

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET
Director and
State Court Administrator



JOHN MCCORMICK
Assistant Court Administrator
Judicial Programs and Services

RICHARD A. STEFANI
Deputy Director
Information Technology

MEETING NOTICE AND AGENDA

**Indigent Defense Commission (IDC)
VIDEOCONFERENCE**

Date and Time of Meeting: Monday, October 23, 2017 @ 1:30 p.m.

Place of Meeting:

| Carson City | Las Vegas | Washoe | Ely | Elko |
|--|---|---|--|--|
| Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada | Nevada Supreme Court Building Conference Room A/B 408 E. Clark Avenue Las Vegas, NV | Second Judicial District Court Room 220B 75 Court Street Reno, NV | White Pine County District Court 801 Clark Street Ely, NV | Elko County District Court 571 Idaho Street, Elko, NV |
| Teleconference Access: Dial-In # 1-877-336-1829 Access Code 2469586 | | | | |

****All participants attending via teleconference should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.***

AGENDA

- I. Call to Order
 - a. Call of Roll
 - b. Determination of a Quorum
- II. Public Comment

Because of time considerations, the period for public comment by each speaker may be limited. Speakers are urged to avoid repetition of comments already made by previous speakers.
- III. Review and Approval of the September 05, 2017 Meeting Summary*
- IV. Update on Nevada Right to Counsel Commission – *Mr. John McCormick*
- V. Rural Counsel Contracts Discussion
- VI. Update on Caseload Standards - *Mr. Hans Jessup*
- VII. Status Update on Indigent Defense Clark County - *Mr. Phil Kohn, Mr. Drew Christensen*

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Supreme Court Building ♦ 408 East Clark Avenue ♦ Las Vegas, Nevada 89101

- VIII. Status Update on Indigent Defense in Washoe County - *Mr. Jeremy Bosler, Ms. Jennifer Lunt, Mr. Bob Bell*
- IX. Status Update from State Public Defender's Office - *Ms. Karin Kreizenbeck*
- X. Status Update on the Federal Public Defender's office – *Ms. Megan Hoffman*
- XI. Update on Eighth Judicial District Court Homicide Case Pilot Project – *Mr. Chris Lalli*
- XII. Other Business
- XIII. Adjournment

- Action items are noted by * and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to five minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: 408 East Clark Avenue.

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Indigent Defense Commission
Summary Prepared by Jamie Gradick
September 05, 2017
1:30p.m.

Attendees Present

Chief Justice Michael A. Cherry, Chair
Justice Lidia Stiglich
Judge Tom Armstrong
Chief Judge Patrick Flanagan
Judge Kevin Higgins
Judge Mike Montero
Judge John Schlegelmilch
Judge Mason Simons
Judge Jim Shirley
Judge Kimberly Wanker
Judge Nathan Tod Young
Bob Bell
Jeremy Bosler
David Carroll
Drew Christensen
Joni Eastley
Kim Farmer
Franny Forsman
Kriston Hill

Dana Hlavac
Megan Hoffman
Philip J. Kohn
Karin Kreizenbeck
Chris Lalli
John Lambrose
Mark Picker
Rachelle Resnick
Diane Roth
Dagny Stapleton
Matt Stermitz
Holly Wellborn
Jeff Wells

AOC Staff

Ben Graham
Hans Jessup
John McCormick
Michael Sommermeyer

- I. Call to Order
 - Call of Roll and Determination of a Quorum
 - Mr. John McCormick called roll; a quorum was present.
- II. Public Comment
 - Chief Justice Michael Cherry determined there was no public comment.
- III. Review and Approval of the May 31, 2017 Meeting Summary
 - Attendees approved the summary of the May 31, 2017 meeting.
- IV. Discussion of SB377

- Mr. McCormick and Mr. Ben Graham provided attendees with an overview of the history and passage of Senate Bill 377.
- Discussion was held regarding the creation of the Nevada Right to Counsel Commission; currently, the appointment process is ongoing.
 - Clark County’s nominations include Phil Kohn, Drew Christensen, or Darren (?)
 - Ms. Dagny Stapleton informed attendees that NACO has voted on and submitted 6 names to the Governor for consideration.
 - Senator Ford has nominated Senator Segerblom to sit on the Commission.
 - LCB will be rendering an opinion regarding the confusion over “public defender who may derive benefit” provision.
 - Chief Justice Cherry asked for clarification regarding whether Mr. David Carroll and the 6th Amendment Center will provide consulting services; Mr. McCormick explained that this is the tentative plan.
 - Washoe County’s nominees are still unclear.

V. Update on Nevada Right to Counsel Commission

- Chief Justice Cherry asked for input regarding the Board of Governors’ appointments.
 - Discussion was held regarding whether contract lawyers can or cannot be on the Commission; LCB is looking into this.
 - Concern was expressed regarding the slow progress of the appointment process and the short amount of time the Commission has to develop its recommendations (1 year).
 - Ms. Kim Farmer commented that the Board is waiting on the LCB to provide direction regarding whether the contract attorneys can be approved. As the legislation is written, contract employees cannot be approved.
- Chief Justice Cherry asked that Ms. Farmer move forward with the language as it currently reads.
 - Ms. Farmer commented that she will remove contract attorneys from the applicant list.
 - Ms. Franny Forsman commented that the problem appears to be a lack of interest among rural attorneys; they may need some help recruiting in the rural counties.
 - Judge Mason Simons offered to work on recruiting attorneys from Elko County; Chief Justice Cherry asked that Judge Simons put any interested candidates in touch with Ms. Farmer.
 - Mr. Lambrose expressed concern regarding a non-contract attorney serving on the Commission if he/she also works with a contract attorney; public defenders serving on the Commission is acceptable.
- Chief Justice Cherry stressed the importance of moving forward with the new Commission and not losing momentum.

VI. Discussion on the Future of the IDC

- Chief Justice Cherry informed attendees that there is some pressure to “free up” staff by ending the IDC but he doesn’t believe the IDC has run its full course yet; we need to continue on until the Nevada Right to Counsel Commission is adequately established and functioning.
- Chief Justice Cherry asked for input regarding the future of the IDC.
 - Mr. Jeremy Bosler suggested the IDC provide the Right to Counsel Commission with its reports/materials and recommendations from its own efforts.
 - Discussion was held regarding sharing the history of the IDC with the Commission; this will occur when appropriate time.

VII. Update on Caseload Standards (*See meeting materials for handout*)

- Mr. Hans Jessup provided an overview of the preliminary numbers for the FY17 caseloads.
- The increase in dispositions is due, largely, to an increase in the number of dispositions being reported by the Las Vegas Justice Court; this could be occurring for a variety of reasons.
- Ms. Forsman asked if the numbers for the rural counties include the contract attorneys and the institutional defenders (when applicable)?
 - Mr. Jessup explained that the data is usually provided by the courts and includes both if the county has both.
- Ms. Forsman asked if the statistics can be broken down to see what the average caseload is for the contract attorneys in the rural counties.
 - Mr. Jessup explained that the data isn’t broken down that way; the contract attorney would have records on their individual caseloads.
- Discussion was held regarding finalizing the Annual Report data by the end of the month and releasing the report in mid-November.

VIII. Status Update on Indigent Defense in Clark County

- Mr. Phil Kohn reported that they are experiencing the same issues with bail; in the four justice court departments using the tool, the consistency of use is varied - the judges are each using it differently.
 - Metro is putting people out on a different monitoring system to address overcrowding.
 - Discussion was held regarding the possible use of a bail master in Clark County; Mr. Kohn confirmed there are no immediate plans for this.
- Mr. Jeff Wells commented that, while there is inconsistency among the 4 pilot-site judges, the program is being expanded to the other departments and this is being tracked in order to preserve statistical validity.
 - Attendees discussed the need for coordination between the Committee to Study Evidence-Based Pretrial Release and the Right to Counsel Commission to make sure the pretrial changes will benefit indigent defendants.

- Mr. Drew Christensen informed attendees that Mr. David Schiek retired in July; at the request of Clark County, Mr. Christensen is overseeing the SPD. (*Portions of this discussion were inaudible*)
 - Attendees discussed training of new attorneys and county allocation of additional resources.
 - 432B cases are now court appointed to private attorneys; the Clark County PD doesn't handle these cases. Discussion was held regarding the possibility of establishing a separate county PD office to handle these cases so there's consistency in representation. Mr. Wells commented that the Clark County is focusing on stabilizing the SPD office before considering the creation of other offices.
 - Attendees discusses caseload standards for 432B cases – 100 “open” cases
 - Discussion was held regarding “cross-training” attorneys from this department to integrate into Mr. Kohn's office and whether this would present a conflict.

IX. Status Update on Indigent Defense in Washoe County

- Ms. Bosler provided an update on indigent defense in Washoe County; there are some issues with the pretrial release program and calendaring issues.
 - There has been discussion of implementing a “bail master” system.
 - Due to the calendaring issues, the courts are considering reaching out to NCSC for review of current processes and suggestions for improvement.
- Mr. Picker commented that the bail master would also improve consistency in bail.
- Mr. Picker informed attendees that Kay Thomas is the new county manager. Also, Jennifer Lunt is retiring in January; the process to appoint her replacement is beginning next week.
- Mr. McCormick informed attendees that the Committee to Study Evidence-Based Pretrial Release's pilot site program is still ongoing; the Committee voted to continue the program through the end of the year.
- Mr. Bell commented that everything is “going well” and they are working on tightening up some procedures in the conflict group, particularly in the family courts.

X. Status Update from State Public Defender's Office

- Ms. Karin Kreizenbeck provided an update on the State PD Office; things are going well but there is one district court judge who will not award expert fees.
- There is a problem with misdemeanor probation violation; this is becoming a drain on resources and is being discussed with stakeholders.
- Recently, there's been an issue with specialty courts – district court judges wanting more options when a defendant is termination from a specialty court.
 - Discussion was held regarding how this is handled in other counties and the use of probation instead of jail.

- Mr. Bosler commented that specialty courts audits are good tools for sharing “best practices” and he would be happy to look into Washoe County specialty courts visiting and auditing other courts in the state.
- Mr. Mark Picker commented that, in some cases, the participants can be put back into the program but with a “strike” on their record so they are aware this is their last chance.

XI. Update on Rural Contract Counsel Fees (*See meeting materials for handout*)

- Ms. Forsman presented her report regarding the counsel contracts in the rural counties.
 - The July 23, 2015 ADKT language needs to be modified; currently, only 3 rural counties comply with the Order’s language.
 - Most of the contracts do not allow for travel reimbursement.
 - There are variances among the contracts in terms of how they define “extraordinary” and under what circumstances they courts will consider paying additional fees/expenses.
 - Ms. Forsman concluded that her analysis of the rural contracts shows that most of them are in, fact, still flat fee contracts despite the language of the Order.
- Ms. Joni Eastley commented that Nye County’s contract includes language that allows for payment of extraordinary costs.
 - Discussion was held regarding the interpretation of the language and how the lawyers are interpreting “extraordinary fees” and what they may request payment for.
 - Judge Wanker commented that she routinely approves extraordinary fees and explained how the contract attorneys in Nye County are compensated.
 - Ms. Forsman clarified that the fees she is referring to include hourly rates when a case is more complex and goes to trial. The issue is that the attorney cannot be in the position of losing money if he/she takes the case to trial.
- Mr. Bosler commented that the requests for fees by attorneys should be tracked.
- Chief Justice Cherry commented on the difference between the flat fee contract system and the hourly system used in the urban counties.
- Attendees discussed the concern that if rural counties have to pay contract attorney hourly rates as “extraordinary fees” for every case that may go to trial, they will have to decrease the amount of the contracts and they will struggle to find adequate attorneys to take these positions.
- Ms. Stapleton asked that the contracts be provided to the Commission membership; Ms. Gradick will distribute the contracts that have been provided.

XII. Other Business

- Judge Schlegelmilch informed attendees that Lyon County has been using a pretrial release program and it has “failed miserably”.

- 48% fail rate, more warrants issued due to lack of compliance
- Chief Justice Cherry commented that Judge Schlegelmilch should communicate his concerns to the Committee to Study Evidence-Based Pretrial Release. Mr. McCormick will have Ms. Jamie Gradick reach out to Judge Schlegelmilch regarding this.
- Justice Stiglich asked for clarification regarding the use of the term “violating” and whether that means the defendant is recidivating/not coming back, or violating conditions of OR? The answer to this determines the changes that need to be made and the issues that need to be addressed.
 - The question is are they coming back to court? Does the system still work to get the right category of people back to court? Are we placing conditions on people on OR that they wouldn’t get if they were able to pay bail?
- Ms. Megan Hoffman provided a brief update on work begin done in the 9th Circuit Federal District Court.
 - Caseloads remain high; increase in rural evidentiary hearings.
 - Continuing to monitor issues arising in state courts.
- Mr. Chris Lalli provided a brief update on the Eighth Judicial District Court Homicide Case Pilot Project.
 - The pilot program has been in place for almost 2 months; there has been an uptake in the number of cases resolved through negotiation. Initial reports seem to be positive but it’s too early for a conclusive evaluation.
- Chief Justice Cherry thanked NACO for its participation in the IDC.

XIII. Adjournment

CHAPTER.....

AN ACT relating to indigent defense; creating the Nevada Right to Counsel Commission; prescribing the membership and duties of the Commission; authorizing the Commission to request the drafting of not more than one legislative measure for each regular session of the Legislature; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill creates the Nevada Right to Counsel Commission and prescribes the duties and functions of the Commission. **Section 9** of this bill provides that the Commission consists of 13 voting members and the Chief Justice of the Nevada Supreme Court, who is an ex officio nonvoting member of the Commission. Under **section 9**, of the 13 voting members of the Commission, the Governor appoints 10 members from among nominees selected by various entities interested in the provision of indigent defense services and the Majority Leader of the Senate, the Speaker of the Assembly and the Chief Justice of the Nevada Supreme Court each appoint one member. **Section 9** also provides that a member of the Commission serves without compensation but is entitled to receive the per diem and travel expenses for state officers and employees while the member is engaged in the business of the Commission. **Section 32** of this bill provides for the appointment of members of the Commission to terms which expire on June 30, 2019.

Section 11 of this bill requires the Commission to conduct a study during the 2017-2019 interim concerning issues relating to the provision of legal representation to indigent persons. **Section 11** also requires the Commission to recommend to the Legislature standards concerning the provision of legal representation to indigent persons. The recommendations must include: (1) standards related to the caseload and workload of defense counsel; (2) minimum standards for the provision of legal representation to indigent persons; (3) minimum standards for a statewide system for the provision of such services in a county whose population is less than 100,000 (currently all counties other than Clark and Washoe Counties); (4) funding a statewide system for the provision of such services; and (5) any other recommendations in accordance with the findings of the Commission. Recommendations proposed by the Commission must be submitted to the Office of Finance in the Office of the Governor and the Legislature on or before September 1, 2018.

Existing law prescribes the number of legislative measures which may be requested by various departments, agencies and other entities of this State for each regular session of the Legislature. (NRS 218D.100-218D.220) **Section 31.2** of this bill authorizes the Nevada Right to Counsel Commission to request for each regular session of the Legislature the drafting of not more than one legislative measure which relates to matters within the scope of the Right to Counsel Commission.

Section 31.6 of this bill makes an appropriation from the State General Fund of \$115,000 for Fiscal Year 2017-2018 and \$115,000 for Fiscal Year 2018-2019 to the Nevada Supreme Court for expenses related to the Commission.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 180 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 16, inclusive, of this act.

Sec. 3. (Deleted by amendment.)

Sec. 4. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 5 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 5. (Deleted by amendment.)

Sec. 6. *“Commission” means the Nevada Right to Counsel Commission created by section 9 of this act.*

Sec. 7. *“Indigent defense services” means the provision of legal representation to:*

1. An indigent person who is charged with a public offense; or

2. An indigent child who is:

(a) Alleged to be delinquent; or

(b) In need of supervision pursuant to title 5 of NRS.

Sec. 8. (Deleted by amendment.)

Sec. 9. 1. *The Nevada Right to Counsel Commission, consisting of 13 voting members and 1 ex officio nonvoting member, is hereby created.*

2. The voting members of the Commission must be appointed as follows:

(a) One member who is a member in good standing of the State Bar of Nevada, appointed by the Majority Leader of the Senate.

(b) One member who has expertise in the finances of State Government, appointed by the Speaker of the Assembly.

(c) One member who is a retired judge or justice or has expertise in juvenile justice and criminal law, appointed by the Chief Justice of the Nevada Supreme Court.

(d) Two members from among six nominees selected by the Board of Governors of the State Bar of Nevada, three of whom must be members in good standing of the State Bar of Nevada who reside in a county whose population is less than 100,000, and three of whom must be members in good standing of the State Bar of Nevada who reside in a county whose population is 100,000 or



more, appointed by the Governor. The Governor must appoint one member who resides in a county whose population is less than 100,000 and one member who resides in a county whose population is 100,000 or more.

(e) Four members from among six nominees selected by the Nevada Association of Counties who reside in a county whose population is less than 100,000, appointed by the Governor. The Governor must appoint one member who has expertise in the finances of local government.

(f) Two members from among four nominees selected by the Board of County Commissioners of Clark County, appointed by the Governor.

(g) One member from among two nominees selected by the Board of County Commissioners of Washoe County, appointed by the Governor.

(h) One member from among three nominees selected jointly by associations of the State Bar of Nevada who represent members of racial or ethnic minorities, appointed by the Governor.

3. The Chief Justice of the Nevada Supreme Court or his or her designee is an ex officio, nonvoting member of the Commission.

4. Each person appointed to the Commission pursuant to subsection 2 must have:

(a) Significant experience in providing legal representation to indigent persons who are charged with public offenses or to indigent children who are alleged to be delinquent or in need of supervision;

(b) A demonstrated commitment to providing effective legal representation to such persons; or

(c) Expertise or experience, as determined by the appointing authority, which qualifies the person to contribute to the purpose of the Commission or to carrying out any of its functions pursuant to section 11 of this act.

5. A person must not be appointed to the Commission pursuant to subsection 2 if he or she is:

(a) A current judge, justice or judicial officer;

(b) A prosecuting attorney or an employee thereof;

(c) A law enforcement officer or an employee of a law enforcement agency; or

(d) An attorney who may obtain any financial benefit from the policies adopted by the Commission.

6. In addition to the other requirements set forth in this section, not more than two persons who are county managers or



members of a board of county commissioners may be appointed to the Commission pursuant to subsection 2.

7. Each member of the Commission continues in office until a successor is appointed.

8. Any vacancy occurring in the membership of the Commission must be filled in the same manner as the original appointment for the remainder of the unexpired term.

9. Each member of the Commission:

(a) Serves without compensation; and

(b) While engaged in the business of the Commission, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

10. Each member of the Commission who is an officer or employee of the State or a local government must be relieved from his or her duties without loss of his or her regular compensation so that the member may prepare for and attend meetings of the Commission and perform any work necessary to carry out the duties of the Commission in the most timely manner practicable. A state agency or local government shall not require an officer or employee who is a member of the Commission to make up the time the member is absent from work to carry out his or her duties as a member, and shall not require the member to take annual vacation or compensatory time for the absence.

11. The Governor may remove a member of the Commission for incompetence, neglect of duty, moral turpitude, misfeasance, malfeasance or nonfeasance in office or for any other good cause.

12. A majority of the voting members of the Commission constitutes a quorum for the transaction of business at a meeting of the Commission. A majority of the voting members of the Commission is required for official action of the Commission.

Sec. 10. (Deleted by amendment.)

Sec. 11. *1. The Commission shall conduct a study during the 2017-2019 interim concerning issues relating to the provision of indigent defense services.*

2. The Commission shall make recommendations to the Legislature to improve the provision of indigent defense services and to ensure that those services are provided in a manner that complies with the standards for the effective assistance of counsel established by the United States Supreme Court and the appellate courts of this State under the Sixth Amendment to the United States Constitution and Section 8 of Article 1 of the Nevada Constitution. The Commission shall make recommendations concerning:



(a) Standards related to the caseload and workload of defense counsel;

(b) Minimum standards for the provision of indigent defense services;

(c) Minimum standards for a statewide system for the provision of indigent defense services in a county whose population is less than 100,000;

(d) Funding a statewide system for the provision of indigent services; and

(e) Any other recommendations in accordance with the findings of the Commission.

3. Any state agency, political subdivision of this State or any other state or local governmental agency in this State, or any officer, employee or other person acting on behalf of such an agency or entity, shall provide, to the best ability of the agency, entity or person, information requested by the Commission to carry out any of its functions pursuant to this section.

4. The Commission may employ and contract, within the limits of legislative appropriations, such experts as necessary to carry out any of its functions pursuant to this section.

5. On or before September 1, 2018, the Commission shall submit a report of its findings and any recommendations to:

(a) The Office of Finance in the Office of the Governor; and

(b) The Director of the Legislative Counsel Bureau for transmittal to the 80th Session of the Nevada Legislature.

Secs. 12-31. (Deleted by amendment.)

Sec. 31.2. Chapter 218D of NRS is hereby amended by adding thereto a new section to read as follows:

1. For a regular session, the Nevada Right to Counsel Commission created by section 9 of this act may request the drafting of not more than one legislative measure which relates to matters within the scope of the Commission. The request must be submitted to the Legislative Counsel on or before September 1 preceding the regular session.

2. A request made pursuant to this section must be on a form prescribed by the Legislative Counsel. A legislative measure requested pursuant to this section must be prefiled on or before the third Wednesday in November preceding the regular session. A legislative measure that is not prefiled on or before that day shall be deemed withdrawn.



Sec. 31.4. NRS 218D.100 is hereby amended to read as follows:

218D.100 1. The provisions of NRS 218D.100 to 218D.220, inclusive, *and section 31.2 of this act* apply to requests for the drafting of legislative measures for a regular session.

2. Except as otherwise provided by a specific statute, joint rule or concurrent resolution, the Legislative Counsel shall not honor a request for the drafting of a legislative measure if the request:

(a) Exceeds the number of requests authorized by NRS 218D.100 to 218D.220, inclusive, *and section 31.2 of this act* for the requester; or

(b) Is submitted by an authorized nonlegislative requester pursuant to NRS 218D.175 to 218D.220, inclusive, *and section 31.2 of this act* but is not in a subject related to the function of the requester.

3. The Legislative Counsel shall not:

(a) Assign a number to a request for the drafting of a legislative measure to establish the priority of the request until sufficient detail has been received to allow complete drafting of the legislative measure.

(b) Honor a request to change the subject matter of a request for the drafting of a legislative measure after it has been submitted for drafting.

(c) Honor a request for the drafting of a legislative measure which has been combined in violation of Section 17 of Article 4 of the Nevada Constitution.

Sec. 31.6. 1. There is hereby appropriated from the State General Fund to the Nevada Supreme Court for expenses related to the Nevada Right to Counsel Commission created by section 9 of this act the following sums:

For the Fiscal Year 2017-2018..... \$115,000

For the Fiscal Year 2018-2019..... \$115,000

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 21, 2018, and September 20, 2019, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred and must be reverted to the State



General Fund on or before September 21, 2018, and September 20, 2019, respectively.

Sec. 32. As soon as practicable after July 1, 2017, the Governor, the Majority Leader of the Senate, the Speaker of the Assembly and the Chief Justice of the Supreme Court, as applicable, shall appoint the members of the Nevada Right to Counsel Commission created pursuant to section 9 of this act to terms that expire on June 30, 2019.

Secs. 33 and 34. (Deleted by amendment.)

Sec. 35. This act becomes effective on July 1, 2017, and expires by limitation on June 30, 2019.

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STAFF REPORT

Report To: Board of Supervisors

Meeting Date: 06/01/2017

Staff Contact: Laura Rader and Max Cortes

Agenda Title: For Possible Action: To approve Conflict Counsel Attorney Services Contract No. 1718-004 with Robert B. Walker; No. 1718-005 with Noel S. Waters; and No. 1718-006 with John E. Malone effective July 1, 2017 each for an annual amount of \$120,972 (year one) with a 2% increase each year through June 30, 2020 to be funded from the General Fund Courts Professional Services/Conflict Account. These are professional services contracts and therefore not suitable for public bidding pursuant to NRS 332.115 (1) (b). (Laura Rader; Lrader@carson.org and Max Cortes; Mcortes@carson.org).

Staff Summary: In March 2017, letters of interest for the contract were issued by publication in the Nevada Appeal, the First Judicial Bar Association and the Washoe County Bar Association. Letters of interest were received by fourteen (14) attorneys and reviewed by James Wilson; District Court Judge, James T. Russell, District Court Judge, John Tatro, Justice/Municipal Court Judge, Thomas R. Armstrong; Justice of the Peace/Municipal Judge, Max Cortes, Court Administrator, Kimberly Okezie; Special Master/Juvenile Division, Ali Banister; Chief Juvenile Services, and Laura Rader; Purchasing & Contracts Administrator. After careful deliberation, Robert B. Walker, Noel S. Waters, and John E. Malone are being recommended to award contracts to serve as Conflict Counsel.

Agenda Action: Formal Action/Motion

Time Requested: 5 minutes

Proposed Motion

I move to approve Conflict Counsel Attorney Services Contract No. 1718-004 with Robert B. Walker; No. 1718-005 with Noel S. Waters; and No. 1718-006 with John E. Malone effective July 1, 2017 each for an annual amount of \$120,972 (year one) with a 2% increase each year through June 30, 2020 to be funded from the General Fund Courts Professional Services/Conflict Account. These are professional services contracts and therefore not suitable for public bidding pursuant to NRS 332.115 (1) (b).

Board's Strategic Goal

Efficient Government

Previous Action

Background/Issues & Analysis

The current Conflict Counsel Attorney Services Contract will expire June 30, 2017.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 (1) (b)

Financial Information

Is there a fiscal impact? ☒ Yes ☐ No

If yes, account name/number: 101-0610-412.03-61

Is it currently budgeted? ☒ Yes ☐ No

Explanation of Fiscal Impact: Fiscal Year 2018 in the amount of \$362,916; Fiscal Year 2019 in the amount of \$370,174.32; Fiscal Year 2020 in the amount of \$377,577.81. \$390,000 is budgeted in this account for FY 18.

Alternatives

Not award contract and provide other direction.

Board Action Taken:

Motion: App

1) KA
2) LB

Aye/Nay 5/0

DM
(Vote Recorded By)

INDEPENDENT CONTRACTOR AGREEMENT
Contract No.1718-006
Title: Conflict Counsel, John E. Malone; Attorney at Law

THIS CONTRACT is made and entered into this 1 day of July, 2017, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as "CITY", and John E. Malone, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the Purchasing and Contracts Administrator for **CITY** is authorized pursuant to Nevada Revised Statutes (hereinafter referred to as "NRS") 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, CONTRACTOR'S compensation under this agreement (does) (does not X) utilize in whole or in part money derived from one or more federal grant funding source(s); and

WHEREAS, it is deemed necessary that the services of **CONTRACTOR** for **CONTRACT No.1718-006** (hereinafter referred to as "Contract") are both necessary and in the best interest of **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, and the following terms, conditions and other valuable consideration, the parties mutually agree as follows:

1. REQUIRED APPROVAL:

This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

2. SCOPE OF WORK (Incorporated Contract Documents):

2.1 **CONTRACTOR** shall provide and perform the following services set forth in Exhibit A, which shall all be attached hereto and incorporated herein by reference for and on behalf of **CITY** and hereinafter referred to as the "SERVICES".

2.2 **CONTRACTOR** represents that it is duly licensed by **CITY** for the purposes of performing the SERVICES.

2.3 **CONTRACTOR** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the SERVICES.

2.4 **CONTRACTOR** represents that it and/or the persons it may employ possess all skills and training necessary to perform the SERVICES described herein and required hereunder. **CONTRACTOR** shall perform the SERVICES faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONTRACTOR** shall be responsible for the professional quality and technical accuracy of all SERVICES furnished by **CONTRACTOR** to **CITY**.

| | |
|------------------|----------|
| For P&C Use Only | |
| CCBL expires | 12/31/17 |
| NVCL expires | N/A |
| GL expires | 6/2/18 |
| AL expires | N/A |
| WC expires | N/A |

PL

6/5/18

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2.5 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONTRACTOR** is a party or by which **CONTRACTOR** is bound, or which would preclude **CONTRACTOR** from performing the SERVICES required of **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such SERVICES.

2.6 Before commencing with the performance of any SERVICES under this Contract, **CONTRACTOR** shall obtain all necessary permits and licenses as may be necessary. Before and during the progress of work under this Contract, **CONTRACTOR** shall give all notice and comply with all the laws, ordinances, rules and regulations of every kind and nature now or hereafter in effect promulgated by any Federal, State, County, or other Governmental Authority, relating to the performance of work under this Contract. If **CONTRACTOR** performs any work that is contrary to any such law, ordinance, rule or regulation, it shall bear all the costs arising therefrom.

2.7 It is expressly understood and agreed that all SERVICES done by **CONTRACTOR** shall be subject to inspection and acceptance by **CITY** and approval of SERVICES shall not forfeit the right of **CITY** to require correction, and nothing contained herein shall relieve **CONTRACTOR** of the responsibility of the SERVICES required under the terms of this Contract until all SERVICES have been completed and accepted by **CITY**.

3. **CONTRACT TERM:**

3.1 This Contract shall be effective from July 1, 2017, subject to Carson City Board of Supervisors' approval (anticipated to be June 1, 2017) to June 30, 2020, unless sooner terminated by either party as specified in **Section 7** (CONTRACT TERMINATION).

4. **NOTICE:**

4.1 Except any applicable bid and award process where notices may be limited to postings by **CITY** on its Finance Department/Bid Opportunities website (www.carson.org), all notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail, by regular mail, by telephonic facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.2 Notice to **CONTRACTOR** shall be addressed to:

John E. Malone
209 N. Pratt Ave.
Carson City, NV 89701
775-461-0254
jmalonelaw@gmail.com

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4.3 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts Department
Laura Rader, Purchasing & Contracts Administrator
201 North Carson Street, Suite 3
Carson City, NV 89701
775-283-7362 / FAX 775-887-2107
Lrader@carson.org

5. COMPENSATION:

5.1 The parties agree that **CONTRACTOR** will provide the SERVICES specified in Section 2 (SCOPE OF WORK) and **CITY** agrees to pay **CONTRACTOR** the Contract's compensation based upon Time and Materials and the Scope of Work Fee Schedule for a not to exceed annual maximum amount of One Hundred Twenty Thousand Nine Hundred Seventy Two Dollars and 00/100 (\$120,972) for year one with a 2% increase each year after through June 30, 2020, and hereinafter referred to as "Contract Sum".

5.2 Contract Sum represents full and adequate compensation for the completed SERVICES, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the SERVICES.

5.3 **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

6. TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONTRACTOR**.

7. CONTRACT TERMINATION:

7.1 Termination Without Cause:

7.1.1 Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

7.1.2 **CITY** reserves the right to terminate this Contract for convenience whenever it considers termination, in its sole and unfettered discretion, to be in the public interest. In the event that the Contract is terminated in this manner, payment will be made for SERVICES actually completed. If termination occurs under this provision, in no event shall **CONTRACTOR** be entitled to anticipated profits on items of SERVICES not performed as of the effective date of the termination or compensation for any other item, including but not limited to, unabsorbed overhead. **CONTRACTOR** shall require that all subcontracts which it enters related to this Contract likewise contain a termination for convenience clause which precludes the ability of any subcontractor to make claims against **CONTRACTOR** for damages due to breach of contract, lost profit on items

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of SERVICES not performed, or unabsorbed overhead, in the event of a convenience termination.

7.2 Termination for Nonappropriation:

7.2.1 All payments and SERVICES provided under this Contract are contingent upon the availability of the necessary public funding, which may include various internal and external sources. In the event that Carson City does not acquire and appropriate the funding necessary to perform in accordance with the terms of the Contract, the Contract shall automatically terminate upon **CITY'S** notice to **CONTRACTOR** of such nonappropriation, and no claim or cause of action may be based upon any such nonappropriation.

7.3 Cause Termination for Default or Breach:

7.3.1 A default or breach may be declared with or without termination.

7.3.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

7.3.2.1 If **CONTRACTOR** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or any SERVICES called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

7.3.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or SERVICES or any services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.3.2.3 If **CONTRACTOR** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

7.3.2.4 If **CITY** materially breaches any material duty under this Contract and any such breach impairs **CONTRACTOR'S** ability to perform; or

7.3.2.5 If it is found by **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONTRACTOR**, or any agent or representative of **CONTRACTOR**, to any officer or employee of **CITY** with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

7.3.2.6 If it is found by **CITY** that **CONTRACTOR** has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.4 Time to Correct (Declared Default or Breach):

7.4.1 Termination upon a declared default or breach may be exercised only after providing seven (7) calendar days written notice of default or breach, and the subsequent failure of the defaulting or breaching party, within five (5) calendar days of providing that default or breach notice, to provide evidence satisfactory to the aggrieved party demonstrating that the declared default or breach has been corrected. Time to correct shall run concurrently with any notice of default or breach and such time to correct is not subject to any stay with respect to the

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nonexistence of any Notice of Termination. Untimely correction shall not void the right to termination otherwise properly noticed unless waiver of the noticed default or breach is expressly provided in writing by the aggrieved party. There shall be no time to correct with respect to any notice of termination without cause or termination for nonappropriation.

7.5 Winding Up Affairs Upon Termination:

7.5.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this **Subsection 7.5** survive termination:

7.5.1.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination; and

7.5.1.2 **CONTRACTOR** shall satisfactorily complete SERVICES in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **CITY**; and

7.5.1.3 **CONTRACTOR** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **CITY**; and

7.5.1.4 **CONTRACTOR** shall preserve, protect, and promptly deliver into **CITY** possession all proprietary information in accordance with "**Section 19**".

7.6 Notice of Termination:

7.6.1 Unless otherwise specified in this Contract, termination shall not be effective until seven (7) calendar days after a party has provided written notice of default or breach, or notice of without cause termination. Notice of Termination may be given at the time of notice of default or breach, or notice of without cause termination. Notice of Termination may be provided separately at any time after the running of the 7-day notice period, and such termination shall be effective on the date the Notice of Termination is provided to the party unless a specific effective date is otherwise set forth therein. Any delay in providing a Notice of Termination after the 7-day notice period has run without a timely correction by the defaulting or breaching party shall not constitute any waiver of the right to terminate under the existing notice(s).

8. **REMEDIES:**

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorney's fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. **CITY** may set off consideration against any unpaid obligation of **CONTRACTOR** to **CITY**.

9. **LIMITED LIABILITY:**

CITY will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise expressly provided for elsewhere in this Contract. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

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10. **FORCE MAJEURE:**

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

11. **INDEMNIFICATION:**

11.1 To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this Section.

11.2 Except as otherwise provided in **Subsection 11.4** below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

11.2.1 a written request for a legal defense for such pending claim(s) or cause(s) of action; and

11.2.2 a detailed explanation of the basis upon which the indemnified party believes that the claim or cause of action asserted against the indemnified party implicates the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

11.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

11.4 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

12. **INDEPENDENT CONTRACTOR:**

12.1 **CONTRACTOR**, as an independent contractor, is a natural person, firm or corporation who agrees to perform SERVICES for a fixed price according to his or its own methods and without subjection to the supervision or control of the **CITY**, except as to the results of the SERVICES, and not as to the means by which the SERVICES are accomplished.

12.2 It is mutually agreed that **CONTRACTOR** is associated with **CITY** only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted SERVICES pursuant to this Contract. **CONTRACTOR** is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

12.3 Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

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12.4 **CONTRACTOR**, in addition to Section 11 (INDEMNIFICATION), shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONTRACTOR'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

12.5 Neither **CONTRACTOR** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CITY**.

13. INSURANCE REQUIREMENTS (GENERAL):

13.1 **NOTICE: The following general insurance requirements shall apply unless these general requirements are altered by any specific requirements set forth in CITY'S solicitation for bid document, the adopted bid or other document incorporated into this Contract by the parties.**

13.2 **CONTRACTOR**, as an independent contractor and not an employee of **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **CITY** shall have no liability except as specifically provided in this Contract.

13.3 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided the required evidence of insurance to **CITY** Purchasing and Contracts, and (2) **CITY** has approved the insurance policies provided by **CONTRACTOR**.

13.4 Prior approval of the insurance policies by **CITY** shall be a condition precedent to any payment of consideration under this Contract and **CITY'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of **CITY** to timely approve shall not constitute a waiver of the condition.

13.5 *Insurance Coverage (13.6 through 13.23):*

13.6 **CONTRACTOR** shall, at **CONTRACTOR'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **CITY**, the required insurance shall be in effect prior to the commencement of work by **CONTRACTOR** and shall continue in force as appropriate until the later of:

13.6.1 Final acceptance by **CITY** of the completion of this Contract; or

13.6.2 Such time as the insurance is no longer required by **CITY** under the terms of this Contract.

13.6.3 Any insurance or self-insurance available to **CITY** under its coverage(s) shall be in excess of and non-contributing with any insurance required from **CONTRACTOR**. **CONTRACTOR'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONTRACTOR** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONTRACTOR** has knowledge of any such failure, **CONTRACTOR** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.7 *General Insurance Requirements (13.8 through 13.23):*

13.8 **Certificate Holder:** Each certificate shall list Carson City c/o Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701 as a certificate holder.

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13.9 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

13.10 **Waiver of Subrogation:** Each liability insurance policy, except for professional liability, shall provide for a waiver of subrogation in favor of City.

13.11 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

13.12 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONTRACTOR** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONTRACTOR** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000.00 per occurrence, unless otherwise approved by **CITY**.

13.13 **Policy Cancellation:** Except for ten (10) calendar days' notice for non-payment of premium, premium, **CONTRACTOR** or its insurers must provide thirty (30) calendar days prior written notice to Carson City Purchasing and Contracts if any policy will be canceled, non-renewed or if required coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by mail to Carson City Purchasing and Contracts, 201 N. Carson Street, Suite 3, Carson City, NV 89701. When available, each insurance policy shall be endorsed to provide thirty (30) days' notice of cancellation, except for ten (10) days' notice for non-payment of premium, to City.

13.14 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers under federal and Nevada law and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

13.15 **Evidence of Insurance:** Prior to commencement of work, **CONTRACTOR** must provide the following documents to Carson City Purchasing and Contracts, 201 North Carson Street, Suite 3, Carson City, NV 89701:

13.16 **Certificate of Insurance:** **CONTRACTOR** shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing and Contracts to evidence the insurance policies and coverages required of **CONTRACTOR**.

13.17 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing and Contracts to evidence the endorsement of **CITY** as an additional insured per **Subsection 13.9** (Additional Insured).

13.18 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess insurance policy may be required.

13.19 **Review and Approval:** Documents specified above must be submitted for review and approval by **CITY** Purchasing and Contracts prior to the commencement of work by **CONTRACTOR**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to **CITY** under this Contract or otherwise. **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

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13.20 COMMERCIAL GENERAL LIABILITY INSURANCE:

CONTRACTOR shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence.

13.20.1 *Minimum Limits required:*

13.20.2 Two Million Dollars (\$2,000,000.00) - General Aggregate.

13.20.3 Two Million Dollars (\$2,000,000.00) - Products & Completed Operations Aggregate.

13.20.4 One Million Dollars (\$1,000,000.00) - Each Occurrence.

13.20.5 CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)].

13.20.6 City and County of Carson City, Nevada, its officers, employees and immune contractors shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or CG 20 26, or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

13.20.7 This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to City. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

13.20.8 There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under a contract.

13.20.9 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Contract. Insurer shall endorse CGL policy as required to waive subrogation against City with respect to any loss paid under the policy.

13.21 BUSINESS AUTOMOBILE LIABILITY INSURANCE:

13.21.1 *Minimum Limit required:*

13.21.2 Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident for bodily injury and property damage.

13.21.3 Such insurance shall cover liability arising out of owned, hired, and non-owned autos (as applicable). Coverage as required above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

13.21.4 Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by

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the automobile liability or other liability insurance obtained by **CONTRACTOR** pursuant this Contract.

13.22 PROFESSIONAL LIABILITY INSURANCE

13.22.1 *Minimum Limit required:*

13.22.2 **CONTRACTOR** shall maintain professional liability insurance applying to all activities performed under this Contract with limits not less than One Million Dollars (\$1,000,000.00) and Two Million Dollars (\$2,000,000) in the aggregate.

13.22.3 Retroactive date: Prior to commencement of the performance of this Contract.

13.22.4 **CONTRACTOR** will maintain professional liability insurance during the term of this Contract and for a period of three (3) years after termination of this Contract unless waived by the City. In the event of non-renewal or other lapse in coverage during the term of this Contract or the three (3) year period described above, **CONTRACTOR** shall purchase Extended Reporting Period coverage for claims arising out of **CONTRACTOR's** negligence acts, errors and omissions committed during the term of the Professional Liability Policy. The Extended Reporting Period shall continue through a minimum of three (3) years after termination date of this Contract.

13.22.5 A certified copy of this policy may be required.

13.23 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

13.23.1 **CONTRACTOR** shall provide workers' compensation insurance as required by NRS Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

13.23.2 **CONTRACTOR** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONTRACTOR** is a sole proprietor; that **CONTRACTOR** will not use the services of any employees in the performance of this Contract; that **CONTRACTOR** has elected to not be included in the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive; and that **CONTRACTOR** is otherwise in compliance with the terms, conditions, and provisions of NRS Chapters 616A-616D, inclusive.

13.23.3 **CONTRACTOR** waives all rights against City and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

14. BUSINESS LICENSE:

14.1 **CONTRACTOR** shall not commence work before **CONTRACTOR** has provided a copy of his Carson City business license to Carson City Purchasing and Contracts.

14.2 The Carson City business license shall continue in force until the later of: (1) final acceptance by **CITY** of the completion of this Contract; or (2) such time as the Carson City business license is no longer required by **CITY** under the terms of this Contract.

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15. COMPLIANCE WITH LEGAL OBLIGATIONS:

CONTRACTOR shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or SERVICES or any services of this Contract.

CONTRACTOR will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with NRS Chapter 361 generally and NRS 361.157 and 361.159, specifically regarding for profit activity. **CONTRACTOR** agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. **CITY** may set-off against consideration due any delinquent government obligation.

16. WAIVER OF BREACH:

Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

17. SEVERABILITY:

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

18. ASSIGNMENT / DELEGATION:

To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONTRACTOR** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**. The parties do not intend to benefit any third party beneficiary regarding their respective performance under this Contract.

19. CITY OWNERSHIP OF PROPRIETARY INFORMATION:

Any files, reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by **CONTRACTOR** (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of **CITY** and all such materials shall be delivered into **CITY** possession by **CONTRACTOR** upon completion, termination, or cancellation of this Contract. **CONTRACTOR** shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of **CONTRACTOR'S** obligations under this Contract without the prior written consent of **CITY**. Notwithstanding the foregoing, **CITY** shall have no proprietary interest in any materials licensed for use by **CITY** that are subject to patent, trademark or copyright protection.

20. PUBLIC RECORDS:

Pursuant to NRS 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying. **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONTRACTOR** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

INDEPENDENT CONTRACTOR AGREEMENT
Contract No.1718-006
Title: Conflict Counsel, John E. Malone; Attorney at Law

21. CONFIDENTIALITY:

CONTRACTOR shall keep confidential all information, in whatever form, produced, prepared, observed or received by **CONTRACTOR** to the extent that such information is confidential by law or otherwise required by this Contract.

22. FEDERAL FUNDING:

22.1 In the event federal grant funds are used for payment of all or part of this Contract:

22.1.1 CONTRACTOR certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

22.1.2 CONTRACTOR and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

22.1.3 CONTRACTOR and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and Executive Order 11478 (July 21, 2014) and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, sexual orientation, gender identity, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

22.1.4 If and when applicable to the particular federal funding and the Scope of Work under this Contract, **CONTRACTOR** and its subcontractors shall comply with: American Iron and Steel (AIS) provisions of P.L. 113- 76, Consolidated Appropriations Act, 2014, Section 1605 – Buy American (100% Domestic Content of iron, steel and manufactured goods); Federal Highway Administration (FHWA) 23 U.S.C. § 313 – Buy America, 23 C.F.R. §635.410 (100% Domestic Content of steel, iron and manufactured products); Federal Transit Administration (FTA) 49 U.S.C. § 5323(j), 49 C.F.R. Part 661 – Buy America Requirements (See 60% Domestic Content for buses and other Rolling Stock).

23. LOBBYING:

23.1 The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

23.1.1 Any federal, state, county or local agency, legislature, commission, council or board;

23.1.2 Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

23.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

INDEPENDENT CONTRACTOR AGREEMENT
Contract No.1718-006
Title: Conflict Counsel, John E. Malone; Attorney at Law

24. GENERAL WARRANTY:

CONTRACTOR warrants that it will perform all SERVICES required hereunder in accordance with the prevailing standard of care by exercising the skill and care normally required of individuals performing the same or similar SERVICES, under the same or similar circumstances, in the State of Nevada.

25. PROPER AUTHORITY:

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONTRACTOR** acknowledges that this Contract is effective only after approval by the Carson City Board of Supervisors and only for the period of time specified in this Contract. Any SERVICES performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective is performed at the sole risk of **CONTRACTOR**.

26. GOVERNING LAW / JURISDICTION:

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

27. ENTIRE CONTRACT AND MODIFICATION:

This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Carson City Board of Supervisors. Conflicts in language between this Contract and any other agreement between **CITY** and **CONTRACTOR** on this same matter shall be construed consistent with the terms of this Contract. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

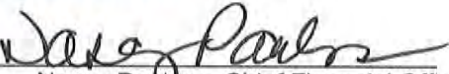
INDEPENDENT CONTRACTOR AGREEMENT
Contract No.1718-006
Title: Conflict Counsel, John E. Malone; Attorney at Law

28. ACKNOWLEDGMENT AND EXECUTION:

This Contract may be executed in counterparts. The parties hereto have caused this Contract to be signed and intend to be legally bound thereby as follows:

CITY

Chief Financial Officer
Attn: Laura Rader, Purchasing & Contracts Administrator
Purchasing and Contracts Department
201 North Carson Street, Suite 3
Carson City, Nevada 89701
Telephone: 775-283-7362
Fax: 775-887-2107
Lrader@carson.org


By: 
Nancy Paulson, Chief Financial Officer

Dated 6/16/17

CITY'S LEGAL COUNSEL

Carson City District Attorney

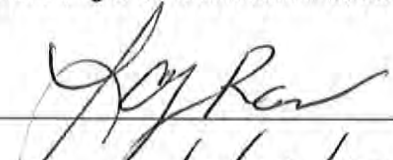
I have reviewed this Contract and approve
as to its legal form.

By: 
Deputy District Attorney

Dated 6/14/2017

**CONTRACTOR will not be given authorization
to begin work until this Contract has been
signed by Purchasing and Contracts**

BY: Laura Rader, CPPB
Purchasing & Contracts Administrator

By: 

Dated 6/16/17

101.0610.412.03-61

INDEPENDENT CONTRACTOR AGREEMENT

Contract No.1718-006

Title: Conflict Counsel, John E. Malone; Attorney at Law

Undersigned deposes and says under penalty of perjury: That he/she is **CONTRACTOR** or authorized agent of **CONTRACTOR**; that he/she has read the foregoing Contract; and that he/she understands the terms, conditions and requirements thereof.

CONTRACTOR

BY: John E. Malone

TITLE: Attorney at Law


CARSON CITY BUSINESS LICENSE #: 17- 000 322 71

Address: 1865 Monte Vista Dr.

City: Reno **State:** NV **Zip Code:** 89511

Telephone: 775-830-2307

E-mail Address: jmalonelaw@gmail.com



(Signature of Contractor)

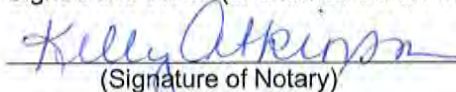
DATED 6-28-17

STATE OF Nevada)

County of Carson City)

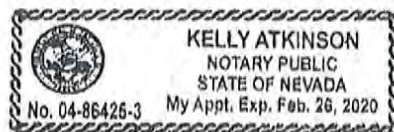
)ss

Signed and sworn (or affirmed before me on this 28th day of June, 2017



(Signature of Notary)

(Notary Stamp)



INDEPENDENT CONTRACTOR AGREEMENT

Contract No.1718-006

Title: Conflict Counsel, John E. Malone; Attorney at Law

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of June 1, 2017 approved the acceptance of the attached Contract hereinbefore identified as **CONTRACT No. 1718-006**. Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

CARSON CITY, NEVADA



ROBERT L. CROWELL, MAYOR

DATED this 1st day of June, 2017.

ATTEST:



SUSAN MERRIWETHER, CLERK-RECORDER

DATED this 1st day of June, 2017.

INDEPENDENT CONTRACTOR AGREEMENT
Contract No.1718-006
Title: Conflict Counsel, John E. Malone; Attorney at Law

SAMPLE INVOICE

Invoice Number: _____
Invoice Date: _____
Invoice Period: _____

Vendor Number: _____

Invoice shall be submitted to:

Carson City District Court
Attn: Wendy Yang
885 East Musser St
Carson City NV 89701

| Line Item # | Description | Unit Cost | Units Completed | Total \$\$ |
|------------------------|-------------|-----------|-----------------|------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total for this invoice | | | | |

| | | |
|--------------------------------------|----|-------|
| Original Contract Sum | \$ | _____ |
| Less amount previously billed | \$ | _____ |
| = contract sum prior to this invoice | \$ | _____ |
| Less this invoice | \$ | _____ |
| =Dollars remaining on Contract | \$ | _____ |

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES

Conflict Counsel Contract FY18-FY20

CONTRACTOR SERVICES:

1. The **CONTRACTOR** hereby agrees to perform the services of an attorney in the defense of indigent adults charged with a public offense and when the court for cause is required to disqualify the State Public Defender.
2. The **CONTRACTOR** agrees to perform the services of an attorney for a child alleged to be delinquent or in need of supervision where the Court orders the appointment of an attorney in accord with NRS 62.085 and when the Court for cause is required to disqualify the State Public Defender.
3. The **CONTRACTOR** agrees to perform the services of an attorney for a parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the court orders the appointment of **CONTRACTOR** pursuant to NRS 432B.420 and when the court for cause is required to disqualify the State Public Defender.
4. The **CONTRACTOR** agrees to actively participate and attend meetings to adhere to the best practices and standards adopted by the First Judicial District Court - Juvenile Court Division and the Carson City Justice/Municipal Court.
5. The **CONTRACTOR** agrees to perform the services of an attorney for a person against whom proceedings are commenced to revoke any probation which was granted to that person, provided that the Court appoints **CONTRACTOR** on the matter to represent that person at the probation revocation proceedings and the person is indigent and when the Court for cause is required to disqualify the State Public Defender.
6. The **CONTRACTOR** agrees to perform the duties required by NRS 260.050 (County public defenders).
7. The **CONTRACTOR** agrees to perform the services of an attorney to represent a child or parent in any proceeding for terminating parental rights, or any rehearing or appeal where the Court orders the appointment of an attorney in accord with NRS 128.100 and when the Court for cause is required to disqualify the State Public Defender.
8. The **CONTRACTOR** agrees to perform services of an attorney for fees pursuant to NRS 7.125 – 7.165 on cases appointed by the Court for the convenience of the Court, where there is no disqualification of the public defender.

SCOPE OF WORK:

The parties agree that the scope of work for the **CONTRACTOR** shall be as follows:

- a. The **CITY** contracts with the **CONTRACTOR** to provide the professional and legal services of an attorney for the conflict cases and when the court for cause is required to disqualify the State Public Defender.
- b. The **CONTRACTOR** shall provide all required professional services as necessary to satisfy the intended purposes of this Contract.
- c. Such services shall be performed in accordance with this Contract and shall not be altered

Conflict Counsel Contract FY18-FY20

except by written consent of both parties.

d. The professional services described in the succeeding paragraphs must be performed in a professional, competent and effective manner given the law applicable to the particular matter for which legal services are being rendered and the applicable rules and standards of professional responsibility.

e. The **CITY** is contracting for the professional services of the **CONTRACTOR**.

f. If **CONTRACTOR** practices law with a law firm, another lawyer within the firm may appear for **CONTRACTOR** at any stage of the proceeding.

g. However, no additional compensation shall be paid to the **CONTRACTOR** or the other lawyer in **CONTRACTOR'S** firm by virtue of this change.

h. In performing the professional services described in the Scope of Work to be performed by the **CONTRACTOR** under this Contract shall be as follows:

- i. Conduct interviews;
- ii. Perform or supervise the performance of necessary investigation;
- iii. Conduct necessary preparation;
- iv. Promptly appear at all Court hearings concerning the assigned matter including, but not limited to, preliminary hearing, arraignment, pretrial writ or motion hearings, trial and sentencing as required to provide a full professional defense of the matter;
- v. Be required to represent the person in the assigned matter on any appeal to the First Judicial District Court or Nevada Supreme Court whether based upon a preliminary matter, final judgment, or other matters required in this Contract.
- vi. **CONTRACTOR** shall represent indigent defendants on all matters deemed appropriate by the Court and any other pending or trailing matter that the State Public Defender was previously appointed.
- vii. The **CONTRACTOR** agrees to staff and maintain an office in Carson City, Nevada and furnish to the Justice Courts, District Courts, Specialty Courts, Juvenile Court, Sheriff's Department and District Attorney a telephone number for use after normal office hours in any emergency that may arise where the **CONTRACTOR'S** services are requested pursuant to the terms of this contract.

PROCEDURAL PROVISIONS:

If, in the interests of justice, the **CONTRACTOR** is required to substitute out of an assigned case, the **CONTRACTOR** shall petition the Court for approval of the substitution.

- a. The Court will make reasonable efforts to appoint and substitute in one of the **CONTRACTORS** in the **CITY'S** contracted conflict counsel.

Conflict Counsel Contract FY18-FY20

- b. **CONTRACTOR** shall be allowed to substitute out of an assigned case if the Defendant of the assigned case has sought to retain **CONTRACTOR** prior to, or before knowledge of, the assignment. **CONTRACTOR** shall notify the Court in writing of the conflict, and the Court will make reasonable efforts to appoint and substitute in one of the **CONTRACTORS** in the City's contracted conflict counsel.
- c. If the **CITY'S** other contract **CONTRACTORS** cannot properly be substituted in to the **CONTRACTOR'S** assigned case, the Court may appoint and order the compensation of another non-contract lawyer in the manner provided in NRS 7.115 to 7.165, inclusive.
- d. The Court may request periodic time summaries from the **CONTRACTOR** in a form prescribed by the Court.
- e. These time summaries will report the amount of time necessary and reasonable spent for travel, investigation, research, trial preparation and hearings as well as trials.
- f. These time summaries will be filed with the Court at the conclusion of each assigned case and sealed by the Clerk of Court until requested by the Court.
- g. These time reports may be made available by the Clerk of Court for audit by the **CITY'S** representative.
- h. **CONTRACTOR** shall report quarterly to the Court Technology Coordinator or their designee the following information:
 - i. Adult criminal cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony, gross misdemeanor, misdemeanor, and court); (3) number of cases closed/concluded and summary of reason for closure; and, (4) other pertinent information requested by the Court Technology Coordinator or their designee.
 - ii. Extraordinary Cases/Capital Cases: (1) Number of cases pending; (2) additional costs incurred and charged to the City on the case; (3) other pertinent information requested by the Court Technology Coordinator or their designee.
 - iii. Juvenile Cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor and court); (3) number of cases closed/concluded and summary of reason for closure; (4) number of probation violations handled and resolved; (5) number of parole violations handled and resolved; and, (6) other pertinent information requested by the Court Technology Coordinator or their designee.
 - iv. NRS 432B Cases: (1) number of cases opened; (2) number of children represented; (3) number of adults represented; and, (4) other pertinent information requested by the Court Technology Coordinator or their designee.
 - v. Probation and Parole Violations: (1) number of cases opened, separated by probation and parole violation; (2) number of cases closed/concluded and summary of reason for

Conflict Counsel Contract FY18-FY20

closure; and, (3) other pertinent information requested by the Court Technology Coordinator.

- vi. **CONTRACTOR** shall provide this information in a format approved by and
- vii. acceptable to the Court Technology Coordinator or their designee. A sample form will be provided to the **CONTRACTOR** by the Court.
- viii. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, **CONTRACTOR** agrees to provide and maintain that information at no additional cost to the **CITY**.
- ix. **CONTRACTOR** is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the **CONTRACTOR** should attempt to resolve the matter with the Court Technology Coordinator or their designee and, if necessary, the Board of Supervisors.
- x. Nothing in this paragraph shall be construed in a manner that violates the confidence of the client or the attorney-client privilege contained in Court rules or statutes.

MISCELLANEOUS PROVISIONS:

- a. The **CITY** and the **CONTRACTOR** acknowledge that the City may contract with other lawyers in the same manner and for the same purposes as **CONTRACTOR**.
- b. It is agreed by the **CITY** and the **CONTRACTOR** that this Contract, if entered into, will enable appointments to be made by the Court, on a rotating basis and to eliminate appointment of **CONTRACTOR** in a matter that would create a conflict of interest for **CONTRACTOR** in a particular matter.
- c. Causes of action between the parties to this Contract pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of completion for acts or failures to act occurring prior to completion, or the date of final payment, to the **CONTRACTOR** in a particular manner.
- d. The **CITY** and the **CONTRACTOR**, respectively, bind themselves, their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.
- e. **CONTRACTOR** may engage in the private practice of law which does not conflict with **CONTRACTOR'S** professional services as Conflict Counsel pursuant to this Contract.
- f. If **CONTRACTOR** is required to substitute out of an assigned case, **CONTRACTOR** shall comply with Procedural Provisions within the Scope of Work section of this Contract.
- g. This Contract represents the entire and integrated agreement between the City and **CONTRACTOR** and supersedes all prior negotiations, representations, contracts, or agreements, either written or oral.

Conflict Counsel Contract FY18-FY20

- h. This Contract may be amended only by written instrument signed by both the **CITY** and the **CONTRACTOR**.
- i. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the **CITY** or **CONTRACTOR**.

CONSIDERATION:

Monthly Payments:

- a. First Year – for the period of July 1, 2017 through June 30, 2018. - The **CITY** agrees to pay the **CONTRACTOR** and the **CONTRACTOR** agrees to accept as full compensation for the performance of legal services under this contract the sum of Ten Thousand Eighty One Dollars (\$10,081.00) per month.
- b. Second Year – for the period of July 1, 2018 through June 30, 2019 - The **CITY** agrees to pay the **CONTRACTOR** and the **CONTRACTOR** agrees to accept as full compensation for the performance of legal services under this contract the sum of Ten Thousand Two Hundred Eighty Two Dollars and Sixty Two Cents (\$10,282.62) per month.
- c. Third Year – for the period of July 1, 2019 through June 30, 2020 - The **CITY** agrees to pay the **CONTRACTOR** and the **CONTRACTOR** agrees to accept as full compensation for the performance of legal services under this contract the sum of Ten Thousand Four Hundred Eighty Eight Dollars and Twenty Seven Cents (\$10,488.27) per month.
- d. The **CONTRACTOR** will submit a billing to the First Judicial District Court, Attention: Carin Fisher, 885 Musser Street, Suite 3031, Carson City, NV 89701.
- e. In the event that a billing is for services provided to an inmate of the Nevada State Prison system, the billing shall state this information so that the **CITY** will be able to obtain reimbursement from the State of Nevada pursuant to NRS 212.070.
- f. Billing statement must include; monthly billing costs, hours and rates for special cases pursuant to NRS 7.125 and that have been approved by the Judge. The compensation specified in Monthly Payments (a-c) is in lieu of the statutorily prescribed fees codified in NRS 7.125.
- g. However, the Court can, for reasons specified in NRS 7.125 (4) (a)-(d), award extraordinary fees to **CONTRACTOR** in a particular matter which are over and above the compensation specified in Monthly Payments, provided that the statutorily prescribed procedures contained in NRS 7.125 (4) are complied with.
- h. **CONTRACTOR** will not request Extraordinary Fees pursuant to NRS 7.125 (4) (a)-(d) when appointed on Category A cases pursuant to NRS 7.125 until 25 hours of work has been conducted.

Conflict Counsel Contract FY18-FY20

- i. **CONTRACTOR** agrees to indicate that 25 hours of work has been performed and \$2,500.00 deducted from the total Extraordinary Fee Request when submitting these requests to the District Court Judges.
- j. The **CITY** must receive from **CONTRACTOR** notice of a request to the court for extraordinary fees when such a request is made. The **CITY** and **COURT** recognize NRS 7.145, which states that a claim for compensation and expenses made pursuant to NRS 7.125 or 7.135 must not be paid unless it is submitted within 60 days after the appointment is terminated to: a) The magistrate in cases in which the representation was rendered exclusively before him; and b) The district court in all other cases. It is hereby agreed by **CONTRACTOR**, **CITY** and **COURT** that **CONTRACTOR** shall submit notice of a request for extraordinary fees pursuant to 6.1. These provisions allow the **CITY** to adhere to minimum accounting standards and to properly budget and account for these services.
- k. The **CONTRACTOR** may secure reimbursement from the **CITY** for extraordinary investigative costs, required to secure expert or other services necessary for the adequate defense in any assigned matter, in the statutorily prescribed manner codified in NRS 7.135, 7.145 and 7.155.
- l. The **CONTRACTOR** may secure reimbursement from the **CITY** for minor investigative, expert or other services necessary for adequate defense in the statutorily prescribed manner for court-appointed counsel for costs up to \$500.00. If extraordinary investigative fees are needed, a separate request should be submitted.
- m. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of the **CONTRACTOR'S** practice as required by this contract are the responsibility of the **CONTRACTOR** and part of **CONTRACTOR'S** compensation paid pursuant to Monthly Payments of this contract and as provided in NRS 260.040 (5).
- n. Mileage and travel expenses of the **CONTRACTOR** are the responsibility of the **CONTRACTOR** and are part of the compensation paid pursuant to Monthly Payments.
- o. The **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.



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**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
CHURCHILL COUNTY, NEVADA
AND
TROY C. JORDAN, ESQ. AND DAVID K. NEIDERT, ESQ.
FOR
INDIGENT LEGAL SERVICES**

WHEREAS, Churchill County (hereinafter "County") is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, the Churchill County Board of County Commissioners desires to appoint three attorneys and/or law firms, who will act independently from each other, as Public Defenders of the County, pursuant to Churchill County Code 2.56 and Nevada Revised Statutes 260.010; and

WHEREAS, the County desires to contract with Troy C. Jordan, Esq. and David K. Neidert, Esq. (hereinafter "Contractor") as one of the three Public Defenders in order to provide legal services to those indigents involved in the Courts in the County; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the County; and

WHEREAS, Contractor represents that he is licensed to practice law in Nevada and in good standing with the State Bar, and is also duly qualified, equipped, staffed, ready, willing, and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the parties mutually agree as follows:

1. **TERM OF CONTRACT.** Upon execution by both parties, the Contract will be effective for two years, from December 1, 2012 through November 30, 2014. Thereafter, the Contract may be renewed for three additional one-year terms at the same payment for services rate and on the same terms and conditions as set forth herein. Unless cancelled in writing by one of the parties pursuant to the requirements of Section 9 herein, the Contract shall be deemed to be renewed.
2. **WORK TO BE PERFORMED.** The parties agree that the services to be performed are as follows:
 - A. The Contractor shall represent adult criminal defendants that a Court in the County has determined to be indigent. The representation shall include all stages of the criminal proceedings, including, but not limited to, appeals, revocation of probation or parole, and participation in any diversion program arising under provision of state law. Furthermore, Contractor shall be responsible for the sealing of any eligible record relating to an indigent person in consequence to participation in any diversion program.



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11/20/2012
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- B. The Contractor shall provide legal representation for a child alleged to be delinquent or in need of supervision where the Court or Juvenile Master orders the appointment in accordance with NRS Chapter 62. Representation shall include all stages of the proceedings, including, but not limited to, disposition, appeals, and revocation of probation or parole.
- C. The Contractor shall perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of the Contractor pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.
- D. Capital Cases are outside the scope of this Contract. Upon the State filing a Notice of Intent to Seek Death Penalty, statutory appointment procedures shall apply.

3. STANDARD OF WORK.

- A. In providing legal representation as set forth in Section Two, Contractor must provide those services in a professional, competent, and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those hearings, filing all necessary motions or other legal documents, and performing or supervising any necessary investigations.
- B. Contractor acknowledges that there will be two other attorneys who will have executed similar agreements and agrees to cooperate with the other attorneys to ensure that all Courts are adequately covered by one or more of the attorneys. Contractor further agrees to cooperate with the other two attorneys to ensure, to the extent possible under ethical requirements, that all cases are covered, that any conflicts are resolved by the three public defenders, and that appointments are completed in a manner that ensures equitable workload between the attorneys.
- C. Contractor agrees that he will at all times faithfully, industriously, and to the best of his knowledge, experience, and talents, perform all of the duties that may be required of him under the terms of this Contract.
- D. If at any time during the representation of a person the Contractor has reason to believe the person is not indigent, the Contractor must immediately notify the Court.

4. OFFICE.

- A. Contractor agrees to staff and maintain an office in Churchill County, Nevada. Included in the payment for services of this Contract (see Section Six) is an



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11/20/2012

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allowance for office space, furniture, equipment, and supplies, pursuant to NRS 260.040. The cost of routine investigation, secretarial services, and any other necessary expense for the Contractor's practice as required by this Contract is the sole responsibility of the Contractor. The County shall be responsible for the provision of transcripts for appointed cases.

- B. Contractor agrees to furnish to the Justice Court, District Court, and District Attorney, a telephone number for use after normal office hours in the event of an emergency that may arise where Contractor's services are requested pursuant to the terms of this contract.
- C. Contractor may engage in the private practice of law which does not conflict with Contractor's professional services required pursuant to this Contract. Contractor shall not represent any person in a suit or claim that is adverse to the County.

5. REPORTING.

- A. Contractor shall provide, on a monthly basis, a report to the County Manager containing the following information:
 - i. The total number of cases on which the Contractor has been appointed during the month, designated by their status: misdemeanor, gross misdemeanor, felony;
- B. If any State statute or Nevada Supreme Court Rule in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Contractor agrees to provide and maintain that information at no additional cost to the County.
- C. Contractor agrees to provide this required report along with his invoice for services rendered pursuant to Section 6 herein. Payment shall not become due until the required report is submitted.

6. PAYMENT FOR SERVICES.

- A. Contractor agrees to perform the work set forth in Section Two for payment in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) annually. The County will make payment to Contractor in twelve equal monthly installments. The first payment shall be due on December 5, 2012, and payments shall become due thereafter on a monthly basis after fulfilling the requirements of Section 6(C).
- B. The Contractor may secure reimbursement for extraordinary investigative costs, expert witness fees, or other necessary services if so ordered by a Court, pursuant to NRS 7.135. Mileage and travel expenses of Contractor are the responsibility of Contractor.



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- C. Contractor shall submit to the County Manager an invoice for services rendered on a monthly basis. The invoice shall include the normal fee for services rendered as well as any reimbursable expenses. County shall pay the amount of the invoice within fifteen business days of receipt of the invoice and report required in Section 5 above.
7. **INDEPENDENT CONTRACTOR STATUS.** The parties agree that Contractor shall have the status of and shall perform all work under this Contract as an independent contractor. The Contract does not create an employer/employee relationship, and the County does not control the means by which Contractor provides services. Contractor is not a County employee and there shall be no:
- A. Withholding of income taxes or other taxes by the County;
 - B. Industrial insurance coverage provided by the County;
 - C. Participation in group insurance plans which may be available to employees of the County;
 - D. Participation or contributions by either the Contractor or the County to the public employee's retirement system;
 - E. Accumulation of vacation leave or sick leave provided by the County;
 - F. Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

8. **PROFESSIONAL LICENSING AND LIABILITY INSURANCE.**

- A. Contractor represent himself as meeting all licensing requirements as an attorney within the State of Nevada and further represents that he is in good standing with the highest attorney licensing authority of the State of Nevada. Contractor agrees to maintain his professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract at Contractor's expense. Failure to maintain this license in good standing may result in immediate termination of this Contract. Contractor shall notify the County Manager if they are brought before the Nevada State Bar or the Nevada State Ethics Commission on an ethics charge or if they are arrested for a crime.
- B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$500,000.00 per claim and \$1,000,000.00 aggregate during the term of this Contract. The insurance coverage shall be written by an insurance carrier authorized to write such policies in the State of Nevada, and the coverage must be in existence at the time of execution of this Contract as a condition precedent. The cost of the insurance is the sole responsibility of the Contractor.



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- C. Concurrently with the execution of this Contract, Contractor shall provide to the County a certificate of liability insurance evidencing the coverage limits required by this Contract.
9. **TERMINATION OF CONTRACT.** Either party may revoke this Contract, with or without cause, provided that a revocation shall not be effective until ninety (90) calendar days after the party has served written notice upon the other party. All pending cases that were produced for this Contract must be immediately turned over to whomever the appropriate Court designates re-assignment. If terminated, the payment for services of the Contractor will be reduced to the proportionate number of days worked by the Contractor. The Contractor must reimburse the County for any funds received to which he is not entitled due to the termination.
10. **NON-ASSIGNMENT.** The County is contracting for the personal and professional services of Contractor. This Contract may not be assigned or delegated in whole or in part to a third party without the approval of the Board of County Commissioners. If the Contractor wishes to have a substitute attorney appear for him for any reason, then Contractor may do so and is responsible for the cost of the substitute attorney. There is no requirement to have the approval of the Board of County Commissioners for substitutions that are less than twenty (20) judicial days per year, or five (5) consecutive days.
11. **CONSTRUCTION OF CONTRACT.** This Contract shall be construed and interpreted according to the laws of the State of Nevada. There shall be no presumption for or against the drafter in interpreting or enforcing this Contract.
12. **PARAGRAPH HEADINGS.** The titles to the paragraphs of this Contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the construction of this Contract.
13. **DISPUTE RESOLUTION.** If any dispute arises over the interpretation of this Contract or the performance of this Contract, Contractor shall contact the County Manager and attempt to resolve the matter. If the County Manager and Contractor cannot agree, Contractor may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution. Any action to enforce the terms of this Agreement must be brought in the Tenth Judicial District Court of the State of Nevada, in and for the County of Churchill. In the event that any action is filed in relation to this Contract, each party shall be responsible for their own attorney fees.
14. **IMPLEMENTATION.** The parties acknowledge that the Judicial Branch, pursuant to statute and the Separation of Powers Doctrine has the express authority to determine eligibility for assignment of attorneys in particular cases pursuant to this Contract. It is contemplated by the parties that the Courts will evenly and equitably assign cases between the three contracted attorneys and/or law firms



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- 15. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall fully and completely comply with all applicable local, state, and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this Contract, including Court rules and regulations.
- 16. NO WAIVER.** The failure of any party to this Contract to insist upon the performance of any of the terms and conditions of this Contract, or the waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 17. CLIENT FILES.** Contractor shall maintain the files of appointed clients as required by state statute or rule.
- 18. INDEMNIFICATION.** Contractor agrees to indemnify and save and hold the County, its officers, agents, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this Contract by Contractor or Contractor's agents or employees.
- 19. MODIFICATION OF CONTRACT.** This Contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties. There are no promises, terms, conditions, or obligations other than those contained in this Contract.
- 20. SEVERABILITY.** Each provision of this Contract is severable from the whole. If any portion of this Contract is deemed to be invalid, that invalidity shall not impair the remaining provisions of this Contract.
- 21. NOTICES.** All notices or other information that is to be submitted to a party shall be sent to the following address:

Churchill County Manager
155 North Taylor Street
Suite 153
Fallon, NV 89406

Troy C. Jordan, Esq.
David K. Neidert, Esq.
643 South Maine Street
Fallon, NV 89406

- 22. EFFECTIVE DATE.** This Agreement shall be effective as of December 1, 2012.
- 23. COOPERATION WITH COURT AND CURRENT PUBLIC DEFENDER.** Churchill County is under Contract with the current public defender until December 17, 2012. Contractor agrees to cooperate with the Courts and the current public defender to ensure equitable distribution of cases upon the effective date of this Agreement. Matters related to caseload distribution shall be resolved among the contract attorneys and the Courts.



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*IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services
for the Indigent Legal Services to be signed and intend to be legally bound thereby.*

Troy C. Jordan, Esq.11-19-2012
(Date)

(Date)
Norm Frey, Chairman
Board of County Commissioners

(Date)

(Date)

DOC # 438872

01/13/2014 10:16 AM

Official Record

Recording requested By
CHURCHILL COUNTY

Churchill County - NV

Joan Sims - Recorder

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Recorded By: TH RPTT



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**AMENDMENT TO CONTRACT FOR PROFESSIONAL SERVICES BETWEEN
CHURCHILL COUNTY, NEVADA AND TROY C. JORDAN, ESQ. AND DAVID K.
NEIDERT, ESQ. FOR INDIGENT LEGAL SERVICES**

WHEREAS, the parties hereto entered into an agreement for indigent legal services effective December 1, 2012, which is attached hereto and hereinafter referred to as "the Contract"; and

WHEREAS, Troy C. Jordan seeks to terminate his agreement to provide indigent legal services; and

WHEREAS, David K. Neidert seeks to be the responsible attorney for the entire agreement;

WHEREFORE, the Parties desire to amend the Agreement as provided herein.

1. Attorneys. Troy C. Jordan shall no longer provide indigent legal services on behalf of Churchill County effective January 1, 2014. David K. Neidert shall be the sole attorney bound by the remainder of the Contract and subject to its terms.

2. Original Contract. This Amendment modifies the Contract, which is attached hereto and incorporated by this reference. All terms of the Contract, not inconsistent with this Amendment remain in full force and effect.

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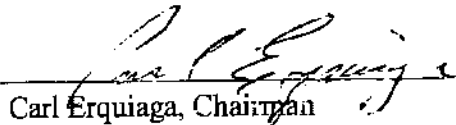
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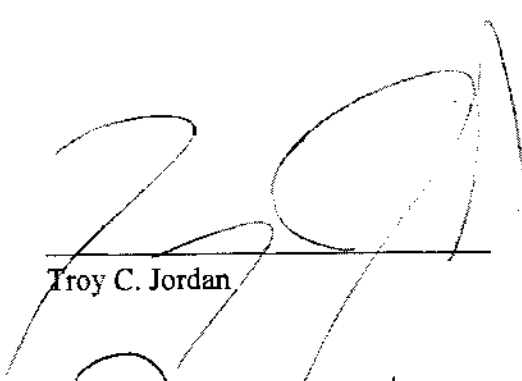
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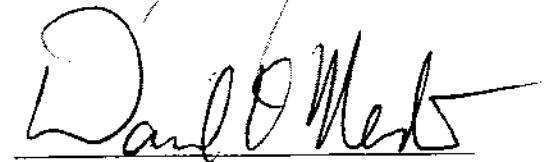
3. Term of Contract. This Amendment does not alter or modify the term provisions of the original Contract.

Dated, this 2nd day of January, 2014.

By:


Carl Erquiaga, Chairman


Troy C. Jordan


David K. Neidert



**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
CHURCHILL COUNTY, NEVADA
AND
JACOB N. SOMMER, ESQ.
FOR
INDIGENT LEGAL SERVICES**

WHEREAS, Churchill County (hereinafter "County") is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, the Churchill County Board of County Commissioners desires to appoint three attorneys and/or law firms, who will act independently from each other, as Public Defenders of the County, pursuant to Churchill County Code 2.56 and Nevada Revised Statutes 260.010; and

WHEREAS, the County desires to contract with Jacob N. Sommer, Esq. (hereinafter "Contractor") as one of the three Public Defenders in order to provide legal services to those indigents involved in the Courts in the County; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the County; and

WHEREAS, Contractor represents that he is licensed to practice law in Nevada and in good standing with the State Bar, and is also duly qualified, equipped, staffed, ready, willing, and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the parties mutually agree as follows:

1. **TERM OF CONTRACT.** Upon execution by both parties, the Contract will be effective for two years, from December 1, 2012 through November 30, 2014. Thereafter, the Contract may be renewed for three additional one-year terms at the same payment for services rate and on the same terms and conditions as set forth herein. Unless cancelled in writing by one of the parties pursuant to the requirements of Section 9 herein, the Contract shall be deemed to be renewed.
2. **WORK TO BE PERFORMED.** The parties agree that the services to be performed are as follows:
 - A. The Contractor shall represent adult criminal defendants that a Court in the County has determined to be indigent. The representation shall include all stages of the criminal proceedings, including, but not limited to, appeals, revocation of probation or parole, and participation in any diversion program arising under provision of state law. Furthermore, Contractor shall be responsible for the sealing of any eligible record relating to an indigent person in consequence to participation in any diversion program.



- B. The Contractor shall provide legal representation for a child alleged to be delinquent or in need of supervision where the Court or Juvenile Master orders the appointment in accordance with NRS Chapter 62. Representation shall include all stages of the proceedings, including, but not limited to, disposition, appeals, and revocation of probation or parole.
- C. The Contractor shall perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of the Contractor pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.
- D. Capital Cases are outside the scope of this Contract. Upon the State filing a Notice of Intent to Seek Death Penalty, statutory appointment procedures shall apply.

3. STANDARD OF WORK.

- A. In providing legal representation as set forth in Section Two, Contractor must provide those services in a professional, competent, and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those hearings, filing all necessary motions or other legal documents, and performing or supervising any necessary investigations.
- B. Contractor acknowledges that there will be two other attorneys who will have executed similar agreements and agrees to cooperate with the other attorneys to ensure that all Courts are adequately covered by one or more of the attorneys. Contractor further agrees to cooperate with the other two attorneys to ensure, to the extent possible under ethical requirements, that all cases are covered, that any conflicts are resolved by the three public defenders, and that appointments are completed in a manner that ensures equitable workload between the attorneys.
- C. Contractor agrees that he will at all times faithfully, industriously, and to the best of his knowledge, experience, and talents, perform all of the duties that may be required of him under the terms of this Contract.
- D. If at any time during the representation of a person the Contractor has reason to believe the person is not indigent, the Contractor must immediately notify the Court.

4. OFFICE.

- A. Contractor agrees to staff and maintain an office in Churchill County, Nevada. Included in the payment for services of this Contract (see Section Six) is an



allowance for office space, furniture, equipment, and supplies, pursuant to NRS 260.040. The cost of routine investigation, secretarial services, and any other necessary expense for the Contractor's practice as required by this Contract is the sole responsibility of the Contractor. The County shall be responsible for the provision of transcripts for appointed cases.

- B. Contractor agrees to furnish to the Justice Court, District Court, and District Attorney, a telephone number for use after normal office hours in the event of an emergency that may arise where Contractor's services are requested pursuant to the terms of this contract.
- C. Contractor may engage in the private practice of law which does not conflict with Contractor's professional services required pursuant to this Contract. Contractor shall not represent any person in a suit or claim that is adverse to the County.

5. REPORTING.

- A. Contractor shall provide, on a monthly basis, a report to the County Manager containing the following information:
 - i. The total number of cases on which the Contractor has been appointed during the month, designated by their status: misdemeanor, gross misdemeanor, felony;
- B. If any State statute or Nevada Supreme Court Rule in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Contractor agrees to provide and maintain that information at no additional cost to the County.
- C. Contractor agrees to provide this required report along with his invoice for services rendered pursuant to Section 6 herein. Payment shall not become due until the required report is submitted.

6. PAYMENT FOR SERVICES.

- A. Contractor agrees to perform the work set forth in Section Two for payment in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) annually. The County will make payment to Contractor in twelve equal monthly installments. The first payment shall be due on December 5, 2012, and payments shall become due thereafter on a monthly basis after fulfilling the requirements of Section 6(C).
- B. The Contractor may secure reimbursement for extraordinary investigative costs, expert witness fees, or other necessary services if so ordered by a Court, pursuant to NRS 7.135. Mileage and travel expenses of Contractor are the responsibility of Contractor.



- C. Contractor shall submit to the County Manager an invoice for services rendered on a monthly basis. The invoice shall include the normal fee for services rendered as well as any reimbursable expenses. County shall pay the amount of the invoice within fifteen business days of receipt of the invoice and report required in Section 5 above.

- 7. **INDEPENDENT CONTRACTOR STATUS.** The parties agree that Contractor shall have the status of and shall perform all work under this Contract as an independent contractor. The Contract does not create an employer/employee relationship, and the County does not control the means by which Contractor provides services. Contractor is not a County employee and there shall be no:

- A. Withholding of income taxes or other taxes by the County;
- B. Industrial insurance coverage provided by the County;
- C. Participation in group insurance plans which may be available to employees of the County;
- D. Participation or contributions by either the Contractor or the County to the public employee's retirement system;
- E. Accumulation of vacation leave or sick leave provided by the County;
- F. Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

8. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

- A. Contractor represent himself as meeting all licensing requirements as an attorney within the State of Nevada and further represents that he is in good standing with the highest attorney licensing authority of the State of Nevada. Contractor agrees to maintain his professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract at Contractor's expense. Failure to maintain this license in good standing may result in immediate termination of this Contract. Contractor shall notify the County Manager if they are brought before the Nevada State Bar or the Nevada State Ethics Commission on an ethics charge or if they are arrested for a crime.
- B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$500,000.00 per claim and \$1,000,000.00 aggregate during the term of this Contract. The insurance coverage shall be written by an insurance carrier authorized to write such policies in the State of Nevada, and the coverage must be in existence at the time of execution of this Contract as a condition precedent. The cost of the insurance is the sole responsibility of the Contractor.



C. Concurrently with the execution of this Contract, Contractor shall provide to the County a certificate of liability insurance evidencing the coverage limits required by this Contract.

9. **TERMINATION OF CONTRACT.** Either party may revoke this Contract, with or without cause, provided that a revocation shall not be effective until ninety (90) calendar days after the party has served written notice upon the other party. All pending cases that were produced for this Contract must be immediately turned over to whomever the appropriate Court designates re-assignment. If terminated, the payment for services of the Contractor will be reduced to the proportionate number of days worked by the Contractor. The Contractor must reimburse the County for any funds received to which he is not entitled due to the termination.
10. **NON-ASSIGNMENT.** The County is contracting for the personal and professional services of Contractor. This Contract may not be assigned or delegated in whole or in part to a third party without the approval of the Board of County Commissioners. If the Contractor wishes to have a substitute attorney appear for him for any reason, then Contractor may do so and is responsible for the cost of the substitute attorney. There is no requirement to have the approval of the Board of County Commissioners for substitutions that are less than twenty (20) judicial days per year, or five (5) consecutive days.
11. **CONSTRUCTION OF CONTRACT.** This Contract shall be construed and interpreted according to the laws of the State of Nevada. There shall be no presumption for or against the drafter in interpreting or enforcing this Contract.
12. **PARAGRAPH HEADINGS.** The titles to the paragraphs of this Contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the construction of this Contract.
13. **DISPUTE RESOLUTION.** If any dispute arises over the interpretation of this Contract or the performance of this Contract, Contractor shall contact the County Manager and attempt to resolve the matter. If the County Manager and Contractor cannot agree, Contractor may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution. Any action to enforce the terms of this Agreement must be brought in the Tenth Judicial District Court of the State of Nevada, in and for the County of Churchill. In the event that any action is filed in relation to this Contract, each party shall be responsible for their own attorney fees.
14. **IMPLEMENTATION.** The parties acknowledge that the Judicial Branch, pursuant to statute and the Separation of Powers Doctrine has the express authority to determine eligibility for assignment of attorneys in particular cases pursuant to this Contract. It is contemplated by the parties that the Courts will evenly and equitably assign cases between the three contracted attorneys and/or law firms



- 15. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall fully and completely comply with all applicable local, state, and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this Contract, including Court rules and regulations.
- 16. NO WAIVER.** The failure of any party to this Contract to insist upon the performance of any of the terms and conditions of this Contract, or the waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 17. CLIENT FILES.** Contractor shall maintain the files of appointed clients as required by state statute or rule.
- 18. INDEMNIFICATION.** Contractor agrees to indemnify and save and hold the County, its officers, agents, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this Contract by Contractor or Contractor's agents or employees.
- 19. MODIFICATION OF CONTRACT.** This Contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties. There are no promises, terms, conditions, or obligations other than those contained in this Contract.
- 20. SEVERABILITY.** Each provision of this Contract is severable from the whole. If any portion of this Contract is deemed to be invalid, that invalidity shall not impair the remaining provisions of this Contract.
- 21. NOTICES.** All notices or other information that is to be submitted to a party shall be sent to the following address:

Churchill County Manager
155 North Taylor Street
Suite 153
Fallon, NV 89406

Jacob N. Sommer, Esq.
131 South Maine Street
Suite 201
Fallon, NV 89406

- 22. EFFECTIVE DATE.** This Agreement shall be effective as of December 1, 2012.
- 23. COOPERATION WITH COURT AND CURRENT PUBLIC DEFENDER.** Churchill County is under Contract with the current public defender until December 17, 2012. Contractor agrees to cooperate with the Courts and the current public defender to ensure equitable distribution of cases upon the effective date of this Agreement. Matters related to caseload distribution shall be resolved among the contract attorneys and the Courts.



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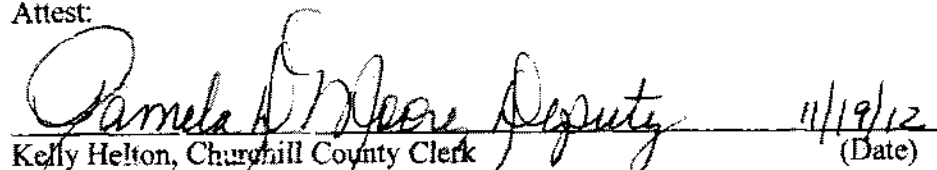
IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.



Jacob N. Sommer, Esq.19 NOV. 2012
(Date)

Norm Frey, Chairman
Board of County Commissioners11/19/12
(Date)

Attest:



Kelly Helton, Churchill County Clerk11/19/12
(Date)

DOC # 441329

06/17/2014

02:02 PM

Official Record

Recording requested By
CHURCHILL COUNTY

Churchill County - NV

Joan Sims - Recorder

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Recorded By TN RPTT



441329

**CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
CHURCHILL COUNTY, NEVADA
AND
CHARLES B. WOODMAN, ESQ.
FOR
INDIGENT LEGAL SERVICES**

WHEREAS, Churchill County (hereinafter "County") is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, the Churchill County Board of County Commissioners desires to appoint three attorneys and/or law firms, who will act independently from each other, as Public Defenders of the County, pursuant to Churchill County Code 2.56 and Nevada Revised Statutes 260.010; and

WHEREAS, the County desires to contract with CHARLES B. WOODMAN, Esq. (hereinafter "Contractor") as one of the three Public Defenders in order to provide legal services to those indigents involved in the Courts in the County; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the County; and

WHEREAS, Contractor represents that he is licensed to practice law in Nevada and in good standing with the State Bar, and is also duly qualified, equipped, staffed, ready, willing, and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the parties mutually agree as follows:

1. **TERM OF CONTRACT.** Upon execution by both parties, the Contract will be effective for 17 months, from July 1, 2014 through November 30, 2015. Thereafter, the Contract may be renewed for two additional one-year terms at the same payment for services rate and on the same terms and conditions as set forth herein. Unless cancelled in writing by one of the parties pursuant to the requirements of Section 9 herein, the Contract shall be deemed to be renewed.



2. WORK TO BE PERFORMED. The parties agree that the services to be performed are as follows:

- A. The Contractor shall represent adult criminal defendants that a Court in the County has determined to be indigent. The representation shall include all stages of the criminal proceedings, including, but not limited to, appeals, revocation of probation or parole, and participation in any diversion program arising under provision of state law. Furthermore, Contractor shall be responsible for the sealing of any eligible record relating to an indigent person in consequence to participation in any diversion program.
- B. The Contractor shall provide legal representation for a child alleged to be delinquent or in need of supervision where the Court or Juvenile Master orders the appointment in accordance with NRS Chapter 62. Representation shall include all stages of the proceedings, including, but not limited to, disposition, appeals, and revocation of probation or parole.
- C. The Contractor shall perform the services of an attorney for a child, parent, or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of the Contractor pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.
- D. Capital Cases are outside the scope of this Contract. Upon the State filing a Notice of Intent to Seek Death Penalty, statutory appointment procedures shall apply.

3. STANDARD OF WORK.

- A. In providing legal representation as set forth in Section Two, Contractor must provide those services in a professional, competent, and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those hearings, filing all necessary motions or other legal documents, and performing or supervising any necessary investigations.
- B. Contractor acknowledges that there will be two other attorneys who will have executed similar agreements and agrees to cooperate with the other attorneys to ensure that all Courts are adequately covered by one or more of the attorneys. Contractor further agrees to cooperate with the other two attorneys to ensure, to the extent possible under ethical requirements, that all cases are covered, that any conflicts are resolved by the three public defenders, and that appointments are completed in a manner that ensures equitable workload between the attorneys.



- C. Contractor agrees that he will at all times faithfully, industriously, and to the best of his knowledge, experience, and talents, perform all of the duties that may be required of him under the terms of this Contract.
- D. If at any time during the representation of a person the Contractor has reason to believe the person is not indigent, the Contractor must immediately notify the Court.

4. OFFICE.

- A. Contractor agrees to staff and maintain an office in Churchill County, Nevada. Included in the payment for services of this Contract (see Section Six) is an allowance for office space, furniture, equipment, and supplies, pursuant to NRS 260.040. The cost of routine investigation, secretarial services, and any other necessary expense for the Contractor's practice as required by this Contract is the sole responsibility of the Contractor. The County shall be responsible for the provision of transcripts for appointed cases.
- B. Contractor agrees to furnish to the Justice Court, District Court, and District Attorney, a telephone number for use after normal office hours in the event of an emergency that may arise where Contractor's services are requested pursuant to the terms of this contract.
- C. Contractor may engage in the private practice of law which does not conflict with Contractor's professional services required pursuant to this Contract. Contractor shall not represent any person in a suit or claim that is adverse to the County.

5. REPORTING.

- A. Contractor shall provide, on a monthly basis, a report to the County Manager containing the following information:
 - i. The total number of cases on which the Contractor has been appointed during the month, designated by their status: misdemeanor, gross misdemeanor, felony;
- B. If any State statute or Nevada Supreme Court Rule in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Contractor agrees to provide and maintain that information at no additional cost to the County.
- C. Contractor agrees to provide this required report along with his invoice for services rendered pursuant to Section 6 herein. Payment shall not become due until the required report is submitted.

6. PAYMENT FOR SERVICES.



- A. Contractor agrees to perform the work set forth in Section Two for payment in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) annually. The County will make payment to Contractor in twelve equal monthly installments. The first payment shall be due on July 5, 2014, and payments shall become due thereafter on a monthly basis after fulfilling the requirements of Section 6(C).
 - B. The Contractor may secure reimbursement for extraordinary investigative costs, expert witness fees, or other necessary services if so ordered by a Court, pursuant to NRS 7.135. Mileage and travel expenses of Contractor are the responsibility of Contractor.
 - C. Contractor shall submit to the County Manager an invoice for services rendered on a monthly basis. The invoice shall include the normal fee for services rendered as well as any reimbursable expenses. County shall pay the amount of the invoice within fifteen business days of receipt of the invoice and report required in Section 5 above.
- 7. INDEPENDENT CONTRACTOR STATUS.** The parties agree that Contractor shall have the status of and shall perform all work under this Contract as an independent contractor. The Contract does not create an employer/employee relationship, and the County does not control the means by which Contractor provides services. Contractor is not a County employee and there shall be no:
- A. Withholding of income taxes or other taxes by the County;
 - B. Industrial insurance coverage provided by the County;
 - C. Participation in group insurance plans which may be available to employees of the County;
 - D. Participation or contributions by either the Contractor or the County to the public employee's retirement system;
 - E. Accumulation of vacation leave or sick leave provided by the County;
 - F. Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.
- 8. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.**
- A. Contractor represents himself as meeting all licensing requirements as an attorney within the State of Nevada and further represents that he/she is in good standing with the highest attorney licensing authority of the State of Nevada. Contractor agrees to maintain his professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract at Contractor's expense. Failure to maintain this license in good standing may result in immediate termination of this Contract. Contractor shall notify the County Manager if they are brought before the Nevada State Bar or the Nevada State Ethics Commission on an ethics charge or if they are



arrested for a crime. Contractor shall notify the County Manager of any court ordered sanctions against Contractor which includes both suspended and imposed sanctions.

B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$500,000.00 per claim and \$1,000,000.00 aggregate during the term of this Contract. The insurance coverage shall be written by an insurance carrier authorized to write such policies in the State of Nevada, and the coverage must be in existence at the time of execution of this Contract as a condition precedent. The cost of the insurance is the sole responsibility of the Contractor.

C. Concurrently with the execution of this Contract, Contractor shall provide to the County a certificate of liability insurance evidencing the coverage limits required by this Contract.

9. **TERMINATION OF CONTRACT.** Either party may revoke this Contract, with or without cause, provided that a revocation shall not be effective until ninety (90) calendar days after the party has served written notice upon the other party. All pending cases that were produced for this Contract must be immediately turned over to whomever the appropriate Court designates re-assignment. If terminated, the payment for services of the Contractor will be reduced to the proportionate number of days worked by the Contractor. The Contractor must reimburse the County for any funds received to which he is not entitled due to the termination.
10. **NON-ASSIGNMENT.** The County is contracting for the personal and professional services of Contractor. This Contract may not be assigned or delegated in whole or in part to a third party without the approval of the Board of County Commissioners. If the Contractor wishes to use an associate attorney to perform any duties under this Contract, he/she must first obtain the approval of the Board of County Commissioners. If the Contractor wishes to have a substitute attorney appear for him for any reason, then Contractor may do so and is responsible for the cost of the substitute attorney. There is no requirement to have the approval of the Board of County Commissioners for substitutions that are less than twenty (20) judicial days per year, or five (5) consecutive days.
11. **CONSTRUCTION OF CONTRACT.** This Contract shall be construed and interpreted according to the laws of the State of Nevada. There shall be no presumption for or against the drafter in interpreting or enforcing this Contract.
12. **PARAGRAPH HEADINGS.** The titles to the paragraphs of this Contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the construction of this Contract.



- 13. DISPUTE RESOLUTION.** If any dispute arises over the interpretation of this Contract or the performance of this Contract, Contractor shall contact the County Manager and attempt to resolve the matter. If the County Manager and Contractor cannot agree, Contractor may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution. Any action to enforce the terms of this Agreement must be brought in the Tenth Judicial District Court of the State of Nevada, in and for the County of Churchill. In the event that any action is filed in relation to this Contract, each party shall be responsible for their own attorney fees.
- 14. IMPLEMENTATION.** The parties acknowledge that the Judicial Branch, pursuant to statute and the Separation of Powers Doctrine has the express authority to determine eligibility for assignment of attorneys in particular cases pursuant to this Contract. It is contemplated by the parties that the Courts will evenly and equitably assign cases between the three contracted attorneys and/or law firms
- 15. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall fully and completely comply with all applicable local, state, and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this Contract, including Court rules and regulations.
- 16. NO WAIVER.** The failure of any party to this Contract to insist upon the performance of any of the terms and conditions of this Contract, or the waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
- 17. CLIENT FILES.** Contractor shall maintain the files of appointed clients as required by state statute or rule.
- 18. INDEMNIFICATION.** Contractor agrees to indemnify and save and hold the County, its officers, agents, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this Contract by Contractor or Contractor's agents or employees.
- 19. MODIFICATION OF CONTRACT.** This Contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties. There are no promises, terms, conditions, or obligations other than those contained in this Contract.
- 20. SEVERABILITY.** Each provision of this Contract is severable from the whole. If any portion of this Contract is deemed to be invalid, that invalidity shall not impair the remaining provisions of this Contract.
- 21. NOTICES.** All notices or other information that is to be submitted to a party shall be sent to the following address:



441329

06/17/2014
007 of 7

Churchill County Manager
155 North Taylor Street
Suite 153
Fallon, NV 89406

Charles B. Woodman
548 west Plumb Lane,
Suite B
Reno, NV 89509

22. EFFECTIVE DATE. This Agreement shall be effective as of July 1, 2014.

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.

Charles B. Woodman

6/10/2014
(Date)

Carl Erquiaga, Chairman
Board of County Commissioners

6/17/14
(Date)

Attest:

Kelly Helton, Churchill County Clerk

6/17/14
(Date)

CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
DOUGLAS COUNTY, NEVADA
AND
MARIA PENCE, ESQ.
PENCE & ASSOCIATES
1662 U.S. HWY. 395 N., SUITE 203
MINDEN, NV 89423
FOR
INDIGENT LEGAL SERVICES

WHEREAS, Douglas County, is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, Douglas County desires to employ an experienced attorney, Maria Pence, Esq., (hereinafter Attorney) to provide legal services to those indigents involved in the Courts in Douglas County; and

WHEREAS, it is deemed that the services of Attorney herein specified are both necessary and desirable and in the best interests of Douglas County; and

WHEREAS, Attorney represents that she is licensed to practice law in Nevada and in good status with the State Bar, and is also duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. EFFECTIVE DATE OF CONTRACT.

Upon execution by both parties, the contract will be effective for the period of July 1, 2017 through June 30, 2018.

2. WORK TO BE PERFORMED.

The parties agree that the services to be performed are as follows:

A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including appeals and revocation of probation or parole, but not postconviction proceedings.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62.

C. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128. Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours, per case, for appointments pursuant to NRS 128.100.

D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept the appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed

3. STANDARD OF WORK.

A. In providing legal representation as set forth in Section Two, Attorney must provide those services in a professional, competent and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney, a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorney's compensation paid pursuant to Section 4 of this Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

4. PAYMENT FOR SERVICES.

A. Attorney agrees to perform the work set forth in paragraph two at a cost not to exceed \$195,833.33. The County will make the payment to attorney on a quarterly basis in the amount of \$48,958.33. The Attorney may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so ordered by a Court. Attorney will not be reimbursed for travel expenses or any form of per diem.

B. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4) (a)-(d), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

5. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION COVERAGE.

The parties agree that Attorney shall have the status of and shall perform all work under this contract as an independent contractor. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat. § 284.173, as necessarily adapted, to the parties, including that Attorney is not a County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Attorney or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the County;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

6. INDUSTRIAL INSURANCE.

Attorney agrees to maintain required workers compensation coverage pursuant to NRS chapters 616A to 616D, throughout the entire term of the contract. Attorney must, provide either a certificate of insurance or an affidavit indicating that he/she is: (i) In accordance with the provisions of NRS 616B.659, or has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and (ii) Is otherwise in compliance with those terms, conditions and provisions.

7. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

A. Attorney agrees to maintain their professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract. Failure to maintain this license will result in immediate termination of this contract. Attorney shall notify the Senior Judge of the Ninth Judicial District Court if they are brought before the Nevada State Bar on an ethics charge or if they are arrested for a crime.

B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$250,000 per claim and \$500,000 aggregate during the term of this contract. The insurance cost is the sole responsibility of the Attorney. Copies of both the license and certificate of professional liability insurance must be sent to the Douglas County Manager.

8. TERMINATION OF CONTRACT.

A. Either party may revoke this contract without cause, provided that a revocation shall not be effective until 45 calendar days after the party has served written notice upon the

other party. All monies due and owing up to the point of termination shall be paid by Douglas County, and all pending cases that were produced for this contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination.

B. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at their own cost, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

9. NON ASSIGNMENT.

The County is contracting for the personal and professional services of the Attorney. This contract may not be assigned or delegated to a third party without the approval of the District Court Judges. If the Attorney wishes to have a substitute attorney appear for him/her due to vacation, illness or personal family matter, then Attorney may do so and is responsible for paying for the substitute attorney. There is no requirement to have District Court Judges approval for substitutions that are less than twenty-five (25) judicial days per year.

10. CONSTRUCTION OF CONTRACT.

This contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this contract shall be resolved by binding arbitration, with an arbiter to be selected from a list maintained by the Nevada Supreme Court of senior judges, with both parties to pay share the senior judge and any other related Court fees. Each party is responsible for their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

11. DELEGATION OF AUTHORITY.

The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this contract. Such designations include the development of factors for determining whether a person is indigent; assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; may order monthly time summaries from attorneys; preparing vouchers for the quarterly payments to Attorneys; approval of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

12. COMPLIANCE WITH APPLICABLE LAWS.

Attorney shall fully and completely comply with all applicable local state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including court rules and regulations.

13. INDEMNIFICATION.

Attorney agrees to indemnify and save and hold the County, its officers, agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Attorney or Attorney's agents or employees.

14. MODIFICATION OF CONTRACT.

This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties.


15. NOTICES.

All notices or other information that is to be submitted to a party shall be sent to the following addresses:

Douglas County Manager
P.O. Box 218
Minden, NV 89423

Maria Pence, Esq.
Pence & Associates
1662 U.S. Hwy. 395 N., Suite 203
Minden, NV 89423

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.

 5/9/12
Maria Pence, Esq. (date)
Pence & Associates

William B. Penzel, Chairman (date)
Board of County Commissioners

Attest:

Kathy Lewis, Douglas County Clerk (date)

END OF DOCUMENT

CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
DOUGLAS COUNTY, NEVADA
AND
DERRICK M. LOPEZ, ESQ.
1470 HIGHWAY 395
GARDNERVILLE, NEVADA 89410
FOR
INDIGENT LEGAL SERVICES

WHEREAS, Douglas County, is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, Douglas County desires to employ an experienced attorney, Derrick M. Lopez, Esq. (hereinafter Attorney) to provide legal services to those indigents involved in the Courts in Douglas County; and

WHEREAS, it is deemed that the services of Attorney herein specified are both necessary and desirable and in the best interests of Douglas County; and

WHEREAS, Attorney represents that he is licensed to practice law in Nevada and in good status with the State Bar, and is also duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. EFFECTIVE DATE OF CONTRACT.

Upon execution by both parties, the contract will be effective for the period of July 1, 2017 through June 30, 2018.

2. WORK TO BE PERFORMED.

The parties agree that the services to be performed are as follows:

A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including appeals and revocation of probation or parole, but not postconviction proceedings.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62.

C. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to

have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128. Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours, per case, for appointments pursuant to NRS 128.100.

D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept the appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed

3. STANDARD OF WORK.

A. In providing legal representation as set forth in Section Two, Attorney must provide those services in a professional, competent and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney, a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorney's compensation paid pursuant to Section 4 of this Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

4. PAYMENT FOR SERVICES.

A. Attorney agrees to perform the work set forth in paragraph two at a cost not to exceed \$195,833.33. The County will make the payment to attorney on a quarterly basis in the amount of \$48,958.33. The Attorney may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so ordered by a Court. Attorney will not be reimbursed for travel expenses or any form of per diem.

B. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4)

(a)-(d), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

5. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION COVERAGE.

The parties agree that Attorney shall have the status of and shall perform all work under this contract as an independent contractor. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat. § 284.173, as necessarily adapted, to the parties, including that Attorney is not a County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Attorney or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the County;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

6. INDUSTRIAL INSURANCE.

Attorney agrees to maintain required workers compensation coverage pursuant to NRS chapters 616A to 616D, throughout the entire term of the contract. Attorney must, provide either a certificate of insurance or an affidavit indicating that he/she is: (i) In accordance with the provisions of NRS 616B.659, or has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and (ii) Is otherwise in compliance with those terms, conditions and provisions.

7. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

A. Attorney agrees to maintain their professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract. Failure to maintain this license will result in immediate termination of this contract. Attorney shall notify the Senior Judge of the Ninth Judicial District Court if they are brought before the Nevada State Bar on an ethics charge or if they are arrested for a crime.

B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$250,000 per claim and \$500,000 aggregate during the term of this contract. The insurance cost is the sole responsibility of the Attorney. Copies of both the license and certificate of professional liability insurance must be sent to the Douglas County Manager.

8. TERMINATION OF CONTRACT.

A. Either party may revoke this contract without cause, provided that a revocation shall not be effective until 45 calendar days after the party has served written notice upon the other party. All monies due and owing up to the point of termination shall be paid by

Douglas County, and all pending cases that were produced for this contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination.

B. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at their own cost, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

9. NON ASSIGNMENT.

The County is contracting for the personal and professional services of the Attorney. This contract may not be assigned or delegated to a third party without the approval of the District Court Judges. If the Attorney wishes to have a substitute attorney appear for him/her due to vacation, illness or personal family matter, then Attorney may do so and is responsible for paying for the substitute attorney. There is no requirement to have District Court Judges approval for substitutions that are less than twenty-five (25) judicial days per year.

10. CONSTRUCTION OF CONTRACT.

This contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this contract shall be resolved by binding arbitration, with an arbiter to be selected from a list maintained by the Nevada Supreme Court of senior judges, with both parties to pay share the senior judge and any other related Court fees. Each party is responsible for their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

11. DELEGATION OF AUTHORITY.

The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this contract. Such designations include the development of factors for determining whether a person is indigent; assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; may order monthly time summaries from attorneys; preparing vouchers for the quarterly payments to Attorneys; approval of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

12. COMPLIANCE WITH APPLICABLE LAWS.

Attorney shall fully and completely comply with all applicable local state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including court rules and regulations.

13. INDEMNIFICATION.

Attorney agrees to indemnify and save and hold the County, its officers, agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Attorney or Attorney's agents or employees.

14. MODIFICATION OF CONTRACT.

This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties.


15. NOTICES.

All notices or other information that is to be submitted to a party shall be sent to the following addresses:

Douglas County Manager
P.O. Box 218
Minden, NV 89423

Derrick M. Lopez, Esq.
1470 Highway 395
Gardnerville, Nevada 89410

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.

 5-8-17
Derrick M. Lopez, Esq. (date)

William B. Penzel, Chairman (date)
Board of County Commissioners

Attest:

Kathy Lewis, Douglas County Clerk (date)

END OF DOCUMENT

CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
DOUGLAS COUNTY, NEVADA
AND
MATTHEW ENCE, ESQ.
1662 US HWY 395, #104
MINDEN, NEVADA 89423
FOR
INDIGENT LEGAL SERVICES

WHEREAS, Douglas County, is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, Douglas County desires to employ an experienced attorney, Matthew Ence, Esq. (hereinafter Attorney) to provide legal services to those indigents involved in the Courts in Douglas County; and

WHEREAS, it is deemed that the services of Attorney herein specified are both necessary and desirable and in the best interests of Douglas County; and

WHEREAS, Attorney represents that he is licensed to practice law in Nevada and in good status with the State Bar, and is also duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. EFFECTIVE DATE OF CONTRACT.

Upon execution by both parties, the contract will be effective for the period of July 1, 2017, through June 30, 2018, inclusive.

2. WORK TO BE PERFORMED.

The parties agree that the services to be performed are as follows:

A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including appeals and revocation of probation or parole, but not postconviction proceedings.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62.

C. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to

have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128. Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours, per case, for appointments made pursuant to NRS 128.100.

D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept the appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed

3. STANDARD OF WORK.

A. In providing legal representation as set forth in Section Two, Attorney must provide those services in a professional, competent and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney, a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorney's compensation paid pursuant to Section 4 of this Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

4. PAYMENT FOR SERVICES.

A. Attorney agrees to perform the work set forth in paragraph two at a cost not to exceed \$146,874.99. The County will make the payment to attorney on a quarterly basis in the amount of \$48,958.33. The Attorney may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so ordered by a Court. Attorney will not be reimbursed for travel expenses or any form of per diem.

B. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4)

(a)-(d), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified, provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

5. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION COVERAGE.

The parties agree that Attorney shall have the status of and shall perform all work under this contract as an independent contractor. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 284.173, as necessarily adapted, to the parties, including that Attorney is not a County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Attorney or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the County;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

6. INDUSTRIAL INSURANCE.

Attorney agrees to maintain required workers compensation coverage pursuant to NRS chapters 616A to 616D, throughout the entire term of the contract. Attorney must, provide either a certificate of insurance or an affidavit indicating that he is: (i) In compliance with the provisions of NRS 616B.659 or has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and (ii) Is otherwise in compliance with those terms, conditions and provisions.

7. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

A. Attorney agrees to maintain their professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract. Failure to maintain this license will result in immediate termination of this contract. Attorney shall notify the Senior Judge of the Ninth Judicial District Court if he is brought before the Nevada State Bar on an ethics charge or if he is arrested for a crime.

B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$250,000 per claim and \$500,000 aggregate during the term of this contract. The insurance cost is the sole responsibility of the Attorney. Copies of both the license and certificate of professional liability insurance must be sent to the Douglas County Manager.

8. TERMINATION OF CONTRACT.

A. Either party may revoke this contract without cause, provided that a revocation shall not be effective until 30 calendar days after the party has served written notice upon the other party. All monies due and owing up to the point of termination shall be paid by Douglas County, and all pending cases that were produced for this contract must be

immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which he is not entitled due to the termination.

B. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at their own cost, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

9. NON ASSIGNMENT.

The County is contracting for the personal and professional services of the Attorney. This contract may not be assigned or delegated to a third party without the approval of the District Court Judges. If the Attorney wishes to have a substitute attorney appear for him/her due to vacation, illness or personal family matter, then Attorney may do so and is responsible for paying for the substitute attorney. There is no requirement to have District Court Judges approval for substitutions that are for less than twenty-five (25) judicial days, cumulative in duration, per calendar year.

10. CONSTRUCTION OF CONTRACT.

This contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this contract shall be resolved by binding arbitration, with an arbiter to be selected from a list maintained by the Nevada Supreme Court of senior judges, with both parties to pay share the senior judge and any other related Court fees. Each party is responsible for their own attorney's fees. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

11. DELEGATION OF AUTHORITY.

The Judges of the Ninth Judicial District Court and the Justices of the two Townships within Douglas County are expressly designated as the sole authority to oversee and implement the provisions of this contract. Such designations include the development of factors for determining whether a person is indigent; assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; may order monthly time summaries from attorneys; preparing vouchers for the quarterly payments to Attorneys; approval of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

12. COMPLIANCE WITH APPLICABLE LAWS.

Attorney shall fully and completely comply with all applicable local state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including court rules and regulations.

13. INDEMNIFICATION.

Attorney agrees to indemnify and save and hold the County, its officers, agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Attorney or Attorney's agents or employees.

14. MODIFICATION OF CONTRACT.

This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties.

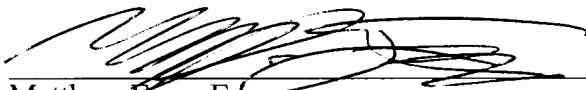
15. NOTICES.

All notices or other information that is to be submitted to a party shall be sent to the following addresses:

Douglas County Manager
P.O. Box 218
Minden, NV 89423

Matthew Ence, Esq.
1662 US Hwy 395, #104
Minden, NV 89423

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for Indigent Legal Services to be signed and intend to be legally bound thereby.


Matthew Ence, Esq.

9/8/17
(Date)

William B. Penzel, Chairman
Board of County Commissioners

(Date)

Attest:

Kathy Lewis, Douglas County Clerk

(Date)

END OF DOCUMENT

CONTRACT FOR PROFESSIONAL SERVICES
BETWEEN
DOUGLAS COUNTY, NEVADA
AND
KRISTINE L. BROWN, ESQ.
THE LAW OFFICE OF KRISTINE L. BROWN, LLC
1190 HIGH SCHOOL STREET, SUITE A
GARDNERVILLE, NEVADA 89410
FOR
INDIGENT LEGAL SERVICES

WHEREAS, Douglas County, is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, Douglas County desires to employ an experienced attorney, Kristine L. Brown, Esq. with the Law Office Kristine L. Brown, LLC, (hereinafter Attorney) to provide legal services to those indigents involved in the Courts in Douglas County; and

WHEREAS, it is deemed that the services of Attorney herein specified are both necessary and desirable and in the best interests of Douglas County; and

WHEREAS, Attorney represents that she is licensed to practice law in Nevada and in good status with the State Bar, and is also duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. EFFECTIVE DATE OF CONTRACT.

Upon execution by both parties, the contract will be effective for the period of July 1, 2017 through June 30, 2018.

2. WORK TO BE PERFORMED.

The parties agree that the services to be performed are as follows:

A. The Attorney will represent adult criminal defendants that a Court in Douglas County has determined to be indigent. The representation will include all stages of the criminal proceedings including appeals and revocation of probation or parole, but not postconviction proceedings.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision where a Court orders the appointment in accord with NRS Chapter 62.

C. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to

have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128. Attorney will be paid supplemental fees at the statutory rate for any work performed beyond ten (10) hours, per case, for appointments pursuant to NRS 128.100.

D. If at any time during the representation of a person the Attorney has reason to believe the person is not indigent, the Attorney must immediately notify the Court.

E. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court.

F. If a defendant who is requesting appointed counsel due to indigence has contacted Attorney concerning retaining that Attorney for representation, that Attorney will not be obligated to accept the appointed case. The Attorney must notify the appropriate court, by letter, of the contact with the indigent defendant prior to the proposed appointment, and the next firm in the rotation will be appointed

3. STANDARD OF WORK.

A. In providing legal representation as set forth in Section Two, Attorney must provide those services in a professional, competent and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

B. Attorney agrees to staff and maintain an office in Douglas County, Nevada. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney, a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorney's compensation paid pursuant to Section 4 of this Contract.

C. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

4. PAYMENT FOR SERVICES.

A. Attorney agrees to perform the work set forth in paragraph two at a cost not to exceed \$195,833.33. The County will make the payment to attorney on a quarterly basis in the amount of \$48,958.33. The Attorney may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so ordered by a Court. Attorney will not be reimbursed for travel expenses or any form of per diem.

B. The compensation specified above is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, the Court may, for the reasons specified in NRS 7.125(4)

(a)-(d), award extraordinary fees to Attorney in a particular matter, which are over and above the compensation specified provided that the statutorily prescribed procedures contained in NRS 7.125(4) are complied with.

5. INDEPENDENT CONTRACTOR STATUS AND PROVISION OF WORKERS COMPENSATION COVERAGE.

The parties agree that Attorney shall have the status of and shall perform all work under this contract as an independent contractor. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat. § 284.173, as necessarily adapted, to the parties, including that Attorney is not a County employee and that there shall be no:

- (1) Withholding of income taxes by the County;
- (2) Industrial insurance coverage provided by the County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Attorney or the County to the public employee's retirement system;
- (5) Accumulation of vacation leave or sick leave provided by the County;
- (6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

6. INDUSTRIAL INSURANCE.

Attorney agrees to maintain required workers compensation coverage pursuant to NRS chapters 616A to 616D, throughout the entire term of the contract. Attorney must, provide either a certificate of insurance or an affidavit indicating that he/she is: (i) In accordance with the provisions of NRS 616B.659, or has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and (ii) Is otherwise in compliance with those terms, conditions and provisions.

7. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

A. Attorney agrees to maintain their professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract. Failure to maintain this license will result in immediate termination of this contract. Attorney shall notify the Senior Judge of the Ninth Judicial District Court if they are brought before the Nevada State Bar on an ethics charge or if they are arrested for a crime.

B. Contractor also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$250,000 per claim and \$500,000 aggregate during the term of this contract. The insurance cost is the sole responsibility of the Attorney. Copies of both the license and certificate of professional liability insurance must be sent to the Douglas County Manager.

8. TERMINATION OF CONTRACT.

A. Either party may revoke this contract without cause, provided that a revocation shall not be effective until 45 calendar days after the party has served written notice upon the other party. All monies due and owing up to the point of termination shall be paid by Douglas County, and all pending cases that were produced for this contract must be

immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination.

B. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at their own cost, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

9. NON ASSIGNMENT.

The County is contracting for the personal and professional services of the Attorney. This contract may not be assigned or delegated to a third party without the approval of the District Court Judges. If the Attorney wishes to have a substitute attorney appear for him/her due to vacation, illness or personal family matter, then Attorney may do so and is responsible for paying for the substitute attorney. There is no requirement to have District Court Judges approval for substitutions that are less than twenty-five (25) judicial days per year.

10. CONSTRUCTION OF CONTRACT.

This contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this contract shall be resolved by binding arbitration, with an arbiter to be selected from a list maintained by the Nevada Supreme Court of senior judges, with both parties to pay share the senior judge and any other related Court fees. Each party is responsible for their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

11. DELEGATION OF AUTHORITY.

The Judges of the Ninth Judicial District Court and the Justices of the two Townships are expressly designated the authority to oversee and implement the provisions of this contract. Such designations include the development of factors for determining whether a person is indigent; assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; may order monthly time summaries from attorneys; preparing vouchers for the quarterly payments to Attorneys; approval of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. However, the County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

12. COMPLIANCE WITH APPLICABLE LAWS.

Attorney shall fully and completely comply with all applicable local state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including court rules and regulations.

13. INDEMNIFICATION.

Attorney agrees to indemnify and save and hold the County, its officers, agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Attorney or Attorney's agents or employees.

14. MODIFICATION OF CONTRACT.

This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties.

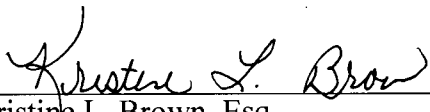
15. NOTICES.

All notices or other information that is to be submitted to a party shall be sent to the following addresses:

Douglas County Manager
P.O. Box 218
Minden, NV 89423

Kristine L. Brown, Esq.
The Law Office Kristine L. Brown, LLC
1190 High School Street, Suite A
Gardnerville, NV 89410

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.



Kristine L. Brown, Esq.
The Law Office Kristine L. Brown, LLC

5/10/17

(date)

William B. Penzel, Chairman
Board of County Commissioners

(date)

Attest:

Kathy Lewis, Douglas County Clerk

(date)

END OF DOCUMENT

CONTRACT FOR CONFLICT COUNSEL FOR PUBLIC DEFENSE SERVICES

The County of Lincoln, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Shain Manuele of Manuele Law, LLC, referred to as "Firm", agree to the provision of conflict counsel for public defense services as outlined below for the period from July 1, 2017 to June 30, 2019.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible person entitled to public representation in Lincoln County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide conflict counsel for the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260; and

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

I. DURATION OF CONTRACT

This Contract for Conflict Counsel shall commence on July 1, 2017 and terminate on June 30, 2019, unless extended or terminated earlier in a manner allowed by this Contract. Unless re-negotiation is requested by either party, this contract shall automatically renew for an additional two year term. The Contract may not renew automatically more than once.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS

432B.420. And the representation of the Lincoln County Public Defender can not be appointed due to an issue with conflicts.

- B. Case, Case Completion: A Case shall mean representation of one person on one charging document. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that cause number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.
- D. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services required in the representation, administration of indigent cases assigned, appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and other legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings for conflict cases. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-.155 and any other relevant state statute, court rule, and constitutional provisions.

- E. Complex Litigation Cases: Complex Litigation refers solely to all capital cases that proceed to trial.
- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in capital cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.
- H. Significant Increases: A significant increase is an increase of 20% or more in the Firm's annual hours to cover the indigent defense caseload.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Contracting Authority may establish a panel of no less than three (3) individuals to conduct oversight of the Firm in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The panel shall be appointed by the Contracting Authority and may include judges, representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors or law enforcement officials. The Firm will meet regularly with the panel, but not more than once quarterly.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm attorney shall satisfy the minimum requirements for practicing law in Nevada as determined by the Nevada Supreme Court. Eight hours of [each year's required yearly] continuing legal education credits shall be in spent in courses relating to criminal law practice or other areas of law in which the Firm provides legal services to eligible clients under the terms of this Contract. The Firm will maintain for inspection on its premises records of compliance with this provision.
- B. Each Firm attorney representing a defendant accused of a Class A felony, as defined in Nevada Revised Statutes, must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a Class A felony, as defined in Nevada Revised Statutes, shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a Class B or C felony, as defined in Nevada Revised Statutes, or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Firm, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own.

- E. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience
- F. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is all cases requesting and assigned for conflict public defender services for which the Lincoln County Public Defender has a conflict. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Firm agrees to provide representational services in the following types of cases:

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will refer to the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.

- D. It is agreed that the Firm will maintain the required annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

| | |
|---------------------------|----|
| Felony Cases | 15 |
| Misdemeanor Cases | 40 |
| Juvenile Offender Cases | 20 |
| Juvenile Dependency Cases | 6 |
| Civil Commitment Cases | 25 |
| Contempt of Court Cases | 22 |
| Drug Court Cases | 20 |
| Appeals | 2 |

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of his time on felony cases and half of his time on misdemeanor cases, he would be expected to carry an annual caseload no greater than 7 felonies and 15 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of his professional time which he devotes to Contract cases. All attorneys who split their time between Contract work and private business as well as work under this contract must report the quantity of hours they devote to private business to the Contracting Authority so that Firm caseload levels may be accurately monitored.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Firm to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys
One full time Investigator for every 45 Felony Cases
One full time Investigator for every 60 Juvenile Cases
One full time Investigator for every 120 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Firm may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- F. If the Firm is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- G. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.
- H. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Firm's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VIII. VARIANCE

The Firm and the Contracting Authority agree that the actual number of hours spent in completion of this contract may vary. It is agreed that the Firm will provide services at a flat rate of \$20,000/year. If the Firm experiences a significant increase above the 200 hours (\$20,000/\$100 per hour) required, the Firm may request additional compensation pursuant to Section XII.

The Firm shall provide reports as required in the agreement.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour. Thereafter, the Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.
- C. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the Firm attorney(s) and the expected duration of the case.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case) after having participated in the required seven hours of annual CLE required in Section V.A, the Firm shall require additional training in the particular type of case, as necessary.

XI. ATTORNEY EVALUATION

If the Contract requires the services of two or more attorneys, the Firm director, or his/her designee, shall evaluate the professional performance of Firm attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files,

and in court observation. The Firm shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Firm's director and the Firm attorney.

XII. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm a rate of \$20,000/year for the work performed, excepting therefrom Capital cases, plus the potential variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. In addition to the rate listed above, the Contracting Authority will provide, at its expense, one account or user name to the Firm for the same online legal research used by the prosecutor's office of the Contracting Authority.
- C. In the event of Firm failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XIII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm within 30 days of the finding of the request that the supplemental funds shall not be available.

XIV. REPORTS AND INSPECTIONS

The Firm agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

A. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator, if there are hours to be reported.

B. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

C. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

D. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.

- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be covered by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.
- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Firm, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or

damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVII. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. Upon request the Firm shall provide proof of malpractice insurance.

B. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

XVIII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Firm to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training

provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XIX. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
2. The Firm shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.

In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 15 days' written notice to the Firm in the event that –
 1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;

2. The Firm engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority's governing body. In the event the Contracting Authority's governing body reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Contracting Authority's governing body. The Contract will remain in full force pending communication of the Contracting Authority to the Firm. A decision by the Contracting Authority's governing body affirming termination shall become effective 10 days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Firm terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.
- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work at a rate of \$100.00 per hour. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required at the rate of \$100.00 per hour.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the

Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.

- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXII. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in writing not less than five days prior to the date of any proposed assignment or subcontract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXIII. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be

incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXIV. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXV. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVII. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVIII. CONFLICT OF INTEREST

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

Agreed:


Firm


Contracting Authority

Date: 4/18/17

Date: 5/1/17

CONTRACT FOR PUBLIC DEFENSE SERVICES

The County of Lincoln, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Dylan V. Frehner, Attorney at Law, PC, referred to as "Firm", agree to the provision of public defense services as outlined below for the period from July 1, 2017 to June 30, 2019.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible person entitled to public representation in Lincoln County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260; and

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on July 1, 2017 and terminate on June 30, 2019, unless extended or terminated earlier in a manner allowed by this Contract. Unless re-negotiation is requested by either party, this contract shall automatically renew for an additional two year term. The Contract may not renew automatically more than once.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS 432B.420.

- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that cause number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.
- D. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services required in the representation, administration of indigent cases assigned, appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and other legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-.155 and any other relevant state statute, court rule, and constitutional provisions.
- E. Complex Litigation Cases: Complex Litigation refers solely to all capital cases that proceed to trial.

- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in capital cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.
- H. Significant Increases: A significant increase is an increase of 20% or more in the Firm's annual hours to cover the indigent defense caseload.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Contracting Authority may establish a panel of no less than three (3) individuals to conduct oversight of the Firm in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The panel shall be appointed by the Contracting Authority and may include judges, representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors or law enforcement officials. The Firm will meet regularly with the panel, but not more than once quarterly.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm attorney shall satisfy the minimum requirements for practicing law in Nevada as determined by the Nevada Supreme Court. Eight hours of [each year's required yearly] continuing legal education credits shall be in spent in courses relating to criminal law practice or other areas of law in which the Firm provides legal services to eligible clients under the terms of this Contract. The Firm will maintain for inspection on its premises records of compliance with this provision.
- B. Each Firm attorney representing a defendant accused of a Class A felony, as defined in Nevada Revised Statutes, must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a Class A felony, as defined in Nevada Revised Statutes, shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a Class B or C felony, as defined in Nevada Revised Statutes, or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Firm, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own.
- E. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven

years of criminal law experience and training or experience in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience

- F. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is all cases requesting and assigned public defender services for which the Firm does not have a conflict. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Firm agrees to provide representational services in the following types of cases:

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will refer to the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.
- D. It is agreed that the Firm will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

| | |
|---------------------------|-----|
| Felony Cases | 150 |
| Misdemeanor Cases | 400 |
| Juvenile Offender Cases | 200 |
| Juvenile Dependency Cases | 60 |
| Civil Commitment Cases | 250 |
| Contempt of Court Cases | 225 |
| Drug Court Cases | 200 |
| Appeals | 25 |

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases. All attorneys who split their time between Contract work and private business as well as work under this contract must report the quantity of hours they devote to private business to the Contracting Authority so that Firm caseload levels may be accurately monitored.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Firm to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys
 One full time Investigator for every 450 Felony Cases
 One full time Investigator for every 600 Juvenile Cases
 One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Firm may

determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- F. If the Firm is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- G. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.
- H. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Firm's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VIII. VARIANCE

The Firm and the Contracting Authority agree that the actual number of hours spent in completion of this contract may vary. It is agreed that the Firm will provide at least 1250 attorney/investigator hours (\$125,000 / \$100 per hour) for all cases assigned. The Firm will reimburse the County at the rate of \$100/hour times the number of

attorney/investigator hours that fall below the required 1250 hours with or before the July Caseload report submitted by the Firm. If the Firm exceeds the 1250 hours required, the Firm may request additional compensation pursuant to Section XII.

The Firm shall provide reports as required in the agreement.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour. Thereafter, the Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.
- C. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the Firm attorney(s) and the expected duration of the case.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (e.g. a Capital case) after having participated in the required seven hours of annual CLE required in Section V.A, the Firm shall require additional training in the particular type of case, as necessary.

XI. ATTORNEY EVALUATION

If the Contract requires the services of two or more attorneys, the Firm director, or his/her designee, shall evaluate the professional performance of Firm attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Firm shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Firm's director and the Firm attorney.

XII. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm a rate of \$125,000/year for the work performed, excepting therefrom Capital cases, plus or minus the variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. In addition to the rate listed above, the Contracting Authority will provide, at its expense, one account or user name to the Firm for the same online legal research used by the prosecutor's office of the Contracting Authority.
- C. In the event of Firm failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XIII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm within 30 days of the finding of the request that the supplemental funds shall not be available.

XIV. REPORTS AND INSPECTIONS

The Firm agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

- A. Position Salary Profile

The Firm shall submit to the Contracting Authority on the last working day in July and by the 15th day of the first month of each subsequent quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who perform work on this Contract, distributed by type of case. The report will designate the name and salary for each FTE employee in a format to be provided. The Contracting Authority will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

B. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator.

C. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

D. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

E. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.
- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be covered by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract..
- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Firm, its officers, employees, representatives or agents.

- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVII. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance

The Firm shall maintain continuously public liability insurance with limits of liability not less than: \$250,000 for each person, personal injury, \$500,000 for each occurrence, property damage, liability, or a combined single limit of \$500,000 for each occurrence, personal injury and/or property damage liability.

Such insurance shall include the Contracting Authority as an additional insured and shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Firm shall provide a certificate of insurance or, upon written request of the Contracting Authority, a duplicate of the policy as evidence of insurance protection.

B. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$250,000 per claim with a \$500,000 aggregate. The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole

negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. The Firm shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

The Firm shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

XVIII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Firm to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XIX. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
2. The Firm shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review

of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.

In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days' written notice to the Firm in the event that –
1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;
 2. The Firm engages in misappropriation of funds; or
 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority's governing body. In the event the Contracting Authority's governing body reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Contracting Authority's governing body. The Contract will remain in full force pending communication of the Contracting Authority to the Firm. A decision by the Contracting Authority's governing body affirming termination shall become effective 10 days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or

service pursuant to this Contract. In the event that the Firm terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.

- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXII. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in

writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.

- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXIII. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXIV. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXV. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVII. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVIII. CONFLICT OF INTEREST

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

Agreed:


Firm


Contracting Authority

Date: 4/18/17

Date: 5/1/17

7/1/17

AGREEMENT FOR PUBLIC DEFENDER SERVICES
JULY 1, 2017 THROUGH JUNE 30, 2020

This Agreement is hereby made and entered into this 1st day of July, 2017, by and between AARON MOURITSEN, hereinafter referred to as "Attorney" and Lyon County, a political subdivision of the State of Nevada, hereinafter referred to as "County."

PART A - APPOINTMENT AS PUBLIC DEFENDER

1. The Lyon County Board of County Commissioners shall appoint Attorney as one of three Public Defenders of Lyon County, pursuant to Lyon County Code 1.09.01 and NRS 260.010. The parties agree that approval of this Agreement by the Board of Commissioners constitutes appointment as Public Defender for a three (3) year period, commencing July 1, 2017 and ending June 30, 2020.

2. Attorney agrees that he is a Public Defender pursuant to Chapter 260 of Nevada Revised Statute and Lyon County Code 1.09.01.

PART B - ADULT CRIMINAL CASES

1. Upon assignment to an adult criminal case, Attorney agrees to perform the services of an attorney in the defense of indigent persons charged with a criminal offense.

2. In any case to which Attorney is assigned, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the proceedings, including sentencing. Attorney shall be required to represent the Defendant on any appeal to the Third Judicial District Court or the Nevada Supreme Court whether based upon a preliminary matter or final judgment.

4. Attorney agrees to provide full professional services for all matters in any Lyon County or regional drug court.

PART C - CAPITAL CASES

1. Attorney agrees to provide representation in all non-extraordinary cases when appointed. Consistent with the Nevada Supreme Court Rules (SCR), including SCR 250, Attorney will assist a SCR 250 qualified attorney in the representation of one (1) capital case each contract year without receiving additional payment under this agreement except as provided in Section J.4 below. The contract year is defined as July 1 through June 30, and the date is determined by when Attorney is appointed in the capital case. In the event Attorney is appointed to represent an indigent defendant in more than one capital case or assists a SCR 250 qualified attorney in more than one capital case in a contract year, Attorney agrees to provide such representation in those additional cases at the rate of ONE HUNDRED TWENTY-FIVE (\$125.00) per hour. Should any of the public defenders become capital case qualified pursuant to SCR 250, the attorney and county will negotiate

representation in the same manner as any other capital case certified attorney. Should an unforeseen circumstance arise in a capital or extraordinary case, Attorney agrees to immediately contact the Lyon County Manager and negotiate a responsible resolution.

PART D - JUVENILE COURT PROCEEDINGS AND PROCEEDINGS PURSUANT TO NRS 432B

1. Upon appointment to a juvenile case or a case arising under Chapter 432B of the Nevada Revised Statutes, either by Juvenile Master or the Court, Attorney agrees to perform the services of an attorney in the representation of such person.

2. In any case to which Attorney is appointed, Attorney shall prepare the investigation, trial preparation and defense which is required to provide a full professional representation of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the person at all stages of the proceedings including fact-finding and final disposition. Attorney shall be required to represent the person on appeal to the District Court or Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART E - PROBATION AND PAROLE REVOCATION PROCEEDINGS

1. If proceedings are commenced to revoke any probation or parole which was granted to a Defendant, the Attorney shall represent the Defendant at the probation revocation proceedings if the Court appoints Attorney on the case, or parole revocation proceedings if the Defendant requests Attorney's services or Attorney is appointed by a person authorized to so appoint.

2. In any case to which Attorney is appointed, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the probation and parole revocation proceedings. Attorney shall represent the Defendant on any appeal to the Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART F - OFFICE

1. Attorney agrees to staff and maintain an office in Lyon County, Nevada, independent from any office of another Public Defender contracting with Lyon County. Attorney may have space in the same building as another Public Defender provided that any office will be independent with the other Public Defenders such that there is no conflict of interest or violation of Supreme Court Rules or Rules of Professional Conduct governing conflicts of interest created by attorney's staff. Attorney agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office and District Attorney a phone number for use after hours in any emergency that may arise where Attorney's services are requested. Attorney agrees to cooperate with County to establish

at no additional cost to County a system whereby appointed defendants incarcerated in the Lyon County Jail can call the attorney at no charge.

2. The expense of office space, telephone, fax, computer, furniture, equipment, supplies, and secretarial services suitable for conduct of attorney's practice as required by this Agreement are the sole responsibility of Attorney. Attorney's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5).

PART G – REPORTING

1. Attorney shall report quarterly to the County Manager and Board of County Commissioners the following information:

A. Adult criminal cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor, and court); and, (3) other pertinent information requested by the County Manager.

B. Extraordinary Cases/Capital Cases: (1) Number of cases pending; (2) additional costs incurred and charged to County on the case; (3) other pertinent information requested by the County Manager.

C. Juvenile Cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor and court; (3) number of probation violations handled and resolved; (4) number of parole violations handled and resolved; and, (5) other pertinent information requested by the County Manager.

D. NRS 432B Cases: (1) number of cases opened; (2) number of children represented; (3) number of adults represented; and, (4) other pertinent information requested by the County Manager.

E. Probation and Parole Violations: (1) number of cases opened, separated by probation and parole violation; and, (2) other pertinent information requested by the County Manager.

2. Attorney shall provide this information in a format approved by and acceptable to the County Manager.

3. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Attorney agrees to provide and maintain that information at no additional cost to County.

4. Attorney is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the Attorney should attempt to resolve the matter with the County Manager and, if necessary, the Board of County Commissioners.

PART H - INSURANCE

1. Attorney will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in the policy limits of at least \$500,000, during the term of this Agreement. Attorney will maintain workers compensation insurance as required by Nevada law. Attorney will provide proof of this insurance coverage to County during the term of this Agreement.

The policies must be written with an insurance carrier authorized to do this type of insurance in the State of Nevada. The premium expense for this coverage is the responsibility of the Attorney.

PART I - PRIVATE LAW PRACTICE

1. Attorney may maintain a private law practice and may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this Agreement. Attorney may, to the extent permitted by the Supreme Court Rules, Rules of Professional Conduct, and applicable law, represent clients in matters before boards and commissions of Lyon County. Attorney agrees not to file on behalf of, or represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners acts as governing body.

PART J – COMPENSATION

1. County agrees to pay to Attorney and Attorney agrees to accept as full compensation for the performance of legal services under this Agreement the sum of:

ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED DOLLARS (\$185,400.00) for Fiscal year 2017-2018, commencing July 1, 2017 and ending June 30, 2018, in equal monthly installments of:

FIFTEEN THOUSAND FOUR HUNDRED FIFTY DOLLARS \$15,450.00 due on or before the 5th of each month.

2. The parties may increase the contract amount for the subsequent two fiscal years by mutual agreement of the parties in writing and approved by the Lyon County Board of County Commissioners. In the event that the parties do not agree on an increase, the compensation shall remain as stated in Paragraph J.1, above.

3. Attorney may secure reimbursement from County for investigative, required expert or other services necessary for an adequate defense in any assigned matter in the manner set forth in NRS 7.135, 7.145 and 7.155.

4. Attorney understands that this Agreement is for public defender services pursuant to NRS 260.010 through NRS 266.080 and that the provisions as set forth in NRS 7.125 are not applicable, and Attorney is not entitled to any compensation or reimbursement pursuant to NRS 7.125.

5. The compensation specified in Paragraph J.1 is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, Attorney may seek compensation pursuant to NRS 7.125 in complex cases involving felonies, including excess fees for the reasons specified in NRS 7.125(4)(a)-(d), when Attorney is appointed to represent an indigent defendant in such matters and

the case involves special circumstances that justify additional compensation for the effort expended to provide an adequate defense. In lieu of additional compensation under this paragraph, the Court may also consider a reduction in Attorney's caseload until Attorney is done with the complex matter.

6. Mileage and travel expenses of Attorney are the responsibility of Attorney and County will not pay additional for mileage or travel.

PART K - INDEPENDENT CONTRACTOR

1. Attorney understands that this Agreement is for professional services as an independent contractor and does not create an employer/employee relationship. County does not control the means by which Attorney provides services. Attorney is not an employee of County and there will be no withholding of income tax or other taxes by County, no provision for workers compensation insurance by County, no group insurance benefits available to County employees, no retirement benefits, and no accumulation of vacation or sick leave or any other employee benefit available to Lyon County employees.

PART L - AMENDMENT/CANCELLATION/OPTION YEAR

1. The parties agree that this Agreement can only be amended by agreement of the parties in writing.

2. This Agreement may be terminated by either party after ninety (90) days written notice to the other party. Attorney serves at the pleasure of the Board of County Commissioners pursuant to NRS 266.010. This Agreement may be terminated for cause at any time. In the event of termination of this Agreement for any reason, the total compensation due Attorney shall be reduced to the proportionate number of days worked by Attorney.

3. This Agreement may be renewed for the additional terms of one (1), two (2) or three (3) years commencing July 1, 2020 at the same or different compensation, as agreed upon by the parties, unless canceled or terminated by the parties as provided herein. Any renewal shall be in writing and must be approved with the same formality as this Agreement.

PART M - ASSIGNMENT AND DELEGATION

1. County is contracting for the personal and professional services of Attorney. This Agreement or any portion thereof, is not assignable to any other Attorney without the express approval of the Board of County Commissioners.

2. Attorney shall have the authority to contract with and/or employ other qualified attorneys to assist in the performance of this Agreement without prior approval of County. The costs associated with the employment/contract with others shall be paid by Attorney. Attorney may not contract with or employ any other attorney who has a contract to provide public defender services or conflict defender services for Lyon County, except for a short duration, not to exceed ninety (90) days, when one of the Public Defenders is unable to perform because of illness or disability, and such arrangement is approved in writing by the County Manager.

3. Attorney agrees to indemnify and hold harmless County, its officers, agents, and employees from all damages or suits brought by or against any contractor or employee of Attorney related to the services provided by that contractor or employee pursuant to Part M, paragraph 2 of this Agreement.

PART N – CONFLICTS

1. Attorney realizes that there will be two other attorneys who will have executed a similar agreement and agrees to cooperate with the other attorneys to insure that all courts are adequately covered by one or more of the attorneys.

2. Attorney shall cooperate with the other two public defenders to ensure, to the extent possible under ethical considerations, that all cases are covered and that any conflicts are resolved by the three Public Defenders. Attorney is not entitled to additional compensation for conflict cases. Attorney is not obligated to provide additional attorneys should a case arise where there is an insufficient number of public defenders to ethically represent all defendants.

PART O - DISPUTE RESOLUTION

1. If any dispute arises over the interpretation of this Agreement or the performance of this Agreement, Attorney shall contact the County Manager and attempt to resolve the matter. If the County Manager and Attorney cannot agree, Attorney may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution.

2. Any action to enforce the terms of this Agreement must be brought in the Third Judicial District Court of the State of Nevada, in and for the County of Lyon.

PART P - ENTIRE AGREEMENT/GOVERNING LAW

1. This agreement constitutes the entire agreement between the parties and shall be interpreted according to Nevada law.

This Agreement is approved and entered into this 1st day of June, 2017.

LYON COUNTY

Barry Key
By: Chairman, Board of Lyon
County Commissioners

Attest:

Nikki Bryan
County Clerk

This Agreement is approved and entered into this 15 day of June, 2017.

[Signature]
AARON MOURITSEN

STATE OF NEVADA)
) ss.
COUNTY OF LYON)

On this 15th day of June, 2017, personally appeared before me, the undersigned Notary Public in and for said County of State, Aaron Mouritsen, known to me to be the person who executed the foregoing Agreement for the uses and purposes herein mentioned.

Margie F. Kassebaum
NOTARY PUBLIC



7/11/17

AGREEMENT FOR PUBLIC DEFENDER SERVICES
JULY 1, 2017 THROUGH JUNE 30, 2020

This Agreement is hereby made and entered into this 1st day of July, 2017, by and between KENNETH WARD, a Professional Corporation, hereinafter referred to as "Attorney" and Lyon County, a political subdivision of the State of Nevada, hereinafter referred to as "County."

PART A - APPOINTMENT AS PUBLIC DEFENDER

1. The Lyon County Board of County Commissioners shall appoint Attorney as one of three Public Defenders of Lyon County, pursuant to Lyon County Code 1.09.01 and NRS 260.010. The parties agree that approval of this Agreement by the Board of Commissioners constitutes appointment as Public Defender for a three (3) year period, commencing July 1, 2017 and ending June 30, 2020.

2. Attorney agrees that he is a Public Defender pursuant to Chapter 260 of Nevada Revised Statute and Lyon County Code 1.09.01.

PART B - ADULT CRIMINAL CASES

1. Upon assignment to an adult criminal case, Attorney agrees to perform the services of an attorney in the defense of indigent persons charged with a criminal offense.

2. In any case to which Attorney is assigned, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the proceedings, including sentencing. Attorney shall be required to represent the Defendant on any appeal to the Third Judicial District Court or the Nevada Supreme Court whether based upon a preliminary matter or final judgment.

4. Attorney agrees to provide full professional services for all matters in any Lyon County or regional drug court.

PART C - CAPITAL CASES

1. Attorney agrees to provide representation in all non-extraordinary cases when appointed. Consistent with the Nevada Supreme Court Rules (SCR), including SCR 250, Attorney will assist a SCR 250 qualified attorney in the representation of one (1) capital case each contract year without receiving additional payment under this agreement except as provided in Section J.4 below. The contract year is defined as July 1 through June 30, and the date is determined by when Attorney is appointed in the capital case. In the event Attorney is appointed to represent an indigent defendant in more than one capital case or assists a SCR 250 qualified attorney in more than one capital case in a contract year, Attorney agrees to provide such representation in those additional cases at the rate of ONE HUNDRED TWENTY-FIVE (\$125.00) per hour. Should any of the public defenders become capital case qualified pursuant to SCR 250, the attorney and county will negotiate

representation in the same manner as any other capital case certified attorney. Should an unforeseen circumstance arise in a capital or extraordinary case, Attorney agrees to immediately contact the Lyon County Manager and negotiate a responsible resolution.

PART D - JUVENILE COURT PROCEEDINGS AND PROCEEDINGS PURSUANT TO NRS 432B

1. Upon appointment to a juvenile case or a case arising under Chapter 432B of the Nevada Revised Statutes, either by Juvenile Master or the Court, Attorney agrees to perform the services of an attorney in the representation of such person.

2. In any case to which Attorney is appointed, Attorney shall prepare the investigation, trial preparation and defense which is required to provide a full professional representation of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the person at all stages of the proceedings including fact-finding and final disposition. Attorney shall be required to represent the person on appeal to the District Court or Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART E - PROBATION AND PAROLE REVOCATION PROCEEDINGS

1. If proceedings are commenced to revoke any probation or parole which was granted to a Defendant, the Attorney shall represent the Defendant at the probation revocation proceedings if the Court appoints Attorney on the case, or parole revocation proceedings if the Defendant requests Attorney's services or Attorney is appointed by a person authorized to so appoint.

2. In any case to which Attorney is appointed, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the probation and parole revocation proceedings. Attorney shall represent the Defendant on any appeal to the Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART F - OFFICE

1. Attorney agrees to staff and maintain an office in Lyon County, Nevada, independent from any office of another Public Defender contracting with Lyon County. Attorney may have space in the same building as another Public Defender provided that any office will be independent with the other Public Defenders such that there is no conflict of interest or violation of Supreme Court Rules or Rules of Professional Conduct governing conflicts of interest created by attorney's staff. Attorney agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office and District Attorney a phone number for use after hours in any emergency that may arise where Attorney's services are requested. Attorney agrees to cooperate with County to establish

at no additional cost to County a system whereby appointed defendants incarcerated in the Lyon County Jail can call the attorney at no charge.

2. The expense of office space, telephone, fax, computer, furniture, equipment, supplies, and secretarial services suitable for conduct of attorney's practice as required by this Agreement are the sole responsibility of Attorney. Attorney's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5).

PART G – REPORTING

1. Attorney shall report quarterly to the County Manager and Board of County Commissioners the following information:

A. Adult criminal cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor, and court); and, (3) other pertinent information requested by the County Manager.

B. Extraordinary Cases/Capital Cases: (1) Number of cases pending; (2) additional costs incurred and charged to County on the case; (3) other pertinent information requested by the County Manager.

C. Juvenile Cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor and court; (3) number of probation violations handled and resolved; (4) number of parole violations handled and resolved; and, (5) other pertinent information requested by the County Manager.

D. NRS 432B Cases: (1) number of cases opened; (2) number of children represented; (3) number of adults represented; and, (4) other pertinent information requested by the County Manager.

E. Probation and Parole Violations: (1) number of cases opened, separated by probation and parole violation; and, (2) other pertinent information requested by the County Manager.

2. Attorney shall provide this information in a format approved by and acceptable to the County Manager.

3. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Attorney agrees to provide and maintain that information at no additional cost to County.

4. Attorney is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the Attorney should attempt to resolve the matter with the County Manager and, if necessary, the Board of County Commissioners.

PART H - INSURANCE

1. Attorney will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in the policy limits of at least \$500,000, during the term of this Agreement. Attorney will maintain workers compensation insurance as required by Nevada law. Attorney will provide proof of this insurance coverage to County during the term of this Agreement.

The policies must be written with an insurance carrier authorized to do this type of insurance in the State of Nevada. The premium expense for this coverage is the responsibility of the Attorney.

PART I - PRIVATE LAW PRACTICE

1. Attorney may maintain a private law practice and may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this Agreement. Attorney may, to the extent permitted by the Supreme Court Rules, Rules of Professional Conduct, and applicable law, represent clients in matters before boards and commissions of Lyon County. Attorney agrees not to file on behalf of, or represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners acts as governing body.

PART J – COMPENSATION

1. County agrees to pay to Attorney and Attorney agrees to accept as full compensation for the performance of legal services under this Agreement the sum of:

ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED DOLLARS (\$185,400.00) for Fiscal year 2017-2018, commencing July 1, 2017 and ending June 30, 2018, in equal monthly installments of:

FIFTEEN THOUSAND FOUR HUNDRED FIFTY DOLLARS \$15,450.00 due on or before the 5th of each month.

2. The parties may increase the contract amount for the subsequent two fiscal years by mutual agreement of the parties in writing and approved by the Lyon County Board of County Commissioners. In the event that the parties do not agree on an increase, the compensation shall remain as stated in Paragraph J.1, above.

3. Attorney may secure reimbursement from County for investigative, required expert or other services necessary for an adequate defense in any assigned matter in the manner set forth in NRS 7.135, 7.145 and 7.155.

4. Attorney understands that this Agreement is for public defender services pursuant to NRS 260.010 through NRS 266.080 and that the provisions as set forth in NRS 7.125 are not applicable, and Attorney is not entitled to any compensation or reimbursement pursuant to NRS 7.125.

5. The compensation specified in Paragraph J.1 is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, Attorney may seek compensation pursuant to NRS 7.125 in complex cases involving felonies, including excess fees for the reasons specified in NRS 7.125(4)(a)-(d), when Attorney is appointed to represent an indigent defendant in such matters and

the case involves special circumstances that justify additional compensation for the effort expended to provide an adequate defense. In lieu of additional compensation under this paragraph, the Court may also consider a reduction in Attorney's caseload until Attorney is done with the complex matter.

6. Mileage and travel expenses of Attorney are the responsibility of Attorney and County will not pay additional for mileage or travel.

PART K - INDEPENDENT CONTRACTOR

1. Attorney understands that this Agreement is for professional services as an independent contractor and does not create an employer/employee relationship. County does not control the means by which Attorney provides services. Attorney is not an employee of County and there will be no withholding of income tax or other taxes by County, no provision for workers compensation insurance by County, no group insurance benefits available to County employees, no retirement benefits, and no accumulation of vacation or sick leave or any other employee benefit available to Lyon County employees.

PART L - AMENDMENT/CANCELLATION/OPTION YEAR

1. The parties agree that this Agreement can only be amended by agreement of the parties in writing.

2. This Agreement may be terminated by either party after ninety (90) days written notice to the other party. Attorney serves at the pleasure of the Board of County Commissioners pursuant to NRS 266.010. This Agreement may be terminated for cause at any time. In the event of termination of this Agreement for any reason, the total compensation due Attorney shall be reduced to the proportionate number of days worked by Attorney.

3. This Agreement may be renewed for the additional terms of one (1), two (2) or three (3) years commencing July 1, 2020 at the same or different compensation, as agreed upon by the parties, unless canceled or terminated by the parties as provided herein. Any renewal shall be in writing and must be approved with the same formality as this Agreement.

PART M - ASSIGNMENT AND DELEGATION

1. County is contracting for the personal and professional services of Attorney. This Agreement or any portion thereof, is not assignable to any other Attorney without the express approval of the Board of County Commissioners.

2. Attorney shall have the authority to contract with and/or employ other qualified attorneys to assist in the performance of this Agreement without prior approval of County. The costs associated with the employment/contract with others shall be paid by Attorney. Attorney may not contract with or employ any other attorney who has a contract to provide public defender services or conflict defender services for Lyon County, except for a short duration, not to exceed ninety (90) days, when one of the Public Defenders is unable to perform because of illness or disability, and such arrangement is approved in writing by the County Manager.

3. Attorney agrees to indemnify and hold harmless County, its officers, agents, and employees from all damages or suits brought by or against any contractor or employee of Attorney related to the services provided by that contractor or employee pursuant to Part M, paragraph 2 of this Agreement.

PART N – CONFLICTS

1. Attorney realizes that there will be two other attorneys who will have executed a similar agreement and agrees to cooperate with the other attorneys to insure that all courts are adequately covered by one or more of the attorneys.

2. Attorney shall cooperate with the other two public defenders to ensure, to the extent possible under ethical considerations, that all cases are covered and that any conflicts are resolved by the three Public Defenders. Attorney is not entitled to additional compensation for conflict cases. Attorney is not obligated to provide additional attorneys should a case arise where there is an insufficient number of public defenders to ethically represent all defendants.

PART O - DISPUTE RESOLUTION

1. If any dispute arises over the interpretation of this Agreement or the performance of this Agreement, Attorney shall contact the County Manager and attempt to resolve the matter. If the County Manager and Attorney cannot agree, Attorney may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution.

2. Any action to enforce the terms of this Agreement must be brought in the Third Judicial District Court of the State of Nevada, in and for the County of Lyon.

PART P - ENTIRE AGREEMENT/GOVERNING LAW

1. This agreement constitutes the entire agreement between the parties and shall be interpreted according to Nevada law.

This Agreement is approved and entered into this 1st day of June, 2017.

LYON COUNTY

B. J. Huggins

By: Chairman, Board of Lyon
County Commissioners

Attest:

Nikki Bryan
County Clerk

This Agreement is approved and entered into this 8th day of June, 2017.

Kenneth Ward

KENNETH WARD, President
KENNETH WARD, a Professional
Corporation

STATE OF NEVADA)
) ss.
COUNTY OF LYON)

On this 8th day of June, 2017, personally appeared before me, the undersigned Notary Public in and for said County of State, Kenneth Ward, known to me to be the person who executed the foregoing Agreement for the uses and purposes herein mentioned.

Margie F. Kassebaum
NOTARY PUBLIC



7/1/17

AGREEMENT FOR PUBLIC DEFENDER SERVICES
JULY 1, 2017 THROUGH JUNE 30, 2020

This Agreement is hereby made and entered into this 1st day of July, 2017, by and between WAYNE A. PEDERSON, a Professional Corporation, hereinafter referred to as "Attorney" and Lyon County, a political subdivision of the State of Nevada, hereinafter referred to as "County."

PART A - APPOINTMENT AS PUBLIC DEFENDER

1. The Lyon County Board of County Commissioners shall appoint Attorney as one of three Public Defenders of Lyon County, pursuant to Lyon County Code 1.09.01 and NRS 260.010. The parties agree that approval of this Agreement by the Board of Commissioners constitutes appointment as Public Defender for a three (3) year period, commencing July 1, 2017 and ending June 30, 2020.

2. Attorney agrees that he is a Public Defender pursuant to Chapter 260 of Nevada Revised Statute and Lyon County Code 1.09.01.

PART B - ADULT CRIMINAL CASES

1. Upon assignment to an adult criminal case, Attorney agrees to perform the services of an attorney in the defense of indigent persons charged with a criminal offense.

2. In any case to which Attorney is assigned, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the proceedings, including sentencing. Attorney shall be required to represent the Defendant on any appeal to the Third Judicial District Court or the Nevada Supreme Court whether based upon a preliminary matter or final judgment.

4. Attorney agrees to provide full professional services for all matters in any Lyon County or regional drug court.

PART C - CAPITAL CASES

1. Attorney agrees to provide representation in all non-extraordinary cases when appointed. Consistent with the Nevada Supreme Court Rules (SCR), including SCR 250, Attorney will assist a SCR 250 qualified attorney in the representation of one (1) capital case each contract year without receiving additional payment under this agreement except as provided in Section J.4 below. The contract year is defined as July 1 through June 30, and the date is determined by when Attorney is appointed in the capital case. In the event Attorney is appointed to represent an indigent defendant in more than one capital case or assists a SCR 250 qualified attorney in more than one capital case in a contract year, Attorney agrees to provide such representation in those additional cases at the rate of ONE HUNDRED TWENTY-FIVE (\$125.00) per hour. Should any of the public

defenders become capital case qualified pursuant to SCR 250, the attorney and county will negotiate representation in the same manner as any other capital case certified attorney. Should an unforeseen circumstance arise in a capital or extraordinary case, Attorney agrees to immediately contact the Lyon County Manager and negotiate a responsible resolution.

PART D - JUVENILE COURT PROCEEDINGS AND PROCEEDINGS PURSUANT TO NRS 432B

1. Upon appointment to a juvenile case or a case arising under Chapter 432B of the Nevada Revised Statutes, either by Juvenile Master or the Court, Attorney agrees to perform the services of an attorney in the representation of such person.

2. In any case to which Attorney is appointed, Attorney shall prepare the investigation, trial preparation and defense which is required to provide a full professional representation of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the person at all stages of the proceedings including fact-finding and final disposition. Attorney shall be required to represent the person on appeal to the District Court or Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART E - PROBATION AND PAROLE REVOCATION PROCEEDINGS

1. If proceedings are commenced to revoke any probation or parole which was granted to a Defendant, the Attorney shall represent the Defendant at the probation revocation proceedings if the Court appoints Attorney on the case, or parole revocation proceedings if the Defendant requests Attorney's services or Attorney is appointed by a person authorized to so appoint.

2. In any case to which Attorney is appointed, Attorney shall prepare the criminal investigation, trial preparation and defense which is required to provide a full professional defense of the case.

3. In any case which is to be performed by Attorney, Attorney shall represent the Defendant at all stages of the probation and parole revocation proceedings. Attorney shall represent the Defendant on any appeal to the Nevada Supreme Court, whether based upon a preliminary matter or final judgment.

PART F - OFFICE

1. Attorney agrees to staff and maintain an office in Lyon County, Nevada, independent from any office of another Public Defender contracting with Lyon County. Attorney may have space in the same building as another Public Defender provided that any office will be independent with the other Public Defenders such that there is no conflict of interest or violation of Supreme Court Rules or Rules of Professional Conduct governing conflicts of interest created by attorney's staff. Attorney agrees to furnish to the Justice Courts, District Courts, Lyon County Sheriff's Office and District Attorney a phone number for use after hours in any emergency that may

arise where Attorney's services are requested. Attorney agrees to cooperate with County to establish at no additional cost to County a system whereby appointed defendants incarcerated in the Lyon County Jail can call the attorney at no charge.

2. The expense of office space, telephone, fax, computer, furniture, equipment, supplies, and secretarial services suitable for conduct of attorney's practice as required by this Agreement are the sole responsibility of Attorney. Attorney's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5).

PART G – REPORTING

1. Attorney shall report quarterly to the County Manager and Board of County Commissioners the following information:

A. Adult criminal cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor, and court); and, (3) other pertinent information requested by the County Manager.

B. Extraordinary Cases/Capital Cases: (1) Number of cases pending; (2) additional costs incurred and charged to County on the case; (3) other pertinent information requested by the County Manager.

C. Juvenile Cases: (1) number of cases opened; (2) types of offenses (with a breakdown of felony/misdemeanor and court; (3) number of probation violations handled and resolved; (4) number of parole violations handled and resolved; and, (5) other pertinent information requested by the County Manager.

D. NRS 432B Cases: (1) number of cases opened; (2) number of children represented; (3) number of adults represented; and, (4) other pertinent information requested by the County Manager.

E. Probation and Parole Violations: (1) number of cases opened, separated by probation and parole violation; and, (2) other pertinent information requested by the County Manager.

2. Attorney shall provide this information in a format approved by and acceptable to the County Manager.

3. If any State statute in effect now or hereinafter enacted requires public defenders to provide certain information or reports, Attorney agrees to provide and maintain that information at no additional cost to County.

4. Attorney is not required to provide any information which would compromise client confidentiality or violate any laws or rules of professional conduct. In case of a dispute, the Attorney should attempt to resolve the matter with the County Manager and, if necessary, the Board of County Commissioners.

PART H - INSURANCE

1. Attorney will maintain adequate liability insurance, including errors and omissions coverage and general liability coverage, in the policy limits of at least \$500,000, during the term of this Agreement. Attorney will maintain workers compensation insurance as required by Nevada law.

Attorney will provide proof of this insurance coverage to County during the term of this Agreement. The policies must be written with an insurance carrier authorized to do this type of insurance in the State of Nevada. The premium expense for this coverage is the responsibility of the Attorney.

PART I - PRIVATE LAW PRACTICE

1. Attorney may maintain a private law practice and may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this Agreement. Attorney may, to the extent permitted by the Supreme Court Rules, Rules of Professional Conduct, and applicable law, represent clients in matters before boards and commissions of Lyon County. Attorney agrees not to file on behalf of, or represent clients in any lawsuits against Lyon County, its officers, employees, or agents, or entities in which the Board of County Commissioners acts as governing body.

PART J – COMPENSATION

1. County agrees to pay to Attorney and Attorney agrees to accept as full compensation for the performance of legal services under this Agreement the sum of:

ONE HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED DOLLARS (\$185,400.00) for Fiscal year 2017-2018, commencing July 1, 2017 and ending June 30, 2018, in equal monthly installments of:

FIFTEEN THOUSAND FOUR HUNDRED FIFTY DOLLARS \$15,450.00 due on or before the 5th of each month.

2. The parties may increase the contract amount for the subsequent two fiscal years by mutual agreement of the parties in writing and approved by the Lyon County Board of County Commissioners. In the event that the parties do not agree on an increase, the compensation shall remain as stated in Paragraph J.1, above.

3. Attorney may secure reimbursement from County for investigative, required expert or other services necessary for an adequate defense in any assigned matter in the manner set forth in NRS 7.135, 7.145 and 7.155.

4. Attorney understands that this Agreement is for public defender services pursuant to NRS 260.010 through NRS 266.080 and that the provisions as set forth in NRS 7.125 are not applicable, and Attorney is not entitled to any compensation or reimbursement pursuant to NRS 7.125.

5. The compensation specified in Paragraph J.1 is in lieu of the statutorily prescribed fees codified in NRS 7.125. However, Attorney may seek compensation pursuant to NRS 7.125 in complex cases involving felonies, including excess fees for the reasons specified in NRS

7.125(4)(a)-(d), when Attorney is appointed to represent an indigent defendant in such matters and the case involves special circumstances that justify additional compensation for the effort expended to provide an adequate defense. In lieu of additional compensation under this paragraph, the Court may also consider a reduction in Attorney's caseload until Attorney is done with the complex matter.

6. Mileage and travel expenses of Attorney are the responsibility of Attorney and County will not pay additional for mileage or travel.

PART K - INDEPENDENT CONTRACTOR

1. Attorney understands that this Agreement is for professional services as an independent contractor and does not create an employer/employee relationship. County does not control the means by which Attorney provides services. Attorney is not an employee of County and there will be no withholding of income tax or other taxes by County, no provision for workers compensation insurance by County, no group insurance benefits available to County employees, no retirement benefits, and no accumulation of vacation or sick leave or any other employee benefit available to Lyon County employees.

PART L - AMENDMENT/CANCELLATION/OPTION YEAR

1. The parties agree that this Agreement can only be amended by agreement of the parties in writing.

2. This Agreement may be terminated by either party after ninety (90) days written notice to the other party. Attorney serves at the pleasure of the Board of County Commissioners pursuant to NRS 266.010. This Agreement may be terminated for cause at any time. In the event of termination of this Agreement for any reason, the total compensation due Attorney shall be reduced to the proportionate number of days worked by Attorney.

3. This Agreement may be renewed for the additional terms of one (1), two (2) or three (3) years commencing July 1, 2020 at the same or different compensation, as agreed upon by the parties, unless canceled or terminated by the parties as provided herein. Any renewal shall be in writing and must be approved with the same formality as this Agreement.

PART M - ASSIGNMENT AND DELEGATION

1. County is contracting for the personal and professional services of Attorney. This Agreement or any portion thereof, is not assignable to any other Attorney without the express approval of the Board of County Commissioners.

2. Attorney shall have the authority to contract with and/or employ other qualified attorneys to assist in the performance of this Agreement without prior approval of County. The costs associated with the employment/contract with others shall be paid by Attorney. Attorney may not contract with or employ any other attorney who has a contract to provide public defender services or conflict defender services for Lyon County, except for a short duration, not to exceed ninety (90) days, when one of the Public Defenders is unable to perform because of illness or disability, and such

arrangement is approved in writing by the County Manager.

3. Attorney agrees to indemnify and hold harmless County, its officers, agents, and employees from all damages or suits brought by or against any contractor or employee of Attorney related to the services provided by that contractor or employee pursuant to Part M, paragraph 2 of this Agreement.

PART N – CONFLICTS

1. Attorney realizes that there will be two other attorneys who will have executed a similar agreement and agrees to cooperate with the other attorneys to insure that all courts are adequately covered by one or more of the attorneys.

2. Attorney shall cooperate with the other two public defenders to ensure, to the extent possible under ethical considerations, that all cases are covered and that any conflicts are resolved by the three Public Defenders. Attorney is not entitled to additional compensation for conflict cases. Attorney is not obligated to provide additional attorneys should a case arise where there is an insufficient number of public defenders to ethically represent all defendants.

PART O - DISPUTE RESOLUTION

1. If any dispute arises over the interpretation of this Agreement or the performance of this Agreement, Attorney shall contact the County Manager and attempt to resolve the matter. If the County Manager and Attorney cannot agree, Attorney may request that the matter be brought before the Board of County Commissioners for discussion and possible resolution.

2. Any action to enforce the terms of this Agreement must be brought in the Third Judicial District Court of the State of Nevada, in and for the County of Lyon.

PART P - ENTIRE AGREEMENT/GOVERNING LAW

1. This agreement constitutes the entire agreement between the parties and shall be interpreted according to Nevada law.

This Agreement is approved and entered into this 1st day of June, 2017.

LYON COUNTY

Bob Kelly
By: Chairman, Board of Lyon
County Commissioners

Attest:

Nikki Bryan
County Clerk

This Agreement is approved and entered into this 13th day of June, 2017.

Wayne A. Pederson
Wayne A. Pederson, President
Wayne A. Pederson, a Professional
Corporation

STATE OF NEVADA)
) ss.
COUNTY OF LYON)

On this 13th day of June, 2017, personally appeared before me, the undersigned Notary Public in and for said County of State, Wayne A. Pederson, known to me to be the person who executed the foregoing Agreement for the uses and purposes herein mentioned.

Margie F. Kassebaum
NOTARY PUBLIC



CONTRACT FOR PROFESSIONAL SERVICES

Between
Nye County, Nevada
and
Contractor

For
PUBLIC DEFENDER SERVICES

WHEREAS, Nye County is a political subdivision of the State of Nevada, and is required to provide for indigent legal services; and

WHEREAS, Nye County desires to provide public defender services, pursuant to the provisions of Chapter 2.48 of the Nye County Code, to those indigents involved in the criminal courts in Nye County through the appointment of a consortium of attorneys acting independently and separately; and

WHEREAS, it is deemed that the services of Attorney herein specified are both necessary and desirable and in the best interests of Nye County; and

WHEREAS, Attorney represents that he is licensed to practice law in Nevada and in good status with the State Bar, and is also duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

Now, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. **EFFECTIVE DATE OF CONTRACT.** Upon execution by both parties, the contract will be effective for the period of [REDACTED], 2017 through [REDACTED], 2018.

2. **WORK TO BE PERFORMED.** The parties agree that the services to be performed are as follows:

A. The Attorney will represent adult criminal defendants that a court in Nye County has determined to be indigent, except for capital cases. The representation will include all stages of the criminal proceedings including direct appeals, revocation of probation or parole and specialty courts. The Attorney will be primary counsel for courts located in Pahrump. Attorney further agrees to handle conflict cases that may arise in Tonopah and Beatty if no other consortium counsel is available for appointment.

B. The Attorney will provide legal representation for a child alleged to be delinquent or in need of supervision when a Court orders the appointment in accord with NRS Chapter 62.

C. Attorney agrees to perform the services of an attorney for a child, parent or other person responsible for a child's welfare when that parent or other person is alleged to have abused or neglected that child and the Court orders the appointment of Attorney pursuant to NRS 432B.420, or any subsequent proceedings under NRS Chapter 128.

D. Attorney agrees to attend Justice Court 72-hour in-custody hearings on a rotating basis with other consortium counsel as scheduled.

E. Attorney shall continue to perform services for any appointed client for which said attorney is counsel of record on the effective date of this agreement. Compensation for such services performed after the effective date of this agreement shall be paid in accordance with this agreement only.

F. Attorney agrees to provide legal services to Juvenile Court of Nye County.

3. STANDARD OF WORK.

A. In providing legal representation as set forth in Section Two, Attorney must provide those services in a professional, competent and effective manner. This includes but is not limited to interviewing the client, appearing at all Court hearings or providing coverage for those Court hearings, filing all necessary motions or other legal documents and performing or supervising any necessary investigations.

B. Attorney shall conduct representation of clients in such manner so as not to create conflicts with other attorneys within the consortium. If at any time during the representation of a person the Attorney has reason to believe that there is a legal ethical conflict with that representation, the Attorney must immediately notify the Court and the County Manager or his or her designee.

C. Attorney agrees to furnish to the Justice Courts, District Courts and District Attorney, a telephone number for use after normal office hours in any emergency that may arise in which Attorney's services are requested pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies, routine investigative costs, travel to court and secretarial services suitable for the conduct of attorney's practice as required by this contract are the responsibility of Attorney and are part of Attorney's compensation paid pursuant to Section 4 of this Contract.

D. Attorney shall cooperate with other counsel within the consortium, to the extent possible under ethical considerations, to ensure all cases are covered and any conflicts are resolved by the consortium of attorneys. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

4. PAYMENT FOR SERVICES.

A. Nye County agrees to pay and Attorney agrees to accept as full compensation for the performance of legal services under this Agreement the sum of _____ Dollars (\$_____). The County will make the payment to attorney upon the effective date of the contract.

B. Attorney may secure reimbursement for extraordinary investigative costs, expert witness fees or other necessary services if so ordered by a Court. Attorney will not be reimbursed for travel expenses or any form of per diem. Any payment for extraordinary costs or fees shall be paid only when submitted and approved by the court ordering said extraordinary services.

C. The compensation specified above is for services as a public defender and is in lieu of the statutorily prescribed fees codified in NRS 7.125. In the event Attorney shall be appointed to represent a client on a matter not provided for in this agreement, Attorney agrees to provide representation to each additional client at the rate and in accordance with the provisions of NRS 7.125.

D. Attorney shall be paid for any time and services on cases for which Attorney is counsel of record at the time of the effective date of this agreement at the existing rates. All compensation for any services provided as appointed counsel after the effective date of this agreement shall be in accordance with this agreement only. Attorney shall submit a voucher for compensation of all fees and services earned prior to the effective date of this agreement to the appointing court within ten (10) business days after the effective date of this agreement.

5. INDEPENDENT CONTRACTOR STATUS.

A. The parties agree that Attorney shall have the status of and shall perform all work under this contract as an independent contractor. Nothing herein contained shall be construed as granting to Nye County the power or right to control the means by which Attorney provides legal services under this agreement. The parties also agree Attorney is not a Nye County employee and that there shall be no:

- (1) Withholding of income taxes by Nye County;
- (2) Industrial insurance coverage provided by Nye County;
- (3) Participation in group insurance plans which may be available to employees of the County;
- (4) Participation or contributions by either the Attorney or Nye County to the public employees' retirement system;
- (5) Accumulation of vacation leave or sick leave provided by Nye County;
- (6) Unemployment compensation coverage provided by Nye County; or
- (7) Any other benefit granted to employees of Nye County

B. Attorney may maintain a private law practice and may engage in the private practice of law that does not conflict with Attorney's professional services required pursuant to this Agreement.

C. Attorney agrees that acceptance of this appointment is as a public defender pursuant to Chapter 260 of the Nevada Revised Statutes and Chapter 2.48 of the Nye County Code.

6. INDUSTRIAL INSURANCE.

Attorney agrees to maintain required workers compensation coverage pursuant to NRS chapters 616A through 616D, throughout the entire term of the contract. Attorney must provide either a certificate of insurance or an affidavit indicating that he/she is: (i) In accordance with the provisions of NRS 616B.659, or has not elected to be included within the terms, conditions and provisions of NRS chapters 616A through 616D, inclusive; and (ii) Is otherwise in compliance with those terms, conditions and provisions.

7. PROFESSIONAL LICENSING AND LIABILITY INSURANCE.

A. Attorney agrees to maintain his or her professional license to practice law in active status and good standing for the State of Nevada during the term of this Contract. Failure to maintain this license will result in immediate termination of this contract. Attorney shall notify the County Manager if he or she is brought before the Nevada State Bar on a charge of professional misconduct for services performed pursuant to this agreement or in his or her private practice or if he or she is arrested for a Crime.

B. Attorney also agrees to acquire and maintain professional liability insurance, including errors and omissions coverage, in the minimum amount of \$250,000 per claim and \$500,000 aggregate during the term of this contract. The insurance cost is the sole responsibility of the Attorney. Copies of both the license and certificate of professional liability insurance must be sent to the Nye County Manager.

8. TERMINATION OF CONTRACT.

A. Either party may revoke this contract without cause, provided that a revocation shall not be effective until ninety (90) calendar days after the party has served written notice upon the other party. All monies due and owing up to the point of termination shall be paid by Nye County, and all pending cases that were produced for this contract must be immediately turned over to the Court for re-assignment. If terminated, the total compensation of the Attorney will be reduced to the proportionate number of days worked by the Attorney. The Attorney must reimburse the County for any funds received to which they are not entitled due to the termination.

B. Should Attorney be unable to perform any or all of his duties by reason of illness, accident or other cause beyond his control, and the disability exists for a period beyond ten (10) judicial days, Attorney must provide, at their own cost, a substitute attorney (which could include other contract attorneys) to perform the duties of the Attorney during the term of disability. If the disability is permanent, irreparable, or of such nature as to make the performance of his duties impossible, or the disability continues beyond forty (40) judicial days, the County may, at its discretion, terminate this agreement, and the respective duties, rights and obligations of this agreement will terminate.

9. NON ASSIGNMENT.

The County is contracting for the personal and professional services of the Attorney. This contract may not be assigned or delegated to a third party without the approval of the County Manager or his or her designee. If the Attorney wishes to have a substitute attorney appear for him/her due to vacation, illness or personal family matter, then Attorney may do so and is responsible for paying for the substitute attorney. The use of a substitute is intended for very short durations on a non-recurring basis. Any use of a substitute attorney on a regular or recurring basis shall constitute an assignment or delegation unless agreed to by the County Manager or his or her designee.

10. REPORTING REQUIREMENTS.

A. Attorney shall make an annual report on or before July 31st of each calendar year to the County Manager covering all cases handled by his or her office during the preceding year in accordance with the provisions of NRS 260.070. Said report shall include a list, by name of defendant, of all cases assigned to Attorney during the preceding fiscal year or current active cases previously assigned to Attorney indicating for each case the type of offenses involved and the manner and date of disposition.

B. Attorney shall maintain records of cases assigned and report such information on or before the 15th day of each month for activities during the preceding calendar month. Reports shall include, but not limited to tracking of number of cases opened and closed, type of offenses, manner of disposition and such other pertinent information as requested by the County Manager. Attorney shall provide such other information as may be required by statute, court order or request from any State agency.

11. CONSTRUCTION OF CONTRACT.

This contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this contract shall be resolved by binding arbitration, with an arbiter to be selected from a list maintained by the Nevada Supreme Court of senior judges, with both parties to share the costs for the senior judge and any other related Court fees. Each party is responsible for their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this contract.

12. DELEGATION OF AUTHORITY.

The County Manager may by contract delegate the authority to oversee and implement the provisions of this contract to any attorney within the consortium, which attorney shall be designated as the program coordinator. The program coordinator shall work with the County Manager and courts assigning cases on a rotating basis among the contract Attorneys to ensure an equitable distribution; may order case reporting summaries from attorneys; approval of and overseeing the use of substitute attorneys for the contract Attorneys, and; all other properly related matters. The County reserves the right to maintain ultimate control over the terms and provisions of this Contract.

13. COMPLIANCE WITH APPLICABLE LAWS.

Attorney shall fully and completely comply with all applicable local state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including court rules and regulations.

14. INDEMNIFICATION.

Attorney agrees to indemnify and save and hold the County, its officers, agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Attorney or Attorney's agents or employees.

15. MODIFICATION OF CONTRACT.

This contract constitutes the entire contract between the parties and may only be modified by a written amendment signed by both parties upon approval of the Nye County Board of County Commissioners.

16. NOTICES.

All notices or other information that is to be submitted to a party shall be sent to the following addresses:

Nye County Manager
P.O.153
Tonopah, NV 89049

IN WITNESS WHEREOF, the parties hereto have caused this contract for legal services for the Indigent Legal Services to be signed and intend to be legally bound thereby.

NYE COUNTY

CONTRACTOR

Pamela Webster
County Manager

Date:

Date:

CHAPTER 2.80

COUNTY PUBLIC DEFENDER'S OFFICE

SECTION:

- 2.80.010: Creation Of Office; Term
- 2.80.015: Definitions
- 2.80.020: Qualifications; Representation Of Indigent Persons Charged
With Public Offense
- 2.80.030: Compensation; Deputies And Employees; Private Practice Of
Law; Office Expenses; Salaries
- 2.80.040: Oath
- 2.80.050: Representation; Termination
- 2.80.060: Interview; Representation Of Indigent Persons
- 2.80.070: Annual Reports; Contents
- 2.80.080: Reports To Legislative Commission
- 2.80.090: Appointments By The Magistrate
- 2.80.100: Disclaimer Of County Duty

2.80.010: CREATION OF OFFICE; TERM:

- A. Pursuant to chapter 260 of Nevada Revised Statutes (NRS), the office of the Pershing County public defender is hereby created.
- B. The public defender shall serve at the pleasure of the board of Pershing County commissioners.
- C. The public defender and the deputy public defender(s) may practice law during hours that he/she is not working for the board of county commissioners as set forth in Nevada Revised Statutes 260.040(4) and may not use county equipment, supplies or facilities for the private practice of law. The staff of the public defender's office may not assist with the private practice of law during office hours or use office equipment, facilities, or supplies in assisting with the private practice of law.

- D. The public defender's office hours are from eight o'clock (8:00) A.M. to five o'clock (5:00) P.M. Monday through Friday, excluding holidays. (Ord. 304, 2013)

2.80.015: **DEFINITIONS:** As used in this chapter, the following terms shall have the following meanings:

CHILD PROTECTIVE PROCEEDINGS:

A. Any proceeding in which a child, as defined in Nevada Revised Statutes 432B.040, is alleged to have been abused or neglected pursuant to Nevada Revised Statutes 432B that brings the child and the responsible person(s) under the jurisdiction of juvenile court and includes a proceeding to terminate the rights of any parent; and

B. Any proceeding brought to terminate the rights of a parent.

HOUSEHOLD ASSETS AND INCOME:

Includes all property owned and gross monthly income received by any household member.

HOUSEHOLD MEMBER:

Shall include any adults living in the home who provide support to the household.

INDIGENT PERSON:

A. Any person (or in a juvenile matter, a child's parent or guardian), who is not able, financially, to secure the services of legal counsel by means of his present or reasonably anticipated resources, considering the seriousness, need, and urgency of the matter, the difficulties or intricacies of the issues involved, and the financial circumstances of the applicant.

B. Any child, as defined by Nevada Revised Statutes 62A.030, whose parent or guardian does not retain an attorney for the child and is not likely to do so. (Any parent or guardian who is not indigent and who does not retain an attorney for the child shall be charged a fee pursuant to section 2.80.090 of this chapter.)

JUVENILE MATTER: Any proceeding in which the juvenile is alleged:
a) to have committed a delinquent act; b) to have committed a truancy; c) to have been incorrigible; or d) to have committed any act that brings the juvenile under the jurisdiction of the juvenile court.

MAGISTRATE: Any officer specified in Nevada Revised Statutes 169.095 and any hearing master appointed by the district court. (Ord. 304, 2013)

2.80.020: QUALIFICATIONS; REPRESENTATION OF INDIGENT PERSONS CHARGED WITH PUBLIC OFFENSE:

A. The public defender shall be:

1. A qualified attorney licensed to practice law in the state of Nevada; and
2. A resident of Pershing County.

B. The public defender shall represent without charge:

1. All indigent persons who are appointed counsel by a magistrate pursuant to section 2.80.090 of this chapter;
2. All persons who are either ordered to attend the drug court program by the district court or who are admitted into the drug court program;
3. All persons who are subject to a Nevada Revised Statutes chapter 432B proceeding or any parent against whom the state of Nevada is seeking termination of parental rights; and
4. When ordered to do so by a court of competent jurisdiction, any person alleged to be mentally ill. (Ord. 304, 2013)

2.80.030: COMPENSATION; DEPUTIES AND EMPLOYEES; PRIVATE PRACTICE OF LAW; OFFICE EXPENSES; SALARIES:

A. The compensation of the public defender, the deputy public defender(s), and the secretarial staff shall be fixed by the board of county commissioners in accordance with budgetary constraints.

- B. Subject to prior approval of the board of county commissioners through the budgeting process, the public defender may request that the court authorize the expenditure of funds, not to exceed the amount authorized by the budget, for investigators, expert witnesses, and other services that may be necessary to enable the public defender to carry out the responsibilities of defending its clients. The public defender may appoint deputies and support staff, with the approval of the board of county commissioners. Any appointment made pursuant to this section must not be construed to confer upon the appointee policymaking authority for the office of the public defender or Pershing County.
- C. The compensation for services authorized under subsection B of this section shall be fixed by the board of county commissioners during the budgeting process. Any augments of the budgetary amount must be sought before the county commissioners.
- D. As set forth in section 2.80.010 of this chapter, the public defender and his deputies and assistant attorneys may engage in the private practice of law while employed in the office of public defender on vacation and during nonworking hours. A public defender and deputy public defender must be qualified to practice law in this state through licensure with the Nevada State Bar Association or through rule of the Nevada supreme court.
- E. The board of county commissioners shall provide office space, furniture, and equipment for the use of the public defender suitable for the conduct of the business of his office. The public defender shall be required to maintain a budget for office supplies, telephone lines, fax lines, and other expenses. In any case, funds for all charges, costs or cash allowances must first have been authorized pursuant to provisions within the public defender's budget, or otherwise authorized and made available by the board of Pershing County commissioners.
- F. All costs, salaries and expenses entailed in the operation of the office of the public defender shall be borne by Pershing County, subject to the prior approval of the board of county commissioners. (Ord. 304, 2013)

2.80.040: **OATH:** Before entering upon the duties of their offices, the public defender and all assistants and deputies shall take the constitutional oath of office administered by the clerk of the court or a judicial officer. (Ord. 304, 2013)

2.80.050: REPRESENTATION; TERMINATION: A defendant whom the public defender is assigned and appointed to represent, shall be represented at every critical stage of the proceedings from initial appointment by the court, unless, during the proceedings, a conflict of interest is determined to exist by a court of competent jurisdiction. If a court is satisfied that the defendant is financially able to obtain counsel, the court may terminate the appointment of the public defender or order payment of fees and/or expenses as provided in section 2.80.090 of this chapter. If during the course of criminal proceedings, including appeal, a court finds that a defendant is financially unable to pay retained counsel, the court may appoint the public defender to represent said defendant. (Ord. 304, 2013)

2.80.060: INTERVIEW; REPRESENTATION OF INDIGENT PERSONS:

- A. The public defender may, prior to being designated as counsel for that person, interview an indigent person who has been arrested and is scheduled to appear in court to be advised or arraigned on a charge alleging the commission of a public offense.
- B. When representing an indigent person, the public defender shall:
 - 1. Counsel and defend him, if he is held in custody and charged with a public offense, or in insanity or incompetency proceedings, or in any other proper case at every stage of the proceedings following such designation by the appropriate magistrate.
 - 2. Prosecute any appeals or other remedies before or after conviction or commitment which he considers to be in the interests of justice. (Ord. 304, 2013)

2.80.070: ANNUAL REPORTS; CONTENTS:

- A. The public defender shall make annual reports to the board of county commissioners covering all cases handled by his office during the preceding calendar year. Such reports shall be in writing in a form approved by the county and submitted not later than February 1 of the following year.
- B. Such report shall contain any and all information requested by the board of county commissioners and shall include at least the following information:
 - 1. The number of new cases received during the report period;

2. The number of cases closed during the report period;
3. The dollar amount of all attorney fees levied upon public defender clients;
4. The dollar amount of all revenue collected during the report period; and
5. The number of cases received during the report period consisting of the following:
 - a. Felonies.
 - b. Gross misdemeanors.
 - c. Misdemeanors.
 - d. Municipal ordinance violations.
 - e. Parole violations.
 - f. Modifications of probation or sentence.
 - g. Miscellaneous proceedings.
 - h. Juvenile proceedings.
 - i. Insanity hearings.
 - j. Probation revocations.
 - k. Supreme court appeals.
 - l. District court appeals.
 - m. Extradition proceedings.
 - n. Postconviction proceedings.
 - o. Child protective proceedings.
 - p. Drug court proceedings.
 - q. Guardianship proceedings. (Ord. 304, 2013)

2.80.080: REPORTS TO LEGISLATIVE COMMISSION: The public defender shall submit such reports to the legislative commission as the regulations of the legislative commission require. (Ord. 304, 2013)

2.80.090: APPOINTMENTS BY THE MAGISTRATE:

- A. Any individual appearing before the magistrate on the following matters may make appointment to have counsel appointed:
1. All criminal matters in which the magistrate deems that the appointment of counsel for the defendant is warranted;
 2. All juvenile matters in which the magistrate deems that the appointment of counsel for the juvenile is warranted;
 3. All guardianships involving the public guardian in which the magistrate deems that the appointment of counsel for the proposed adult ward is warranted; and
 4. All child protective proceedings brought before the district court for hearing in which the magistrate deems that the appointment of counsel for the parent(s) is warranted.
- B. Prior to making an appointment under subsection A of this section, the magistrate shall:
1. Require the defendant to make application for appointment by filling out a sworn declaration of assets and income on a standardized form, with the exception of cases involving a ward under a guardianship proceeding;
 2. Based upon the affidavit, the court shall make finding as to the indigency of the individual based upon the guidelines established by resolution of the commissioners or by the interlocal agreement if combined with more than one county.
 3. Unless the provisions of subsection B4 of this section apply, on a matter involving a criminal charge or a child protective proceeding, if the court determines an individual is indigent pursuant to the guidelines, the court may enter an order appointing the public defender. If the court issues an order, the court shall order the defendant to pay a fee to the court for use of the services provided by the public defender, as follows: two hundred fifty dollars (\$250.00) for all mis-

demeanor charges and 432B cases; five hundred dollars (\$500.00) for all gross misdemeanor and felony cases.

4. On a matter involving a criminal charge or child protective proceeding, if the court determines: a) an individual is not indigent pursuant to the guidelines; b) that the individual would not be able, due to his financial condition, to afford a private attorney; and c) the magistrate finds that the defendant is financially able to make partial payment for such representation, the magistrate may enter an order appointing the public defender. If the court issues an order of appointment under this subsection, the court shall order the defendant to pay a fee to the court for use of the services provided by the public defender, as follows:

(see following page)

2.80.090

2.80.090

| Family Size | Poverty (Above) | 125% Poverty (Above) | 150% Poverty (Above) | 175% Poverty (Above) | 200% Poverty (Above) | 300% Poverty (Above) |
|--|---|--|---|---|--|--|
| 1 | \$10,210.00 | \$12,763.00 | \$15,315.00 | \$17,867.50 | \$20,420.00 | \$ 30,630.00 |
| 2 | 13,690.00 | 17,113.00 | 20,535.00 | 23,957.50 | 27,380.00 | 41,070.00 |
| 3 | 17,170.00 | 21,463.00 | 25,755.00 | 30,047.50 | 34,340.00 | 51,510.00 |
| 4 | 20,650.00 | 25,813.00 | 30,975.00 | 36,137.50 | 41,300.00 | 61,950.00 |
| 5 | 24,130.00 | 30,163.00 | 36,195.00 | 42,227.50 | 48,260.00 | 72,390.00 |
| 6 | 27,610.00 | 34,513.00 | 41,415.00 | 48,317.50 | 55,220.00 | 82,830.00 |
| 7 | 31,090.00 | 38,863.00 | 46,635.00 | 54,407.50 | 62,180.00 | 93,270.00 |
| 8 | 34,570.00 | 43,213.00 | 51,855.00 | 60,497.50 | 69,140.00 | 103,710.00 |
| Each additional household member (add) | 3,480.00 | 4,350.00 | 6,960.00 | 6,090.00 | 6,960.00 | 10,440.00 |
| Type of crime and fee | Misd./\$250.00 432B/\$250.00 Juvenile/\$250.00 Felony/\$250.00 | Misd./\$400.00 432B/\$400.00 G.Misd/\$500.00 Felony/\$500.00 Juvenile/\$400.00 | Misd./\$600.00 432B/\$600.00 G.Misd/\$1,500.00 Felony/\$1,500.00 Murder/\$5,000.00 Juvenile/\$750.00 | Misd./\$750.00 432B/\$750.00 G.Misd/\$2,500.00 Felony/\$2,500.00 Murder/\$7,500.00 Juvenile/\$750.00 | Misd./\$1,000.00 432B/\$1,000.00 G.Misd/\$3,500.00 Felony/\$4,500.00 Murder/\$10,000.00 Juvenile/\$750.00 | Misd./\$1,500.00 432B/\$1,500.00 G.Misd/\$4,500.00 Felony/\$6,000.00 Murder/\$15,000.00 Juvenile/\$750.00 |

January 2015

Pershing County

5. Unless the provisions of subsection B6 of this section apply, on a juvenile matter, if the court determines a juvenile and his parents are indigent pursuant to the guidelines, the court may enter an order appointing the public defender for the juvenile provided. The court shall order the juvenile or his parents pay a fee in the amount of two hundred fifty dollars (\$250.00) to the court for use of the services provided by the public defender.

6. On a juvenile matter, if the court determines: a) a juvenile and/or his parents individually are not indigent pursuant to the guidelines; b) that the juvenile and/or his parents would not be able, due to financial condition, to afford a private attorney; and c) the magistrate finds that the juvenile and/or his parents are financially able to make partial payment for such representation, the magistrate may enter an order appointing the public defender; provided, that the court shall order the defendant to pay a fee to the court for use of the services provided by the public defender in the amount up to seven hundred fifty dollars (\$750.00) as set forth in the provisions of subsection B4 of this section.

7. On a guardianship matter, the court may appoint the public defender for the adult ward. In the event that the estate has assets, the court shall require the public defender to submit, quarterly, monthly billing on the matter. The court shall then assess the amount to be paid on an hourly basis, not to exceed one hundred dollars (\$100.00) per hour, for the services of the public defender. The estate shall pay the clerk of the court.

- C. All fees paid to the clerk of the court shall be sent to the county treasurer to reimburse the county for the services of the public defender.
- D. If during the course of the proceedings, a court is satisfied that the defendant is financially able to obtain counsel, the court may terminate the appointment of the public defender or order payment of fees and/or expenses as provided herein. If during the course of criminal proceedings, including appeal, a court finds that a defendant is financially unable to pay retained counsel, the court may appoint the public defender to represent said defendant.
- E. If a defendant for whom an attorney is appointed at the public's expense on account of indigency has property subject to execution or has acquired such property, real or personal, within six (6) years after the termination of the attorney's representation, the court shall determine the value of the legal services provided and shall render

judgment for that amount in favor of Pershing County which furnished the public defender or otherwise paid for the defense. (Ord. 304, 2013)

2.80.100: **DISCLAIMER OF COUNTY DUTY:** Nothing contained in this chapter shall be interpreted or construed as a creation of, or an acknowledgment of, any duty owed to criminal defendants by the county of Pershing other than a fulfillment of those specific requirements levied upon the county of Pershing by the Nevada legislature. (Ord. 304, 2013)

BOARD OF COUNTY COMMISSIONERS

PERSHING COUNTY
P. O. DRAWER E
LOVELOCK, NEVADA 89419
775-273-2342 ♦ FAX: 775-273-5078

August 2, 2017

Mr. Kyle Swanson
Attorney at Law
530 Melarkey Street, #209
Winnemucca, NV 89419

RE: 2017-2018 Pershing County Conflicts Contract renewal

Dear Mr. Swanson:

Please be advised that the Pershing County Board of Commissioners approved your request to renew the Contract for Legal Services for the 2017-2018 budget year in the amount of \$50,000.00 effective August 1, 2017. This renewal was approved on May 3, 2017.

The board is requesting that you appear during budget workshops next March 2018, to discuss any increase to the renewal amount and that you consider a multi-year contract in the future. We look forward to working with you this next year.

Sincerely,

PERSHING COUNTY BOARD OF COMMISSIONERS



Karen T. Wesner
Administrative Assistant

Faxed 8-4-2017

CONTRACT FOR LEGAL SERVICES

This contract is entered into this 31st day of July, 2004, by KYLE B. SWANSON, (referred to as "Attorney") and PERSHING COUNTY, a political subdivision of the State of Nevada (referred to as "County").

RECITALS

The County currently uses the services of the State Public Defender in accord with Chapter 180 of the Nevada Revised Statutes.

Occasionally the State Public Defender cannot represent certain indigent persons charged with public offenses because of conflicts of interest, for cause constituting a legal disqualification, or for reasons which make it impossible for the State Public Defender to provide representation.

Pursuant to Chapter 260 of the Nevada Revised Statutes, the County wishes to provide for Attorney's representation for indigent persons charged with public offenses when the Court, for cause, disqualifies the State Public Defender, or when the State Public Defender is otherwise unable to provide representation.

The Attorney submitted a proposal to the County for this position and has provided the County with resumes, background information and professional references supporting Attorney's representation that Attorney is qualified and able to render the professional services provided in this contract.

IN CONSIDERATION OF THESE RECITALS, the parties to this contract agree as follows:

1. Attorney agrees to represent any indigent adult charged with a public offense, whether felony, gross misdemeanor or misdemeanor, when the Court, for cause, disqualifies the State Public Defender or when the State Public Defender is otherwise unable to provide representation.

2. Attorney agrees to represent a child alleged to be delinquent or in need of supervision where the Court orders the appointment of an Attorney in accord with NRS 62.085, and the Court, for cause, disqualifies the State Public Defender or when the State Public Defender is otherwise unable to provide representation.

3. Attorney agrees to represent a parent, or other persons responsible for a child's welfare, when that parent or other person is alleged to have abused or neglected that child, or, in some instances, represent the child, when the Court orders the appointment of an attorney pursuant to NRS 432B.420 and the Court, for cause, disqualifies the State Public Defender, or when the State Public Defender is otherwise unable to provide representation. Additionally, Attorney may be appointed to represent indigent persons who are named as wards in guardianship cases when the State Public Defender is unable to provide representation.

4. Attorney agrees to represent a person against whom proceedings are commenced to revoke probation, provided that the Court appoints Attorney at the probation revocation proceeding, the person is indigent, and the Court, for cause, disqualifies the State Public Defender, or when the State Public Defender is otherwise unable to provide representation.

5. Attorney agrees to represent any indigent defendant in appeals to the Sixth Judicial District Court or Nevada Supreme Court, whether based upon a preliminary matter or final judgment in any case assigned to Attorney or in any appeal assigned by the Court because of a conflict with or disqualification of the Public Defender.

6. In performing the professional services described in paragraphs 1, 2, 3, 4 and 5 of this agreement, attorney shall:

- A. Conduct interviews;
- B. Perform or supervise the performance of necessary investigation;
- C. Conduct necessary preparation;
- D. Appear at all Court hearings concerning the assigned matter including, but not limited to, preliminary hearing, arraignment, pre-trial writ or motion hearings, trial, sentencing and any appeal hearing as required to provide a full professional defense of the matter and if unable to appear will provide a qualified attorney to cover all attorney's court appearances (see Section 12).
- E. The professional services described in this paragraph, as well as those described in paragraphs 1, 2, 3, 4, and 5 must be performed in a professional, competent and effective manner and attorney must abide by all applicable rules and standards of professional responsibility.

7. Attorney agrees to furnish to the Justice Court, District Court, Sheriff's Department and District Attorney, a telephone number for use after normal office hours in any emergency that may arise where Attorney's services are requested

pursuant to the terms of this contract. The expense of office space, furniture, equipment, supplies and secretarial service suitable for the conduct of Attorney's practice as required by this contract are the responsibility of Attorney. Attorney's expenses described in this paragraph are not a charge against the County as provided in NRS 260.040(5).

8. County agrees to pay to Attorney, and Attorney agrees to accept as full compensation for the performance of legal services under this contract, the sum of \$18,000.00 per year in equal monthly installments of \$1,500.00.

9. Attorney may secure reimbursement from County for investigative, expert or other services necessary for an adequate defense in any assigned matter in the statutorily prescribed manner codified in NRS 7.135.

10. Mileage and travel expenses of Attorney are the responsibility of Attorney and are part of the compensation paid pursuant to paragraph 8.

11. This contract does not cover death penalty cases or petitions for post-conviction relief.

12. Attorney may engage in the private practice of law which does not conflict with Attorney's professional services required pursuant to this contract.

13. County is contracting for the personal and professional services of Attorney. If Attorney practices law with a law firm, another lawyer within the firm may appear for Attorney at any stage of the proceeding. However, no additional compensation shall be paid to the Attorney, or the other lawyer in Attorney's firm, by

virtue of this change. If attorney must have another attorney cover court as set forth in Section D attorney is responsible for compensating that attorney. If, in the interests of justice, Attorney is required to substitute out of an assigned matter, Attorney shall petition the Court for approval of this substitution.

14. Quarterly, Attorney is to provide the County Clerk with a list of all cases attorney is defending and the status of the cases. A copy will be provided to the Pershing County District Attorney. Attorney will maintain case time summaries of time expended by Attorney in execution of this contract. These time summaries will report the amount of time necessarily and reasonably spent for travel, investigation, research, trial preparation and hearings, as well as trials. These time summaries will be filed with the Court at the conclusion of each assigned matter and sealed by the Clerk until requested by the Court. These time reports may be made available by the Court for audit by the County's representative. Nothing contained in this paragraph shall be construed in a manner that violates the confidences of the client or the attorney-client privilege.

15. Attorney will maintain adequate professional malpractice insurance, including errors and omissions coverage, in the policy limits of \$500,000.00 during the term of this contract with the County. Attorney will provide proof of this insurance coverage to the county during the term of this agreement and the policy will be written with an insurance carrier authorized to write policies insuring this type of risk

in the State of Nevada. The premium expense for this coverage is the responsibility of Attorney.

16. This contract is effective from August 1, 2004 through July 31, 2006. The contract may be renewed by both parties each year thereafter. Both parties have the right to re-negotiate the financial or other terms of the contract at the end of the contracting period and prior to the renewal of this contract.

17. Either Attorney or County may terminate this agreement by giving the other party 60 days advance written notice of their intent to terminate this contract pursuant to this paragraph. The Court may elect to appoint non-contract attorneys and compensate them in accord with NRS 7.125 on any matters pending as of the date this contract is terminated.

18. Written notices required pursuant to the terms of this contract shall be transmitted via first class mail (postage prepaid) to the parties at the following addresses:

PERSHING COUNTY DISTRICT ATTORNEY

P. O. Box 299

Lovelock, NV 89419

KYLE B. SWANSON, ESQ.

530 MELARKEY STREET, #209

WINNEMUCCA, NV 89445

19. Attorney is an independent contractor. The County is contracting for the independent professional services of Attorney and does not control the means by which Attorney provides those services contracted for. Attorney is not an employee of County and there will be no:

A. Withholding of income tax by County;

B. Provision of industrial insurance coverage by County;

C. Participation by Attorney in any group insurance plans which may be available to county employees;

D. Contributions by County on behalf of Attorney to the Public Employees' Retirement System; or

E. Accumulations of vacation or sick leave or any other employee benefit normally available to Pershing County employees.

20. This contract may be amended in writing by the parties only after giving 60 days advance written notice to the other party.

21. This contract constitutes the entire agreement between the parties and shall be interpreted according to Nevada law.

DATED this 5th day of July, 2004.

PERSHING COUNTY

ATTORNEY

By: _____

Chairman

Board of County Commissioners

Kyle B. Swanson

ATTEST:

DONNA GILES
COUNTY CLERK

Approved as to form:
Jim C. Shirley
DISTRICT ATTORNEY

By: _____

Donna Giles

Jim C. Shirley

CONTRACT FOR PUBLIC DEFENSE SERVICES

The County of White Pine, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Jane Eberhardy of Jane Eberhardy Law LLC, referred to as "Firm" or "Agency", agree to the provision of public defense services as outlined below for the period from July 1, 2017 to June 30, 2019.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible person entitled to public representation in White Pine County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide 1/3 of the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260; and

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on July 1, 2017 and terminate on June 30, 2019, unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS 432B.420.
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from

separate transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that case number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.
- D. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Firm and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-.155 and any other relevant state statute, court rule, and constitutional provisions.
- E. Complex Litigation Cases: Complex Litigation refers solely to all death penalty cases that proceed to trial.

- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in death penalty cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Contracting Authority shall establish a panel of no less than three (3) individuals to conduct oversight of the Firm in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The panel shall be appointed by the Contracting Authority and may include judges, representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors or law enforcement officials. The Firm will meet regularly with the panel, but not more than once quarterly.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm attorney shall satisfy the minimum requirements for practicing law in Nevada as determined by the Nevada Supreme Court. Eight hours of

[each year's required yearly] continuing legal education credits shall be spent in courses relating to criminal law practice or other areas of law in which the Firm provides legal services to eligible clients under the terms of this Contract. The Firm will maintain for inspection at the State Bar, proof of compliance with this provision.

- B. Each Firm attorney representing a defendant accused of a Class A felony, as defined in Nevada Revised Statutes, must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a Class A felony, as defined in Nevada Revised Statutes, shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a Class B or C felony, as defined in Nevada Revised Statutes, or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Firm, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own. Should the caseload under this Contract require 10 or more FTE attorneys, the Firm will provide one FTE supervising attorney for every 10 FTE caseload attorneys.
- F. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience

in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience

- G. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is 1/3 of all cases requesting and assigned public defender services. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Firm agrees to provide representational services in the following types of cases:

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will refer to the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.

- D. It is agreed that the Firm will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

| | |
|---------------------------|-----|
| Felony Cases | 150 |
| Misdemeanor Cases | 400 |
| Juvenile Offender Cases | 200 |
| Juvenile Dependency Cases | 60 |
| Civil Commitment Cases | 250 |
| Contempt of Court Cases | 225 |
| Drug Court Cases | 200 |
| Appeals | 25 |

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Firm to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys
One full time Investigator for every 450 Felony Cases
One full time Investigator for every 600 Juvenile Cases
One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the

jurisdiction. The Firm may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- F. If the Firm is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney not to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- G. Sexual Predator Commitment Cases: "Sexual predator commitment" cases shall be handled as Complex Litigation cases.
- H. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.
- I. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Firm's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

...
...

VIII. VARIANCE

The Firm and the Contracting Authority agree that the actual number of hours spent in completion of this contract may vary. It is agreed that the Firm will provide at least 1450 attorney/legal assistant/support staff/investigator hours (\$145,000 / \$100 per hour) for all cases assigned. The Firm will reimburse the County at the rate of \$100/hour times the number of attorney/legal assistant/support staff/investigator hours that fall below the required 1450 hours. If the Firm exceeds the 1450 hours required, the Firm may request additional compensation pursuant to Section XII.

The Firm shall provide reports as required in the agreement.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour. Thereafter, the Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.
- C. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the Firm attorney(s) and the expected duration of the case.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case) after having participated in the required seven hours of annual

CLE required in Section V.A, the Firm shall require additional training in the particular type of case, as necessary.

XI. ATTORNEY EVALUATION

If the Contract requires the services of two or more attorneys, the Firm director, or his/her designee, shall evaluate the professional performance of Firm attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Firm shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Firm's director and the Firm attorney.

XII. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm a rate of \$145,000 per year, for the work performed, excepting therefrom Capital cases, plus or minus the variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. In the event of Firm failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XIII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm within 30 days of the finding of the request that the supplemental funds shall not be available.

XIV. REPORTS AND INSPECTIONS

The Firm agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

A. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator.

B. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

C. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

D. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.
- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be covered by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.

- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Firm, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVII. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. Upon request the Firm shall provide proof of malpractice insurance.

B. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

XVIII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Firm to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XIX. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
2. The Firm shall respond in writing within fifteen (15) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.

In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 15 business days' written notice to the Firm in the event that –
1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;
 2. The Firm engages in misappropriation of funds; or
 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within 15 working days from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 15 business days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Firm. A decision by the Contracting Authority Executive affirming termination shall become effective 15 business days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 calendar days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Firm terminates this Contract for reasons other than good cause

resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.

- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work at a rate of \$100.00 per hour. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required at the rate of \$100.00 per hour.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees and costs associated with such litigation.

XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXII. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXIII. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. A material term of this contract allows the Firm to seek a rate increase for the second year of this two-year contract. The Firm agrees that if a rate increase is sought the Firm will notify the Contracting Authority, in writing, by February 15, 2018 of its desire for a contract pay increase for the contract year July 1, 2018 through June 30, 2019. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXIV. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXV. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVII. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

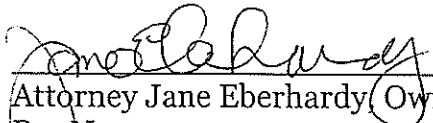
The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVIII. CONFLICT OF INTEREST

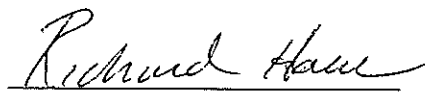
No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

AGREED:

JANE EBERHARDY LAW LLC



Attorney Jane Eberhardy, Owner
Bar No. 4254
Date: 4.7.17



Contracting Authority

Date: 4.12.17

CONTRACT FOR PUBLIC DEFENSE SERVICES

The County of White Pine, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Shain Manuele of Manuele Law LLC, referred to as "Firm" or "Agency", agree to the provision of public defense services as outlined below for the period from July 1, 2017 to June 30, 2019.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible person entitled to public representation in White Pine County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide 1/3 of the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260; and

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on July 1, 2017 and terminate on June 30, 2019, unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS 432B.420.
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from

separate transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that case number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.
- D. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Firm and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-.155 and any other relevant state statute, court rule, and constitutional provisions.
- E. Complex Litigation Cases: Complex Litigation refers solely to all death penalty cases that proceed to trial.

- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in death penalty cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Contracting Authority shall establish a panel of no less than three (3) individuals to conduct oversight of the Firm in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The panel shall be appointed by the Contracting Authority and may include judges, representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors or law enforcement officials. The Firm will meet regularly with the panel, but not more than once quarterly.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm attorney shall satisfy the minimum requirements for practicing law in Nevada as determined by the Nevada Supreme Court. Eight hours of

[each year's required yearly] continuing legal education credits shall be spent in courses relating to criminal law practice or other areas of law in which the Firm provides legal services to eligible clients under the terms of this Contract. The Firm will maintain for inspection at the State Bar, proof of compliance with this provision.

- B. Each Firm attorney representing a defendant accused of a Class A felony, as defined in Nevada Revised Statutes, must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a Class A felony, as defined in Nevada Revised Statutes, shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a Class B or C felony, as defined in Nevada Revised Statutes, or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Firm, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own. Should the caseload under this Contract require 10 or more FTE attorneys, the Firm will provide one FTE supervising attorney for every 10 FTE caseload attorneys.
- F. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience

in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience.

- G. The Firm will be allowed to hire an additional attorney as a consultant to work on any case to ensure that the appropriate amount of experience or qualifications are met in each case as listed above.
- H. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is 1/3 of all cases requesting and assigned public defender services. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Firm agrees to provide representational services in the following types of cases:

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will refer to the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state

judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.

- D. It is agreed that the Firm will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

| | |
|---------------------------|-----|
| Felony Cases | 150 |
| Misdemeanor Cases | 400 |
| Juvenile Offender Cases | 200 |
| Juvenile Dependency Cases | 60 |
| Civil Commitment Cases | 250 |
| Contempt of Court Cases | 225 |
| Drug Court Cases | 200 |
| Appeals | 25 |

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Firm to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys
One full time Investigator for every 450 Felony Cases
One full time Investigator for every 600 Juvenile Cases
One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the jurisdiction. The Firm may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- F. If the Firm is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney not to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- G. Sexual Predator Commitment Cases: "Sexual predator commitment" cases shall be handled as Complex Litigation cases.
- H. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.
- I. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Firm's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VIII. VARIANCE

The Firm and the Contracting Authority agree that the actual number of hours spent in completion of this contract may vary. It is agreed that the Firm will provide at least 1450 attorney/legal assistant/support staff/investigator hours (\$145,000 / \$100 per hour) for all cases assigned. The Firm will reimburse the County at the rate of \$100/hour times the number of attorney/legal assistant/support staff/investigator hours that fall below the required 1450 hours. If the Firm exceeds the 1450 hours required, the Firm may request additional compensation pursuant to Section XII.

The Firm shall provide reports as required in the agreement.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour. Thereafter, the Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.
- C. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the Firm attorney(s) and the expected duration of the case.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case) after having participated in the required seven hours of annual

CLE required in Section V.A, the Firm shall require additional training in the particular type of case, as necessary.

XI. ATTORNEY EVALUATION

If the Contract requires the services of two or more attorneys, the Firm director, or his/her designee, shall evaluate the professional performance of Firm attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Firm shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Firm's director and the Firm attorney.

XII. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm a rate of \$145,000 per year, for the work performed, excepting therefrom Capital cases, plus or minus the variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. In the event of Firm failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XIII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm within 30 days of the finding of the request that the supplemental funds shall not be available.

XIV. REPORTS AND INSPECTIONS

The Firm agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

A. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator.

B. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

C. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

D. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and

privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.
- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be covered by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or

taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.

- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Firm, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVII. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction

to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. Upon request the Firm shall provide proof of malpractice insurance.

B. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

XVIII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Firm to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XIX. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
2. The Firm shall respond in writing within fifteen (15) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.

In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 15 business days' written notice to the Firm in the event that –
 - 1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;
 - 2. The Firm engages in misappropriation of funds; or
 - 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within 15 working days from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 15 business days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Firm. A decision by the Contracting Authority Executive affirming termination shall become effective 15 business days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 calendar days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event

that the Firm terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.

- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work at a rate of \$100.00 per hour. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required at the rate of \$100.00 per hour.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees and costs associated with such litigation.

XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXII. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract. The Firm will be allowed to hire a consultant on certain matters which would fall under a Short-term personal service contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXIII. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. A material term of this contract allows the Firm to seek a rate increase for the second year of this two-year contract. The Firm agrees that if a rate increase is sought the Firm will notify the Contracting Authority, in writing, by February 15, 2018 of its desire for a contract pay increase for the contract year July 1, 2018 through June 30, 2019. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXIV. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXV. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVII. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

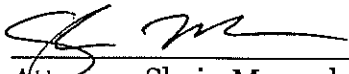
The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVIII. CONFLICT OF INTEREST

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

AGREED:

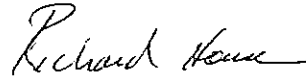
MANUELE LAW LLC



Attorney Shain Manuele, Owner

Bar No. 13533

Date: 4/7/17



Contracting Authority

Date: 4-12-17

CONTRACT FOR PUBLIC DEFENSE SERVICES

The County of White Pine, a political subdivision of the State of Nevada, referred hereafter as "County" or "Contracting Authority," and Richard W. Sears of Sears Law Firm, Ltd., referred to as "Firm" or "Agency", agree to the provision of public defense services as outlined below for the period from July 1, 2017 to June 30, 2019.

RECITAL

WHEREAS, the State/County has a constitutionally mandated responsibility to provide public defender services under the *U.S. and Nevada Constitutions*;

WHEREAS, the County is authorized pursuant to Nevada Revised Statutes ("NRS") Chapter 260 to create an office of public defender and to fill such office by appointment;

WHEREAS, the County desires to have legal services performed for eligible person entitled to public representation in White Pine County by the Firm, as authorized by law;

WHEREAS, the Firm agrees to provide 1/3 of the public defender services for the County, and the County agrees to pay for, competent, zealous representation to its clients as required by the Nevada Rules of Professional Conduct and NRS 260; and

WHEREAS, the County and the Firm agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to eligible clients of the Firm.

In consideration of the recitals and the mutual promises contained in this agreement, the parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on July 1, 2017 and terminate on June 30, 2019, unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client means a defendant, parent, juvenile, or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney, pursuant to NRS 62D.030, NRS 171.188, and/or NRS 432B.420.
- B. Case; Case Completion: A Case shall mean representation of one person on one charging document. In the event of multiple counts stemming from

separate transactions, additional case credit will be recognized. Completion of a case is deemed to occur when all necessary legal action has been taken during the following period(s):

In criminal cases, from arraignment through disposition, from arraignment through the necessary withdrawal of counsel after the substantial delivery of legal services, or from the entry of counsel into the case (where entry into the case occurs after arraignment through no fault of the Firm) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Firm from providing necessary legal services to an eligible client prior to arraignment, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below.

In other cases, from appointment through disposition or necessary withdrawal after substantial delivery of legal services.

- C. Disposition: Disposition in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that case number, including but not limited to felony or misdemeanor probation review, that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution. No hearing that occurs after 30 days of any of the above will be considered part of case disposition for the purpose of this Contract except that a restitution hearing ordered at the time of original disposition, whether it is held within 30 days or subsequently, shall be included in case disposition. Disposition includes the filing of a notice of appeal and prosecution of an appeal, if applicable.
- D. Representational Services: The services for which the Contracting Authority is to pay the Firm are representational services, including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other Firm and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Firm do not include extraordinary expenses incurred in the representation of eligible clients. The allowance of extraordinary expenses at the cost of the Contracting Authority will be determined by a court of competent jurisdiction in accordance with NRS 7.135-155 and any other relevant state statute, court rule, and constitutional provisions.
- E. Complex Litigation Cases: Complex Litigation refers solely to all death penalty cases that proceed to trial.

- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Firm, including expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for in the appropriate courts by motion and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in death penalty cases is included in this category.
- G. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

III. INDEPENDENT CONTRACTOR

The Firm is, for all purposes arising out of this Contract, an independent contractor, and neither the Firm nor its employees shall be deemed employees of the Contracting Authority. The Firm shall complete the requirements of this Contract according to the Firm's own means and methods of work, which shall be in the exclusive charge and control of the Firm and which shall not be subject to control or supervision by the Contracting Authority, except as specified herein.

IV. OVERSIGHT

The Contracting Authority shall establish a panel of no less than three (3) individuals to conduct oversight of the Firm in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, review of contract hours, and response to community and client concerns, among other things. The panel shall be appointed by the Contracting Authority and may include judges, representatives of organizations directly servicing the poor or concerned with the problems of the client community, provided that no single branch of government shall have a majority of votes, and the membership shall not include prosecutors or law enforcement officials. The Firm will meet regularly with the panel, but not more than once quarterly.

V. FIRM'S EMPLOYEES AND EQUIPMENT

The Firm agrees that it has secured or will secure at the Firm's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract.

VI. MINIMUM QUALIFICATIONS FOR FIRM ATTORNEYS

- A. Every Firm attorney shall satisfy the minimum requirements for practicing law in Nevada as determined by the Nevada Supreme Court. Eight hours of

[each year's required yearly] continuing legal education credits shall be spent in courses relating to criminal law practice or other areas of law in which the Firm provides legal services to eligible clients under the terms of this Contract. The Firm will maintain for inspection at the State Bar, proof of compliance with this provision.

- B. Each Firm attorney representing a defendant accused of a Class A felony, as defined in Nevada Revised Statutes, must have served at least two years as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been trial counsel and handled a significant portion of the trial in 5 felony cases that have been submitted to a jury.
- C. Each staff attorney representing a juvenile respondent in a Class A felony, as defined in Nevada Revised Statutes, shall meet the qualifications of (B) above and demonstrate knowledge of the practices of the relevant juvenile court, or have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, assigned to the prosecution or defense of accused persons in juvenile court, or have demonstrably similar experience, and handled at least 5 felony cases through fact finding and disposition in juvenile court.
- D. Each staff attorney representing a defendant accused of a Class B or C felony, as defined in Nevada Revised Statutes, or involved in a probation or parole revocation hearing, must have served at least one year as a prosecutor, a public defender, or assigned counsel within a formal assigned counsel plan that included training, or have demonstrably similar experience, and been sole trial counsel of record in five misdemeanor cases brought to final resolution, or been sole or co-trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- E. Each attorney representing any other client assigned as a part of this Contract shall meet the requirements of (B) above or work directly under the supervision of a senior, supervising attorney employed by the Firm, who meets the requirements of (B) above. Such direct supervision shall continue until the attorney has demonstrated the ability to handle cases on his/her own. Should the caseload under this Contract require 10 or more FTE attorneys, the Firm will provide one FTE supervising attorney for every 10 FTE caseload attorneys.
- F. Notwithstanding the above, each Capital case assigned to the Firm will be staffed by two full time attorneys or FTE attorneys. The lead attorney shall have at least seven years of criminal law experience and training or experience

in the handling of Capital cases; associate counsel shall have at least five years of criminal law experience

- G. Failure on the part of the Firm to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Contract. Failure on the part of the Contracting Authority to provide adequate funding to attract and retain experienced staff and supervisor(s) shall be considered a breach of this Contract.

VII. PERFORMANCE REQUIREMENTS

The Firm agrees to provide the services and comply with the requirements of this Contract. The number of cases for which such services will be required is 1/3 of all cases requesting and assigned public defender services. Any material breaches of this agreement on the part of the Firm or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Firm agrees to provide representational services in the following types of cases:

The Firm agrees to staff its cases according to the following provisions:

- A. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Firm agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Firm from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. The Firm agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- C. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Firm agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the appointing court and/or the Contracting Authority when a conflict is discovered. The Firm will refer to the Nevada Rules of Professional Conduct, as interpreted by the Nevada Bar Association and /or opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice in order to determine the existence and appropriate resolution of conflicts.

- D. It is agreed that the Firm will maintain average annual caseloads per full time attorney or full time equivalent (FTE) no greater than the following:

| | |
|---------------------------|-----|
| Felony Cases | 150 |
| Misdemeanor Cases | 400 |
| Juvenile Offender Cases | 200 |
| Juvenile Dependency Cases | 60 |
| Civil Commitment Cases | 250 |
| Contempt of Court Cases | 225 |
| Drug Court Cases | 200 |
| Appeals | 25 |

These numbers assume that the attorney is assigned only cases that fit into one category. If, instead, a FTE attorney spends half of her time on felony cases and half of her time on misdemeanor cases, she would be expected to carry an annual caseload no greater than 75 felonies and 150 misdemeanors. If the same attorney works less than full time or splits her time between Contract cases and private business, that attorney would be expected to carry a maximum caseload proportional to the portion of her professional time which she devotes to Contract cases.

It is assumed that the level of competent assistance of counsel contemplated by this Contract cannot be rendered by an attorney who carries an average annual caseload substantially above these levels. Failure on the part of the Firm to limit its attorneys to these caseload levels is considered to be a material breach of this agreement.

Complex Litigation is considered to be outside of the normal caseload and is handled as described in Section VI. G. below.

- E. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel at the caseload levels described above. The parties agree and expect that at a minimum the Firm will employ support staff services for its attorneys at a level proportionate to the following annual caseloads:

One full time Legal Assistant for every four FTE Contract attorneys
One full time Investigator for every 450 Felony Cases
One full time Investigator for every 600 Juvenile Cases
One full time Investigator for every 1200 Misdemeanor Cases

In addition, attorneys must have access to mental health evaluation and recommendation services as required.

It is expected that support staff will be paid at a rate commensurate with their training, experience and responsibility, at levels comparable to the compensation paid to persons doing similar work in public agencies in the

jurisdiction. The Firm may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.

- F. If the Firm is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Capital cases typically require 2 FTE attorneys and the FTE of one investigator, as well as the services of a mitigation specialist. Aggravated homicide cases are considered Capital cases until such time as an irrevocable decision is made by the Prosecuting Attorney/District Attorney not to seek the death penalty in the case.

Complex Litigation cases remain pending until the termination of the guilt phase and penalty phase of the trial, or entry of a guilty plea. Upon entry of a verdict or guilty plea, such cases are complete for the purposes of accepting additional Complex Litigation cases. Payment for post-conviction, pre-judgment representation shall be negotiated.

Other special provisions of this Contract which relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- G. Sexual Predator Commitment Cases: "Sexual predator commitment" cases shall be handled as Complex Litigation cases.
- H. The Firm may use legal interns. If legal interns are used, they will be used in accordance with Nevada Admission to Practice Rules.
- I. The Firm agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all of its staff.

Significant Changes

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Firm's responsibility within the terms of this Contract. Any requests by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Firm and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

...
...

VIII. VARIANCE

The Firm and the Contracting Authority agree that the actual number of hours spent in completion of this contract may vary. It is agreed that the Firm will provide at least 1450 attorney/legal assistant/support staff/investigator hours (\$145,000 / \$100 per hour) for all cases assigned. The Firm will reimburse the County at the rate of \$100/hour times the number of attorney/legal assistant/support staff/investigator hours that fall below the required 1450 hours. If the Firm exceeds the 1450 hours required, the Firm may request additional compensation pursuant to Section XII.

The Firm shall provide reports as required in the agreement.

IX. ASSIGNMENT OF COMPLEX LITIGATION CASES

If assignment of Complex Litigation cases is contemplated by this Contract, the Firm will designate a full time or FTE attorney for that purpose and the County agrees to pay the Firm a separate rate of \$125/hour. Thereafter, the Firm shall accept all Complex Litigation cases assigned to it by Contracting Authority subject to the following special provisions:

- A. The Contracting Authority shall not assign further Complex Litigation cases while the Firm has a pending Complex Litigation case, unless the Firm has available qualified staff and the Contracting Authority provides the necessary resources.
- B. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Firm will negotiate a provision of extra compensation to provide for the services of that attorney.
- C. Once a Complex Litigation case has proceeded for two months, Contracting Authority may request a review of the case, including but not limited to hours spent by the Firm attorney(s) and the expected duration of the case.

X. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. The Firm shall provide sufficient training, whether in-house or through a qualified provider of CLE, to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules. If an attorney is transferred to a particular type of case (*e.g.* a Capital case) after having participated in the required seven hours of annual

CLE required in Section V.A, the Firm shall require additional training in the particular type of case, as necessary.

XI. ATTORNEY EVALUATION

If the Contract requires the services of two or more attorneys, the Firm director, or his/her designee, shall evaluate the professional performance of Firm attorneys annually. Evaluations should include monitoring of time and caseload records, review of case files, and in court observation. The Firm shall make available to Contracting Authority its evaluation criteria and evidence that evaluations were conducted, although all evaluations are to be confidential between the Firm's director and the Firm attorney.

XII. COMPENSATION AND METHOD OF PAYMENT

- A. For the term of this contract, the Contracting Authority shall pay the Firm a rate of \$145,000 per year, for the work performed, excepting therefrom Capital cases, plus or minus the variance agreed to in Section VIII (Variance) or separate compensation agreed to in Section IX (Complex Cases). Payments will be made on a quarterly basis prior to the quarter beginning upon submission of an invoice by the Firm. It is possible that the actual amount of compensation will vary according to other terms of this Contract. The parties contemplate that attorneys working under this Contract will be compensated comparably to prosecutors of similar experience and responsibility.
- B. In the event of Firm failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination as provided in Section XIX of this Contract.

XIII. REQUESTS FOR CONTRACT MODIFICATIONS

The Firm may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Firm finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Firm budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Firm within 30 days of the finding of the request that the supplemental funds shall not be available.

XIV. REPORTS AND INSPECTIONS

The Firm agrees to submit to the Contracting Authority the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

A. Caseload Reports

By the fifteenth (15th) day of a quarter, the Firm will report the number of cases completed and hours spent on cases in the past quarter, separated by category, to the Contracting Authority Administrator.

B. Annual Subcontract Attorney Use Report

If the Firm uses any subcontract attorneys in accordance with Section XXI (Assignment and Subcontracting), the Firm shall submit to Contracting Authority a summary report.

C. Bar Complaints

The Firm will immediately notify the Contracting Authority in writing when it becomes aware that a complaint lodged with the Nevada Bar Association/disciplinary body has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Firm's staff or working for the Firm.

D. Inspections

The Firm agrees to grant the Contracting Authority full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Firm shall provide to the Contracting Authority right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Firm in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Firm agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Contracting Authority agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority will respect the attorney-client privilege.

XV. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Firm agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Firm on each case.
- B. The Firm agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Firm for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. The Firm shall at the request of the Contracting Authority have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July. The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. Any expense for an audit performed at the request of the Contracting Authority shall be covered by the Contracting Authority.
- D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Contracting Authority.

XVI. HOLD HARMLESS AND INDEMNIFICATION

- A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Firm to Firm employees or others by reason of the Contract. The Firm shall protect, indemnify, and save harmless the Contracting Authority, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, occurring or resulting from Firm's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.

- B. The Firm agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Firm, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Firm and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the Contracting Authority, its officers, agents, and employees, or any of them, relating or arising out of the performance of this Contract. In the event that any suit based upon such a claim, action, loss, or damage is brought against the Firm, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Firm and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XVII. INSURANCE

Without limiting the Firm's indemnification, it is agreed that the Firm shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. Professional Liability Insurance

The Firm shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Firm which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

The Firm further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Firm shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the Contracting Authority. The Firm shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Firm and the Contracting Authority.

Such insurance shall not be reduced or canceled without 30 days' prior written notice to the Contracting Authority. Upon request the Firm shall provide proof of malpractice insurance.

B. Workers' Compensation

The Firm shall maintain Workers' Compensation coverage as required by the State of Nevada

XVIII. EVALUATION GUIDELINES

The Contracting Authority will review information obtained from the Firm to monitor Firm activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XIX. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The Contracting Authority will notify the Firm in writing of the nature of the breach.
2. The Firm shall respond in writing within fifteen (15) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The Contracting Authority will notify the Firm in writing of the Contracting Authority's determination as to the sufficiency of the Firm's corrective action plan. The determination of the sufficiency of the Firm's corrective action plan will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Firm to implement an appropriate corrective action plan.

In the event that the Firm does not respond to the Contracting Authority's notification within the appropriate time, or the Firm's corrective action plan for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part pursuant to Section XIX (Termination and Suspension).

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Firm which is directly related to the breach of the Contract until the Contracting Authority is satisfied the corrective action has been taken or completed as described in Section XI (Compensation and Method of Payment).

XX. TERMINATION AND SUSPENSION

- A. The Contracting Authority may terminate this Contract in whole or in part upon 15 business days' written notice to the Firm in the event that –
1. The Firm substantially breaches any duty, obligation, or service required pursuant to this Contract;
 2. The Firm engages in misappropriation of funds; or
 3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract pursuant to Section XIX. A.1, the Contracting Authority shall provide the Firm written notice of termination, which shall include the reasons for termination and the effective date of termination. The Firm shall have the opportunity to submit a written response to the Contracting Authority within 15 working days from the date of the Contracting Authority's notice. If the Firm elects to submit a written response, the Contracting Authority Administrator will review the response and make a determination within 10 days after receipt of the Firm's response. In the event the Firm does not concur with the determination, the Firm may request a review of the decision by the Contracting Authority Executive. In the event the Contracting Authority Executive reaffirms termination, the Contract shall terminate in 15 business days from the date of the final decision of the Contracting Authority Executive. The Contract will remain in full force pending communication of the Contracting Authority Executive to the Firm. A decision by the Contracting Authority Executive affirming termination shall become effective 15 business days after it is communicated to the Firm.

- B. The Firm reserves the right to terminate this Contract with cause with 30 calendar days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Firm terminates this Contract for reasons other than good cause

resulting from a substantial breach of this Contract by the Contracting Authority, the Firm shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contracting Authority Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Firm's control, fault or negligence.

- C. In the event of the termination or suspension of this Contract, the Firm shall continue to represent clients that were previously assigned and the Contracting Authority will be liable for any payments owed for the completion of that work at a rate of \$100.00 per hour. The Firm will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Contracting Authority Administrator may request that the Firm attempt to withdraw from any case assigned and not completed. Should a court require, after the Firm has attempted to withdraw, the appearance of counsel from the Firm on behalf of any client previously represented by the Firm where such representation is no longer the obligation of the Firm pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Firm upon judicial verification that continued representation is required at the rate of \$100.00 per hour.
- D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Firm shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Firm by the Contracting Authority.
- E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees and costs associated with such litigation.

XXI. RESPONSIBILITY OF MANAGING DIRECTOR OF FIRM

The managing director of the Firm shall be an attorney licensed to practice law in the State of Nevada. The managing director of the Firm shall be ultimately responsible for receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment provided pursuant to this Contract.

XXII. ASSIGNMENT/SUBCONTRACTING

- A. The Firm shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Firm in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal service contracts with individuals to perform work under the direct supervision and control of the Firm. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.
- B. The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under the Contract to clients of the Firm.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but is not limited to counseling services, consulting services, social work services, investigator services and legal services.

XXIII. RENEGOTIATION

Either party may request that the provisions of this Contract be subject to renegotiation. A material term of this contract allows the Firm to seek a rate increase for the second year of this two-year contract. The Firm agrees that if a rate increase is sought the Firm will notify the Contracting Authority, in writing, by February 15, 2018 of its desire for a contract pay increase for the contract year July 1, 2018 through June 30, 2019. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XXIV. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXV. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

1. In writing; and
2. Directed to the Chief Executive Officer of the Firm and the director/manager of the Contracting Authority department/division specified on page 1 of this Contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXVI. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral representations of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXVII. NONDISCRIMINATION

During the performance of this Contract, neither the Firm nor any party subcontracting with the Firm under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Firm shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXVIII. CONFLICT OF INTEREST

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any functions or responsibility in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Firm.

AGREED:

SEARS LAW FIRM, LTD.



Attorney R.W. Sears, President

Bar No. 5489

Date: 4-7-17



Contracting Authority

Date: 4-12-17

**CONTRACT FOR SERVICES OF INDEPENDENT
CONTRACTOR COUNTY PUBLIC DEFENDER**

A contract between the COUNTY OF MINERAL, State of Nevada acting by and through the Board of County Commissioners, hereinafter referred to as "County", and John E. Oakes, Esq. And Patrick McGinnis, Esq., hereinafter referred to as "Contractor".

PREAMBLE

WHEREAS, N.R.S. Chapter 20 authorizes the County to appoint a County Public Defender to serve at the pleasure of the Board of County Commissioners; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interest of the County; and

WHEREAS, Contractor represents that he is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereto mutually agree as follows:

1. That is contract shall become effective as of the 1st day of July, 2016, and shall continue in affect as hereinafter provided.
2. That the parties agree that the services to be performed by Contractor are as follows:
 - a. Contractor shall provide all public defender services to Mineral County for the period from the 1st day of July, 2016, to the 30th day of June, 2018, to be renewed, extended or limited at the pleasure of the Board of County Commissioners;
 - b. These duties shall consist of representing persons who have requested and have received the appointment of the County public Defender, when designated pursuant to N.R.S. 62.085, 171.188 or 432B.420; without charge to each indigent person for whom he is appointed;

- c. Such duties shall include representations at all stages of criminal proceedings, including interviewing, and all appearances and Justice Court status conferences. Contractor shall also represent persons who have requested and received an appointment of the Public Defender in petitioning for writs of habeas corpus, post-conviction relief, and parole and probation revocation hearings, which are conducted in the County.
 - d. The Public Defender shall be responsible for the sealing of any eligible record relating to an indigent person in consequence to participation by any such person in "Drug Court" sponsored by the Fifth Judicial District Court.
3. Contractor shall not represent any co-defendant in a criminal trial in which he has been appointed as counsel for an indigent pursuant to statutes noted above. Contractor shall not represent any interest which conflicts with his duties as counsel for persons charged with crimes under Nevada Statutes.
4. In consideration of the above duties, Contractor shall receive the annual sum of Eighty Thousand Dollars (\$80,000.00) for the contract period July 1, 2016 to June 30, 2018; said sum to be paid in monthly installments of \$6,666.66 on or about the last day of the month for which services are rendered.
5. The County shall pay contractor the statutory hourly rate for any portion of a non-capital jury trial longer than three regular working days.
6. Contractor shall provide sworn verification to the County of any additional fees or expenses requested to be paid by County.
7. Contractor further agrees to provide the County with an attorney qualified pursuant to Nevada Supreme Court Rule 250 to act as defense counsel in any capital case arising in

the County. Contractor shall guarantee the County that said attorney will remain current with all conditions and training required by law to attain and maintain capital case qualification solely at Contractor's expense.

a. County and Contractor recognize that capital cases provide extraordinary circumstances, which will require Contractor to petition the Court for additional attorney's fees and expenses related to investigation and employment of expert witnesses.

8. All costs associated with necessary defense investigators, witnesses, including expert witnesses, and court transcripts shall be paid pursuant to the relevant provisions of the Nevada Revised Statutes.
9. Contractor will specifically be responsible for payment of employees, secretaries and associates who are considered necessary and important to the performance of Contractor's duties with the exceptions noted herein.
10. Contractor shall be construed and interpreted according to the laws of the State of Nevada.
11. Contractor shall neither assign, transfer, nor delegate any rights, obligations or duties under this agreement without prior written consent of the County, except to those specifically employed by the Contractor.
12. The books, records, documents and practice of the Contractor relevant to this agreement shall be subject to inspection and examination by the County (except privileged information protected by Statute).

13. Any reports, studies, photographs, negatives or other documents or drawings prepared by Contractor in the performance of his obligations under this agreement shall be the exclusive property of the County and all such materials shall be remitted to the County by Contractor upon completion, termination or cancellation of this contract.
14. The parties agree that Contractor is an independent contractor and it is expressly understood and agreed that Contractor is not a County employee and there shall be no:
 - a. Withholding of Income taxes by the County;
 - b. State Industrial Insurance Service coverage provided by the County;
 - c. Participation in group insurance plans which may be available to employees of the County;
 - d. Participation or contributions by either the independent contractor or the County to the Public Employees Retirement System;
 - e. Accumulations of vacation leave or sick leave;
 - f. Unemployment compensation coverage provided by the County if the requirements of N.R.S. 612.085 for independent contractors are met.
15. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

DATED this 13th day of April, 2016.

John E. Oakes, Esq.
Attorney and Counselor at Law
1188 California Avenue
Reno, Nevada 89509
775-324-6257

By: 

Patrick McGinnis, Esq.
Attorney and Counselor at Law
1188 California Avenue
Reno, Nevada 89509
775-324-6257

By: 

County of Mineral, State of Nevada
Board of County Commissioners
P.O. Box 1450
Hawthorne, Nevada 89415
775-945-2446

By: 

Chairman

ATTEST:

RURAL COUNTY CONTRACTS

To: Chief Justice Cherry, Indigent Defense Commission

From: Franny Forsman

RE: Review of rural indigent defense contracts

I have reviewed all of the current contracts provided to me and I observed the following with regard to whether the contracts are “flat fee” contracts.

Carson City (First)

Contract amount includes all expenses. **“Routine investigative costs” borne by contractor.** Extraordinary fees may be requested, reported to City.

Lyon County (Third)

Contractor “accepts as full compensation,” the contract amount; not entitled to \$7.125 reimbursement. **May seek excess fees under “special circumstances.”**

Nye County (Fifth)

Contractor “accepts as full compensation” the contract amount. **No extraordinary fee provision.**

White Pine (Seventh)

Annual amount, except for complex cases. Complex cases are defined as **“solely [] all capital cases that proceed to trial.”**

Lincoln County (Seventh)

Annual amount, except for complex cases. Complex cases are defined as **“solely [] all capital cases that proceed to trial.”**

Eureka (Seventh)

All services to be supplied for annual flat fee. **No provision for extraordinary fees. “The County does not agree to reimburse Contractor for expenses unless otherwise specified in this Contract or incorporated attachments.”** No other provision for expenses. (Note; In the report from the contractor, no claims for any investigative/expert fees were made for the 20 appointed cases in the preceding year.)

Douglas County (Ninth)

Provision for extraordinary fees guided by NRS §7.125.

Churchill (Tenth)

Flat annual fee. Provision for extraordinary expert/investigative fees. **No provision for extraordinary attorney fees.**

Lander County Eleventh)

No contract provided

Mineral County (Eleventh)

Annual flat fee contract. **Extraordinary fees may be granted for any “non-capital trial longer than 3 days.”** (Current reported caseload would result in fees of \$655 per felony. Contractor handled 100 additional Gross Misdemeanors and Misdemeanors so actual compensation was substantially less.)

Survey Responses: Rural Contract Counsel Fees (by Judicial District)

| | Does your jurisdiction/county utilize contract attorneys for purposes of indigent defense? | If you answered "yes" to Question 2, how often does contract counsel request extraordinary fees from your court? | If you answered "yes" to Question 2, under what circumstances does your court grant and/or deny extraordinary fee requests from contract counsel? | If you answered "yes" to Question 2, is it your understanding that contract attorneys in your jurisdiction are familiar with their contacts and are aware of their ability to request extraordinary fees from your court? | Please provide any additional comments: |
|--|--|---|--|--|---|
| | | Rarely | Requests are granted when the defense shows necessity, and denied deny when it does not. | Yes | |
| | | As needed on a case-by-case basis. | The Court can for reasons specified in NRS 7.125 (4) (a)(d), award extraordinary fees to the contract counsel in particular matters. Each request is reviewed by the judge to determine if extraordinary fees should be awarded. At times, hearings are held to obtain further information. | The Conflict Counsel are presented with the contracts and given time to review and provide any suggested changes to the court. The contracts are signed by conflict counsel and notarized. It is our understanding that the contract attorneys are fully aware of their ability to request extraordinary fees. | |
| | | The Public Defender contracts cover rates paid. I believe the contracts have provisions for additional pay in death penalty cases only. A public defender would deal with the County directly if there was a dispute. As to conflict counsel that is not covered by the three contracts, I appoint outside counsel without a contract and pay at the statutory rate. Very rarely do I have to appoint on a case that would exceed the | In 10 years I have denied 1 or 2 requests for costs. Typically counsel will request expenditure limit and order will grant up to that amount. Then counsel submits request for payment. The 1 or 2 cases I denied were when the counsel submitted over the expenditure order and had no justification in line with how the request had been in error. In the handful of statutory appointments, I can think of 1 | Yes. When new attorneys take over, it takes about 2-3 cases for them to figure out how to submit for payment of costs. I will explain at Law and Motion calendar if staff notes that motions and orders not being submitted properly. Staff will contact appointed counsel to get them to submit billings with motion. I have never received any negative feedback from appointed counsel on the timing of | |

| | | | | | |
|--|--|---|--|--|--|
| | | <p>statutory maximums. As to cases that have gone to trial with outside appointed counsel, I almost always exceed the statutory maximum. I can think of a couple of cases over the last 10 years that went to trial on sex assault, lewdness and murder charges.</p> <p>The numbers I am relating are truly guestimates as to request for costs:</p> <ul style="list-style-type: none"> • Category A felonies 95% of the cases will have at least 1 request for investigation fees over \$5000 and expert fees for items like psychological evaluations over \$1500.00 • Category B felonies 10-20% for investigative fees and psychological fees. Child Abuse cases almost always • Category C felonies 5% for investigative fees. If DV case, almost always • Category D felonies 1% • Category E 1% | <p>case in which I did not grant the requested fees. The matter started off as a death penalty case and a mistrial was declared. The State dropped the death penalty and I informed appointed counsel that as it was no longer a death penalty case the public defender would handle. Appointed counsel asked to remain on with the public defender as he already had prepared for the case. I advised him that the statutory maximum would be in play from this point on as the Court would approve all of the hours up until mistrial (over \$100,000) and that the additional maximum should cover a three week trial which he had already prepared for. Appointed counsel submitted a bill for an additional \$150,000 which was denied after going through the required analysis.</p> | <p>payments. Appointed counsel simply attaches an affidavit explaining why the case was complex if it exceeds the maximum.</p> | <p>appointed counsel receiving funds to investigate.</p> |
| | | <p>Hardly ever any extraordinary attorney fees. Consistently request investigative fees and expert fees</p> | <p>Generally for investigative and expert fees the Court grants a large majority of the requests without hearing. In rare instances, when the request is unusually large, we would hold a hearing to determine if the request is reasonable and necessary under the circumstances of the case.</p> | <p>Yes</p> | |

| | | | | | |
|--------------------------|-----|---|---|------|---|
| Fourth Judicial District | No | NA | NA | NA | <p>The Fourth JD does not utilize contract counsel, which I am defining as an attorney with a contract with a county to provide legal services for indigent criminal defendants appearing in the courts in that county.</p> <p>As you know, Elko County has a public defender's office. Private attorneys are appointed to represent indigent criminal defendants for whom representation by the public defender's office is prohibited by a conflict of interest. All private "conflict" attorneys are very aware that they can request fees in excess of the statutory maximum from each DJ in the Fourth Judicial District. In fact, these attorneys often do just that. Both district judges invariably grant these requests. Both district judges agree an "extraordinary fee request" would be denied only if there is solid evidence that the "conflict" attorney is "padding" his/her bill.</p> |
| Fifth Judicial District | Yes | Nye County has contracts with 5 individuals who serve as public defenders. They are: Harry Gensler, Nathan Gent, Jason Earnest, David Richter, and Jonathon Nelson. The Justice Court may appoint | We review the bills and if the additional charges appear to be warranted, approve them. | Yes. | The method by which public defenders and conflict counsel are chosen leaves much to be desired. I believe that the respective counties should have an application process, so that the most |

| | | | | | |
|-------------------------|----|--|---|---|--|
| | | <p>contract counsel outside of these 5 if all are conflicted. In Esmeralda County, Chris Arabia is the contract public defender, and the Justice Court appoints conflict counsel. At the District Court level, we routinely receive requests in almost every case for an investigator, for the payment of experts, etc.</p> <p>I would estimate in 98% of the cases we receive outside cost requests. Outside fee requests occur when the designated public defenders have conflicts and then 100% of the cases seek extraordinary fees.</p> | | | <p>qualified public defenders are selected. This is not the case. Instead, attorneys who may be interested, advise the county, and the county manager, who is not an attorney, decides. I do not believe that the most qualified attorneys are selected, and it concerns me with regard to the defense provided.</p> |
| Sixth Judicial District | No | NA | NA | NA | <p>Humboldt County has a Public Defender's office, a County Alternative Public Defender's office, and occasionally a conflict attorney will be appointed and paid hourly. There is no ceiling on the cost.</p> |
| | | <p>Contract counsel have not requested extraordinary fees since White Pine, Lincoln, and Eureka counties began contract counsel agreements in May, 2015.</p> | <p>The contracts provide for counsel to apply for extraordinary fees. The court would consider any request under NRS 7.125(4)</p> | Yes | <p>Contract counsel have been providing excellent services to date.</p> |
| | | <p>In 3+ years, I have not had a request for extraordinary fees.</p> | <p>Any reasonable request would be granted.</p> | <p>Our contract attorneys are aware of their ability to request extraordinary fees.</p> | <p>I have practiced law since 1986, and been on the bench since 2001. Until approximately three years ago, our district had always been serviced by the Nevada State Public Defenders office.</p> |

| | | | | | |
|----------------------------|-----|--|--|-----|--|
| | | | | | Over the years I have seen many attorneys come and go through the local office: some good, many not so good. Overall, our contract attorneys have been providing the most consistent, high level of Representation I have ever seen. |
| Ninth Judicial District | Yes | NA | In Douglas County, the judge has never seen an instance where any request for fees beyond the contract were denied. The attorneys are aware of this. | Yes | |
| Tenth Judicial District | Yes | They request these type of fees regularly. | The requests are made on an exparte basis. The are granted upon a showing of good cause. To date I can't recall ever denying a request. | Yes | I would be happy to answer any additional questions. |
| Eleventh Judicial District | Yes | Investigative and psychological/psychiatric evaluations happen frequently. | Generally, the requests are granted. | Yes | It seems that resources are requested on an "as needed" basis. The resources in small counties are limited. Counsel makes use of those resources when they believe the need arises. |

SB377 Projected Indigent Defense Costs

SB377 Trail-Level Indigent Defense Projected Costs

| County | FY17 Budget* | FY18 Projected** | FY19 Projected** | FY20 Projected** | FY21 Projected** | FY22 Projected** |
|-----------------------|--------------|------------------|------------------|------------------|------------------|------------------|
| Carson City | \$1,572,365 | \$1,609,787 | \$1,652,286 | \$1,690,619 | \$1,727,474 | \$1,766,688 |
| Churchill | \$476,000 | \$487,329 | \$500,194 | \$511,799 | \$522,956 | \$534,827 |
| Clark | \$48,425,337 | \$49,577,860 | \$50,886,716 | \$52,067,287 | \$53,202,354 | \$54,410,048 |
| Douglas | \$828,334 | \$848,048 | \$870,437 | \$890,631 | \$910,047 | \$930,705 |
| Elko | \$1,420,947 | \$1,454,766 | \$1,493,171 | \$1,527,813 | \$1,561,119 | \$1,596,557 |
| Esmeralda | \$62,000 | \$63,476 | \$65,151 | \$66,663 | \$68,116 | \$69,662 |
| Eureka | \$50,000 | \$51,190 | \$52,541 | \$53,760 | \$54,932 | \$56,179 |
| Humboldt | \$369,040 | \$377,823 | \$387,798 | \$396,795 | \$405,445 | \$414,648 |
| Lander | \$44,880 | \$45,948 | \$47,161 | \$48,255 | \$49,307 | \$50,427 |
| Lincoln | \$145,000 | \$148,451 | \$152,370 | \$155,905 | \$159,304 | \$162,920 |
| Lyon | \$406,518 | \$416,193 | \$427,181 | \$437,091 | \$446,620 | \$456,758 |
| Mineral | \$43,332 | \$44,363 | \$45,534 | \$46,591 | \$47,607 | \$48,687 |
| Nye | \$600,000 | \$614,280 | \$630,497 | \$645,125 | \$659,188 | \$674,152 |
| Pershing | \$209,110 | \$214,087 | \$219,739 | \$224,837 | \$229,738 | \$234,953 |
| Storey | \$85,564 | \$87,600 | \$89,913 | \$91,999 | \$94,005 | \$96,139 |
| Washoe | \$13,396,625 | \$13,715,465 | \$14,077,553 | \$14,404,152 | \$14,718,163 | \$15,052,265 |
| White Pine | \$435,000 | \$445,353 | \$457,110 | \$467,715 | \$477,911 | \$488,760 |
| Total | \$68,570,052 | \$70,202,019 | \$72,055,353 | \$73,727,037 | \$75,334,286 | \$77,044,374 |
| Rural Total | \$6,748,090 | \$6,908,695 | \$7,091,084 | \$7,255,597 | \$7,413,769 | \$7,582,062 |
| State Share*** | \$0 | \$160,605 | \$164,845 | \$168,669 | \$172,346 | \$176,258 |

*FY17 budgeted amount derived from publically available/posted county budget data. Sec. 15 of SB377 requires use of average costs of FY14, FY15, and FY16, but data for those budget years is not consistently and readily available.

**Projections based upon International Monetary Fund (IMF) forecasted United States inflation rate.

***State share reflects the projected cost increase in counties whose population is less than 100,000 per Sec. 15 of SB377.

SB377 Projected Indigent Defense Costs

Projected Costs Associated with the Right to Counsel Committee and Office of Indigent Legal Services in SB377

State Public Defender Budget FY17

| | |
|--------------------|--------------------|
| State General Fund | \$1,732,263 |
| Counties | \$1,657,929 |
| Total | \$3,390,192 |

Based upon a review of the costs associated with the current State Public Defender's Office and Indigent Defense Commissions in other states (MT, MI, VA, ID) it is reasonable to assume that a General Fund obligation of approx. \$2M can be expected to support the Nevada Right to Counsel Committee and the Office of Indigent Legal Services, as contemplated in SB377, in FY18. The following table reflects the roughly estimated General Fund obligation going forward based on projection methodology used in the table on page 1. The table below includes cost projections at higher rates, based up an estimate provided by Sixth Amendment Center.

| Source | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 |
|--------------|-------------|-------------|-------------|-------------|-------------|-------------|
| General Fund | \$1,732,263 | \$2,000,000 | \$2,052,800 | \$2,106,994 | \$2,162,619 | \$2,219,712 |
| General Fund | \$1,732,263 | \$2,500,000 | \$2,566,000 | \$2,633,742 | \$2,703,273 | \$2,774,640 |
| General Fund | \$1,732,263 | \$3,000,000 | \$3,079,200 | \$3,160,491 | \$3,243,928 | \$3,329,568 |

| Indigent Defense Statistics, Fiscal Year 2016-18 | | Fiscal Year | | |
|--|-----------------------------|-------------|-------|----------|
| | | 2016 | 2017 | 2018 YTD |
| Washoe Public Defender | New Appointments | 6,733 | 6,867 | ND |
| | Re-Activated | ND | ND | ND |
| | Adjudicated/Disposed/Closed | 6,649 | 5,969 | ND |
| | Placed on Inactive Status | ND | ND | ND |
| | End Pending | ND | 1,778 | NA |
| Lyon County District Court | New Appointments | 154 | 228 | ND |
| | Re-Activated | 40 | 50 | ND |
| | Adjudicated/Disposed/Closed | 122 | 186 | ND |
| | Placed on Inactive Status | 69 | 69 | ND |
| | End Pending | 45 | 72 | NA |
| Elko County District Court | New Appointments | ND | 653 | ND |
| | Re-Activated | ND | 41 | ND |
| | Adjudicated/Disposed/Closed | ND | 666 | ND |
| | Placed on Inactive Status | ND | 89 | ND |
| | End Pending | ND | 648 | NA |
| Esmeralda County District Court | New Appointments | - | - | - |
| | Re-Activated | - | - | - |
| | Adjudicated/Disposed/Closed | 1 | 2 | - |
| | Placed on Inactive Status | - | - | - |
| | End Pending | 4 | 5 | NA |
| Nye County District Court | New Appointments | 366 | 319 | 58 |
| | Re-Activated | 79 | 101 | 25 |
| | Adjudicated/Disposed/Closed | 346 | 324 | 88 |
| | Placed on Inactive Status | 125 | 150 | 19 |
| | End Pending | 293 | 282 | NA |
| Humboldt County District Court | New Appointments | 194 | 175 | 24 |
| | Re-Activated | 16 | 19 | 1 |
| | Adjudicated/Disposed/Closed | 106 | 226 | 18 |
| | Placed on Inactive Status | 14 | 30 | 5 |
| | End Pending | 224 | 173 | NA |
| Eureka County District Court | New Appointments | - | - | - |
| | Re-Activated | 1 | - | - |
| | Adjudicated/Disposed/Closed | 3 | - | - |
| | Placed on Inactive Status | - | - | - |
| | End Pending | - | - | NA |
| Lincoln County District Court | New Appointments | 26 | 2 | 3 |
| | Re-Activated | 14 | 7 | 1 |
| | Adjudicated/Disposed/Closed | 32 | 19 | 3 |
| | Placed on Inactive Status | 8 | 3 | 1 |
| | End Pending | 19 | 9 | NA |
| White Pine County District Court | New Appointments | 26 | 20 | 4 |
| | Re-Activated | 11 | 9 | 1 |
| | Adjudicated/Disposed/Closed | 47 | 32 | 10 |
| | Placed on Inactive Status | 10 | 3 | - |
| | End Pending | 7 | 9 | NA |

| | | | | |
|--------------------------------------|-----------------------------|--------|--------|-------|
| Clark County Public Defender | New Appointments | 24,015 | 24,069 | 4,083 |
| | Re-Activated | | | |
| | Adjudicated/Disposed/Closed | 19,142 | 24,687 | 4,068 |
| | Placed on Inactive Status | 4,947 | 6,785 | 1,085 |
| | End Pending | 12,220 | 13,153 | NA |
| Clark County Special Public Defender | New Appointments | 32 | 290 | 32 |
| | Re-Activated | - | 6 | 3 |
| | Adjudicated/Disposed/Closed | 28 | 137 | 49 |
| | Placed on Inactive Status | - | 22 | 2 |
| | End Pending | 65 | 205 | NA |
| Churchill County District Court | New Appointments | 252 | 215 | 36 |
| | Re-Activated | 88 | 76 | 10 |
| | Adjudicated/Disposed/Closed | 432 | 364 | 73 |
| | Placed on Inactive Status | 97 | 89 | 8 |
| | End Pending | 88 | 55 | NA |
| Lander County District Court | New Appointments | 34 | 35 | 5 |
| | Re-Activated | - | 1 | - |
| | Adjudicated/Disposed/Closed | 13 | 30 | 7 |
| | Placed on Inactive Status | - | 2 | 1 |
| | End Pending | 37 | 42 | NA |
| Mineral County District Court | New Appointments | 9 | 14 | - |
| | Re-Activated | - | - | - |
| | Adjudicated/Disposed/Closed | 7 | 14 | 3 |
| | Placed on Inactive Status | 3 | - | - |
| | End Pending | 37 | ND | NA |
| Pershing County District Court | New Appointments | 115 | 118 | 17 |
| | Re-Activated | 9 | 7 | 2 |
| | Adjudicated/Disposed/Closed | 124 | 108 | 26 |
| | Placed on Inactive Status | 9 | 6 | - |
| | End Pending | 69 | 82 | NA |
| GRAND TOTAL | New Appointments | 31,956 | 33,005 | 4,262 |
| | Re-Activated | 258 | 317 | 43 |
| | Adjudicated/Disposed/Closed | 27,052 | 32,764 | 4,345 |
| | Placed on Inactive Status | 5,282 | 7,248 | 1,121 |
| | End Pending | 13,108 | 16,513 | NA |

ND No Data

NA Not Applicable

Source: Indigent Defense Caseload Statistics, AOC, Research and Statistics Unit