defender unavailability, to be charged at a 25 percent discount of the current
25 Court appointed attorney rate of \$80.00 per hour, which equals \$60.00 per hour.

26 10) ATTORNEY will in all cases of appointment assist
27 assigned indigent defendant or ward in perfecting his or her right to appeal.

28 11) ATTORNEY will accept two (2) special circumstance
homicide conflict of interest cases per year for each year of the Agreement, not to
exceed a total of ten (10) cases for the Term of the Agreement and pursuant to Section
3 of this Agreement. If ATTORNEY cannot accept such appointment due to a conflict of

1 interest or after appointment must declare that it has a conflict of interest, that case shall
2 not count against the numerical limits set forth in this subsection.

3 Attorney shall not be required to provide Ancillary Services (as that term is
4 defined in Section 2.-L herein below) in special circumstance homicide cases. Ancillary
5 Services, as needed in special circumstance homicide cases, including investigative
6 services, shall be approved and compensated pursuant to the policy of the Fresno
7 County Superior Court regarding appointment of private counsel unless approved at a
8 different rate through a court order.

9 K. Excluded Proceedings - This Agreement does not require
10 ATTORNEY to accept appointments for the following proceedings:

- 11 1) Contempt citations, including, but not limited to, Family
12 Support proceedings;
- 13 2) Conservatorships or guardianships;
- 14 3) Determination of motions for new trial alleging including
15 incompetence of former counsel; and
- 16 4) Any other action or proceeding not specified in this
17 Agreement.

18 L. Ancillary Services - ATTORNEY shall provide such ancillary and
19 supportive services as may be necessary to provide adequate representation, including
20 but not limited to, investigative services, expert witnesses, and polygraph examinations
21 where deemed necessary by ATTORNEY, and such other services properly required by
22 ATTORNEY designed to assist the indigent defendant in the preparation and
23 presentation of his or her case. ATTORNEY shall retain a sufficient number of licensed
24 investigators on staff at all times for both the Level One Conflict Office and the Level
25 Two Conflict Office. ATTORNEY shall employ at least two (2) full-time licensed
26 investigators at all times in the Level One Conflict Office to provide investigative
27 services adequate to service the projected caseload. ATTORNEY shall employ at least
28 one (1) full-time licensed investigator for the Level Two Conflict Office. ATTORNEY
shall utilize office staff to provide interpreter services. At least three (3) office staff
members shall be English/Spanish bilingual in the Level One Conflict Office. At least

1 one (1) office staff member shall be English/Spanish bilingual in the Level Two Conflict
2 Office. Non-Spanish interpreter services will be provided on a fee-for-service basis.

3 The following services shall be provided by ATTORNEY on a fee-
4 for-service basis, to be paid from the Reimbursable Services Fund provided in
5 Section 8.B of this Agreement:

- 6 1) All interpreter services not provided by ATTORNEY's
7 bilingual staff;
- 8 2) Expert witness fees;
- 9 3) Depositions and transcripts;
- 10 4) Polygraph services;
- 11 5) Clothing for court appearances for incarcerated
12 defendants as required; and
- 13 6) Other specialized services which cannot reasonably be
14 provided by ATTORNEY's staff.

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

1 N. Maintenance of Contract Records/Reporting Requirements –

2 ATTORNEY must maintain accounts and records, including personnel, property,
3 financial, and programmatic records, which sufficiently and properly reflect all costs and
4 expenses incurred in performance of services in this Agreement including the direct and
5 indirect costs of services performed. ATTORNEY must maintain records which
6 sufficiently and properly reflect all direct and indirect costs of any subcontracts or
7 personal service contracts. Such records shall include but not be limited to,
8 documentation of funds expended by ATTORNEY for said personal service contracts or
9 subcontracts and documentation of the nature of the services rendered.

10 For auditing and statistical purposes, ATTORNEY shall provide to the COUNTY
11 monthly reports in the standard format required by COUNTY. In addition, ATTORNEY
12 shall submit an annual narrative and statistical report in the format required by
13 COUNTY. Failure to provide required monthly and/or annual reports shall be considered
14 a material breach of contract and shall be cause to withhold payment to ATTORNEY
15 until such time as the required report or reports are filed.

16 ATTORNEY shall at any time during normal business hours and as often as the
17 COUNTY deems necessary, make available for examination by COUNTY, or its
18 authorized representatives, all of its records and data with respect to all matters
19 pertaining to services provided under this Agreement. Upon request by the COUNTY,
20 ATTORNEY shall provide copies of such records and/or make such records available
21 for audit and inspection for the period of this Agreement and up to three years following
22 the date of termination or expiration of this Agreement.

23 3. TERM; RENEWAL OPTIONS; DURATION OF REPRESENTATION

24 A. The term of this Agreement shall be for a period of three (3)
25 years, commencing on July 1, 2017 through and including June 30, 2020. ATTORNEY
26 shall accept appointments for such cases assigned, whether newly appointed or
27 transferred from the previous provider, within the term of this Agreement beginning on
28 July 1, 2017. This Agreement may be extended for two (2) additional consecutive
twelve (12) month periods upon written approval of both parties no later than one
hundred and eighty (180) days prior to the first day of the next twelve (12) month

1 extension period. The County Administrative Officer or his/her designee is authorized to
2 execute such written approval on behalf of COUNTY, based on ATTORNEY'S
3 satisfactory performance.

4 B. Upon termination or expiration of this Agreement, ATTORNEY
5 shall transfer any misdemeanor case without a set trial date immediately to the new
6 provider(s). Any misdemeanor case set for trial shall remain with ATTORNEY until the
7 case is concluded within the meaning of this Agreement (See Section 14 hereinbelow).
8 Any felony case assigned to ATTORNEY with a set preliminary hearing date shall
9 remain with ATTORNEY through preliminary hearing. If said case involves the
10 defendant entering a guilty plea at the preliminary hearing, the case shall remain with
11 ATTORNEY through sentencing. If the outcome at said preliminary hearing is Held To
12 Answer, the Court will appoint new counsel (new provider) at the time the defendant is
13 arraigned on information. If a felony case is scheduled for a Jury Trial, the case shall
14 remain with ATTORNEY through trial or until the case is concluded within the meaning
15 of this Agreement.

16 ATTORNEY shall use its best efforts to transfer all cases to the new provider(s)
17 of services as soon as possible, provided however, in the event ATTORNEY's
18 representation to such conclusion of cases described above will, despite such best
19 efforts, need to continue beyond the termination or expiration of this Agreement so that
20 ATTORNEY may wind up its performance of legal services to such affected clients, the
21 terms and conditions of this Agreement (except that Section 4-C [termination without
22 cause] shall continue to apply to such cases, but only such cases (collectively,
23 "Holdover Cases").

24 Should ATTORNEY be required to provide legal services in any Holdover
25 Cases, ATTORNEY shall, not later than five (5) days after the termination or expiration
26 of this Agreement, give COUNTY written notice of the Holdover Cases (and specify the
27 names and general nature of the relevant Holdover Cases, e.g., misdemeanor, felony).
28 Compensation for services relating to Holdover Cases shall be the amounts defined in
the then-current rate schedule set forth by the Court for cases subject to Penal Code
Section 987.3. The extended services payment shall continue to be in accordance with
Section 8 of this Agreement.

1 In the event of a transition between ATTORNEY and another provider(s) the
2 transition process shall be monitored through the COUNTY's Contract Administrator.

3 4. TERMINATION

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

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

- 12 1) An illegal or improper use of funds;
- 13 2) A failure to comply with any term of this Agreement;
- 14 3) A substantially incorrect or incomplete report submitted to the
15 COUNTY;
- 16 4) Improperly performed service;
- 17 5) Any of the following or inactions by the ATTORNEY:
 - 18 a. Pleading no contest to or being found guilty of a felony
19 or a crime involving moral turpitude;
 - 20 b. Persistent failure or inability to perform the duties of the
21 Agreement, whether willful or otherwise;
 - 22 c. Disability that seriously interferes with the performance
23 of duties and is permanent or is likely to become permanent;
 - 24 d. Willful misconduct by the ATTORNEY pertaining to
25 contract performance;
 - 26 e. Habitual intemperance or the use of intoxicants or
27 drugs; and
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1 f. Conduct prejudicial to the administration of COUNTY's
2 interests in entering into the Agreement, specifically additional expense to COUNTY
3 resulting from ATTORNEY actions contrary to the spirit of this Agreement. Persistent
4 failure or inability to perform shall not be construed to encompass actions within the
5 discretionary duties of ATTORNEY.

6 6) Any of the following occurrences:

7 a. Institution of proceedings by or against ATTORNEY
8 under the United States bankruptcy laws;

9 b. Suspension of business operations, failure or
10 receivership of ATTORNEY;

11 c. Any assignment of this Agreement without prior
12 written approval of COUNTY; and

13 d. Failure by ATTORNEY to administer the Level One or
14 Level Two Conflicts Offices in full compliance with any and all constitutional, legal and
15 professional obligations or requirements, duties and responsibilities governing such
16 Conflict Offices as are required under this Agreement.

17 7) Any other occurrence or omission constituting a breach of
18 contract.

19 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any
20 breach of this Agreement or any default which may then exist on the part of the
21 ATTORNEY. Neither shall such payment impair or prejudice any remedy available to the
22 COUNTY with respect to the breach or default. The COUNTY shall have the right to
23 demand of the ATTORNEY the repayment to the COUNTY of any funds disbursed to the
24 ATTORNEY under this Agreement, which in the judgment of the COUNTY were not
25 expended in accordance with the terms of this Agreement. ATTORNEY shall promptly
26 refund any such funds upon such demand.

27 C. Without Cause - Under circumstances other than those set forth
28 above, this Agreement may be terminated by COUNTY upon the giving of one hundred
eighty (180) days advance written notice of an intention to terminate. ATTORNEY

1 may terminate this Agreement upon written notice to COUNTY at least one hundred
2 eighty (180) days prior to the effective date of termination.

3 5. FINANCIAL ELIGIBILITY DETERMINATION

4 The determination of financial eligibility or indigence is the sole responsibility of the
5 Court. Non-privileged information subsequently obtained by ATTORNEY that suggests
6 that a client is not eligible for appointment of counsel, shall be provided to the Court. At
7 the request of the Court, ATTORNEY shall attend, as a witness, any hearing regarding the
8 client's ability to reimburse COUNTY for the value of ATTORNEY's services.
9 ATTORNEY's participation in such a hearing remains subject to appropriate claims of
10 privilege. Upon commencement of representation, ATTORNEY shall advise client of the
11 requirements of this Section 5.

12 6. FINANCIAL ELIGIBILITY RECORDS

13 Determination of financial eligibility or indigence is the sole responsibility of the
14 Court. ATTORNEY shall nevertheless prepare and maintain records sufficient to enable
15 County to determine the cost of representing each person represented by ATTORNEY
16 and shall make such records available to COUNTY upon COUNTY's request.
17 ATTORNEY shall obtain from each and every person ATTORNEY is appointed to
18 represent, a completed questionnaire verifying the person's eligibility for conflict Public
19 Defender services. At no additional expense to COUNTY, ATTORNEY shall participate
20 and assist COUNTY in the preparation of any questionnaire and shall provide the
21 applicable courts with a copy of each such completed questionnaire upon disposition of
22 each case for which ATTORNEY is appointed. ATTORNEY's participation and disclosure
23 remains subject to appropriate claims of privilege.

24 7. FEE REIMBURSEMENT

25 ATTORNEY shall be responsible for the completion of both attorney and
26 registration fee forms. The Attorney Fee form is to be completed and provided to the
27 Court at the conclusion of a case. The Registration Fee form shall be presented to clients
28 at the time of appointment.

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1 8. CONTRACT PRICE:

2 A. Total Contract Price - The Total Contract Price to be paid

3 ATTORNEY by COUNTY is not to exceed Twenty-Two Million Seven Hundred Thirty-
4 Three Thousand Seven Hundred Sixty Dollars (\$22,733,760) consisting of Twenty-Two
5 Million One Hundred Thirty-Three Thousand Seven Hundred Sixty Dollars (\$22,133,760)
6 for the services to be provided hereunder, including the work to be performed hereunder,
7 for all of the administration, management and supervision, attorney services, support
8 services, ancillary services, and other services identified in ATTORNEY's final Proposal to
9 COUNTY's RFP, and Six Hundred Thousand Dollars (\$600,000) for those enumerated
10 Reimbursable Services which are set forth in subsection B below, all as further defined
11 and specified in this Agreement (hereinafter referred to as the "Total Contract Price"). The
12 Total Contract Price includes all of the prices, fees, charges and expenses necessary in
13 accordance with this Agreement to provide the services hereunder and to meet the
14 requirements of ATTORNEY to provide the services hereunder and to meet the
15 requirements of ATTORNEY's Proposal and the COUNTY's RFP. The Total Contract
16 Price or "Flat Fee," is the sole consideration to be paid to ATTORNEY hereunder, and
17 includes provision for all out-of-pocket costs, such as computer time, freight, long distance
18 telephone charges, travel expenses, copying, telecopying, faxing and postage, and for all
19 items or services necessary to deliver the services described herein. Accordingly, no
20 amounts not specified in this Section 8 shall be billed to or paid by COUNTY, except
21 pursuant to an amendment to this Agreement authorized by COUNTY's Board of
22 Supervisors. ATTORNEY shall not assign any payments or portions of payments without
23 prior written consent of COUNTY.

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

 ATTORNEY'S agreement to this Flat Fee shall include ATTORNEY'S
representation fees for special circumstance – homicide cases as specified in Section 2 of

1 this Agreement. Additional special circumstance – homicide case costs, including the cost
2 of second counsel if required, investigation and ancillary services shall be approved and
3 compensated pursuant to the policy of the Fresno County Superior Court (unless
4 approved at a different rate through a court order) regarding appointment of private
5 counsel in said cases and shall be entirely outside of this Agreement.

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

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

1) The parties agree and understand that the funds to be
appropriated by COUNTY for identification and use in the Fund are included within and are

1 a part of the Total Contract price.

2 2) COUNTY will appropriate One Hundred Twenty Thousand
3 Dollars (\$120,000) each fiscal year of the Agreement. The total five-year appropriation by
4 COUNTY for the Fund shall not exceed Six Hundred Thousand Dollars (\$600,000).

5 3) COUNTY shall only approve Reimbursable Services
6 payments that do not exceed the current rate schedule set forth by the Court and in
7 accordance with Penal Code Section 987.3, unless approved at a different rate through a
8 court order.

9 4) ATTORNEY shall submit an invoice for up to Ten Thousand
10 Dollars (\$10,000) as a first draw on these funds for each of the Level One and Level Two
11 Conflicts Offices. ATTORNEY shall place said monies in a trust fund which shall be
12 equally accessible to the attorneys to whom an indigent defendant case is assigned.
13 ATTORNEY may request as needed throughout each year of the Agreement up to an
14 additional Ten Thousand Dollars (\$10,000.00) drawn down by invoice, supported by such
15 accounting and reporting as specified in Section 13, submitted to COUNTY.

16 5) Any part of the annually appropriated Fund which is not used
17 or utilized for payment of invoices for charges incurred in that year, shall revert to
18 COUNTY and is not subject to further charges hereunder.

19 6) Charges in any year, which exceed the annual amount
20 appropriated by COUNTY for that year, will be applied against the appropriation for the
21 succeeding year or years remaining in the Agreement.

22 7) ATTORNEY shall have no personal interest in the funds
23 appropriated by COUNTY for use in the Fund, and ATTORNEY agrees and understands
24 that the sole purpose of the Fund is reimbursement of the reasonable and necessary
25 charges incurred by ATTORNEY for Reimbursable Services.

26 8) In the event that the total appropriations to the Fund for the
27 potential five year period of this Agreement have been fully exhausted hereunder by
28 ATTORNEY through invoices for reasonable and necessary charges for the provision of
Reimbursable Services, the parties agree that they will mutually review the amounts and

1 funding levels set forth in this subsection and explore an adjustment thereof through
2 agreement renegotiations and agreement modification.

3 C. Holdover Cases Funding – Compensation for Holdover Cases
4 shall not exceed the amounts defined in the then -current rate schedule set forth by the
5 Court for cases subject to Penal Code Section 987.3.

6 D. Payment – ATTORNEY shall receive payment according to the
7 following schedule:

8 1) Year One (1) service payments, excluding Reimbursable Service
9 Fund, shall be Three Hundred Thirty-Six Thousand Five Hundred Seventy-Eight Dollars
10 (\$336,578) each month and will not exceed Four Million Thirty-Eight Thousand Nine
11 Hundred Thirty-Six Dollars (\$4,038,936), annually;

12 2) Year Two (2) service payments, excluding Reimbursable Service
13 Fund, shall be Three Hundred Fifty-Three Thousand Four Hundred Seven Dollars
14 (\$353,407) each month and will not exceed Four Million Two Hundred Forty Thousand
15 Eight Hundred Eighty-Four Dollars (\$4,240,884), annually;

16 3) Year Three (3) service payments, excluding Reimbursable Service
17 Fund, shall be Three Hundred Seventy-One Thousand Seventy-Seven Dollars (\$371,077)
18 each month and will not exceed Four Million Four Hundred Fifty-Two Thousand Nine
19 Hundred Twenty-Four Dollars (\$4,452,924), annually;

20 4) Optional Year Four (4) service payments, excluding Reimbursable
21 Service Fund, shall be Three Hundred Eighty-Five Thousand Nine Hundred Twenty
22 Dollars (\$385,920) each month and will not exceed Four Million Six Hundred Thirty-One
23 Thousand Forty Dollars (\$4,631,040), annually; and

24 5) Optional Year Five (5) service payments, excluding Reimbursable
25 Service Fund, shall be Three Hundred Ninety-Seven Thousand Four Hundred Ninety-
26 Eight Dollars (\$397,498) each month and will not exceed Four Million Seven Hundred
27 Sixty-Nine Thousand Nine Hundred Seventy-Six Dollars (\$4,769,976), annually.

28 Payment for services, other than Reimbursable Services, shall occur within ten (10)
days after COUNTY's receipt of an invoice after the end of each month in which such

1 services were rendered.

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

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

11 E. Other Compensation Prohibited – In no event shall ATTORNEY,
12 including ATTORNEY's Level One Conflict Office, Level Two Conflict Office and any
13 Wheel Attorney, accept anything of value as consideration for services rendered on behalf
14 of an indigent defendant pursuant to this Agreement, except from COUNTY as prescribed
15 by the terms of this Agreement.

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

21 9. CASELOAD AND WORK LEVELS:

22 COUNTY has disclosed to ATTORNEY all information it possesses concerning the
23 type and number of cases handled by County's prior provider for these services for the
24 three/five years immediately preceding this Agreement. The information derives from
25 reports submitted by ATTORNEY (as COUNTY's prior provider) to COUNTY, concerning
26 the type and number of cases handled by ATTORNEY during the term of such
27 ATTORNEY's prior agreement with COUNTY. ATTORNEY represents to COUNTY that it
28 is experienced as an attorney in the representation of indigent defendants, and that its
projections are based upon its independent investigation and consideration of the

1 circumstances, policies and practices within Fresno County and has recommended a flat
2 rate fee for the provision of services hereunder. ATTORNEY and COUNTY acknowledge
3 that many factors outside the control of the parties can affect the ability of ATTORNEY to
4 accurately project caseloads and work levels with certainty. The court and the prosecution
5 largely control such factors and the length of time between arraignment and trial, local
6 sentencing practices, and pleading negotiation practice. ATTORNEY has anticipated
7 and liquidated in its flat fee rate, to the extent possible, all additional expenses arising from
8 such changes, and ATTORNEY assumes the risk of and hereby waives any claim(s) to
9 additional compensation for expenses which may be incurred by reason of such or similar
10 circumstances.

11 The foregoing representations by ATTORNEY are a significant and substantial
12 inducement to COUNTY to enter into this Agreement with ATTORNEY, and COUNTY
13 relies upon ATTORNEY's experience and understanding of the criminal justice system, as
14 well as ATTORNEY's understanding of the circumstances likely to occur during the term of
15 this Agreement.

16 Notwithstanding the foregoing, extraordinary changes beyond the reasonable
17 expectations of the parties may give rise to a need to modify this Agreement to ensure that
18 ATTORNEY will be able to perform the obligations of this Agreement and to provide
19 adequate legal representation. In the event of extraordinary events or conditions,
20 ATTORNEY may request COUNTY to modify this Agreement, upon reasonable notice and
21 satisfactory proof of the need therefor, to provide for such extraordinary events or
22 conditions to allow ATTORNEY to perform the obligations of this Agreement.

23 10. MINIMUM PROFESSIONAL QUALIFICATIONS:

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

ATTORNEY shall provide to COUNTY the names of all attorneys performing legal

1 defense services under this Agreement, their experience, qualifications, and areas of
2 specialization, and shall update this information promptly as necessary. ATTORNEY shall
3 develop and establish categories of minimum special qualifications and categories of
4 cases which each attorney is eligible to handle.

5 The legal representation provided by ATTORNEY and all attorneys performing
6 services under this Agreement shall be of such high quality as will meet all constitutional,
7 statutory, case law, and professional standards and requirements. Federal and State
8 Constitutions require provision of competent counsel in criminal cases. In California, the
9 adopted test for determining competence of counsel in criminal cases is that of a
10 "reasonably competent attorney acting as a diligent, conscientious advocate" (Strickland v.
11 Washington (1984) 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674). ATTORNEY
12 agrees to provide competent legal services in conformity with the above standards.
13 Specifically, the following duties and responsibilities of counsel as set forth in prior court
14 decisions and professional standards will be observed. These include:

15 1) The duty of careful, factual and legal investigation. (See
16 Strickland v. Washington (1984) 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 – duty
17 to research the law and raise objections; In re Saunders (1970) 2 Cal.3d 1033 – duty to
18 investigate medical reports and conduct psychiatric examinations to support a diminished
19 capacity defense; and ABA Standards for Criminal Justice: Prosecution and Defense
20 Function, 3d ed., © 1993 American Bar Association (hereinafter referred to as "ABA
21 Standard"), Standards 4-1.1 through 4-8.6).

22 2) The duty to take prompt action to protect a client's legal
23 rights. (ABA Standards, Section 3.6a (includes procedural steps such as moving for pre-
24 trial release, obtain psychiatric examination, moving for change of venue or continuance,
25 suppression of illegally obtained evidence, severance from jointly charged defendants, or
26 dismissal)).

27 3) The duty to keep a client informed. (ABA Standards, Section
28 3.8.)

4) The duty to prepare for jury selection, examination of
witnesses, submission of instructions and presentation of argument at trial. (ABA

Standards Sections 7.2(a) and 7.2(b).)

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

6) The duty to advise concerning appeals. (ABA Standards Section 8.2(a).)

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

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

9) The duty to maintain confidence and secrets.

10) The duty to administer the Level One and Level Two Conflict Offices in full compliance with any and all constitutional, legal, ethical, professional obligations, duties and responsibilities governing such conflict as required under this Agreement, as specified in Exhibit "A" (ATTORNEY's policies, procedures and practices for multiple conflicts services).

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

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

11. PROFESSIONAL TRAINING AND DEVELOPMENT:

ATTORNEY shall ensure that each attorney providing services under this Agreement shall be provided professional training, and ATTORNEY agrees that the compensation to be provided to ATTORNEY includes the amount to defray such training expense. ATTORNEY shall require all attorneys performing services under this Agreement or any subcontract thereto, to obtain ongoing professional training at a level

1 and cost which does not fall below minimum professional standards. ATTORNEY shall
2 also be responsible for reasonable professional training of non-attorney professional staff.

3 12. CONFLICTS OF INTEREST AND APPEARANCE OF IMPROPRIETY:

4 The parties recognize that ethical considerations such as those referred to in the
5 California Rules of Professional Conduct may prohibit attorneys in the Level One Conflict
6 Office from accepting some appointments normally included in the contract caseload.
7 ATTORNEY agrees to establish a system for screening appointments upon intake to
8 discover potential conflicts of interest and make appropriate referrals to the Level Two
9 Conflict Office or to Wheel Attorneys to provide legal defense services.

10 Upon discovery of a conflict of interest or other ethical consideration precluding
11 further representation, ATTORNEY shall immediately notify the affected client and refer
12 the case to the Level Two Conflict Office, or to Wheel Attorneys or to the Court as
13 necessary.

14 ATTORNEY's Level One Conflict Office shall not decline to represent any eligible
15 person except for a conflict of interest or disqualification pursuant to written order from the
16 Court.

17 13. REPORTS:

18 ATTORNEY shall provide to the Presiding Judge of the Court notice of the
19 attorneys so designated by Attorney for services provided under this Agreement, and
20 ATTORNEY agrees to promptly notify the courts of any additions or deletions to the
21 attorneys so employed, with a copy of such correspondence or notice provided to
22 COUNTY's Contract Administrator.

23 A. Required Reports – ATTORNEY shall provide COUNTY's
24 Contract Administrator each month with a case report on each case handled in a format
25 required by COUNTY as provided in Attachment A. Additionally, ATTORNEY shall
26 provide Monthly reports of an accounting of the Ancillary services funds spent during that
27 month in a format required by COUNTY as provided in Attachment B, including any and all
28 receipts, invoices or other billing documents with each defendant's name and case
numbers referenced on each invoice for the Ancillary services rendered. Monthly reports

1 shall be filed on or before the 15th day of the month following the month of activity
2 reported. In addition, ATTORNEY will submit an annual narrative and statistical report as
3 specified by the COUNTY. The annual report shall be available in an electronic format
4 and filed with COUNTY's Contract Administrator and the Court's Executive Officer no later
5 than August 15th of each year. Failure to provide the case, monthly or annual reports shall
6 be cause to withhold payment to ATTORNEY until such time as the required reports are
7 filed.

8 B. Examination of Records – While conforming with Section 15 of
9 this Agreement, ATTORNEY shall at any time during its normal business hours and as
10 often as COUNTY may deem necessary, make available to COUNTY for examination, its
11 records and data with respect to all matters covered by this Agreement and shall permit
12 COUNTY to audit and inspect all invoices, materials, payrolls, records of personnel,
13 conditions of employment and other data relating to all matters covered by this Agreement.
14 ATTORNEY shall maintain the confidentiality of records pursuant to all federal, state and
15 local laws and professional ethics and standards.

16 14. RETENTION OF FILES:

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

1 the indigent defendant of ATTORNEY's obligations under this Section 14.

2 15. AUDITS AND INSPECTIONS:

3 ATTORNEY shall at any time during business hours, and as often as the COUNTY
4 may deem necessary, make available to the COUNTY for examination all of its records
5 and data with respect to the matters covered by this Agreement. The ATTORNEY shall,
6 upon request by the COUNTY, permit the COUNTY to audit and inspect all of such
7 records and data necessary to ensure ATTORNEY's compliance with the terms of this
8 Agreement. ATTORNEY shall be subject to the examination and audit of the California
9 State Auditor for a period of three (3) years after final payment under contract
10 (Government Code Section 8546.7).

11 16. INDEPENDENT CONTRACTOR:

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

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

27 Because of its status as an independent contractor, ATTORNEY and ATTORNEY's
28 staff shall have absolutely no right to employment rights and benefits available to
COUNTY employees. ATTORNEY shall be solely liable and responsible for providing to,

1 or on behalf of, its employees all legally required employee benefits. In addition,
2 ATTORNEY shall be solely responsible and save COUNTY harmless from all matters
3 relating to payment of ATTORNEY's employees, including compliance with Social Security
4 withholding and all other regulations governing such matters. It is acknowledged that
5 during the term of this Agreement, ATTORNEY may be providing services to others
6 unrelated to the COUNTY or to this Agreement. This aforementioned indemnification
7 provision shall survive the expiration or termination of this Agreement.

8 17. MODIFICATION:

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

11 18. NON-ASSIGNMENT:

12 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or
13 duties under this Agreement without the prior written consent of the other party, except in
14 the case of ATTORNEY's contracts with Stand-in Attorneys or Wheel Attorneys, as
15 specified in Section 1 of this Agreement.

16 19. NON-DISCRIMINATION:

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

21 20. HOLD HARMLESS:

22 ATTORNEY agrees to indemnify, save, hold harmless, and at COUNTY'S request,
23 defend the COUNTY, its officers, agents, and employees from any and all costs and
24 expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in
25 connection with the performance, or failure to perform, by ATTORNEY, its officers, agents,
26 or employees under this Agreement, and from any and all costs and expenses, damages,
27 liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who
28 may be injured or damaged by the performance, or failure to perform, of ATTORNEY,
its officers, agents, or employees under this Agreement.

1 21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND
2 OTHER RESPONSIBILITY MATTERS:

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

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

22 ATTORNEY shall indemnify, defend and hold the County harmless for any loss or
23 damage resulting from a conviction, debarment, exclusion, ineligibility or other matter listed
24 in the signed Certification Regarding Debarment, Suspension, and Other Responsibility
25 Matters.

26 22. INSURANCE:

27 Without limiting the COUNTY's right to obtain indemnification from or any third
28 parties, ATTORNEY, at its sole expense, shall maintain in full force and effect, the
following insurance policies throughout the term of the Agreement:

1 A. Commercial General Liability - Commercial General Liability

2 Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and
3 an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a
4 per occurrence basis. COUNTY may require specific coverages including completed
5 operations, products liability, and contractual liability, Explosion-Collapse-Underground,
6 fire legal liability or any other liability insurance deemed necessary because of the nature
7 of this contract.

8 B. Automobile Liability – Comprehensive Automobile Liability

9 Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars
10 (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident
11 and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such
12 coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00).
13 Coverage should include owned and non-owned vehicles used in connection with this
14 Agreement.

15 C. Attorney at Law Professional Liability and Errors and Omissions –

16 Such program of insurance shall be in the amount of not less than One Million Dollars
17 (\$1,000,000) per occurrence, One Million (\$1,000,000) annual aggregate, and such
18 insurance shall be primary to any other similar insurance maintained by COUNTY. This
19 coverage shall be issued on a per claim basis. ATTORNEY agrees that it shall maintain,
20 as its sole expense, in full force and effect for a period of three (3) years following the
21 termination of this Agreement, one or more policies of professional liability insurance with
22 limits of coverage as specified herein.

23 D. Workers' Compensation - A policy of Workers' Compensation

24 insurance as may be required by the California Labor Code.

25 ATTORNEY shall obtain endorsements to the Commercial General Liability
26 insurance naming the County of Fresno, its officers, agents, and employees, individually
27 and collectively, as additional insured, but only insofar as the operations under this
28 Agreement are concerned. Such coverage for additional insured shall apply as primary
insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,

1 agents and employees shall be excess only and not contributing with insurance provided
2 under ATTORNEY's policies herein. This insurance shall not be cancelled or changed
3 without a minimum of thirty (30) days advance written notice given to COUNTY.

4 Within Thirty (30) days from the date ATTORNEY signs and executes this
5 Agreement, ATTORNEY shall provide certificates of insurance and endorsement as stated
6 above for all of the foregoing policies, as required herein, to the County of Fresno,
7 **(Samantha Buck, Fresno County Administrative Office, 2281 Tulare Street, Room**
8 **304, Fresno, CA 93721)**, stating that such insurance coverage have been obtained and
9 are in full force; that the County of Fresno, its officers, agents and employees will not be
10 responsible for any premiums on the policies; that such Commercial General Liability
11 insurance names the County of Fresno, its officers, agents and employees, individually
12 and collectively, as additional insured, but only insofar as the operations under this
13 Agreement are concerned; that such coverage for additional insured shall apply as primary
14 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
15 agents and employees, shall be excess only and not contributing with insurance provided
16 under ATTORNEY's policies herein; and that this insurance shall not be cancelled or
17 changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

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

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

24 23. SELF DEALING DISCLOSURE:

25 Members of ATTORNEY's Board of Directors shall disclose any self-dealing
26 transactions that they are a party to while ATTORNEY is providing goods or performing
27 services under this Agreement. A self-dealing transaction shall mean a transaction to
28 which ATTORNEY is a party and in which one or more of its directors has a material
financial interest. Members of the Board of Directors shall disclose any self-dealing

1 transactions that they are a party to by completing and signing a Self-Dealing Transaction
2 Disclosure Form (Exhibit "B" hereto) and submitting it to COUNTY prior to commencing
3 with the self-dealing transaction or immediately thereafter.

4 24. GOVERNING LAW:

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

9 25. NOTICES:

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

12 COUNTY

12 ATTORNEY

13 COUNTY OF FRESNO

13 Richard A. Ciummo and Associates

14 County Administrative Office

14 Attn: Richard A. Ciummo

15 2281 Tulare Ave, Room 304

15 123 Fourth Street

16 Fresno, CA 93721

16 Madera, CA 93638

17 Any and all notices between the COUNTY and the ATTORNEY provided for or
18 permitted under this Agreement or by law shall be in writing and shall be deemed duly
19 served when personally delivered to one of the parties, or in lieu of such personal services,
20 when deposited in the United States Mail, postage prepaid, addressed to such party.
21

22 26. ENTIRE AGREEMENT:

23 This Agreement constitutes the entire agreement between the ATTORNEY and
24 COUNTY with respect to the subject matter hereof and supersedes all previous
25 Agreement negotiations, proposals, commitments, writings, advertisements, publications,
26 and understanding of any nature whatsoever unless expressly included in this Agreement.

27 ///

28 ///

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
2 the day and year first hereinabove written.

3 ATTORNEY-CONTRACTOR

4 
5 (Authorized Signature)

6 Michael Fitzgerald CEO
7 Print Name & Title

8 123 East Fourth Street

9 Madera, CA 93638
10 Mailing Address

11 DATE: 5-11-17

COUNTY OF FRESNO



Chairman, Board of Supervisors

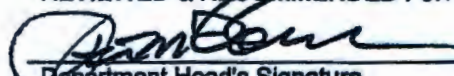
ATTEST:

BERNICE E. SEIDEL, Clerk
Board of Supervisors


By Susan Bishop
Deputy

DATE: _____

REVIEWED & RECOMMENDED FOR APPROVAL

12 
13 Department Head's Signature

14 APPROVED AS TO LEGAL FORM

15 
16 County Counsel

APPROVED AS TO ACCOUNTING FORM

17 
18 Auditor-Controller/Treasurer-Tax Collector

19 FOR ACCOUNTING USE ONLY:

20 ORG No.: 2875

21 Account No.: 7301

22 Requisition No.:

23 FCMC 06/11

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RICHARD A. CIUMMO & ASSOCIATES,
A PROFESSIONAL LAW CORPORATION

POLICY AND PROCEDURES

FOR

MULTIPLE CONFLICTS SERVICES

EXHIBIT A

POLICY AND PROCEDURES

I.

GENERAL OVERVIEW

The multiple conflicts offices of Richard A. Ciummo & Associates, a Professional Law Corporation ("the firm") will represent clients whose cases present a conflict of interest within the Fresno County Public Defender's Office. The scope of services is inclusive of the first (1st) through seventh (7th) levels of conflict defense. To provide said services, the firm will maintain two (2) in-house offices and will contract with five (5) independent attorneys to be assigned cases on a rotational basis. Assignment of cases is as follows:

When the Fresno County Public Defender declares a conflict of interest or in the event of a multiple-defendant case, the court shall appoint Ciummo & Associates ("C&A") as the first alternate attorneys for said conflict or second defendant. If C&A declares a conflict or the case is a three-defendant case, the court shall appoint Alternate Defense Office ("ADO"). If ADO declares a conflict or there are additional defendants in the case, the court shall contact ADO for the next available contract attorney to be assigned the aforementioned defendant(s). ADO will maintain a list of contract attorneys to be assigned to said cases and shall notify the court of the next attorney available on a rotational basis.

The attorneys employed in the offices of C&A and ADO will be employees of the firm. The attorneys will be supervised by the Chief Defense Attorney ("CDA") in their respective offices. All pleadings filed or submitted to a court of record on behalf of clients will bear the name of the applicable office.

The CDA will report directly to the firm's Administrative Office CEO or his designee.

The CDA will bear responsibility for supervising, directing, coordinating and evaluating the work of all the attorneys and staff employed in his/her office. In matters regarding decisions and judgments about how to represent individual clients on matters pending before the court, the CDA will have sole responsibility for providing guidance and direction to the attorneys in his/her office. The Administrative Office of Richard A. Ciummo & Associates will not seek to intervene in, influence or exert control either directly or indirectly over the professional and legal work of staff attorneys on any assigned case to C&A or ADO.

With regard to matters concerning the professional conduct of employees, internal office procedures, relationships with county departments and other firm offices, and the presentation of matters of policy and public interest unrelated to representation of a client on specific cases, the attorneys and staff assigned to C&A and ADO shall have the same duties and responsibilities as other staff members of the firm.

II.

IMPLEMENTATION OF SERVICES

A. PHYSICAL SEGMENTATION OF C&A AND ADO

To promote in both substance and appearance the independence of the attorneys in the C&A and ADO offices and to dispel any appearance of a conflict of interest which would affect the legal representation afforded clients of C&A and ADO, the following safeguards and procedures will be established:

1. Office Space. C&A and ADO will be located and housed in office space separate from each other. The offices provided by C&A and ADO to their attorneys for meeting with clients as well as case preparation will both individually and in the aggregate be separate and apart from each other's office space.

2. Clerical Staff and Communications Systems. Separate clerical staff and space, telephone and fax equipment and any other clerical equipment (e.g., computers) will be provided to the C&A and ADO staff for their exclusive use so as to minimize any possibility of confidential communications with clients or other parties being purposefully or inadvertently compromised.

C&A and ADO will have separate telephone and fax numbers. Each office will also have letterhead, pleading paper, and business cards separate and distinct from each other.

3. Investigation Staff. C&A and ADO will have an investigation staff separate from each other. Investigators will report directly to their CDA.

4. File Management and Client Confidentiality. C&A and ADO will establish its own set of client files and such files will be kept separate and confidential so that no employee of one office will have access to the files of the other office. The same policy will apply to closed client files of C&A and ADO.

5. Accounting and Budget. Any staff requests for funds from the ancillary services account made by staff in preparation for cases assigned to C&A and ADO will be submitted to their respective CDA. Upon approval by the CDA, requests for funds will be processed and the paperwork sent to the County Administrative Office pursuant to contract.

Any matters of accounting and budget within C&A and ADO which could possibly contain client confidential information or present a risk of conflict shall be processed by staff in each office and kept separate from the other.

B. SUPERVISION OF PERSONNEL OF C&A AND ADO

1. Duties and Responsibilities of the Office CDA. The CDA will supervise all attorneys and staff and have sole responsibility for providing guidance and direction to the attorneys and staff. The CDA will report directly to the Administrative Office CEO or his designee.

a. Hiring, Firing and Promotions. Attorneys and staff may be initially recruited, screened and selected by the Administrative Office of the firm.

Once staff is assigned to C&A or ADO, however, any changes in any staff member's salary or working conditions can be made by the firm's Administrative Office upon a recommendation initiated by the CDA. Consistent with the function of C&A and ADO, every effort shall be made to achieve promotional salary parity with the other offices of the firm.

All evaluations of the work performance of staff members assigned to C&A and ADO will be submitted only by the CDA to the Administrative Office CEO or his designee for review and no other member of the firm will have any input or comment upon such recommendations or any action to be taken by the Administrative Office CEO or designee.

Any recommendation for transfer of an attorney or other staff member from C&A or ADO to another office of the firm will be made only by the CDA to the Administrative Office CEO or designee.

Any disciplinary measures--up to and including termination of an employee--can be initiated only by the CDA and are subject to review and approval by the Administrative Office CEO or his designee.

b. Case Workload and Conditions for Employment. It is the policy of the firm to maintain appropriate workloads. The CDA shall have the responsibility of maintaining caseloads and working conditions that are consistent with the proper representation of clients.

c. Requests for Funds. Requests for funds for the use of experts, investigation, or travel relating to a case assigned to a member of the C&A or ADO staff shall be submitted to the CDA for approval. The CDA shall make the final decision on all requests for ancillary funds.

2. Transfer of Employees Between Offices. Every effort will be made to minimize transfers between C&A and ADO. In the event an employee of C&A or ADO transfers to or from the other, procedures shall be followed in order to appropriately identify and prevent potential conflicts of interest.

a. Transfer of Attorneys. Should an attorney transfer into or out of C&A or ADO, that attorney must present to the new CDA a list of all clients represented by that attorney while working for the other office. That list will then be compared with the computerized list of clients, co-defendants, and witnesses of the new office.

If any matches are discovered, the client whose case has been identified as being in conflict will be notified. Each attorney affected will be instructed about the conflict and advised not to discuss the case in the presence of the other or to seek any information about the case in conflict. The CDA will distribute a memorandum to the appropriate parties, including all staff of the new office, notifying them of the screening of each affected attorney from the case in conflict.

If either CDA feels that the transfer cannot be accomplished with adequate safeguards for the client, then the transfer will not occur and the attorney will be returned to the sending office. The CDA will maintain accurate records of each case involving conflicts with transferring attorneys and will monitor attorney compliance with these rules and the California Rules of Professional Conduct. As each matched case in conflict is closed, the transferring attorney will be notified.

b. Transfer of Supervisors. In the event a supervisor of attorneys, investigators, or other staff member, transfer to or from C&A or ADO, the same procedures as described above for attorney transfers shall be followed.

The supervisor will be screened off from any case in the new office which would present a conflict of interest with any case he or she worked on in the other office. The affected supervisor will be instructed about the conflict and advised not to discuss the case or to seek information about the case in conflict. The CDA will distribute memoranda to appropriate staff members notifying them of the screening.

C. PROTECTING CLIENT CONFIDENTIALITY

1. Control of Files. The CDAs in each office will be responsible for maintaining the confidentiality of client files through the use of division identification on all case numbers, other appropriate file security, both physical and electronic; and by arranging for segregated storage of closed files; and by the maintenance of correct centralized conflict data base files clearly identifying District Attorney, City Attorney or County Counsel numbers and C&A or ADO (office specific) case numbers.

2. Education of Staff re Parameters of Glass Walls and Cones of Silence. All staff members of the firm's Fresno office will be held responsible for reading and properly abiding by the Policy and Procedures Manual multiple conflicts offices.

CDAs and supervising attorneys will notify all attorneys and staff in their respective offices of the multiple conflicts offices and the importance of avoiding situations where a conflict of interest may occur with clients represented by their respective offices.

In addition, all attorneys and staff will be made aware of the procedures to follow in case a conflict should arise on a case on which he/she is working. Once a conflict has been identified, all attorneys and staff will strictly abide by the rules regarding screening of the affected staff members from communication or information on the particular case in conflict.

D. CONFLICTS OF INTEREST

1. Identification of Potential Conflict Areas. Conflicts of interest may arise in a variety of circumstances. Each attorney must be alert to recognize when he or she has a case which may involve a conflict and act accordingly. Conflicts typically arise in the following types of circumstances although this list is not exhaustive:

- a. multiple defendants charged in the same case;
- b. situations in which a prosecution witness or alleged victim in one case is currently our client on a separate case or was previously our client on a past/closed case;
- c. the victim or prosecution witness is a member of the staff of the firm or is a member of the immediate family of an employee;
- d. a member of the staff of the firm previously acted adversely to the client's interest in the case;

2. Reporting Conflicts. When a disabling conflict of interest occurs, the conflict must be declared at the earliest possible moment in the case. This will minimize cost and duplication of effort and will also insure that the client is provided with proper counsel as early in the proceedings as possible. Conflicts shall not be declared, however, without completing the appropriate Declaration of Conflict of Interest letter and securing the appropriate authorization.

In any case involving multiple defendants there is such a strong likelihood of a conflict that the declaration should be made at the arraignment. If the arraignment attorney has personal knowledge of any conflict, this too should be

declared at the arraignment. This may be done without prior supervisory approval. However, the attorney declaring the conflict must complete the appropriate conflict letter and submit it to his or her supervisor immediately following the court hearing. This requirement for completing a report is essential so that the names of the parties will be available to other attorneys who may be researching conflict information on their own cases.

In all other cases, the Declaration of Conflict of Interest must be completed and approved by the attorney's supervisor before declaring the conflict in court. The original conflict letter, signed by the appropriate supervisor, is maintained in the client file. A copy will be forwarded to the CDA.

3. Procedure for Determining if a Conflict Exists. Prior to declaring a conflict of interest, attorneys are responsible for verifying that sufficient factual basis for a conflict exists. This should involve:

- a. reviewing the complaint;
- b. reviewing the police report and other discovery material;
- c. reviewing the intake report or pretrial service report, if available.
- d. interviewing the defendant concerning other cases which may be pending or for which he or she may have outstanding warrants.
- e. reviewing the office's data base, including the data base of other offices if it appears warranted by the facts of the case, to determine whether the office is currently representing or has represented a witness or co-defendant on a separate case. If a conflict is identified, the attorney *will not* pull the file to review it. Doing so may well disclose client confidences which will then guarantee the necessity to declare a conflict. Notify the CDA or supervising attorney.

If the review process reveals a conflict, the attorney should proceed through the steps required to declare a conflict.

4. Procedure in Court. When a conflict has been discovered and declaration of the conflict has the appropriate approval, the attorney will set the matter for declaration in court at the earliest possible date. Neither the prosecuting agency nor the court has the right to know the reason for the conflict. Uhl v. Municipal Court (1974) 37 CA3d 526. Attorneys should be particularly careful to not disclose the reason for a conflict which would divulge privileged information.

5. Personal Antagonism Between Attorney and Client. Disagreement between the client and the attorneys to trial strategy or tactics is not grounds for declaring a conflict. People v. Stewart (1970) 6 Cal.App.3d 456; People v. Williams (1970) 2 Cal.3d 894, 905-906; People v. Floyd (1970) 1 Cal.3d 694, 704-705. However, when such disagreement results in a "breakdown in the attorney/client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel, a substitute may be required. People v. Robels (1970) 2 Cal.3d 205, 215.

If a client seeks a hearing under People v. Marsden (1970) 2 Cal.3d 118, the attorney must advise his or her CDA or supervising attorney. If any attorney is relieved from representing a client as the result of a Marsden hearing, the appropriate supervisor must be notified. Adherence to this policy will insure that the attorney's and the defendant's rights will be protected and that a record will be maintained for others who are researching conflict issues in their own cases.

III.

INDEPENDENT CONTRACTORS

The applicable provisions of the policy and procedures set forth above shall apply to those attorneys with whom Richard A. Ciummo & Associates contracts to provide representation in Level III through Level VII conflict cases.

The contract attorneys have complete autonomy and sole responsibility for their offices and staff members.

If any questions or problems arise pertaining to contract services, the contract attorney should address the concerns to the CEO of the firm or his/her designee.

EXHIBIT B

QUALITY ASSURANCE PROCESS

The following sets forth the procedures, processes and conventions necessary to assure the delivery of high quality services to be rendered under the Agreement, the Request for Proposal 918-4396, and the Response to this RFP submitted by Richard A. Ciummo & Associates, a Professional Law Corporation. This process is referenced in the agreement between Richard A. Ciummo & Associates (Contractor) and Fresno County (County).

- A. Intent: The intent of this Quality Assurance process is to maintain the procedures, processes and conventions necessary to demonstrate the quality of services desired by Fresno County and the Courts. The Contractor and County have the mutual objective to achieve a legal defense system that provides indigent defense services for up to seven (7) levels of conflict defense. It also provides Contractor with opportunities to report on its staff's performance and to receive comments and evaluations from County necessary to prepare and implement action plans to correct and improve services. This includes review of the reasonable and necessary costs for ancillary services incurred by the Contractor for which a reimbursement has been requested.
- B. Quality Assurance Process: The Quality Assurance Process shall consist of specified meetings every six (6) months or if the circumstances warrant and upon County's request to consult over changes or refinements to the Agreement or the parties' implementation thereto that are reasonably needed to minimize the number of conflicts resulting in court appointments of private attorneys. The purpose of this process is to avoid causing County to incur additional costs from a Court appointment of private counsel at County's expense.

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	