

**AGREEMENT FOR SERVICES
BETWEEN
THE COUNTY OF CALAVERAS
AND
DAVID K. SINGER, ATTORNEY AT LAW**

THIS AGREEMENT, effective as of July 1, 2019, by and between the COUNTY OF CALAVERAS, a political subdivision of the State of California, hereinafter referred to as COUNTY, and David K. Singer, Attorney at Law, duly licensed to practice under the laws of the State of California, with offices in said County of Calaveras, hereinafter referred to as CONTRACTOR. COUNTY and CONTRACTOR shall collectively be referred to as the PARTIES, and each may individually be referred to as a PARTY.

W I T N E S S E T H:

WHEREAS, COUNTY desires to contract with CONTRACTOR to perform Public Defender services to fulfill the legal obligation of COUNTY to provide counsel to indigent adult criminal defendants (misdemeanors and felonies) and any and all other cases (including homicides) where an individual is entitled to court-appointed counsel but in which COUNTY's primary contracted Public Defenders have a conflict of interest which prevents them from representing said persons; and

WHEREAS, COUNTY and CONTRACTOR desire to enter into an agreement wherein CONTRACTOR will provide all necessary rooms, furniture and supplies as are necessary to adequately represent the above-referenced defendants and individuals, and COUNTY desires to pay a fixed retainer to cover the cost thereof; and

WHEREAS, the PARTIES entered into an Agreement for Services dated July 1, 2015, the initial term of which ended on June 30, 2017; and

WHEREAS, the PARTIES entered into an Agreement for Services dated July 25, 2017, the initial term of which ended on June 30, 2019 ("2017 Agreement") and continues on a month-to-month basis until terminated by either PARTY; and

WHEREAS, the PARTIES desire to enter into a new Agreement for Services effective as of July 1, 2019 and terminate the 2017 Agreement effective as of July 1, 2019;

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. CONTRACTOR agrees to be available and provide competent legal services as set forth below (hereinafter "Services"):

a) Legal Counsel: CONTRACTOR shall accept all assignments by the Court, where an individual is entitled to court-appointed counsel, so long as 1) the COUNTY's primary contracted Public Defenders have a conflict of interest and 2) there is no conflict for the CONTRACTOR. Such assignments shall be for those matters enumerated in Government Code §27706 or as required by the laws of the United States and the State of California (including appeals), except that CONTRACTOR is not obligated to represent defendants charged with crimes punishable by death or life in prison without the possibility of parole. CONTRACTOR shall also provide competent legal representation for the parent, legal guardian, or other party in Welfare & Institutions Code §300 proceedings (i.e. dependency counsel) but not be required to provide representation for Family Code §3150 appointments or representation of the minor in Welfare & Institutions Code §300 proceedings; and

b) Investigative Services: CONTRACTOR shall provide investigative services, as required by the CONTRACTOR in rendering competent legal representation.

2. The term of this Agreement shall be for a period commencing July 1, 2019 and ending June 30, 2021, unless terminated in the manner hereinafter provided. Commencing July 1, 2021, this Agreement shall continue month-to-month on the same terms and conditions unless it is terminated by sixty (60) days' written notice of termination by either PARTY. The 2017 Agreement shall be terminated effective as of July 1, 2019 and replaced by this Agreement.

3. COUNTY shall pay, on a case-by-case basis, such additional fees for investigative services and expert witnesses as approved by the Judges of the various courts of the County of Calaveras.

4. CONTRACTOR agrees that during the term of this Agreement CONTRACTOR shall provide and furnish all necessary rooms and offices for the use of CONTRACTOR and CONTRACTOR's staff, together with all office furniture and supplies, so that CONTRACTOR may properly conduct the Services. The term

"supplies" shall include, but not be limited to, postage, stationery, briefs, printing, telephone and telegraph charges. In addition, CONTRACTOR shall provide the services of all secretaries, receptionists, legal assistants, and other personnel necessary to the proper functioning of the office. COUNTY will reimburse CONTRACTOR, at a reasonable rate, for CONTRACTOR's expenses in providing copies of police reports and other discovery when requested by clients whom CONTRACTOR is appointed to represent.

5. COUNTY, in consideration of CONTRACTOR providing said services, facilities, equipment, supplies and personnel, agrees to pay CONTRACTOR the sum of Seven Thousand Dollars (\$7,000.00) per month, from July 1, 2019 through June 30, 2021, payable monthly in arrears. If, however, during the term of this Agreement the additional funds designated for court-appointed dependency counsel that are provided to the Court in accordance with the Budget Act of 2018 regarding Dependency Counsel Funding and/or the Allocation of Dependency Counsel Funding ("Dependency Counsel Funds") are suspended or are no longer available for any reason, the COUNTY shall only pay CONTRACTOR the sum of Six Thousand Five Hundred Dollars (\$6,500.00) per month, during the time period that the Dependency Counsel Funds are suspended or otherwise not available.

6. CONTRACTOR may also purchase, at CONTRACTOR's expense, health insurance made available by COUNTY to County employees.

7. CONTRACTOR is not prohibited from representing clients other than as required by this Agreement. CONTRACTOR's primary responsibility, however, shall be to represent the indigent clients required by this Agreement, and said priority shall be given to trials and other court appearances required to represent said indigent clients. In the event that CONTRACTOR is unable to appear, CONTRACTOR shall use reasonable efforts to have another attorney specially appear on CONTRACTOR'S behalf.

8. CONTRACTOR shall hold COUNTY harmless from any liability for the expense and cost of said facilities, equipment, supplies and personnel in excess of the amount herein agreed to be paid to CONTRACTOR by COUNTY. CONTRACTOR shall hold County harmless from and against any and all liability, claims, losses as a result of damage or harm to any person or property arising from CONTRACTOR's negligence, errors or omissions in the performance of this Agreement.

9. CONTRACTOR is to be considered by both PARTIES hereto to be an independent contractor and COUNTY shall not have any

control over the manner in which CONTRACTOR performs services, with the exception that CONTRACTOR agrees to perform said services in a manner so as to fulfill the duties of a Public Defender and as a member of the Bar of the State of California to competently represent indigent adults and juveniles who qualify for services.

10. CONTRACTOR may, at CONTRACTOR'S sole discretion, associate counsel or employ other persons to assist in the duties for which this Agreement provides. Whether such other persons are employed by CONTRACTOR or associated by CONTRACTOR, or engaged under contract written or oral, no one of them shall be deemed to be agents, assigns, or employees of COUNTY, and COUNTY shall have no control over personnel selected by CONTRACTOR to assist in the performance of CONTRACTOR'S duties in providing Conflict Public Defender services. Notwithstanding any other provisions to the contrary, prior to the employment of any attorney or attorneys to assume, in whole or part, regular duties under this Agreement, CONTRACTOR shall inform the presiding Superior Court Judge, and the Office of County Counsel.

11. Should CONTRACTOR determine that experts, investigators or other extraordinary services are necessary to adequately represent a person under this Agreement, CONTRACTOR must apply for and receive an order from the Judge of the Court in which the case is being heard authorizing the expenditure for such services. The cost of such services shall not exceed the amount authorized by the Court. Payment for such services will not be made under this Agreement, but shall be paid under the Court cost budget as authorized by the Judge.

12. This Agreement may be terminated at any time by COUNTY or by CONTRACTOR effective upon the first day of any month, by giving written notice to the other PARTY at least sixty (60) days in advance. This Agreement may be amended only by written instrument signed by the COUNTY and CONTRACTOR.

13. It is further agreed by the PARTIES hereto that should the Judges of the various Courts within the COUNTY OF CALAVERAS for good cause refuse to appoint CONTRACTOR to defend those persons referred to herein as indigent adult criminal defendants and juvenile offenders, this Agreement may be terminated at the discretion of the Board of Supervisors.

14. CONTRACTOR agrees to keep ongoing records of the following services provided as Public Defender under this

Agreement, and shall make quarterly reports to the Board of Supervisors, in care of the Administration Office, as to:

- a) Number of appointments to misdemeanor cases;
- b) Number of appointments to felony cases;
- c) Number of appointments to juvenile matters;
- d) Number of misdemeanor jury trials --
 - (1) number of DUI jury trials;
 - (2) number of non-DUI jury trials; and
- e) Number of felony jury trials.

15. CONTRACTOR, at its sole cost and expense for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at least the minimum following insurance coverage(s) and requirements. Such insurance coverage shall be against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, or employees. Such insurance coverage shall be primary coverage and any insurance or self-insurance maintained by COUNTY shall be in excess of CONTRACTOR's insurance coverage and shall not contribute to it.

a) Types of Insurance and Minimum Limits:

- (1) Worker's Compensation Insurance as required by the State of California, in the minimum statutorily required coverage amounts, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease (Not required if Contractor provides written verification it has no employees);
- (2) Comprehensive or Commercial General Liability Insurance Coverage in the minimum amount of \$1,000,000 for each occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability;
- (3) Until December 31, 2019, Professional Liability (Errors and Omissions) Insurance appropriate to CONTRACTOR's profession, in the amount of \$200,000 per occurrence, and \$600,000 in the aggregate;
- (4) Effective as of January 1, 2020, Professional Liability (Errors and Omissions) Insurance appropriate to CONTRACTOR's profession, with limits no less than \$500,000 per claim, and \$1,000,000 in the aggregate;

(5) Motor Vehicle Insurance coverage for any vehicles (including owned, non-owned and hired) used in providing Services under this Agreement, with limits no less than \$500,000 per person, \$1,000,000 per accident, for bodily injury and property damage.

b) Excess Coverage: If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

c) Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) Additional Insured Status: The County, its elected representatives, officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations.

(2) Primary Coverage: For any claims related to this Agreement, the CONTRACTOR's General Liability and Automobile Liability insurance coverage shall be primary as respects the County, its elected representatives, officers, officials, employees, and volunteers.

Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except

with at least 30 days' prior written notice to the County and 10-day notice for nonpayment of the premium.

- (4) Waiver of Subrogation: CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- (5) Self-Insured Retentions: Self-insured retentions must be declared to and approved by the County. The County may require the CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.
- (6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (7) Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- d) Verification of Coverage: CONTRACTOR shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this SECTION 15. All certificates and endorsements are to be received and approved by the County Risk Manager before work commences, and shall be signed by a person authorized by that insurer to bind coverage on its behalf. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The County, its elected representatives, officers, agents, employees, and volunteers shall be named as additional insureds on the commercial general and automobile liability insurance policies.
- e) Subcontractors: If subcontractors are permitted pursuant to SECTION 10. - Subcontracting of this Agreement, CONTRACTOR shall ensure subcontractors meet same required insurance coverages as is required of CONTRACTOR. The CONTRACTOR will check that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall check that County is an additional insured on insurance required from subcontractors.
- f) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

16. Severability: Should any clause, paragraph or language in this Agreement be held to be void, unenforceable, or

unconstitutional, such clause, paragraph or language (a) shall be stricken from this Agreement and the remainder of this Agreement shall continue in full force and effect the same as if such clause, paragraph or language had never been contained herein, or (b) such clause, paragraph or language may be modified or renegotiated between the PARTIES in writing to cure the defect.

17. Notice to PARTIES: All notices to be given by the PARTIES hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF CALAVERAS
ADMINISTRATION
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249
ATTN: AL ALT, COUNTY ADMINISTRATIVE OFFICER

Or to such other location as the County directs.

Notices to CONTRACTOR shall be addressed as follows:

DAVID K. SINGER, ESQ.
P.O. BOX 1542
SAN ANDREAS, CA 95249

Or to such other location as the CONTRACTOR directs.

18. Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in Calaveras County, California, and shall be resolved in accordance with the laws of the State of California.

19. No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

20. Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the PARTIES and they incorporate or supersede all prior written or oral Agreements or understandings.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands as of the day and year first hereinabove written.

CONTRACTOR



David K. Singer

ATTEST:

COUNTY OF CALAVERAS

County Clerk and
Ex Officio Clerk to the
Board of Supervisors of the
County of Calaveras

Chair, Board of Supervisors

Approved As To Form:

7.25.19

Date

Megan Stottfeld

County Counsel