

**REQUEST FOR PROPOSALS
TO PROVIDE INDIGENT DEFENSE WORK
FOR THE COUNTY OF MARIPOSA**

I. PROPOSALS

The County of Mariposa ("County") seeks proposals for contract counsel to conduct indigent defense work on behalf of the County. The term for such contract will be July 1, 2018 through June 30, 2021. Review of responses to this request for proposals will be conducted by a committee of individuals knowledgeable about the criminal justice system. A recommendation will be made to the Board of Supervisors concerning the award of such an agreement.

II. DEFINITIONS

For purposes of this Request For Proposals and the proposed Legal Services Agreement, the following definitions apply:

Level One Defendant – The first defendant to be assigned counsel, whether or not a possible conflict exists with other defendants.

Level Two Defendant – The second defendant to be assigned counsel who has been charged with a criminal act arising out of the same incident wherein the Level One Defendant was charged.

Level Three, Four, Five, etc. Defendant – Each succeeding defendant to be assigned counsel under the same circumstances as described in Level Two above.

III. CRITERIA

A complete bid will incorporate the following:

- (1) All misdemeanor and felony filings involving Level One, Two and Three Defendants, juvenile dependency and juvenile delinquency petitions, Division 4 Probate Code (Guardianships and Conservatorships), and Family Support will be eligible for appointment in the absence of a formally declared and court approved conflict of interest. The assigned attorneys shall participate in the regularly scheduled proceedings of the Superior Court.
- (2) The assigned attorneys shall have at least three years of criminal defense experience including felony trial work.
- (3) The assigned attorneys shall maintain an office within Mariposa County which is staffed and open five days a week. The assigned attorney shall be responsible for rent, utilities, and all associated expenses of the office.

- (4) Bids shall include the cost of all investigation. Exceptions may be negotiated in unusual circumstances based upon court approval on a case-by-case basis.
- (5) Bids shall include the cost of experts. Any expert requested to be funded outside the contract will be subject to prior approval by the court following review on a case-by-case basis.
- (6) Death penalty cases where a special appointment may be required are excluded.
- (7) Any and all special requirements anticipated to be part of a resulting contract will be outlined by the respondent at the time of the bid.

IV. ALTERNATE BIDS

If you propose to represent conflict cases either in-house, or by hiring independent counsel, please be specific regarding how that process will work. If the proposal includes in-house representation, provide legal authority that your proposal is consistent with California's Rules of Professional Conduct.

Mariposa County reserves the right to deny the ability to represent conflict of interest cases in-house, therefore your quoted price should include hiring independent counsel for all levels of defendants

V. AGREEMENT

Attachment 1 is the proposed Legal Services Agreement. This Agreement may be modified based on responses to this Request for Proposals.

VI. EVALUATION OF BIDS

The criteria for evaluation of the submitted bid shall include:

1. Meets the minimum criteria;
2. The proposed fixed fee cost of services;
3. Demonstrated capability of the assigned attorneys;
4. Experience and capability of the firm, if applicable.

VII. DESCRIPTION OF THE SYSTEM

Mariposa County has a two judge Superior Court Judicial Department.

VIII. REVIEW SCHEDULE

The following key dates are anticipated with this request for proposal.

1. Issuance of RFP – March 1, 2018.
2. Return of RFP by respondents – April 12, 2018.
3. Review process (including interviews if appropriate) through May 10, 2018.
4. Begin workload – July 1, 2018.

IX. CONTACT FOR FURTHER INFORMATION

1. For further information regarding this request for proposals, please contact:

Dallin Kimble
County Administrative Officer
P.O. Box 784
Mariposa, CA 95338
(209) 966 – 3222

2. For information regarding Superior Court workload activities, please contact:

Cynthia Busse
Court Executive Officer
P.O. Box 28
Mariposa, CA 95338
(209) 966 – 2005

X. SUBMISSION DEADLINE

Responses to this request for proposals are required to be in the office of the County Administrative Officer no later than 5:00 p.m. April 12, 2018.

Dallin Kimble
County Administrative Officer
P.O. Box 784
Mariposa, CA 95338
(209) 966 – 3222

LEGAL SERVICES AGREEMENT

THIS AGREEMENT shall become effective on July 1, 2018, regardless of the date of execution by the parties, and is executed in Mariposa, California, by and between the COUNTY OF MARIPOSA, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and [legal services provider name], hereinafter referred to individually as "CONTRACTOR" and collectively as "CONTRACTORS." CONTRACTORS represent and warrant that they are now, and will during the term of this Agreement and any extensions, each conduct business as an independent law office and that they are in no way affiliated as partners, employees or agents of each other.

WHEREAS, the COUNTY Board of Supervisors has determined that it is in the best interest of COUNTY to contract with independent contractors for the special legal services hereinafter set forth; and

WHEREAS, CONTRACTORS are Attorneys at Law, licensed to practice law before all of the courts of the State of California and are otherwise qualified to perform the services hereinafter set forth.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. CONTRACTORS shall perform all duties normally provided by a public defender as required by law including but not limited to those duties outlined on Exhibit "A" attached hereto.

2. COUNTY shall pay to CONTRACTORS the sum of XX dollars (\$XX) per year, payable monthly in TWELVE (12) payments of XX dollars (\$XX) on or before the tenth (10th) day of each month. Each monthly payment shall be in arrears for the services performed during the prior month. Each CONTRACTOR shall be paid according to the formula agreed upon between the CONTRACTORS and the County Administrative Officer, however, in no event shall the total paid to all CONTRACTORS exceed the sum of XX dollars (\$XX) in any month during the term of this Agreement unless an increase is granted pursuant to paragraph 3 below, or otherwise as approved by COUNTY based upon the terms and conditions of this Agreement. The parties agree and represent that the amount of compensation has been established after consideration of the facts set forth in California Penal Code §987.3 and further recognize that circumstances such as those referred to in Paragraphs 4 and 5 may require changes in the total compensation. COUNTY and CONTRACTORS agree to re-negotiate the total sum to be paid to CONTRACTORS hereunder in the event CONTRACTORS are required to make Court appearances for new programs for which no regular Court appearances are required at the time of the execution of this Agreement. By way of example only, if a new program is added to the judicial system, which requires CONTRACTORS to appear in Court on Friday, in addition to the then current appearances on Monday, Tuesday and Thursday, this clause will be invoked. However, should the Court simply move Thursday court to Monday, with no additional days requiring court appearances, this clause shall not be invoked.

COUNTY will make available to CONTRACTORS the sum of XX dollars (\$XX) for each fiscal year during the term of this Agreement to be used for investigative purposes as determined by the Superior Court. No funds will be accessed by CONTRACTORS for investigative expenses without the prior written approval of the Superior Court.

3. This Agreement shall be for a term of three (3) years commencing July 1, 2018, terminating on June 30, 2021, unless earlier extended by mutual agreement of the parties. COUNTY shall have the option to extend the term of this Agreement for one (1) one (1) year term. Should COUNTY elect to extend this Agreement, CONTRACTORS shall be notified in writing sixty (60) days prior to the expiration of the initial term, or any extended term. In the event of any extensions hereunder the parties shall mutually agree upon the annual contract price.
4. COUNTY shall receive all funds collected pursuant to Penal Code §§ 987.4, 987.6, and 987.8, Government Code §27712, and any similar statute providing for the reimbursement for the cost of legal services rendered under this Agreement, and no portion of the funds shall inure to CONTRACTORS' benefit or otherwise affect the amount specified in Paragraph 2.
5. This Agreement shall not apply to cases governed by California Penal Code §987.9, "capital cases," nor shall it apply to costs for investigators in homicide cases where the Superior Court has approved extraordinary expenses.
6. In addition to the sum specified in Paragraph 2 above, CONTRACTORS shall be reimbursed for reasonable out-of-pocket expenses incurred in representing criminal defendants in matters where venue has been changed outside the County of Mariposa.
7. Each CONTRACTOR shall maintain a full-time office within the County of Mariposa and shall insure that all attorneys performing legal services under this Agreement are members of the California State Bar in good standing. Each CONTRACTOR shall maintain a telephone answering service or device for the taking of telephone messages during non-business hours. In-custody clients shall be interviewed within thirty-six (36) hours of CONTRACTOR'S appointment. Out-of-custody clients shall be interviewed within seventy-two (72) hours of CONTRACTOR'S appointment.
8. The Superior Court shall develop eligibility guidelines for the purpose of determining an individual's financial eligibility for indigent representation. CONTRACTORS shall obtain from each and every person he/she is appointed to represent, a completed questionnaire verifying the person's eligibility for indigent representation services. Failure to perform this requirement shall constitute a material breach of this Agreement.
9. In performing the duties herein specified, each CONTRACTOR is and shall be an independent contractor and not an employee of the COUNTY. CONTRACTORS will be responsible to COUNTY for only the good faith

performance of this Agreement in conformity with the Rules of Professional Conduct of the State Bar of California and not for the specific manner in which his/her duties are performed or his/her professional judgment exercised. Because each CONTRACTOR is an independent contractor, it shall be his/her sole and absolute responsibility to comply with all federal, state, and local statutes, regulations and ordinances respecting this Agreement.

10. The parties recognize that ethics considerations, such as those set forth in the Rules of Professional Conduct, may prohibit a CONTRACTOR from accepting some appointments that would otherwise be included within this Agreement. Upon discovery of a conflict of interest or other ethical consideration which precludes further representation, CONTRACTOR shall immediately notify the affected client(s) and move the Superior Court to be relieved as counsel.
11. CONTRACTORS, as independent contractors, shall be solely responsible for providing all office furniture, equipment, supplies, secretaries, clerks, attorneys, in-house investigators, and other persons necessary to perform this Agreement, including any professional education and expenses, except experts, expert witness fees, court reporter fees, filing fees, transcript fees, and witness fees paid out of the Superior Court's budget. In the event of a conflict in the performance by any CONTRACTOR'S investigator, that CONTRACTOR shall request additional sums from the Superior Court with which to retain investigative services.
12. CONTRACTORS hereby agree to individually indemnify and hold COUNTY, its officers and its employees absolutely harmless from any and all liability, cost, or expense whatsoever arising out of, or pertaining to, this Agreement and shall defend at no cost to COUNTY or COUNTY'S officers or employees, any such action brought against COUNTY, its officers or its employees.
13. During the term of this Agreement, each CONTRACTOR shall carry professional liability insurance in a minimum amount of \$2,000,000, insuring CONTRACTOR against all claims arising out of CONTRACTOR'S services performed hereunder. CONTRACTORS shall provide COUNTY with proof of insurance required herein upon execution of this Agreement by CONTRACTORS and annually thereafter.
14. Each CONTRACTOR shall notify COUNTY, in writing, within ten (10) working days of receipt by CONTRACTOR of a claim or allegation of ineffective representation by CONTRACTOR arising out of services provided hereunder by CONTRACTOR.
15. Upon the termination of this Agreement, CONTRACTORS shall cooperate fully with COUNTY and with such persons as may be designated by COUNTY to succeed CONTRACTORS in order to effect the orderly transition of legal services from CONTRACTORS to their successors. The cooperation specified in this paragraph includes, but is not limited to, the releasing of such files, papers and records as may be required to carry out the provisions of this Agreement and any subsequent agreement with successor contractors and to ensure the

continued adequate legal representation of persons eligible for the services herein set forth.

16. Each CONTRACTOR shall maintain all files and records for each case for which services are provided under this Agreement for at least ten (10) years following the last date CONTRACTOR rendered services pursuant to this Agreement, unless such files are assigned to successor counsel. CONTRACTORS shall have access to his/her files as necessary. Neither the COUNTY nor any other person or entity shall be permitted access to any such files without the written consent of CONTRACTOR or court order. Prior to closing each case, CONTRACTOR shall notify the client of the requirements of this clause.

17. CONTRACTORS shall provide for the maintenance of quality representation of indigent defendants consistent with constitutional and professional standards. In California, the benchmark adopted test for determining competency of counsel in criminal cases is that of a reasonably competent attorney acting as a diligent, conscientious advocate. (*People v. Pope*, 23 Cal.3d 412 [1979]). CONTRACTORS agree to provide competent legal services in conformity with the above standard, or with standards as modified by more recent legislation or case law. Specifically, the following duties and responsibilities of counsel as set forth in prior court decisions and professional standards will be observed. These include:
 - A. Duty of careful factual and legal investigation. (See *People v. Ibarra*, 60 Cal.2d 460 [1963] regarding duty to research the law and raise settled objections; *In re Saunders*, 2 Cal.2d 1033 [1970] regarding duty to investigate medical reports and conduct psychiatric examinations to support a diminished capacity defense; and ABA Standards on the Defense Function [hereinafter referred to as "ABA Standards"] Section 4.1.)
 - B. Duty to take prompt action to protect a client's legal rights. (See ABA Standards, Section 3.6a [including procedural steps such as moving for pretrial release, obtaining psychiatric examination, moving for change of venue or continuance, suppression of illegally obtained evidence, severance from jointly charged defendants, or dismissal].)
 - C. Duty to keep the client informed. (See ABA Standards, Section 3.8.)
 - D. Duty to prepare for jury selection, examination of witnesses, submission of instructions and presentation of argument at trial. (See ABA Standards, Section 7.2(a) and 7.2(b).)
 - E. Duty to know and explore sentencing alternatives. (See ABA Standards, Section 8.1(b).)
 - F. Duty to advise concerning appeals. (See ABA Standards, Section 8.2(a).)
 - G. Duty not to accept more cases than can be competently handled. (See *Martin v. State Bar*, 20 Cal.3d 717 [1978].)
 - H. Duty not to handle a legal matter which the lawyer knows or should know that he/she is not competent to handle. (See ABA Code of Professional Responsibility, Canon 6, Disciplinary Rule No. 6-101 (a).)
 - I. Duty to maintain client confidences and secrets.

18. The fees of attorneys appointed to represent persons who CONTRACTORS' cannot represent because of conflict of interest shall not constitute a charge against sums to which CONTRACTORS are otherwise entitled pursuant to this

Agreement. CONTRACTORS shall not decline to represent any eligible person except for a conflict of interest or disqualification recognized by the Superior Court.

19. All matters to which CONTRACTORS have been appointed prior to the termination of this Agreement shall be completed by CONTRACTORS notwithstanding the termination of this Agreement. CONTRACTORS acknowledge that services rendered by CONTRACTORS to complete matters pending at the termination of this Agreement shall not entitle CONTRACTORS to any fees beyond the annual payment due CONTRACTORS pursuant to Paragraph 2 above.
20. COUNTY may terminate this Agreement as to any CONTRACTOR performing services hereunder upon a thirty (30) day written notice in the event of a breach by a CONTRACTOR of any of the terms and conditions contained in this Agreement. COUNTY may further terminate this Agreement without cause if the Board of Supervisors determines in any budgetary cycle that it is unable to fund this Agreement in its budget period. This provision is intended to comply with Article XVI, Section 18 of the Constitution of the State of California.
21. COUNTY may terminate this Agreement as to any CONTRACTOR or all CONTRACTORS at any time by providing a notice in writing to CONTRACTOR(S) that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by CONTRACTOR(S). If the Agreement is so terminated, the CONTRACTOR(S) shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.
22. In the event any CONTRACTOR(S) ceases to perform services hereunder or is removed by COUNTY, COUNTY shall replace CONTRACTOR(S) with a qualified attorney.
23. Should any clause, paragraph or language in this Agreement be held to be void, unenforceable, or unconstitutional, such clause, paragraph or language shall be stricken from this Agreement and the remainder of this Agreement shall continue in full force and effect the same as if such clause, paragraph or language had never been contained herein.
24. Neither this Agreement nor any of the rights, obligations or duties specified herein shall be assigned, transferred or delegated to any person without prior written consent of COUNTY. CONTRACTOR shall neither assign nor transfer any interest in or to the proceeds of this Agreement. Any assignment, transfer or delegation in violation of this Paragraph shall be void.
25. This Agreement may not be modified or amended except by a written agreement signed by all parties hereto.
26. Any controversy or claim arising out of or relating to this Agreement which cannot be amicably settled without court action shall be litigated either in the

Superior Court of California, County of Mariposa, or in the United States District Court for the Eastern District of California. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

27. This Agreement constitutes the entire agreement between CONTRACTORS and COUNTY with respect to the subject matter thereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understanding of any nature whatsoever unless expressly included in this Agreement.
28. Any notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid and address as follows:

COUNTY: County of Mariposa
County Administrative Officer
P.O. Box 784
Mariposa, CA 95338

CONTRACTOR: NAME

CONTRACTOR: NAME

CONTRACTOR: NAME

Nothing herein shall preclude the giving of any notice by personal service.

29. While some of the duties of CONTRACTORS hereunder would be the duties of a Public Defender in a county served by a Public Defender, all parties hereto understand and agree that CONTRACTORS are not a Public Defender as described in California Government Code §27700, et seq.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year below written.

COUNTY OF MARIPOSA:

ROSEMARIE SMALLCOMBE, Chair
Board of Supervisors

DATE: _____

APPROVED AS FORM:

STEVEN W. DAHLEM
County Counsel

CONTRACTORS:

NAME
Attorney at Law

DATE: _____

NAME
Attorney at Law

DATE: _____

NAME
Attorney at Law

DATE: _____

ATTEST:

RENÉ LAROCHE
Clerk of the Board

EXHIBIT 'A'

1. Represent all persons whom the Superior Court has deemed indigent and who are charged with the commission of any felony (except capital cases) or misdemeanor when appointed by a Judge of the Mariposa County Superior Court ("Indigent Persons"). Represent juveniles in all petitions filed under Welfare and Institutions Code Sections 300 and 600.
2. Represent all persons requesting counsel and for whom counsel is appointed under Division 4 (Section 1400 et seq.) of the Probate Code (Guardianships and Conservatorships).
3. Represent all Indigent Persons in pretrial extraordinary writs and appeals to the Superior Court, provided that CONTRACTOR may decline appellate appointments when he/she has represented the client in related trial court proceedings. CONTRACTOR will in all cases assist client in perfecting client's right to appeal.
4. Represent all Indigent Persons before the Superior Court for violations of probation, post release community supervision, mandatory supervision, and parole violations. CONTRACTORS shall not be required to represent persons in proceedings for modification of conditions of probation without the Superior Court's consent.
5. Provide juvenile dependency caseload reports to the Superior Court on a monthly basis.