

1 **CONTRACT BETWEEN THE COUNTY OF LAKE AND THE LAW OFFICE OF PEKIN &**
2 **PEKIN FOR INDIGENT DEFENSE SERVICES**
3

4 This Contract is made and entered into 14th day of February, 2017, by and
5 between the COUNTY OF LAKE, a political subdivision of the State of California,
6 hereinafter referred to as COUNTY, and the Law Office of Pekin & Pekin, hereinafter
7 referred to as CONTRACTOR. Terms and conditions of this contract are as follows:
8

9 **SECTION 1**
10 **CONTRACTOR'S RESPONSIBILITIES**
11

12 **A. Scope of Work:** CONTRACTOR hereby agrees to provide competent and
13 adequate legal representation as appointed counsel in the defense of Gary Williams, Case
14 number CR939372.
15

16 **B. Standard of Legal Representation:** CONTRACTOR'S representation shall be
17 of a kind usually and customarily provided by a reasonably competent attorney providing
18 legal defense service in criminal cases. Such complete legal defense services shall include,
19 without limitations, all necessary court appearances for motions, trials, adjudications,
20 hearings, dispositions and sentencing; the preparation of writs, legal research and trial
21 preparation; the necessary support services, including, without limitation, paralegal and
22 clerical support services; necessary ancillary services which are more fully set forth in
23 Subsection "C" of this Section.
24

25 CONTRACTOR shall provide for the maintenance of quality legal representation
26 consistent with constitutional and professional standards. Federal and state constitutions
27 require provision of competent counsel in criminal cases. In California, the adopted test for
28 determining competency of counsel in criminal cases is that of a "reasonably competent
29 attorney acting as a diligent, conscientious advocate." (See *People v. Pope*, 23 Cal.3d
30 412 (1979) disapproved on a different ground in *People v. Berryman* (1993) 6 Cal.4th
31 1048, 1081, fn. 10, overruled on a different ground in *People v. Hill* (1998) 17 Cal.4th 800,
32 823.); see also *In re Scott*, 29 Cal. 4th. 783 (2003); *People v. Bennett*, 17 Cal.4th 373 (1998).
33

34 CONTRACTOR shall provide competent legal services in conformity with the above
35 standard. Specifically, the following duties and responsibilities of counsel as set forth in
36 prior court decisions and professional standards will be observed. These include:

- 37 (a) Duty of careful factual and legal investigation. (*In re Saunders*, 2 Cal.2d
38 1033(1970), holding modified on other grounds by *People v. Duvall*, 9 Cal.4th
39 464 (1995) This includes the duty to research the law and raise settled
40 objections. (See also ABA Standards for Criminal Justice: Prosecution and
41 Defense Function, 3d ed., ©1993, Defense Function, Part One, General
42 Standards (hereinafter referred to "ABA Defense Function General
43 Standards"), Section 4-4.1.)
44 (b) Duty to take prompt action to protect a client's legal rights. (*ABA Defense*
45 *Function General Standards*, Section 4-3.6. [includes procedural steps such
46 as moving for pretrial release, obtaining psychiatric examination, moving for
47 change of venue or continuance, suppression of illegally obtained evidence,
48 severance from jointly charged defendants, or dismissal.]

- 1 (c) Duty to keep the client informed. (ABA Defense Function General Standards,
2 Section 4-3.8.)
3 (d) Duty to prepare for jury selection, examination of witnesses, submission of
4 instructions and presentation of argument at trial. (See ABA Defense
5 Function General Standards, Section 4-7.2, 4-7.6, 4-7.7; Amsterdam, Trial
6 Manual for the Defense of Criminal Cases, 3 Ed., 1974.)
7 (e) Duty to know and explore sentencing alternatives. (ABA Defense Function
8 General Standards, Section 4-8.1.)
9 (f) Duty to advise concerning appeals. (ABA Defense Function General
10 Standards, Section 4-8.2.)
11 (g) Duty not to accept more cases than can be competently handled. (See Martin
12 v. State Bar, 20 Cal.3d 717 [1978].)
13 (h) Duty not to handle a legal matter which the lawyer knows or should know that
14 he/she is not competent to handle. (ABA, Code of Professional
15 Responsibility, Canon 6, Disciplinary Rule No. 6-101(a).)
16 (i) Duty to maintain client confidences and secrets.
17 (j) Duty to maintain regular and meaningful client contact.
18

19 **C. Ancillary Services:** CONTRACTOR shall provide such ancillary and supportive
20 services as may be necessary to provide adequate representation, including, but not limited
21 to, investigative services, polygraphs, expert witnesses, psychological evaluations,
22 interpreter services, transcripts, forensic and laboratory services, court appearance clothing
23 for the defendant and such other services properly required by CONTRACTOR designed to
24 assist in the preparation and presentation of the indigent defendant's case. Said ancillary
25 services shall be provided on a fee for services basis, paid by COUNTY, pursuant to prior
26 Court authorization, which CONTRACTOR shall be obligated to obtain prior to engaging
27 and utilizing said ancillary services.
28

29 **D. Minimum Professional Qualifications:** CONTRACTOR shall ensure that all
30 attorneys performing legal services under this Contract are members of the State Bar in
31 good standing. CONTRACTOR shall maintain ongoing communications with the local Bar
32 Association and other interested professional groups to assure that CONTRACTOR's
33 operations meet the established professional standards for adequate representation.
34

35 **SECTION 2**

36 **COUNTY'S RESPONSIBILITIES**

37

38 COUNTY agrees to compensate CONTRACTOR for services under this Contract, including
39 travel time from Fort Bragg to Lake County, at the rate of \$80 per hour for the first \$40,000.
40 After the \$40,000 threshold has been met, compensation shall be paid at a rate of \$80 per
41 hour not to exceed \$10,000 per month. Said travel from the Law Office of Pekin & Pekin in
42 Fort Bragg to the Courthouse in Lakeport will be subject to a limit of four and one-half (4.5)
43 hours for each required round trip.
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1 CONTRACTOR shall submit an invoice to the COUNTY's Administrative Office for
2 the above hourly charges on or about the last day of each month. Said compensation shall
3 be paid not later than the fifteenth day after the invoice date.
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6 **SECTION 3**
7 **TERM**
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9 The term of this Contract shall commence on the date first written hereinabove and
10 shall continue until terminated as provided herein.
11

12 **SECTION 4**
13 **TERMINATION**
14

15 It is mutually understood that CONTRACTOR's representation of Gary Williams may
16 only be terminated by court order, however, this Contract may be terminated as follows:

- 17 1. Immediately upon removal of CONTRACTOR by court on the basis of
18 affidavit, declaration or judicial determination (so called Marsden Motion); or
- 19 2. By Court Order; or
- 20 3. Upon disposition, by either sentencing, acquittal or dismissal, in the Lake
21 County Superior Court; or
- 22 4. By the mutual consent of the parties.
23

24 **SECTION 5**
25 **INSURANCE**
26

27 CONTRACTOR shall not commence work under this Contract until he has obtained
28 all the insurance required herein, certificates of insurance have been submitted to County
29 and said insurance has been approved by County. The certificates of insurance shall
30 contain a provision that coverage afforded under the policies will not be canceled until at
31 least twenty (20) days prior written notice has been given to County.
32

33 CONTRACTOR shall not allow any subcontractor to commence work on his
34 subcontract until the insurance required of the subcontractor has been obtained. Any failure
35 of CONTRACTOR to maintain the insurance required by this paragraph, or to comply with
36 any of the requirements of this paragraph, shall constitute a material breach of the entire
37 Contract.
38

39 Certificates evidencing the issuance of the following insurance shall be filed with the
40 County within ten (10) days after the date of execution of this Contract by CONTRACTOR:
41

- 42 (a) Workers' Compensation Insurance. CONTRACTOR shall procure and
43 maintain, at CONTRACTOR's own expense during the term hereof, Workers'
44 Compensation Insurance for all of his employees to be engaged in work. In
45 case of any such work sublet, CONTRACTOR shall require subcontractor
46 similarly to provide Workers' Compensation Insurance for all of the latter's
47 employees to be engaged in such work unless such employees are covered

1 by the protection afforded by CONTRACTOR's Workers' Compensation
2 Insurance.

3
4 (b) Automobile Liability Insurance. CONTRACTOR shall procure and maintain,
5 at CONTRACTOR's own expense during the term hereof, Comprehensive
6 Automobile Liability Insurance, both bodily injury and property damage, on
7 owned, hired, leased and non-owned vehicles used in connection with
8 CONTRACTOR's business in an amount of not less than One hundred
9 thousand dollars (\$100,000) per person and Three Hundred Thousand
10 (\$300,000) aggregate.

11
12 (c) Subcontractors: CONTRACTOR shall include all subcontractors as insureds
13 under the aforesaid policies or shall furnish separate certificates and
14 endorsements for each subcontractor to COUNTY for review and approval.
15 All coverages for subcontractors shall be subject to all of the requirements
16 hereinabove and contain the additional insured endorsement required by
17 CONTRACTOR hereinafter.

18
19 (d) For claims arising out of the performance of services under this Contract, the
20 CONTRACTOR's insurance coverage shall be primary insurance as respects
21 the COUNTY, its officers, officials, employees, agents and volunteers. Any
22 insurance or self-insurance maintained by COUNTY, its officers, officials,
23 employees, agents or volunteers shall be excess of the CONTRACTOR's
24 insurance and shall not contribute with it.

25
26 (e) Insurance coverage in the minimum amounts set forth herein shall not be
27 construed to relieve the CONTRACTOR for liability in excess of such
28 coverage, nor shall it preclude COUNTY from taking other actions as is
29 available to it under any other provision of the Agreement or law. Failure of
30 COUNTY to enforce in a timely manner any of the provisions of this section
31 shall not act as a waiver to enforcement of any of these provisions at a later
32 date.

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35 **SECTION 6**
36 **INDEMNIFICATION AND HOLD HARMLESS**
37

38 CONTRACTOR shall indemnify and defend COUNTY and its officers, employees,
39 and agents against and hold them harmless from any and all claims, losses, damages, and
40 liability for damages, including attorney's fees and other costs of defense incurred by
41 COUNTY, whether for damage to or loss of property, or injury to or death of person,
42 including properties of COUNTY and injury to or death of COUNTY officials, employees, or
43 agents, arising out of, or connected with CONTRACTOR'S operations hereunder or in the
44 performance of work described herein, unless such damages, loss, injury or death is
45 caused solely by the negligence of COUNTY.

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3 **SECTION 11**
4 **ATTORNEY'S FEES AND COSTS**
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6 If any action at law or in equity is necessary to enforce or interpret the terms of this
7 contract, the prevailing party shall be entitled to reasonable attorney's fees, costs, and
8 necessary disbursements in addition to any other relief to which such party may be entitled.
9

10
11 **SECTION 12**
12 **INTEREST OF CONTRACTOR**
13

14 CONTRACTOR hereby covenants that he has, at the time of the execution of this
15 contract, no interest, and that he shall not acquire any interest in the future, direct or
16 indirect, which would conflict in any manner or degree with the performance of services
17 required to be performed pursuant to this contract. CONTRACTOR further covenants that
18 in the performance of this work, no person having any such interest shall be employed.
19

20 **SECTION 13**
21 **SEVERABILITY**
22

23 If any provision of this Contract is held to be unenforceable, the remainder of this
24 Contract shall be severable and not affected thereby.
25

26 **SECTION 14**
27 **VENUE**
28

29 Any controversy or claim arising out of or relating to this Contract which cannot be
30 amicably settled without court action shall be litigated in a state court for Lake County,
31 California. The rights and obligations of the parties and all interpretations and performance
32 of this Contract shall be governed in all respects by the laws of the State of California.
33

34 **SECTION 15**
35 **NOTICES**
36

37 All notices that are required to be given by one party to the other under this Contract
38 shall be in writing and shall be deemed to have been given if delivered personally or
39 enclosed in a properly addressed envelope and deposited with a United States Post Office
40 for delivery by registered or certified mail addressed to the parties at the following
41 addresses, unless such addresses are changed by notice, in writing, to the other party:
42

43
44 COUNTY:
45 Administrative Office
46 255 N. Forbes St
47 Lakeport, CA 95453
48 Attn: Carol J. Huchingson

CONTRACTOR
Law Office of Pekin & Pekin
123B Laurel Street
Fort Bragg, CA

SECTION 17
OTHER PROVISIONS

A. REIMBURSEMENTS: COUNTY shall receive all funds collected pursuant to Penal Code §§ 987.4, 987.6, 987.8, 987.9, Government Code § 27712 and 15202, and any similar statute providing for reimbursement for the cost of legal services rendered under this Contract, and no portion of said funds shall inure to the benefit of CONTRACTOR or otherwise affect the amount specified in Section TWO above. CONTRACTOR shall cooperate with and provide information to COUNTY'S Auditor-Controller, or his or her designee, or when appropriate to COUNTY's Administrative Officer, or his designee, upon reasonable request, in order to assist COUNTY in claims for State and/or Court reimbursement of COUNTY'S costs of providing indigent criminal legal defense services pursuant to this Contract. CONTRACTOR shall not be required to reveal information which is privileged or which may otherwise compromise the defense of a pending case.

B. This Contract constitutes the entire Contract between CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included or incorporated in this Contract.

Executed at Lakeport, California, on the day and year first above written.

COUNTY OF LAKE

CONTRACTOR

Carol J. Huchingson
County Administrative Officer

Pekin & Pekin
Attorney at Law

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel


