

Appendix C  
NLADA's  
*"Model Contract for Public Defender Services"*

## CONTRACT FOR PUBLIC DEFENSE SERVICES

The [City, County, State], referred to as “the Contracting Authority,” and [law firm or non-profit organization], referred to hereafter as “the Agency,” agree to the provision of public defense services as outlined below for the period [date] to [date]. The Contracting Authority Administrator is [ ], and the Managing Director of the Agency is [ ].

Following are the underlying bases for the Contract:

- i. [City, County, State] has a constitutionally mandated responsibility to provide public defender services which is specifically defined in [local ordinance or statute], and/or a [statutory/judicially-required] duty to provide [specify juvenile, civil commitment, etc. services].
- ii. The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in \_\_\_\_ [City, County, State] by the Agency, as authorized by law.
- iii. The Agency agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by the controlling Professional Responsibility [Rules or Code].
- iv. The Contracting Authority and the Agency 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 Agency.

The parties agree as follows:

### I. DURATION OF CONTRACT

This Contract shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, 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 person who is facing civil commitment 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 [relevant state statute, court rule, and constitutional provision].

- 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 Agency) through disposition or necessary withdrawal after the substantial delivery of legal services. Nothing in this definition prevents the Agency 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, [define according to type of case—juvenile, family, etc.].
- 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, if applicable. Nothing in this definition prevents the Agency from providing necessary legal services to an eligible client after disposition, but payment for such services will require a showing pursuant to the Extraordinary Expenses paragraph below. Disposition in other cases shall mean: [define according to type of case—juvenile, family, etc.].
- D. Representational Services: The services for which the Contracting Authority is to pay the Agency 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 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 Agency 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 [relevant state statute, court rule, and constitutional provisions].

- E. Complex Litigation Cases: Complex Litigation refers to: 1) all Capital homicide cases, 2) all aggravated homicide cases, 3) those felony fraud cases in which the estimated attorney hours necessary exceeds one hundred seventy (170) hours, 4) cases which involve substantial scientific information resulting in motions to exclude evidence pursuant to controlling case law emanating from *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), and *Daubert v. Merrell Dow*, 113 S.Ct. 2786 (1993), or similar opinions, and 5) other cases in which counsel is able to show the appropriate court in an *ex parte* proceeding that proper representation requires designation of the case as complex litigation.
- F. Other Litigation Expenses: Other Litigation Expenses shall mean those expenses which are not part of the contract with the Agency, 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.

### **III. INDEPENDENT CONTRACTOR**

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

### **IV. POLICY BOARD**

Oversight of the Agency in matters such as interpretation of indigent defense standards, recommendation of salary levels and reasonable caseloads, and response to community and client concerns, shall be provided by the Policy Board. The Policy Board shall be [appointed/designated] by the Contracting Authority and shall consist of [3-13] diverse members, a majority of which shall be practicing attorneys, and shall include 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, judges or law enforcement officials. The Agency will meet regularly with the Policy Board.

## **V. AGENCY'S EMPLOYEES AND EQUIPMENT**

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

## **VI. MINIMUM QUALIFICATIONS FOR AGENCY ATTORNEYS**

- A. Every Agency attorney shall satisfy the minimum requirements for practicing law in [state] as determined by the [state] Supreme Court. Seven hours of [each year's required or (where CLE is not otherwise 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 Agency provides legal services to eligible clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
- B. Each Agency attorney representing a defendant accused of a [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], 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 [\_\_\_\_ (e.g. Class A)] felony, as defined in [relevant local statute], 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 [\_\_\_\_ (e.g. Class B or C)] felony, as defined in [relevant local statute], 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 Agency, 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 Agency will provide one FTE supervising attorney for every 10 FTE caseload attorneys.
  
- E. Notwithstanding the above, each Capital case assigned to the Agency 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. Notwithstanding the above, each Capital case assigned to the Agency 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. Notwithstanding the above, each Complex Litigation case assigned to the Agency other than a Capital case shall be staffed by one FTE attorney with at least seven years of criminal law experience, or the equivalent of one half-time (.5 FTE) attorney with seven years of criminal law experience and one half-time (.5 FTE) attorney with five years of criminal law experience.
  
- H. Failure on the part of the Agency 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 Agency 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 the amount specified on Worksheet A, subject to the variance terms specified in Section VII (Variance). Any material breaches of this agreement on the part of the Agency or the Contracting Authority may result in action as described in Section XVIII (Corrective Action) or Section XIX (Termination and Suspension).

The Agency agrees to provide representational services in the following types of cases: [ ]

The Agency 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 Agency 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 Agency 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.
- C. The Agency agrees that an attorney will make contact with all other clients within 5 working days from notification of case assignment.
- D. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Agency agrees to screen all cases for conflict upon assignment and throughout the discovery process, and to notify promptly the Contracting Authority when a conflict is discovered. The Agency will refer to the [state] Rules of Professional Conduct, as interpreted by [the (state or other relevant) 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.
- E. It is agreed that the Agency 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 that 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 Agency 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 Agency 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.

- F. 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 Agency 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 Social Service Caseworker for every 450 Felony Cases  
One full time Social Service Caseworker for every 600 Juvenile Cases  
One full time Social Service Caseworker for every 1200 Misdemeanor Cases  
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 Agency 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.

- G. If the Agency is to be responsible for representing defendants in Complex Litigation cases, the following provisions apply. Complex Litigation cases occupy the full time or FTE of one attorney and the half time of one investigator prior to completion, except for Capital cases which 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 that relate to Complex Litigation are found in Section V (Minimum Qualifications) and Section VIII (Assignment of Complex Litigation).

- H. Sexual Predator Commitment Cases: “Sexual predator commitment” cases shall be handled as Complex Litigation cases.
- I. The Agency may use legal interns. If legal interns are used, they will be used in accordance with [citation to State Admission to Practice Rules].
- J. The Agency 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 Agency'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 agency 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 Agency and the Contracting Authority agree that the actual number of cases assigned under this contract may vary from the numbers agreed on Worksheet A by the following levels:

Monthly Variance	20%
Quarterly Variance	15%
Semi-Annual Variance	15%
Yearly Variance	5%

Any deviation in the number of cases assigned that is within the limits above shall not result in alteration of payment owed to the Agency by the Contracting Authority and shall not be the cause of renegotiation of this Contract except as provided in Section XII (Requests for Modifications). The Contracting Authority agrees to make good faith efforts to keep the number of cases assigned within the variance level. In no event shall the Agency be required to accept cases above the level of

the variance, even for extra compensation, if doing so would imperil the ability of the Agency's attorneys to maintain the maximum caseload standards provided in Section VI (Performance Requirements). The Contracting Authority shall provide the Agency with quarterly estimates of caseload to be assigned at least one month prior to the beginning of each calendar quarter and shall make available, upon request, the data and rationale which form the basis of such estimate(s).

#### **IX. ASSIGNMENT OF COMPLEX LITIGATION CASES**

[If assignment of Complex Litigation cases is contemplated by this Contract,] the Agency will designate a full time or FTE attorney for that purpose. Thereafter, the Agency 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 Agency has a pending Complex Litigation case, unless the Agency has available qualified staff and the Contracting Authority provides the necessary resources.
- B. In the event the Agency attorney designated to handle Complex Litigation is not occupied with a Complex Litigation case, Contracting Authority may increase the assignment of other felony cases up to 12.5 per month.
- C. Should the services of an additional FTE attorney be required due to the pendency of a Capital case, the Contracting Authority and the Agency will negotiate a reduction in Agency caseload or provision of extra compensation to provide for the services of that attorney.
- D. 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 agency attorney(s) and the expected duration of the case. Such review may result in reclassification of the case or modification in payment structure to ensure that the requirements of Sections V.G. and VI. G above can be met.

#### **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 Agency 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 or other Complex litigation after having participated in the required seven hours of annual CLE required in Section V.A, the Agency shall require additional training in the particular type of case, as necessary.

## **XI. ATTORNEY EVALUATION**

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

## **XII. COMPENSATION AND METHOD OF PAYMENT**

- A. For the term of this contract, the Contracting Authority shall pay the Agency a rate of \$\_\_\_\_\_ for the caseload specified on Worksheet A, plus or minus the variance agreed to in Section VII (Variance). Payments will be made on a monthly basis. 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. The Contracting Authority shall provide the Agency with a certification of case assignments 10 working days after the close of each calendar month. The Agency shall return the signed certification within 10 working days of receipt. The Contracting Authority will pay the Agency by the 8th working day of the following month.
- C. If services in addition to those called for by this Contract are required because of unexpected increases in annual caseload(s), the Contracting Authority shall provide supplemental funding to the Agency at a rate to be negotiated which is commensurate with the rate paid under this Contract (or, in the event that new categories of cases (*e.g.* Capital cases or other Complex Litigation) are added, commensurate with the rate prosecutors receive for similar work) and the actual cost to the Agency of providing the extra service. This provision in no way limits the right of the Agency to refuse to accept cases in excess of the agreed caseload and variance as described in Section VII (Variance).
- D. If the number of cases assigned by the Contracting Authority falls below the agreed caseload and variance, the Contracting Authority will remain liable for the full rate agreed unless it has complied with the provisions in Section XII (Request for Modifications).
- E. In the event of Agency 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 Contracting Authority shall evaluate the number of cases assigned to the Agency and make projections as to the number of cases that will be assigned to the Agency in future months. These projections will be provided to the Agency on a quarterly basis as specified in Section VII (Variance). If the projection indicates that the cases assigned to the Agency will exceed the variance, the Contracting Authority will negotiate with the Agency for supplemental funding to cover the increased caseload, commensurate with the rate paid in this Contract and the actual cost of providing representation. The Agency shall have the right without penalty to refuse to accept additional cases beyond the agreed caseload and variance in order to preserve its ability to manage the caseloads of its attorneys as specified in Section VII (Variance).

If the Contracting Authority determines that forces beyond its control such as an unexpected decline in availability of cases for assignment will require the number of cases assigned to the Agency to drop below the agreed caseload and variance, the Contracting Authority may request renegotiation of the rate to be paid under this contract in writing no less than 30 days prior to the date that any change would become effective. Both parties agree in these circumstances to negotiate in good faith for a new rate proportionate to the rate paid under this Contract, taking into account the expenses incurred by the Agency and the Agency's opportunity to realize cost savings and devote resources to other work.

In addition, the Agency may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Agency 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 Agency 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 Agency within 30 days of the finding of the request that the supplemental funds shall not be available.

### **XIV. REPORTS AND INSPECTIONS**

The Agency 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 Agency shall submit to the Contracting Authority on the last working day in January 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 seventh day of the month, the Agency will report the number of cases completed in the past month, separated by category, to the Contracting Authority Administrator.

C. Expenditure Reports

Within 20 days of the last day of each calendar month, the Agency will certify to Contracting Authority a monthly report of the prior month's expenditures for each type of case handled, in the format to be provided. Expenditure reporting shall be on an accrual basis.

D. Annual Subcontract Attorney Use Report

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

E. Bar Complaints

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

F. Inspections

The Agency 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 Agency 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 Agency in a way that allows access by the Contracting Authority without breaching such confidentiality or privilege. The Agency 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 Agency 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 Agency on each case.
- B. The Agency agrees to maintain records that 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 Agency 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 Agency shall 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.
- 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 Agency to Agency employees

or others by reason of the Contract. The Agency 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 Agency'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 Agency 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 Agency, its officers, employees, representatives or agents.
- C. The Contracting Authority shall indemnify and hold harmless the Agency 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 Agency, the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Agency 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 Agency's indemnification, it is agreed that the Agency 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 Agency 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 Agency 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 Agency shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts that occur during the course of their employment with the Agency 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 \$1,000,000 combined single limit per claim/aggregate. The Agency 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 Agency 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 Agency shall not be required to make payments other than its judicially determined percentage, for any professional liability that is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Agency and the Contracting Authority.

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

C. Automobile Insurance

The Agency shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Agency to transport clients of the Agency.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage that the Agency is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$500,000 combined single limit per accident for bodily injury and property damage.

D. Workers' Compensation

The Agency shall maintain Workers' Compensation coverage as required by the [state statutory reference].

The Agency 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 Agency to monitor Agency 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 Agency in writing of the nature of the breach.
2. The Agency 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 Agency in writing of the Contracting Authority's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency'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 Agency does not concur with the determination, the Agency may request a review of the decision by the Contracting Authority Executive. The Contracting Authority agrees that it shall work with the Agency to implement an appropriate corrective action plan.

In the event that the Agency does not respond to the Contracting Authority's notification within the appropriate time, or the Agency'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 Agency that 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 Agency in the event that –
1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract;
  2. The Agency 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 Agency written notice of termination, which shall include the reasons for termination and the effective date of termination. The Agency 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 Agency 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 Agency's response. In the event the Agency does not concur with the determination, the Agency 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 10 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 Agency. A decision by the Contracting Authority Executive affirming termination shall become effective 10 days after it is communicated to the Agency.

- B. The Agency 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 Agency terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the

Agency 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 Agency's control, fault or negligence.

- C. In the event of the termination or suspension of this Contract, the Agency 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 Agency 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 Agency attempt to withdraw from any case assigned and not completed. Should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency on behalf of any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Agency 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 Agency shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency 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.
- G. 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 AGENCY**

The managing director of the Agency shall be an attorney licensed to practice law in the State of \_\_\_\_\_. The managing director of the Agency 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 Agency shall not assign or subcontract any portion of this Contract without consent of the Contracting Authority. Any consent sought must be requested by the Agency 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 Agency. 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 that 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 Agency.
- C. The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services that 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 that 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 Agency 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 Agency nor any party subcontracting with the Agency 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 Agency shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit such discrimination.

## **XXVIII. CONFLICT OF INTEREST**

### **A. Interest of Members of Contracting Authority and Agency**

No officer, employee, or agent of the Contracting Authority, or the State of \_\_\_\_\_, 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 Agency.

### **B. Interests of Agency Directors, Officers, and Employees**

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract

funds without prior disclosure and approval by the Administrator of the Contracting Authority:

1. The employment of an individual, either as an employee of the Agency or as an independent consultant, who is either: (a) related to a director of the Agency; (b) employed by a corporation owned by a director of the Agency, or relative of a director of the Agency. This provision shall not apply when the total salary to be paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.
  
2. The acquisition or rental by the Agency of real and/or personal property owned or rented by either: (a) an Agency officer, (b) an Agency director, (c) an individual related to an Agency officer or Agency director, or (d) a corporation owned by the Agency, an Agency director, an Agency officer, or relative of an Agency officer or director.

Agreed:

\_\_\_\_\_ Agency

\_\_\_\_\_ Contracting Authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Worksheet A**

The Agency agrees to accept the following cases from the Contracting Authority for the duration of this Contract for the rates shown, subject to the terms of this Agreement:

<u>Case Type</u>	<u>Annual Caseload</u>	<u>Monthly Caseload</u>	<u>Payment</u>
Adult Felony			
Adult Misdemeanor			
Juvenile Offender			
Juvenile Dependency			
Civil Commitment			
Misdemeanor Appeal			
[Specialty Courts; Other]			
<b><u>Total:</u></b>			

The Agency agrees to provide the following other services for the Contracting Authority for the rate shown, subject to the terms of this agreement:

<u>Service</u>	<u>Payment</u>
Complex Litigation	
24 Hour Advisory Service	
In Custody Arraignments	
[Other]	
<b><u>Total:</u></b>	

