



# County of Santa Cruz

## COUNTY ADMINISTRATIVE OFFICE

701 OCEAN STREET, SUITE 520, SANTA CRUZ, CA 95060-4073

(831) 454-2100 FAX: (831) 454-3420 TDD: (831) 454-2123

SUSAN A. MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

May 26, 1999

Agenda: June 8, 1999

BOARD OF SUPERVISORS  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

### APPROVAL OF PUBLIC DEFENDER CONFLICT OF INTEREST CONTRACTS

Dear Members of the Board:

On May 18, 1999 your Board approved compensation and contract provisions for Public Defender Conflict of Interest services for the period July 1, 1999 through June 30, 2002 and directed that the contracts with the firms of Page, Salisbury, and Dudley, and Wallraff and Gilman be returned to your Board on this date for final approval. The attached contracts incorporate the provisions approved by your Board on May 18, 1999 and add quarterly reporting requirements for felony and misdemeanor probation violations and juvenile probation violations to assist in measuring workload.

It is therefore Recommended that your Board:

- 1) Approve the contracts with the firms of Page, Salisbury, and Dudley, and Wallraff and Gilman for Public Defender Conflict of Interest services for the period July 1, 1999 through June 30, 2002; and,
- 2) Authorize the County Administrative Officer to sign on behalf of the County.

Very truly yours,

SUSAN A. MAURIELLO  
County Administrative Officer

cc: Auditor-Controller  
County Counsel  
Superior Court  
Wallraff and Gilman  
Page, Salisbury, and Dudley

COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

70

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: County Administrative Office (Dept.)  
Paul Gutz (Signature) 5-27-99 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

- Said agreement is between the COUNTY OF SANTA CRUZ (Agency) and WALLRAFF & GILMAN, 136 Vernon Street, Santa Cruz, CA 95060 (Name & Address)
- The agreement will provide Public Defender Conflict of Interest Services
- The agreement is needed because the County cannot provide the service
- Period of the agreement is from July 1, 1999 to June 30, 2000
- Anticipated cost is \$ 576,510 (Fixed Amount, Monthly Rate, Not to exceed)
- Remarks: ON CONTINUING AGREEMENTS LIST
- Appropriations are budgeted in 591000 (Index#) 3680 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations  are available and  have been encumbered. \* Contract No. 90023A Date 5/27/99  
 are not available and  will be encumbered. \*  
\* SUBJECT TO APPROVAL OF THE 99/2000 BUDGET  
By Gary A. Knutson Auditor - Controller  
Paul J. Silver Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the County Administrative Officer to execute the same on behalf of the County of Santa Cruz

Remarks: G (Analyst) County Administrative Officer  
By Paul Gutz Date 5/27/99

Agreement approved as to form. Date \_\_\_\_\_

- Distribution:
- Bd. of Supv. - White
  - Auditor-Controller - Blue
  - County Counsel - Green \*
  - Co. Admin. Officer - Canary
  - Auditor-Controller - Pink
  - Originating Dept. - Goldenrod

\* To Orig. Dept. if rejected.

10  
ADM - 29 (6/95)

State of California )  
County of Santa Cruz ) ss  
I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_ County Administrative Officer  
\_\_\_\_\_ 19 \_\_ By \_\_\_\_\_ Deputy Clerk

Contract No. \_\_\_\_\_

A G R E E M E N T

PUBLIC DEFENDER CONFLICT OF INTEREST SERVICES

THIS AGREEMENT made and entered into this 1st day of July 1, 1999, by and between the COUNTY OF SANTA CRUZ, hereinafter designated "COUNTY", and the law firm of WALLRAFF AND GILMAN, attorneys, hereinafter referred to as "CONTRACTOR,"

WITNESSETH:

WHEREAS, constitutional requirements, public necessity, and convenience require that the County provide for an adequate defense for indigent persons accused of crimes; provide representation for juveniles brought before the Juvenile Court; provide representation for minors or parents in actions to have a minor declared free from parental custody and control; and provide representation for indigent defendants in paternity proceedings wherein the State appears; and

WHEREAS, the COUNTY desires to contract with CONTRACTOR to represent persons in "conflict of interest" cases where the Courts determine that the Public Defender's Office cannot represent them because of a current conflict of interest; and

WHEREAS, CONTRACTOR desires to contract with the COUNTY for providing services as the court-appointed attorney for such conflict of interest cases:

THE PARTIES HERETO AGREE AS FOLLOWS:

1. The CONTRACTOR shall perform the following functions and duties:
  - (a) The functions and duties of a court-appointed attorney in conflict of interest cases, as determined by the courts of Santa Cruz County, as said functions and duties are set forth in Government Code Section 27706 et seq; except for cases of contempt in child support collection proceedings and cases on appeal from judgement in misdemeanor proceedings.

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Page 2

(b) Representation in any conflict of interest case, upon appointment by the Court pursuant to Welfare & Institutions Code section 317, of a parent, de facto parent, or guardian of a minor child, brought before the Juvenile Court under Welfare & Institutions Code section 300, when it appears to the Court that the parent, de facto parent, or guardian desires counsel, but is presently financially unable to afford counsel.

This representation is to include, if necessary, representation of minors or parents in actions to have a minor, adjudicated a dependent in dependency proceedings prior to January 1, 1989, declared free from parental custody and control under the provisions of Division 12, Part 4, Chapter 2 (commencing with section 7820) of the Family Code.

Representation, when appointed by the Court by reason of conflict of interest, of persons held for evaluation or treatment or for whom a conservatorship petition has been filed under the provisions of the Lanterman-Petris-Short Act, Division 5, Part I (commencing with Section 5000) of the Welfare and Institutions Code, including persons appealing the determination made at a hearing held pursuant to Welfare & Institutions Code section 5332 concerning the capacity to refuse antipsychotic medication;

(d) Representation, when appointed by the Court by reason of a conflict of interest, of persons for whom a conservatorship petition has been filed under the provisions of Division 5 of the Probate Code;

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Page 3

(e) Representation, when appointed by the Court by reason of a conflict of interest, of indigent defendants in paternity proceedings wherein the State appears under the provisions of the Uniform Parentage Act, Division 4, Part 7 (commencing with Section 7000) of the Civil Code and as required pursuant to *Sals v. Cortez* (1979) 24 Cal. 3d22.

2. CONTRACTOR shall be responsible for handling one-half of the above described "conflicts" cases. COUNTY will contract with another party in addition to CONTRACTOR to be responsible for the other half of the conflict of interest cases. In the event both the CONTRACTOR and the other party are unable to handle a conflict case because they in turn also have conflicts of interest, the Court shall appoint a private attorney to provide the representation.

3. Conflict of interest cases shall be determined by the Courts and assigned to the CONTRACTOR and the other party on as equal a basis as possible.

4. The CONTRACTOR shall provide quarterly reports, due the first day of November, February, May and August, to the Auditor-Controller and County Administrative Officer. The quarterly report shall provide information regarding assigned case load, broken down to reveal the number of:

- jury trials
- adult misdemeanor cases
- adult felony cases
- adult felony and misdemeanor probation violations
- juvenile criminal cases
- juvenile probation violations
- L.P.S. cases
- W & I Section 300 cases
- paternity cases
- co-defendant cases
- conflict of interest cases declared that arise solely

Agreement Public Defender Conflict of Interest Services  
Page 4

- from the CONTRACTOR'S private criminal practice
- other assigned cases
- conflict of interest cases that are assigned as a result of a conflict declared by the other Conflicts' Contractor.

CONTRACTOR shall provide other reports as may be requested from time to time by the County Administrative Officer. CONTRACTOR shall annually report to the County Administrative Officer the frequency and cost of other services in representing parties, including witness fees, scientific investigation, interpreting and other services.

5. COUNTY shall pay to CONTRACTOR as compensation for the services of CONTRACTOR as follows:

1999-00	\$48,043 per month not to exceed \$576,510
2000-01	\$49,964 per month not to exceed \$599,571
2001-02	\$51,963 per month not to exceed \$623,554

6. COUNTY shall pay CONTRACTOR for the cost of court transcripts, medical, psychological and psychiatric experts, witness fees and such specialized services as may be required.

7. It is understood and agreed that CONTRACTOR may be appointed in extraordinary felony cases which could require unusual time and expense. In only the most extreme circumstances will CONTRACTOR request extra compensation for such an appointment. When such a case does arise, CONTRACTOR shall so advise the COUNTY and shall petition the Superior Court for a recommendation to the Board of Supervisors as to:

- (1) the existence of the extraordinary circumstances, and
- (2) the CONTRACTOR'S requested extra compensation.

Any such request by Contractor must include a complete justification of the anticipated extra expenses. Extra compensation shall generally be limited to special circumstances felony cases.

Agreement Public Defender Conflict of Interest Services  
Page 5

If the Superior Court agrees that extra fees are warranted and reasonable, then the Presiding Judge shall make the recommendation to the Board of Supervisors, which will be responsible for any supplemental appropriation. Special approval and authorization by the Board of Supervisors is required prior to the expenditure of funds. Compensation for such cases shall be as follows:

New Appointments

- . First Case assigned in a fiscal year

<u>Year</u>	<u>Hourly Rate</u>
1999-00	\$95.00
2000-01	\$95.00
2001-02	\$95.00

- . Second attorney and/or case and subsequent cases assigned in a fiscal year.

<u>Year</u>	<u>Hourly Rate</u>
1999-00	\$85.00
2000-01	\$85.00
2001-02	\$85.00

8. CONTRACTOR may handle private criminal cases, except in those cases where there would be a conflict with a previous assignment arising out of this contract. CONTRACTOR shall not receive any referral fee or any other fee from any person to whom they refer any criminal case during the term of this contract. Members of the office of the CONTRACTOR may handle private criminal cases outside of Santa Cruz County with the condition that no cases are taken which create a conflict of interest with pending cases assigned under this contract. It is further agreed that the firm members may appear for their established civil clients in criminal matters as long as a conflict of interest is not created with pending cases assigned under this contract.

9. CONTRACTOR shall select and employ attorneys and investigators as needed to assist with the duties as described in this contract and Contractor must at all times have available the services of no less than 5 full time attorney equivalents. All

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Page 6

attorneys shall be members in good standing of the State Bar of California and shall be approved by a majority of the Superior Court Judges prior to handling cases under the terms of this agreement. It is agreed and understood that the addition in courts and/or significant increases in caseload or some other significant variable may require adjustments in this contract during its term.

10. CONTRACTOR shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements for the full term of this contract and any extensions thereof. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.



B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

County Administrative Office  
Government Center, Room 520  
701 Ocean Street  
Santa Cruz, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverage.

10.1 INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTORS

- A. COUNTY shall exonerate, indemnify, defend, and hold harmless CONTRACTOR (which for the purpose of this paragraph shall include its officers, agents, employees and volunteers) from any and all claims, demands, losses, damages, defense costs or liability of any kind or nature which CONTRACTOR may sustain or incur or which may be imposed upon CONTRACTOR for injury to or death of persons or damage to property as a result of or arising out of CONTRACTOR'S alleged malpractice in the performance of this contract, excepting any liability based on actual fraud, corruption, or actual malice of CONTRACTOR, or any failure to notify COUNTY in writing within 15 days of receipt of any claim or lawsuit, or any willful failure or refusal of CONTRACTOR to reasonably cooperate in good faith in the defense by the COUNTY of the claim or lawsuit, and further excepting any liability based on operation by CONTRACTOR of a vehicle, and excepting any liability based on the condition of the premises of the CONTRACTOR.
- B. Except as otherwise provided in paragraph A. above, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of this paragraph shall include its officers, agents, employees and volunteers) from and against:
1. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any

damage to the person(s), or property(ies) of CONTRACTOR and third persons.

2. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

#### 11. EQUAL EMPLOYMENT OPPORTUNITY

A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical handicap, medical condition (cancer related), marital status, sex, sexual preference, age (over 40), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to recruitment or recruitment advertising, employment, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship) employment upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If the Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation, age (over 40), veteran status, or any other non-merit factor Agreement Public Defender Conflict of Interest Services unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider

Agreement Public Defender Conflict of Interest Services  
Page 10

Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen ((15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

14. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

Agreement Public Defender Conflict of Interest Services  
Page 11

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than instrumentalities, tools and work place; (e) The length of time for slight; (f) The CONTRACTOR rather than the COUNTY supplies the which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

15. The term of this agreement shall be from July 1, 1999 through June 30, 1999; 2002 provided, however, that either party may terminate this agreement for good cause only upon giving ninety (90) days written notice of termination to the other party. In August, 2001 the parties shall begin negotiations for the purpose of determining a contract compensation level for 2002-03 and any subsequent years. In the event that agreement on the renewal is not reached Contractor will cooperate in the orderly transition of assigned cases.

16. At the conclusion of the term of this contract, all proposals for conflict public defender work such as is discussed herein, shall be based on assuming all of CONTRACTOR'S case load, but for those cases wherein the Court will not' relieve

Agreement Public Defender Conflict of Interest Services  
Page 12

CONTRACTOR as counsel of record. CONTRACTOR shall petition the Court in each case being handled by CONTRACTOR at the conclusion of the term, and successor counsel shall be ready to assume any and all of Agreement.

It is the intent of this contract that the Court will relieve CONTRACTOR and substitute CONTRACTOR with the successor, unless substitution of the successor will substantially prejudice the defendant. In the cases where CONTRACTOR is not relieved, compensation shall be the prevailing rate paid to attorneys individually appointed by the Courts to provide public defender services in general criminal cases, not to exceed \$20,000, and is subject to the approval of the court.

17. NONASSIGNMENT. CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

COUNTY OF SANTA CRUZ

By \_\_\_\_\_  
County Administrative Officer

CONTRACTOR

BY *Maabel Gil*  
Wallraff and Gilman

APPROVED AS TO FORM:  
*Quigley L. Kent*  
County Counsel

Distribution: CAO  
County Counsel  
Auditor-Controller  
Contractor

s:\0128s

COUNTY OF SANTA CRUZ  
REQUEST FOR APPROVAL OF AGREEMENT

PC 83

TO: Board of Supervisors  
County Administrative Officer  
County Counsel  
Auditor-Controller

FROM: County Administrative Office (Dept.)  
Paul Sany (Signature) 5-27-99 (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the COUNTY OF SANTA CRUZ (Agency)  
and PAGE, SALISBURY & DUDLEY, 605 Center Street, Santa Cruz, CA 95060 (Name & Address)

2. The agreement will provide Public Defender Conflict of Interest Services

3. The agreement is needed because the County cannot provide the service

4. Period of the agreement is from July 1, 1999 to June 30, 2000

5. Anticipated cost is \$ 576,513 (XXXXXXXXXXXXXXXXXXXX, Not to exceed)

6. Remarks: ON CONTINUING AGREEMENTS LIST

7. Appropriations are budgeted in 591003 (Index#) (~~S~~ 680 b o b j e c t)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered. \* Contract No. 90616A Date 5/27/99  
are not available and will be encumbered. \*  
\* SUBJECT TO THE APPROVAL OF THE 1999/2000 BUDGET  
GARY A. KNUTSON, Auditor - Controller  
By Ronald J. Silva Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the County Administrative Officer to execute the same on behalf of the County of Santa Cruz

(Agency).

Remarks: G (Analyst) By Paul Sany County Administrative Officer Date 5/27/99

Agreement approved as to form. Date \_\_\_\_\_

- Distribution:  
Bd. of Supv. - White  
Auditor-Controller - Blue  
County Counsel - 4000  
Co. Admin. Officer - Canary  
Auditor-Controller - Pink  
Originating Dept. - Goldenrod

\*To Orig. Dept. if rejected.

State of California )  
County of Santa Cruz ) ss  
I \_\_\_\_\_ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,  
State of California, do hereby certify that the foregoing request for approval of agreement was approved by  
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered  
in the minutes of said Board on \_\_\_\_\_ County Administrative Officer  
\_\_\_\_\_ 19 \_\_\_\_\_ By \_\_\_\_\_ Deputy Clerk

Contract No. \_\_\_\_\_

## A G R E E M E N T

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## WITNESSETH:

WHEREAS, constitutional requirements, public necessity, and convenience require that the County provide for an adequate defense for indigent persons accused of crimes; provide representation for juveniles brought before the Juvenile Court; provide representation for minors or parents in actions to have a minor declared free from parental custody and control; and provide representation for indigent defendants in paternity proceedings wherein the State appears; and

WHEREAS, the COUNTY desires to contract with CONTRACTOR to represent persons in "conflict of interest" cases where the Courts determine that the Public Defender's Office cannot represent them because of a current conflict of interest; and

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- paternity cases
- co-defendant cases

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- conflict of interest cases declared that arise solely from the CONTRACTOR'S private criminal practice
- other assigned cases
- conflict of interest cases that are assigned as a result of a conflict declared by the other Conflicts' Contractor.

CONTRACTOR shall provide other reports as may be requested from time to time by the County Administrative Officer. CONTRACTOR shall annually report to the County Administrative Officer the frequency and cost of other services in representing parties, including witness fees, scientific investigation, interpreting and other services.

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- (2) the CONTRACTOR'S requested extra compensation.

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New Appointments

- . First Case assigned in a fiscal year

<u>Year</u>	<u>Hourly Rate</u>
1999-00	\$95.00
2000-O 1	\$95.00
200 I-02	\$95.00

- . Second attorney and/or case and subsequent cases assigned in a fiscal year.

<u>Year</u>	<u>Hourly Rate</u>
1999-00	\$85.00
2000-O 1	\$85.00
2001-02	\$85.00

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attorneys shall be members in good standing of the State Bar of California and shall be approved by a majority of the Superior Court Judges prior to handling cases under the terms of this agreement. It is agreed and understood that the addition in courts and/or significant increases in caseload or some other significant variable may require adjustments in this contract during its term.

10. CONTRACTOR shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements for the full term of this contract and any extensions thereof. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000.00 combined single limit per occurrence for bodily injury and property damage.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

County Administrative Office  
Government Center, Room 520  
701 Ocean Street  
Santa Cruz, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverage.

10.1 INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTORS

- A. COUNTY shall exonerate, indemnify, defend, and hold harmless CONTRACTOR (which for the purpose of this paragraph shall include its officers, agents, employees and volunteers) from any and all claims, demands, losses, damages, defense costs or liability of any kind or nature which CONTRACTOR may sustain or incur or which may be imposed upon CONTRACTOR for injury to or death of persons or damage to property as a result of or arising out of CONTRACTOR'S alleged malpractice in the performance of this contract, excepting any liability based on actual fraud, corruption, or actual malice of CONTRACTOR, or any failure to notify COUNTY in writing within 15 days of receipt of any claim or lawsuit, or any willful failure or refusal of CONTRACTOR to reasonably cooperate in good faith in the defense by the COUNTY of the claim or lawsuit, and further excepting any liability based on operation by CONTRACTOR of a vehicle, and excepting any liability based on the condition of the premises of the CONTRACTOR.
- B. Except as otherwise provided in paragraph A. above, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of this paragraph shall include its officers, agents, employees and volunteers) from and against:
1. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or

which may be imposed upon them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

2. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

#### 11. EQUAL EMPLOYMENT OPPORTUNITY

A. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical handicap, medical condition (cancer related), marital status, sex, sexual preference, age (over 40), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to recruitment or recruitment advertising, employment, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training, (including apprenticeship) employment upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If the Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:



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(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation, age (over 40), veteran status, or any other non-merit factor Agreement Public Defender Conflict of Interest Services unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen ((15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

14. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than instrumentalities, tools and work place; (e) The length of time for slight; (f) The CONTRACTOR rather than the COUNTY supplies the which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

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15. The term of this agreement shall be from July 1, 1999 through June 30, 1999; 2002 provided, however, that either party may terminate this agreement for good cause only upon giving ninety (90) days written notice of termination to the other party. In August, 2001 the parties shall begin negotiations for the purpose of determining a contract compensation level for 2002-03 and any subsequent years. In the event that agreement on the renewal is not reached Contractor will cooperate in the orderly transition of assigned cases.

16. At the conclusion of the term of this contract, all proposals for conflict public defender work such as is discussed herein, shall be based on assuming all of CONTRACTOR'S case load, but for those cases wherein the Court will not relieve CONTRACTOR as counsel of record. CONTRACTOR shall petition the Court in each case being handled by CONTRACTOR at the conclusion of the term, and successor counsel shall be ready to assume any and all of Agreement.

It is the intent of this contract that the Court will relieve CONTRACTOR and substitute CONTRACTOR with the successor, unless substitution of the successor will substantially prejudice the defendant. In the cases where CONTRACTOR is not relieved, compensation shall be the prevailing rate paid to attorneys individually appointed by the Courts to provide public defender services in general criminal cases, not to exceed \$20,000, and is subject to the approval of the court.

17. NONASSIGNMENT. CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.

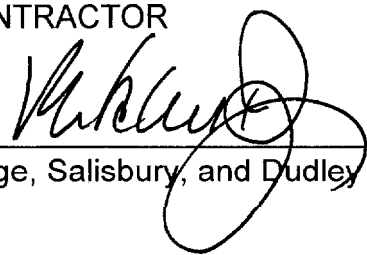
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IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

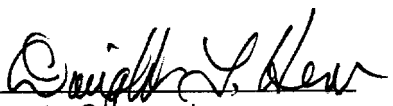
COUNTY OF SANTA CRUZ

By \_\_\_\_\_  
County Administrative Officer

CONTRACTOR

By  \_\_\_\_\_  
Page, Salisbury, and Dudley

APPROVED AS TO FORM:

  
\_\_\_\_\_  
County Counsel

- Distribution: CAO
- County Counsel
- Auditor-Controller
- Contractor

s:\0 128s