

AGREEMENT FOR INDIGENT DEFENSE SERVICES

THIS AGREEMENT, is made and entered into this 23rd day of January, 2018, by and between the County of Lake, a political subdivision of the State of California, (hereinafter referred to as "COUNTY"), and Mitchell Hauptman and Anakalia K. Sullivan, hereinafter collectively referred to as CONTRACTOR and also known for the purposes of identification in this Agreement as Lake Indigent Defense, LLP, (hereafter also referred to as "LID") located at 825 S. Main Street, Lakeport, CA 95453

WHEREAS, the Constitution guarantees persons charged with the commission of a crime the right to be represented by counsel; and,

WHEREAS, Penal Code Section 987.2 authorizes COUNTY to pay a reasonable sum for compensation and for necessary expenses of court-assigned counsel in cases in which the court determines that the Public Defender is unable, due to a conflict of interest ("hereinafter also referred to as "conflict") or other reason, to represent a person who desires but is unable to employ counsel; and,

WHEREAS, CONTRACTOR has represented that CONTRACTOR, as individual attorneys and as identified collectively as Lake Indigent Defense, LLP possessed the skill, experience and facilities to provide competent and adequate legal representation of up to seven (7) levels of felony defense representation and up to twelve (12) levels of misdemeanor defense representation to indigent defendants in a case, for a period of approximately three (3) years a fixed annual contract amount pursuant to the terms described in the RFP, which Proposal would provide budgetary stability and cost efficiency to COUNTY; and,

WHEREAS, the partnership of J. David Markham and Anakalia K. Sullivan will end effective January 31, 2018, necessitated by the appointment of one partner to a Superior Court Judgeship, and CONTRACTOR intends to substitute Mitchell Hauptman, a new partner, in place of Mr. Markham; and

WHEREAS, the County desires to continue contracting for indigent defense services but the change in partnership status necessitates the execution of a new agreement that memorializes the revised partnership arrangement.

WHEREAS, it is in the interest of justice, efficiency and the benefit of indigent defendants that COUNTY contracts with private counsel to render the usual and customary legal services of a public defender.

NOW THEREFORE, COUNTY and CONTRACTOR mutually agree as follow:

1. DEFINITIONS

- A. "Adequate Coverage" means generally that effective assistance of counsel is provided and the business of the Court is not delayed because of the absence of and/or lack of preparation and/or experience of CONTRACTOR and/or its independent Attorney Contractors.
- B. "CONTRACTOR" shall mean Mitchell Hauptman and Anakalia K. Sullivan, who shall be jointly and severally held to the obligations, terms, and conditions of this Agreement.
- C. "COUNTY" shall mean the County of Lake, a political subdivision of the State of California.
- D. "Contract attorneys" or "Attorney Contractors" or "independent attorney subcontractor" shall mean the independent attorney who is under contract to CONTRACTOR to provide legal defense services in cases to indigents.
- E. "Court" shall mean the Lake County Superior Court, including the branch courts and the Juvenile Court of Lake County, unless otherwise specifically indicated.

- F. "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.
- G. Lake Indigent Defense, shall mean the collective identification of the presently informal partnership of Mitchell Hauptman and Anakalia K. Sullivan, who, as of the date of execution of this Agreement, are presently acting jointly and severally in the performance of this Agreement. The organizational and legal status and structure of CONTRACTOR hereunder may subsequently be modified upon written consent of the COUNTY and the agreement of the parties hereto to execute any necessary amendments/adjustments to this Agreement.

2. SCOPE OF SERVICES

A. General Duties and Obligations:

All attorneys providing services under this Agreement, including CONTRACTOR, shall at all times each be an Attorney at Law admitted and licensed to practice in the State of California and shall at all times maintain active status with the California State Bar Association.

CONTRACTOR shall complete in a professional and diligent manner all legal representation of indigent persons that CONTRACTOR is properly appointed to represent, consistent with Section 27706(a) of the Government Code. CONTRACTOR agrees to provide competent and adequate legal representation of indigent defendants when appointed to do so by a judge of the Lake County Superior Court.

CONTRACTOR's representation shall be of the kind usually and customarily as a complete legal defense service in criminal cases for indigent defendants whom the Court appoints CONTRACTOR to represent. Such complete legal defense services shall include, without limitation, all necessary court appearances for motions, trials, adjudications, hearings, dispositions and sentencing; preparation of writs, legal research and trial preparation; necessary support services, including, without limitation, investigative, paralegal and clerical support services; necessary ancillary services including, without limitation, expert witnesses, psychological evaluations; all necessary motions and appearances to the conclusion of the proceeding, including, without limitation, requests for modification of probation, alleged violations of probation or failure in a diversionary program or other representation of a previously sentenced or adjudicated client not involving new criminal charges and collateral appearances for such actions as dismissals under Vehicle Code Section 41500 or as part of a plea bargain agreement; all legal defense services reasonably and legally required therein from the time of appointment through a final adjudication of the proceeding, including those duties required by Penal Code Section 1240.1 (a) and Welfare and Institutions Code Section 800; and all other and such other legal representation or services necessary to provide complete legal defense services to disposition of a defendant's case.

CONTRACTOR, and Contract Attorneys, shall perform the services hereunder with the care, skill and diligence associated with professional attorneys and in accordance with the applicable professional standards currently recognized by such profession. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of all reports, information, and other items and services furnished under this Agreement. CONTRACTOR shall comply with all applicable Federal, State, and Local laws, ordinances, codes, and regulations in performing the services hereunder.

CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its reports and other related items or services.

In executing this Agreement, CONTRACTOR hereby acknowledges and agrees that they are jointly and severally as individual attorneys held to the obligations of CONTRACTOR imposed by this Agreement and jointly and severally liable for any failure(s) of CONTRACTOR to adequately and satisfactorily perform said obligations.

B. Proceedings Covered Under Flat Fee

CONTRACTOR agrees to accept appointments to represent such indigent defendants regarding any case, which for this Agreement is defined to encompass any and all of the proceedings enumerated below. CONTRACTOR shall defend,

without expense to the defendant, an indigent defendant at any and all stages of a Covered Proceeding. A "Covered Proceeding" shall mean the following cases in which COUNTY is responsible for legal representation costs:

- i. All non-capital criminal cases;
- ii. Capital Cases ;
- iii. Civil Contempt cases;
- iv. Paternity cases;
- v. Welfare and Institutions Code 602 cases (Juvenile Delinquency);
- vi. Writs of Habeas Corpus stemming from underlying criminal cases;
- vii. Conservatorship proceedings pursuant to Welfare and Institutions Code sections 5350, et seq., Probate Code sections 1800, et seq., and Probate Code sections 1470, 1471, and 2365.5(f)(1)
- viii. Probation violations;
- ix. Motions for new trials;
- x. Motions to withdraw a plea;
- xi. Any proceedings in the appellate court prior to conviction which are deemed necessary by CONTRACTOR;
- xii. Any appeals of misdemeanor cases to the appellate department of the Superior Court which are deemed necessary by the CONTRACTOR; and

C. Additional Compensation – Capital and Complex Cases

- i. Complex cases requiring extraordinary attorney time shall be subject to additional compensation to be determined by the parties subsequent to good-faith negotiations.
- ii. Death Penalty Cases: Subject to appointment by the Court of CONTRACTOR or any of its independent attorney subcontractors to a death penalty case (a capital case within the meaning of Penal Code Section 987.9), the following fees will apply and shall be payable on or before the last day of each month following the Superior Court's approval of *Keenan* counsel in a capital case: Seventy-five dollars (\$75) per hour for pre-trial work and seventy-five dollars (\$75) per hour for work while in trial, to each attorney (two attorneys maximum per defendant, contemplating one attorney for guilt phase and one attorney for penalty phase.) COUNTY reserves the right to contract these cases separately from this contract as needed.

The compensation payable under this Section, together with the expense payments provided for in Section 2 (CONTRACTOR's RESPONSIBILITIES) above, is the maximum amount which COUNTY must pay for the legal defense of indigent criminal defendants under this Agreement, and CONTRACTOR shall assume and pay all other expenses incurred in the performance of this Agreement.

CONTRACTOR shall ensure that any of its independent attorney subcontractors assigned to a death penalty case is qualified, experienced, and competent to provide legal defense services in such cases.

D. Levels of Conflict Defense

CONTRACTOR shall provide legal defense services for up to seven (7) conflict levels for individual indigent defendants in a felony case, and up to twelve (12) conflict levels for individual defendants in a misdemeanor case. CONTRACTOR shall employ that combination of CONTRACTORs and/or Contract CONTRACTORs as are necessary to ensure the delivery of complete legal defense services for up to seven (7) indigent defendants in a felony case and up to twelve (12) indigent defendants in a misdemeanor case.

E. Contractor Staffing and Coverage

CONTRACTOR shall deploy such attorneys in such sufficient numbers and with the requisite preparation, experience and availability as will provide the legal representation contemplated in this Agreement and as will ensure that the business of the Court is not unreasonable delayed or impeded. CONTRACTOR shall provide a sufficient number of competent attorneys in order to deliver legal services to indigent defendants hereunder and provide adequate coverage to the Court.

F. Contract Attorneys

CONTRACTOR and COUNTY have the mutual objective to achieve a legal defense system that provides competent indigent defense services and adequate coverage to the Court. Therefore, CONTRACTOR shall maintain under contract a sufficient number of attorneys, presently estimated to be fourteen (14) Contract Attorneys, to provide adequate legal defense services to indigent defendants.

CONTRACTOR recognizes COUNTY's objective to obtain legal services across all levels of conflict defense as required herein. A Contract Attorney declaring a conflict in representing an indigent defendant exposes COUNTY to increased costs for court-appointed attorneys to represent the indigent defendant. COUNTY desires that such conflicts be minimized so that the maximum number of indigent defendants receives representation under this Agreement instead of through court-appointed attorneys. To that end, and to the extent permitted by law, CONTRACTOR shall endeavor to minimize the number of Contract Attorneys who allege a conflict of interest and agrees to promptly employ those practices and procedures described in CONTRACTOR's response to the COUNTY's request for proposals for the provision of indigent defense services, which response is attached hereto and incorporated herein by reference. CONTRACTOR shall provide COUNTY (County Administrative Officer or designee) with a monthly statistical report on the number of declared conflicts by Contract Attorneys. In addition to the meeting requirements specified in Section 2.R. herein, CONTRACTOR shall also consult with COUNTY at least every six (6) months to review 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. However, CONTRACTOR shall meet with COUNTY at times earlier than every six (6) months if the circumstances warrant and upon COUNTY's request. An important purpose of the aforesaid reports, meetings and consultation is to avoid causing COUNTY to incur unnecessary additional costs from a Court appointment of private counsel at COUNTY expense.

CONTRACTOR's contracts with private attorneys shall be in writing and shall contain provisions that: (1) prohibit them from seeking a court appointment directly from the Court to represent any indigent defendant CONTRACTOR previously assigned to them; (2) prohibit them from converting any indigent defendant CONTRACTOR previously assigned to them into a private criminal defense client; (3) require all Contract Attorneys to obtain the insurance policies required of CONTRACTOR in "INSURANCE" Section of the Agreement, and to name COUNTY as endorsed on the policy an additional insured in each such insurance policy. CONTRACTOR shall include in each contract with a private attorney the provisions set forth in the "CONTRACTOR Staffing and Coverage" and "Personnel", and subsections of this Agreement.

Contract Attorneys shall maintain offices separate from the CONTRACTOR and from such other attorneys that CONTRACTOR engages to act as a Contract Attorney. The use of separate offices is to avoid conflicts of interest and an ethical "glass wall," as that term is recognized in *Castro v. Los Angeles County Board of Supervisors* (1991) 232 Cal.App.3d 1432.

CONTRACTOR shall remain legally responsible for the performance of all terms of this Agreement, including the work performed or to be performed by Attorney employees or its independent attorney subcontractors. Any subcontracting by CONTRACTOR shall be subject to all applicable provisions of this Agreement. Additionally, CONTRACTOR shall ensure that its Contract Attorneys are held to the same "For Cause" termination standards to which CONTRACTOR is held pursuant to Section 10.B. herein.

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G. Appointment Process

The indigent defense system to be implemented by CONTRACTOR hereunder provides for the Lake County Superior Court's case assignment of Contract Attorneys directly. CONTRACTOR shall provide the Court with a list of available and appropriately qualified attorneys with the time frame required by the Court. In the event the Contract Attorney declares a legal conflict of interest in regard to a particular case, the case will be referred back to the CONTRACTOR for assignment to an alternate Contract Attorney. Through the hiring of sufficient and competent Contract Attorneys will ensure that the required levels of conflict defense set forth in Section 2.D. of this Agreement will be provided.

H. Ancillary Services

CONTRACTOR and COUNTY acknowledge that although this Agreement includes costs for legal and investigative expenses, ancillary and supportive services may be necessary to provide adequate representation to indigent defendants. In addition, California and Federal courts have ruled that there is an inherent conflict of interest in cases when the CONTRACTOR must choose between spending funds on their own compensation or, in the alternative, on experts or other services potentially benefiting the client. Accordingly, the "Ancillary Services" Section of this Agreement provides a separate list of the types of ancillary services not to be paid by the CONTRACTOR and that will be paid by the COUNTY.

Subject to approval by the Court, CONTRACTOR shall ensure that its Contract Attorneys shall obtain such ancillary and supportive services as may be necessary to provide adequate representation, including, but not limited to, investigative services, expert witnesses, forensic experts where deemed necessary by CONTRACTOR, and such other services properly required by CONTRACTOR designed to assist the indigent defendant in the preparation and presentation of his or her case. Ancillary services are to be provided in accordance with such policies and fee schedules of the Court as are applicable hereto.

CONTRACTOR shall retain a sufficient number of investigators on staff or under contract at all times to provide investigative services adequate to service the projected caseload. CONTRACTOR and Contract Attorneys are required to use investigators who are licensed or exempt from licensure by the State of California for any and all services pertaining to the fulfillment of this contract in accordance with the Business and Professions Code Section 7520 et seq.

The following ancillary services are subject to Court approval and shall thereafter be paid by the COUNTY:

- i. Expert witness fees, payable in accordance with State law;
- ii. Transcription Fees;
- iii. Interpreter Services;
- iv. Polygraph Services
- v. Costs for Psychological Evaluations and Reports;
- vi. Laboratory and Forensic Services ;
- vii. Extraordinary costs/expenses related to defense representation (with prior approval); and
- viii. Other specialized services which cannot reasonably be provided by CONTRACTOR's staff.

I. Private Practice of Law

CONTRACTOR shall be allowed to engage in the private practice of law, including the defense of those charged with crimes, provided that no private case may cause a conflict of interest which would prevent CONTRACTOR from providing the contracted services herein. CONTRACTOR shall not accept any compensation or other material benefit for providing legal defense services to any indigent defendant in a case that is a Covered Proceeding under this Agreement. Under no circumstances shall CONTRACTOR receive compensation for providing legal defense services to an indigent defendant in a Covered Proceeding except pursuant to this Agreement. CONTRACTOR shall also refrain from any actions resulting in a

referral of an indigent defendant, subsequently determined to be eligible to receive legal defense services under this Agreement in a Covered Proceeding, to a different CONTRACTOR already employed by CONTRACTOR for compensation other than from this Agreement. These restrictions are specifically intended to include Contract Attorneys and CONTRACTORS shall ensure that its contracts with Contract Attorneys shall contain said restrictions.

J. Office Access and Appointments

CONTRACTOR shall maintain an adequate Lake County office that shall be open during normal business hours for appointments by indigent defendants who are not in custody. CONTRACTOR shall maintain published office addresses and telephone numbers and a telephone answering service or devices for taking telephone messages during non-business hours. In-custody clients generally shall be interviewed within thirty-six (36) hours of CONTRACTOR's appointment. Out-of-custody clients generally shall be interviewed within seventy-two (72) hours of CONTRACTOR's appointment.

K. Obligation to Keep Courts Informed

CONTRACTOR shall keep all courts informed of the status of pending cases for which Contract Attorneys have been appointed and shall advise the Court at the earliest possible time as to whether cases will be settled or go to trial, whether continuances are needed, whether and whenever interpreters will be needed, and other such matters bearing on the scheduling of cases before the Court. At the commencement of this Agreement, CONTRACTOR shall submit to COUNTY written plans setting forth the deployment of attorneys and Contract Attorneys in the Court, including the Juvenile Court and branch courts, for the COUNTY's review and approval. CONTRACTOR shall submit to the COUNTY updates of the deployment plans as soon as reasonably possible to reflect changes in deployment of attorneys.

L. Administration of Practices and Procedures

CONTRACTOR shall generate written practices and procedures for use by all attorneys providing services under this Agreement, including Contract Attorneys which are designed to avoid, whenever possible, the existence of conflicts of interest. Upon request, CONTRACTOR shall provide COUNTY and the Court a list of attorneys providing services under this Agreement. Each list shall contain a brief biographical sketch pertaining to each attorney's professional experience. CONTRACTOR shall notify COUNTY and the Court of any proposed changes in attorney staffing, including Contract Attorneys.

M. Declining Court Appointments

CONTRACTOR shall not decline court appointment in any cases except for legal conflict of interest or other legal grounds.

N. Personnel

CONTRACTOR represents that all attorneys providing services under this Agreement, including Contract Attorneys, shall possess at all times herein the requisite experience, training, skill and competence to provide competent legal services as assigned counsel and are willing to provide the services described in this Agreement. CONTRACTOR represents that the CONTRACTOR has, or will secure at its own expense, all personnel required to provide the services described in this Agreement. All of the services required to be provided hereunder will be performed by CONTRACTOR, CONTRACTOR's legal staff under its supervision, or CONTRACTOR's Contract Attorneys and all personnel engaged in the work shall be qualified to perform such services. CONTRACTOR's personnel expressly agreed that they are not the employees of the COUNTY. CONTRACTOR staff and Contract Attorneys shall consist of such attorneys, paralegal and clerical personnel in sufficient quantity and quality to meet all constitutional, statutory, and case law requirements for the defense of indigents in Lake County and to adequately and professionally carry out the duties and obligations set forth in this Agreement.

O. Registration; Accounting; Reimbursements

At the conclusion of a case and upon request of the Court, CONTRACTOR shall require Contract Attorneys to provide the Court with an accounting of all time expended and costs to assist in determination of the cost of counsel pursuant to Penal Code Section s 987.4 and 987.8.

CONTRACTOR shall assist COUNTY in obtaining qualifying reimbursements from the State of California, should any Contract Attorney providing services hereunder be assigned cases involving "homicide", "special circumstance" as charged by the District Attorney "not guilty by reason of insanity pleas" and "sexually violent predator civil commitments" such cases shall be clearly identified on all reports. In addition to required monthly reports, a report reflecting total costs for these type cases shall be provided to COUNTY within thirty (30) days of the end of each fiscal year.

P. Client's Interest

CONTRACTOR shall at all times be governed solely by considerations of the client's interests and at no time shall the exercise of CONTRACTOR's judgment in the performance of the legal services on behalf of CONTRACTOR's client be subject to the direction or control of COUNTY or any representative of COUNTY.

Q. Other Indigent Legal Services

CONTRACTOR agrees to meet and confer with COUNTY, upon receipt of ninety (90) days' notice by COUNTY, concerning any need for further indigent legal services not specifically set forth in this Agreement, including any modifications associated with potential changes to the indigent legal services system.

R. Coordination Meetings

During the first six months of the initial Term of this Agreement, CONTRACTOR agrees to meet monthly with the County's Public Defender Oversight Committee (or their Designee) to assess CONTRACTOR's ability to comply with the Performance Standards established herein, and assess CONTRACTOR's ability to sufficiently document said compliance. Said assessment shall include but not be limited to evaluating the effectiveness and/or sufficiency of the CONTRACTOR's: 1) case management system (especially as it relates to monitoring caseloads, declared conflicts of interest, client contact, use of investigators and time spent on each case); 2) form and content of proposed monthly reports; and 3) system of managing client complaints. At the conclusion of said six month Term, the Public Defender Oversight Committee (or their designee) shall submit a report to the Lake County Board of Supervisors that summarizes the monthly findings and corrective actions the parties have mutually agreed to initiate.

Notwithstanding the foregoing, at any time during the Term hereof, upon request, the CONTRACTOR shall meet with COUNTY and/or Court representatives to coordinate indigent defense services being provided and improve any inefficiency that may be within CONTRACTOR's scope of control.

S. Designation of Primary Point of Contact

During the Term of this Agreement, Anakalia K. Sullivan shall serve as the primary point of contact for the COUNTY and the courts for the services provided hereunder.

3. CASELOAD AND WORK LEVELS

COUNTY has disclosed to CONTRACTOR all information it possesses concerning the type and number of cases handled by COUNTY's prior contractors for this service. CONTRACTOR agrees that, based upon this information and CONTRACTOR's own independent investigation of the facts and circumstances surrounding the provision of indigent conflict defense services in Lake County, and CONTRACTOR's own experience in the criminal law field representing indigent defendants, this Agreement contains an expanded definition of the duties to be provided to an indigent defendant. CONTRACTOR further agrees that they are experienced as attorneys in the representation of indigent defendants, and that CONTRACTOR's projections are based upon its independent investigation and consideration of the circumstances, policies and practices within Lake County and has recommended a flat fee rate for the provision of services hereunder. CONTRACTOR and COUNTY acknowledge that many factors outside the control of the parties can affect the ability of CONTRACTOR to accurately project caseloads and/or work levels with certainty. The Court and the prosecution largely control such factors as the length of time between arraignment and trial, local sentencing practices and pleading negotiation practice. CONTRACTOR has anticipated and liquidated in its flat fee and projected yearly increases, to the extent possible, all additional expenses arising from such change, and CONTRACTOR assumes the risk of and hereby waives any claim(s) to additional compensation for expenses which may be incurred by reason of such or similar circumstances.

These agreements and representations of CONTRACTOR are a significant inducement to COUNTY to enter into this Agreement, and COUNTY relies upon CONTRACTOR's experience and understanding of the criminal justice system and its vagaries, as well as CONTRACTOR's understanding of the circumstances likely to occur during the term of this Agreement.

Notwithstanding the foregoing, extraordinary events or conditions beyond the reasonable expectation of the parties may give rise to a need to modify or adjust this Agreement to ensure that CONTRACTOR will be able to perform the obligations of this Agreement and to provide adequate legal representation. In the event of such extraordinary events or conditions, CONTRACTOR may request COUNTY to agree to modify this Agreement, upon reasonable notice and satisfactory proof thereof, to provide for the occurrence of such extraordinary events or conditions to permit CONTRACTOR to continue to perform its obligations under this Agreement. COUNTY maintains the right to choose to enter or not enter into any such modification of this Agreement. Extraordinary circumstance may include the cumulative effect of multiple homicide cases involving extreme expenses. In the event that the CONTRACTOR is required to devote an extraordinary expenditure of time and effort not reasonably foreseen by this Agreement, CONTRACTOR may apply to the Lake County Board of Supervisors for a modification to this Agreement to provide for additional reasonable compensation.

4. AVOIDING CONFLICTS OF INTEREST

The parties recognize that ethical considerations such as those referred to in the Rules of Professional Conduct may prohibit the CONTRACTOR from accepting some appointments normally included in the Agreement caseload. The CONTRACTOR agrees to establish a system for immediately screening new appointments upon intake to discover potential conflicts of interest.

Specifically CONTRACTOR agrees and warrants that they are familiar with and will comply with Rule 3-320 of the State Bar of California's Rules of Professional Conduct. Further, CONTRACTOR agrees to provide COUNTY (County Administrative Officer or designee) a letter on an annual basis describing CONTRACTOR's compliance with Rule 3-320 as it relates to any CONTRACTOR partner or employee. Said letter is incorporated by reference.

Upon discovery of a conflict of interest or other ethical considerations which preclude further representation by CONTRACTOR or any Contract Attorney, CONTRACTOR shall immediately notify the affected client(s) and the Court and assist in the referral and/or transfer of the case to another CONTRACTOR to provide indigent legal services of the same type. COUNTY must be advised when CONTRACTOR is not able to provide representation as described in this Agreement.

CONTRACTOR shall not be prohibited from engaging in the private practice of law, including the defense of those charged with crimes in any and all proceedings, provided that no private case shall be accepted which may cause a conflict of interest to arise wherein CONTRACTOR would be thereby rendered unable to represent an indigent person.

Cases must be assessed as to seriousness and complexity and only assigned to indigent defense providers who possess the requisite relevant experience, training, and ability necessary for such matters.

Reasonable maximum caseloads should be established after evaluating the workload that each type of case represents in the context of the criminal practices and procedures used in Lake County. No attorney should be assigned more cases than he/she can effectively handle.

5. MINIMUM PROFESSIONAL QUALIFICATIONS

CONTRACTOR shall ensure that CONTRACTOR and all Contract Attorneys performing legal services under this Agreement are active members in good standing of the State Bar of California. CONTRACTOR shall maintain ongoing communications with the local Bar Association and other interested professional groups to assure that CONTRACTOR's operations meet the established professional standards for adequate representation. CONTRACTOR shall, during the term of the contract, report to the Lake County Administrative Officer (or designee) pending disciplinary matter within 24 hours of becoming aware of it.

CONTRACTOR shall provide to COUNTY names of all attorneys performing legal defense services under this Agreement, their experience, qualifications, and areas of specialization, and shall update this information promptly as necessary.

CONTRACTOR shall develop and establish categories of minimum special qualifications and categories of cases for which each attorney is eligible to handle.

6. PERFORMANCE STANDARDS

The legal representation provided by CONTRACTOR and all attorneys performing legal services under this Agreement shall be of such high quality as will meet all constitutional, statutory, case law, and professional standards and requirements. Federal and State Constitutions require provision of competent counsel in criminal cases. In California, the test for determining competency of counsel in criminal cases is that of a "reasonably competent attorney acting as a diligent, conscientious advocate" (*People v. Pope* (1979) 23 Cal.3d 412, disapproved on a different ground in *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn.10, overruled on a different ground in *People v. Hill* (1998) 17 Cal.4th 800, 823; see also *In re Scott* (2003) 29 Cal.4th 783; *People v. Bennett* (1998) 17 Cal.4th 373.) CONTRACTOR agrees to provide competent legal services in conformity with the above standards. Specifically, the following duties and responsibilities of counsel as set forth in prior court decisions and professional standards will be observed. These include:

- A. Duty of careful factual and legal investigation. (*In re Saunders*, 2 Cal.2d 1033(1970), holding modified on other grounds by *People v. Duvall*, 9 Cal.4th 464 (1995). This includes the duty to research the law and raise settled objections. (See also ABA Standards for Criminal Justice: Prosecution and Defense Function, 3d ed., ©1993, Defense Function, Part One, General Standards (hereinafter referred to "ABA Defense Function General Standards"), Section 4-4.1.)
- B. Duty to take prompt action to protect a client's legal rights. (ABA Defense Function General Standards, Section 4-3.6.) [This includes procedural steps such as moving for pretrial release, obtaining psychiatric examination, moving for change of venue or continuance, suppression of illegally obtained evidence, severance from jointly charged defendants, or dismissal.]
- C. Duty to keep the client informed. (ABA Defense Function General Standards, Section 4-3.8.)
- D. Duty to prepare for jury selection, examination of witnesses, submission of instructions and presentation of argument at trial. (See ABA Defense Function General Standards, Section 4-7.2, 4-7.6, 4-7.7; Amsterdam, *Trial Manual for the Defense of Criminal Cases*, 3 Ed., 1974.)
- E. Duty to know and explore sentencing alternatives. (ABA Defense Function General Standards, Section 4-8.1.)
- F. Duty to advise concerning appeals. (ABA Defense Function General Standards, Section 4-8.2.)
- G. Duty not to accept more cases than can be competently handled. (See *Martin v. State Bar*, 20 Cal.3d 717 (1978).)
- H. Duty not to handle a legal matter which the lawyer knows or should know that he/she is not competent to handle. (ABA Code of Professional Responsibility, Canon 6, Disciplinary Rule No. 6-101(a).)
- I. Duty to maintain client confidences and secrets.
- J. Duty to maintain regular and meaningful client contact.

Except as otherwise provided herein, this Agreement shall be construed so no breach occurs if CONTRACTOR's conduct is dictated by constitutional or statutory requirements, CONTRACTOR's duties to the courts, clients, rules of professional responsibility, or considerations of professional ethics.

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

Failure on the part of CONTRACTOR to monitor and take corrective action as to any attorney performing services under the Agreement who repeatedly fails to make required court appearances, repeatedly relies upon other counsel to make

court appearances on his/her behalf, and/or who repeatedly engages in unprofessional conduct shall be considered a material breach of this Agreement.

7. PROFESSIONAL TRAINING AND DEVELOPMENT

CONTRACTOR shall ensure that the ongoing legal education of its staff attorneys and/or Contract Attorneys includes formal training likely to assist the individual attorney's professional development in providing indigent defense services.

8. COMPENSATION

A. Total Contract Price

Except as enumerated hereinafter in Section 8.B., the annual Total Contract Price to be paid CONTRACTOR by COUNTY is not to exceed One Million Three Hundred and Twenty Thousand Dollars and No/100 Cents (\$1,320,000) per annum consisting of the services to be provided hereunder, including the work to be performed hereunder, for all of the administration, management and supervision, attorney services, support services, facilitation of ancillary services, and other services identified in CONTRACTOR's Proposal to COUNTY's RFP, all as further defined and specified in this Agreement (hereinafter referred to as "Total Contract Price.").

The Total Contract Price includes all of the prices, fees, charges and expenses necessary in accordance with this Agreement to provide the services hereunder and to meet the requirements of CONTRACTOR's Proposal and COUNTY's RFP. The Total Contract Price is the sole consideration to be paid to CONTRACTOR hereunder, and includes provision for all out-of-pocket costs, such as computer time, freight, long distance telephone charges, travel expenses, copying, telecopying, faxing and postage, and for all items or services necessary to deliver the services described herein. Accordingly, no amounts not specified in the "Ancillary Services" subsection shall be billed to or paid by COUNTY, except pursuant to this Agreement or amendment hereto authorized by COUNTY'S Board of Supervisors. CONTRACTOR shall not assign any payments or portions of payments without prior written consent of COUNTY.

CONTRACTOR's agreement to the flat fee in this Agreement is based upon CONTRACTOR's Proposal and CONTRACTOR's independent investigation and review of the statistical information set forth in the COUNTY's RFP and CONTRACTOR's Proposal. The parties agree and represent to each other that the flat fee basis of compensation has been established after consideration of the facts set forth in California Penal Code Section 987.3.

B. Exceptions to Total Contract Price:

- i. Ancillary services which are provided pursuant to Section 2.H. hereinabove; and
- ii. Subject to the limitations set forth in Section 2.C. hereinabove, capital cases beyond first-chair and complex cases requiring extraordinary attorney time.

C. Ancillary Services

All attorney and investigative expenses for representing indigent defendants are included under this Agreement, except for those non-attorney expenses listed below. Those costs deemed necessary and reasonable by the Court in the performance of services authorized by this Agreement shall be paid by the COUNTY:

- i. Expert witness fees, payable in accordance with State law;
- ii. Transcription Fees;
- iii. Interpreter Services;
- iv. Polygraph Services;
- v. Costs for Psychological Evaluations and Reports;
- vi. Laboratory and Forensic Services ;
- vii. Extraordinary costs/expenses related to defense representation (with prior approval); and

the said attorney is relieved from all such cases, then his or her duties under this contract are ended, and COUNTY shall pay CONTRACTOR through the termination date, and remainder of this section shall not apply to CONTRACTOR (or its independent Attorney Contractors). However, if CONTRACTOR or its independent Attorney Contractors have one or more cases in which they are still the attorney of record on the termination date, the COUNTY shall negotiate with CONTRACTOR compensation to be paid based on the evaluation of caseload.

- ii. Unless terminated as herein provided, this Agreement is scheduled to end on June 30, 2019. After *the termination date*, under this Agreement, the Court shall not assign any cases to CONTRACTOR (or its independent Attorney Contractors), and CONTRACTOR (or its independent Attorney Contractors) shall not accept cases.

10. TERMINATION

This Agreement may be terminated in accordance with the following:

A. Non-Allocation of Funds

The terms of this Agreement and the services to be provided hereunder are contingent upon the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the COUNTY may modify the Administrative services provided by Lake Indigent Defense, LLP or terminate this Agreement, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

B. For Cause

COUNTY may, in addition to any other remedies it may have, by giving written notice thereof to CONTRACTOR in the manner set forth under Section 24 herein ("NOTICES") immediately suspend or terminate this Agreement in full or in part, where in the determination of COUNTY there is sufficient cause due to:

- i. An illegal or unethical use of funds;
- ii. A failure to comply with any material term of this Agreement;
- iii. A substantially incorrect or incomplete report submitted to COUNTY after a request to correct or complete the report has been complied with in a timely manner;
- iv. Improperly performed services;
- v. Any of the following actions or inaction by CONTRACTOR:
 - a. Pleading no contest to or being found guilty of a felony or a crime involving moral turpitude;
 - b. Persistent failure or inability to perform the duties of the Agreement, whether willful or otherwise;
 - c. Disability that seriously interferes with the performance of duties and is permanent or is likely to become permanent;
 - d. Willful misconduct by CONTRACTOR pertaining to contract performance;
 - e. Habitual intemperance or the use of intoxicants or drugs;
 - f. Conduct prejudicial to the administration of justice which brings CONTRACTOR into disrepute;
 - g. Conduct prejudicial to the administration of COUNTY's interests in entering this Agreement, specifically additional expense to COUNTY resulting from CONTRACTOR actions contrary to the spirit of this Agreement. Persistent failure or inability to perform shall not be construed to encompass actions within the discretionary duties of CONTRACTOR.
- vi. Any of the following occurrences:

viii. Other specialized services which cannot reasonably be provided by CONTRACTOR's staff.

To provide funds for the purpose of reimbursement of the reasonable and necessary charges for these ancillary services to the direct providers thereof, the parties agree that the above mentioned ancillary expense will be forwarded to and paid by the COUNTY.

D. Payments

CONTRACTOR shall receive payment according to the following schedule:

For the period February 1, 2018 to June 30, 2019, equal monthly payments of One Hundred and Ten Thousand Dollars and No/100 Cents (\$110,000), which totals One Million Three Hundred and Twenty Thousand Dollars and No/100 Cents (\$1,320,000) annually and One Million Seven Hundred Sixty Thousand Dollars (\$1,760,000) over the full 16 month Term of this Agreement.. The compensation payable under this subsection is the maximum amount which COUNTY shall pay CONTRACTOR for providing legal defense services to indigent defendants under this Agreement, and CONTRACTOR shall assume and pay all other expenses incurred in CONTRACTOR's performance under this Agreement.

E. Other Payment Provisions:

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

COUNTY, upon consultation with the Court, reserves the right to reduce the monthly compensation of CONTRACTOR if it appears that the CONTRACTOR has not or will not be handling the contracted share of assignments. Prior to any such reduction, COUNTY shall engage in good faith discussions with CONTRACTOR in an attempt to resolve any perceived deficiencies.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of Lake Indigent Defense, LLP and be mailed or delivered to CONTRACTOR at the address listed in Section 24 herein. Whenever reasonably possible, COUNTY will attempt to arrange for CONTRACTOR to pick up the monthly payment directly from COUNTY or their designated agent on the last Friday of each calendar month.

CONTRACTOR may request COUNTY to have the check mailed or delivered to CONTRACTOR, in such a manner of, or at such other address as, CONTRACTOR may from time to time designate to COUNTY. Such request must be made in writing in accordance with such procedures as outlined under Section 24 of this Agreement.

9. TERM; CONTINUATION OF REPRESENTATION

The Term of this Agreement shall be from February 1, 2018 through and including June 30, 2019, unless earlier terminated as set forth in Section 10 ("TERMINATION"), below.

CONTRACTOR shall provide services under this Agreement in cases which have not been closed to which CONTRACTOR or its independent Attorney Contractors have been appointed previously under prior agreements and to which they are appointed by the Court. CONTRACTOR (or its independent Attorney Contractors assigned) shall continue to work on those cases, even though they have not been concluded by the end of the Term set forth in the prior agreement, in the manner hereafter provided.

A. If this Agreement is not extended or renewed, then commencing on the date of the Notice of Termination COUNTY will pay CONTRACTOR as follows:

- i. On or before the termination date, each attorney who has a case or cases under this Agreement (or a previous contract) that are still pending in court, shall ask the Court to allow him or her to withdraw from each such case, effective on the termination date and have the Court appoint another attorney to assume the duties of the defense attorney in each such case. If the Court grants the motion and

- a. Institution of proceedings by or against CONTRACTOR under the United States bankruptcy laws;
 - b. Suspension of business operations, failure or receivership of CONTRACTOR;
 - c. Any assignment of this Agreement without prior written approval of COUNTY;
 - d. Failure by CONTRACTOR to procure or maintain required insurance, as specified in the Section 12 of this Agreement;
 - e. Failure by CONTRACTOR to procure or maintain required bonding, as specified in the "INSURANCE" Section of this Agreement;
 - f. Failure by CONTRACTOR to administer the delivery of legal services hereunder in full compliance with any and all constitutional, legal and professional obligations or requirements, and/or duties and responsibilities governing CONTRACTOR's conduct under this Agreement.
- vii. Any other occurrence or omission constituting a material breach of contract.

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

C. Without Cause

Under circumstances other than those set forth above, COUNTY may terminate this Agreement upon the giving of ninety (90) days advance written notice of an intention to terminate. CONTRACTOR may terminate this Agreement upon giving ninety (90) days advance notice of an intention to terminate.

D. Mutual Consent

This Agreement may be terminated upon the mutual written consent of the parties.

E. No Further Liability

Upon the effective date of termination, COUNTY shall have no further liability to CONTRACTOR except for payment for actual services rendered during the performance hereunder to the time specified in said notice, not previously reimbursed by COUNTY to the extent such costs are actual, necessary, reasonable and verifiable, and have been incurred by CONTRACTOR prior to and in connection with discontinuing the work hereunder.

F. Transition

Upon the termination or expiration of the Agreement, CONTRACTOR shall cooperate fully with COUNTY and with such persons as may be designated by COUNTY to succeed CONTRACTOR or to whom CONTRACTOR may replace in order to effect the orderly transition of legal services from CONTRACTOR to CONTRACTOR's successor or vice-versa. The cooperation specified in this paragraph includes, but is not limited to, the releasing or acceptance of such files, papers and records as may be required to carry out the provisions of this Agreement, and any subsequent Agreement with the successor CONTRACTOR or assumption of caseloads as otherwise required by COUNTY, and insuring the continued adequate legal representation of persons eligible for the services herein set forth.

11. DISPOSITION OF WORK UPON TERMINATION

In the event of termination, all finished or unfinished documents and other materials, if any, at the option of COUNTY, and to the extent permitted by law, shall become the property of the COUNTY and CONTRACTOR shall be entitled to receive compensation for any work completed prior to receipt of the notice of termination. Neither party, however, shall

be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Agreement was terminated at will or for cause.

12. INSURANCE

CONTRACTOR, which at the time of the execution of this Agreement consists of the informal partnership of Mitchell Hauptman and Anakalia Sullivan shall not commence work under this Agreement until each said partner has obtained all the insurance required herein, certificates of insurance have been submitted to COUNTY and said insurance has been approved by COUNTY. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be canceled until at least twenty days (20) prior written notice has been given to COUNTY. Both Mitchell Hauptman and Anakalia Sullivan are responsible, both jointly and severally, for compliance with this Section.

CONTRACTOR shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of CONTRACTOR to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

Certificates evidencing the issuance of the following insurance shall be filed with the COUNTY within ten (10) days after the date of execution of this Agreement by CONTRACTOR:

- A **Compensation Insurance:** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense, during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In case any such work is sublet, CONTRACTOR shall require subcontractor similarly to provide Employer's Liability and Workers' Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by CONTRACTOR's Workers' Compensation Insurance. Employer's Liability Insurance shall be in an amount not less than \$1,000,000 per occurrence.
- B **Commercial General Liability:** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, upon itself and its employees at all times during the course of this Contract, Commercial General Liability Insurance (Occurrence Form CG 0001), for bodily injury, personal injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single-limit coverage per occurrence including but not limited to endorsements for the following coverage's: premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.
- C **Automobile Liability Insurance:** CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage on owned, hired, leased and non-owned vehicles used in connection with CONTRACTOR's business in an amount of not less than one million dollars (1,000,000) combined single-limit coverage per occurrence.
- D. **Subcontractors:** CONTRACTOR shall include all subcontractors as insured's under the aforesaid policies or shall furnish separate certificates and endorsements for each subcontractor to COUNTY for review and approval. The minimum coverages for subcontractors shall be \$300,000 for Commercial General Liability and \$300,000 for Automobile Liability Insurance. Subcontractor's insurance certificates shall contain the additional insured endorsement required by CONTRACTOR hereinafter.
- E. **Additional Insured Endorsement:** The Commercial General Liability and automobile policies are to contain, or be endorsed to contain, the following provisions:
 - I. The COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insured's and shall be added in the form of an endorsement to CONTRACTOR's insurance on Form CG 20 38 04 13 or coverage at least as broad. All coverage available to the CONTRACTOR shall also be available and applicable to the COUNTY. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the

COUNTY. CONTRACTOR shall not commence work under this Agreement until he has had delivered to COUNTY the Additional Insured Endorsements required herein.

- II. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

F. Other Insurance Provisions:

- i. For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with CONTRACTOR's insurance. Any excess insurance by CONTRACTOR shall contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the COUNTY before the COUNTY's own primary Insurance policy or self-insurance shall be called upon to protect the CONTRACTOR.
- ii. Any deductibles or self-insured retentions must be declared to and approved by COUNTY (County Administrative Officer or designee). At the option of COUNTY, either: CONTRACTOR shall reduce or eliminate such deductibles or self-insurance retentions; or CONTRACTOR shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- iii. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- iv. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the CONTRACTOR for liability in excess of such coverage, nor shall it preclude CONTRACTOR from taking other actions as is available to it under any other provision of the Agreement or law. Failure of COUNTY to enforce in a timely manner any of the provisions of this Section 12.F. shall not act as a waiver to enforcement of any of these provisions at a later date.
- v. If any insurance coverage required by the Agreement is provided on a "Claims Made", rather than "occurrence" form, CONTRACTOR agrees to maintain required coverage for a period of three 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 Section 12.Fv. sub 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.
- vi. CONTRACTOR agrees to waive all rights or subrogation against COUNTY, its officers, officials, employees, agents, and volunteers for losses arising from work performed by CONTRACTOR under this Agreement.

13. INDEMNIFICATION

CONTRACTOR, and each individual partner thereof both jointly and severally has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, CONTRACTOR's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of CONTRACTOR.

CONTRACTOR's liability for indemnity and each individual partner thereof both jointly and severally under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the CONTRACTOR, its agents, sub-contractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of COUNTY. This duty shall arise at the first claim or allegation of liability against COUNTY. CONTRACTOR will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

14. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that CONTRACTOR and each individual partner thereof is an independent Contractor in the performance of the work duties and obligations devolving upon CONTRACTOR under this Agreement. COUNTY shall neither have, nor exercise any control or direction over the methods by which CONTRACTOR shall perform the assigned work and functions. The contractual interest of COUNTY is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and CONTRACTOR shall hold COUNTY harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security income tax; and any other obligations from statutes or codes applying to CONTRACTOR, or its sub-contractors and employees, if any.

It is mutually agreed and understood that CONTRACTOR, its Contract Attorneys and employees, if any, shall have no claim under this Agreement or otherwise against COUNTY for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

CONTRACTOR shall insure that all its personnel and employees, sub-Contractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that COUNTY is not responsible for any benefits, coverage or payment for their efforts.

15. RECORDS, INFORMATION AND REPORTS

CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, COUNTY shall have free access to non-privileged materials at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

To the extent permitted by law, CONTRACTOR shall furnish COUNTY (County Administrative Officer or designee) such periodic reports as COUNTY may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the CONTRACTOR.

16. RETENTION OF FILES

CONTRACTOR or CONTRACTOR's Contract Attorneys shall maintain all files and time records for each case in safe storage for at least seven (7) years, or longer as made necessary by the applicable statutes of the State of California at the conclusion of services rendered by CONTRACTOR or CONTRACTOR's Contract Attorneys in the case, unless such files are assigned to successor counsel in the case. COUNTY shall have access to such files as necessary for administration of this Agreement or a successor contract, but COUNTY shall observe the confidentiality of such files for all other purposes.

17. REPORTS AND INFORMATION

To the extent permitted by law, CONTRACTOR shall furnish COUNTY (County Administrative Officer or designee) such periodic reports as COUNTY may request pertaining to the work or services undertaken pursuant to his Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement, shall be borne by CONTRACTOR.

As set forth in the Proposal, CONTRACTOR shall specifically provide to the Lake County Administrative Officer monthly statistical reports within thirty (30) days of the end of the month covered by the report. The report shall indicate the number of cases received per month, the numbers and types of cases referred to Contract Attorneys, the number of open cases, the total number of cases closed and their disposition, the number of cases assigned to private investigators, the total number of open cases maintained by each private investigator, the total number of cases closed by each private investigator, and any other additional information deemed necessary by the COUNTY. Said reports must be provided in an electronic format (via email or a computer storage disk).

18. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of the COUNTY as provided in this Agreement are expressly conditioned upon CONTRACTOR's compliance with the provisions of the Agreement to the personal satisfaction of the COUNTY. COUNTY shall determine compliance in good faith and as a reasonable person would under the circumstances.

19. CHANGE OF LEGAL/OPERATING STRUCTURE OF CONTRACTOR

Should the legal/operating structure of CONTRACTOR change during the course of this Agreement from an informal partnership arrangement to another type of legal business structure and/or entity, the parties shall meet and confer in good faith to review and implement the necessary modifications to the Agreement to reflect said change so long as to do so does not result in the imputation of greater liability to the COUNTY than exists in the Agreement as presently crafted.

20. COMPLETE AGREEMENT

This Agreement and any additional supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto. To the extent any provision(s) of this Agreement conflicts with, or appear to be in conflict with the provisions of CONTRACTOR's proposal attached hereto and incorporated herein by reference as Exhibit "A", said provision(s) of this Agreement shall control.

21. ADMINISTRATION OF AGREEMENT

COUNTY shall designate a representative to administer this Agreement. Said designee shall ensure the enforcement of the terms of this Agreement and coordinate the duties of the CONTRACTOR.

22. COUNTY NOT OBLIGATED TO THIRD PARTIES

COUNTY shall not be obligated or liable to any party other than CONTRACTOR.

23. COUNTY'S RIGHTS NOT WAIVED BY PAYMENTS

In no event shall the making, by the COUNTY, of any payment to CONTRACTOR constitute, or be construed as, a waiver by the COUNTY of any breach of covenant, or any default which may then exist, on the part of CONTRACTOR, and the making of any such payment by the COUNTY while any such breach or default shall exist be construed as acceptance of substandard or careless work or as relieving CONTRACTOR from its full responsibility under this Agreement.

24. NOTICES

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

COUNTY

NAME: County Administrative Office

ADDRESS: 255 N. Forbes Street

CITY/STATE/ZIP: Lakeport, CA 95453

PHONE: 707-263-2580

FAX: 707-263-2207

CONTRACTOR

NAME: Anakalia Sullivan or Mitchell Hauptman
Lake Indigent Defense, LLPLID

ADDRESS: 825 S. Main Street

CITY/STATE/ZIP: Lakeport, CA 95453

PHONE: 707-900-5177

FAX: 707-900-5178

- A. Any and all notices between COUNTY and CONTRACTOR provided for or permitted under this Agreement shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party.
- B. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.
- C. Any party may change its address of fax number by giving the other party notice of the change in any manner permitted by this Agreement.

25. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by COUNTY and counsel for COUNTY.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Lake County, unless the parties agree otherwise or are otherwise required by law.

26. AMENDMENT; NO WAIVER; INTERPRETATION

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by COUNTY's County Administrative Office and County Counsel.

27. REMEDY FOR BREACH AND RIGHT TO CURE

Notwithstanding anything else in this Agreement to the contrary, if CONTRACTOR fails to perform any obligation of this Agreement, COUNTY may itself perform, or cause the performance of, such agreement or obligation. In that event, CONTRACTOR will, on demand, fully reimburse COUNTY for all such expenditures. This is in addition to any other remedies available to the COUNTY by law or as otherwise stated in this Agreement.

28. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

29. CONFLICT OF INTEREST

CONTRACTOR and each individual partner thereof covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. CONTRACTOR shall ensure that no conflict of interest exists between its officers, employees, or sub-Contractors, and the COUNTY. CONTRACTOR shall ensure that no COUNTY officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. CONTRACTOR shall ensure that no COUNTY employee shall have any relationship to the CONTRACTOR or officer or employee of the CONTRACTOR, nor that any such person will be employed by CONTRACTOR in the performance of this Agreement without immediate divulgence of such fact to the COUNTY (County Administrative Officer or designee).

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30. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

CONTRACTOR and any and all of CONTRACTOR's employees and Contract Attorneys shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto.

CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

31. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

32. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to CONTRACTOR from the COUNTY may however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

34. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between them. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written at Lakeport, California.

COUNTY OF LAKE



CHAIRMAN, Board of Supervisors



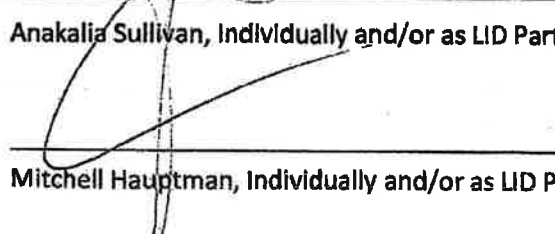
ATTEST: Carol J. Huchingson
Clerk of the Board of Supervisors

By: 

CONTRACTOR



Anakalia Sullivan, Individually and/or as LID Partner



Mitchell Hauptman, Individually and/or as LID Partner

APPROVED AS TO FORM:

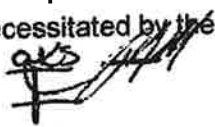
Anita L. Grant
County Counsel



AMENDMENT NO. 1 TO THE AGREEMENT FOR INDIGENT DEFENSE SERVICES

This Amendment No. 1 to that certain Agreement for Indigent Defense Services between the County of Lake and the partnership of J. David Markham and Anakalia K. Sullivan, (known collectively as Lake Indigent Defense) is made effective and entered into this 23rd day of January, 2018, by and between said parties.

WHEREAS, the County of Lake and Lake Indigent Defense have heretofore entered into an Agreement for Indigent Defense Services ("Agreement") on April 25, 2017 (the date approved by the Lake County Board of Supervisor), with an effective date of May 7, 2017; and

WHEREAS, the partnership of J. David Markham and Anakalia K. Sullivan will end effective January 31, 2017, necessitated by the appointment of one partner to a Superior Court Judgeship; and *2018* 

Whereas, LID intends to substitute a new partner in place of Mr. Markham; and

Whereas, the County desires to continue contracting with LID for indigent defense services but the change in partnership status necessitates the termination of this Agreement and the concurrent execution of a new agreement that memorializes the revised partnership arrangement.

Now therefore and in consideration of the mutual promises hereinafter contained, the parties hereto agree to amend the Agreement as follows:

1. **Section 8, COMPENSATION.** Subsection D, entitled "Payments" is amended as follows:

"ATTORNEY shall receive payment according to the following schedule:

"For the period May 7, 2017 to January 6, 2018 (the "Initial Term") eight equal monthly payments of One Hundred Ten Thousand Dollars and no/100 Cents (\$110,000.00).

For the period January 7, 2018 to January 31, 2018, a payment of Eighty Eight Thousand Seven Hundred Nine Dollars and 68/100 cents (\$88,709.68).

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

2. **Section 9, TERM; CONTINUATION OF REPRESENTATION,** is hereby amended to read as follows:

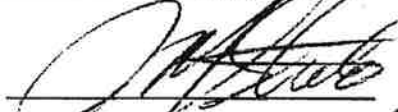
"The Term of this Agreement shall be from May 7, 2017 through and including January 31, 2018, unless earlier terminated as set forth in Section 10 ("TERMINATION"), below.

CONTRACTOR shall provide services under this Agreement in cases which have not been closed to which CONTRACTOR or its independent Attorney Contractors have been appointed previously under prior agreements and to which they are appointed by the Court. CONTRACTOR (or its independent Attorney Contractors assigned) shall continue to work on those cases, even though they have not been concluded by the end of the Term set forth in the prior agreement, in the manner hereafter provided."

Except as specifically modified herein, all other terms and conditions of the Agreement entered into on April 25, 2017, with an effective date of May 7, 2017, shall remain in full force and effect.

Executed at Lakeport, California, on this 23rd day of January, 2018.

COUNTY OF LAKE


CHAIRMAN, Board of Supervisors



CONTRACTOR

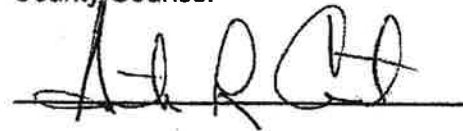

J. DAVID MARKHAM


ANAKALIA SULLIVAN, Partner, LID

ATTEST: Carol J. Huchingson
Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM:
Anita L. Grant
County Counsel



**Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and
Lake Indigent Defense LLP**

This Amendment No. 2 to Agreement is made and entered into this 14th day of May, 2019 by and between the COUNTY OF LAKE, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and Lake Indigent Defense, LLP (hereinafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, The Agreement for Indigent Defense Services was made and entered into the 23rd day of January, 2018; and

WHEREAS, the COUNTY desires to continue contracting for indigent defense services; and

WHEREAS, the COUNTY seeks to extend the term four (4) months and adjust the payment amount of the Agreement previously agreed upon,

NOW, THEREFORE, the parties hereby agree as follows:

A. Section 8(D) Payments is hereby amended to read:

"Contractor shall receive payment according to the following schedule:

For the period February 1, 2018 to **October 31, 2019**, equal monthly payments of One Hundred and Ten Thousand Dollars and No/100 Cents (\$110,000), and **Two Million Three Hundred and Ten Thousand Dollars (\$2,310,000)** over the full **twenty one (21)** month term of this Agreement. The compensation payable under this subsection is the maximum amount which COUNTY shall pay CONTRACTOR for providing legal defense services to indigent defendant's under this Agreement, and CONTRACTOR shall assume and pay all other expenses incurred in CONTRACTOR'S performance under this Agreement."

B. Section 9 Term; Continuation of Representation is hereby amended to read:

"The Term of this Agreement shall be from February 1, 2018 through and including **October 31, 2019**, unless terminated as set forth in Section (10) ("Termination"), below."

**Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and
Lake Indigent Defense LLP**

The Parties agree that all other terms and conditions of the original Agreement shall remain in full force and effect.

COUNTY OF LAKE

By: See attached
Chair, Board of Supervisors

ATTEST:
CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

By: See attached

CONTRACTOR

By: Anakalia Sullivan
Anakalia Sullivan, Individually and/or as LID
Partner

By: Mitchell Hauptman
Mitchell Hauptman, Individually and/or as
LID Partner

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: See attached

**Amendment No. 2 to Agreement for Indigent Defense Between County of Lake and
Lake Indigent Defense LLP**

The Parties agree that all other terms and conditions of the original Agreement shall remain in full force and effect.

COUNTY OF LAKE

By: _____

Chair, Board of Supervisors

CONTRACTOR

By: See attached signature page
Anakalia Sullivan, Individually and/or as LID Partner

By: See attached signature page
Mitchell Hauptman, Individually and/or as LID Partner

ATTEST:

CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

By: _____

APPROVED AS TO FORM:

ANITA L. GRANT
County Counsel

By: _____



The within instrument is a correct
copy of the document on file in
this office.

ATTEST: 01/4/19
CAROL J. HUCHINGSON
Clerk of the Board of Supervisors of
the State of California in and for the
County of Lake
By: _____

**AMENDMENT NO. 3 TO THE AGREEMENT FOR INDIGENT DEFENSE SERVICES
BETWEEN THE COUNTY OF LAKE AND LAKE INDIGENT DEFENSE, LLP**

The Amendment No. 3 to Agreement is made and entered into this 22nd day of October, 2019 by and between the COUNTY OF LAKE, a political subdivision of the State of California "hereinafter referred to a "COUNTY") and Lake Indigent Defense, LLP (hereafter referred to as "CONTRACTOR").

RECITALS

WHEREAS, the Agreement for Indigent Defense Services was made and entered into the 23rd day of January, 2018; and

WHEREAS, the COUNTY adopted Amendment No. 1 to terminate the Agreement and concurrently execute a new Agreement revising the new partnership arrangement; and

WHEREAS, the COUNTY adopted Amendment No. 2 to extend the term of the Agreement four (4) months during contract negotiations; and

WHEREAS, the COUNTY desires to continue contracting for indigent services and requires additional time to complete negotiations; and

WHEREAS, the COUNTY seeks to extend the term fourteen (14) months and increase the monthly amount of the Agreement previously agreed upon from One Hundred and Ten Thousand Dollars (\$110,000) to One Hundred and Eighteen Thousand Dollars (\$118,000),

NOW, THEREFORE, the parties hereby agree as follows:

A. Section 8(D) Payments is hereby amended to read:

"Contractor shall receive payment according to the following schedule:

For the period February 1, 2018 to **December 31, 2020**, equal monthly payments of **One Hundred and Eighteen Thousand Dollars and No/00 Cents (\$118,000)**, which totals **Three Million Nine Hundred and Sixty Two Thousand (\$3,962,000)** over the full **Thirty Five (35)** month Term of this Agreement. The compensation payable under this subsection is the maximum amount which COUNTY shall pay CONTRACTOR for providing legal defense services to indigent defendant's under this Agreement, and CONTRACTOR shall assume and pay all other expenses incurred in CONTRACTOR's performance under this Agreement."

B. Section 9 Term; Continuation of Representation is hereby amended to read:

"The Term of this Agreement shall be from February 1, 2018 through and including **December 31, 2020**, unless terminated as set forth in Section (10) (Termination)", below."

**AMENDMENT NO. 3 TO THE AGREEMENT FOR INDIGENT DEFENSE SERVICES
BETWEEN THE COUNTY OF LAKE AND LAKE INDIGENT DEFENSE, LLP**

The Parties agree that all other terms and conditions of the original Agreement shall remain in full force and effect.

COUNTY OF LAKE

By: [Signature]
Chair, Board of Supervisors

CONTRACTOR

By: Andrea Sullivan
Anakalia Sullivan Individually and/or
as LID Partner

By: [Signature]
Mitchell Hauptman, Individually
and/or LID Partner

ATTEST:
CAROL J. HUCHINGSON
Clerk to the Board of Supervisors

By: [Signature]

APPROVED AS TO FORM:
ANITA GRANT
County Counsel

By: [Signature]

