

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Defender

BOARD AGENDA # *B-11

Urgent Routine

AGENDA DATE October 21, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Public Defender to Finalize and Enter into an Agreement with the Administrative Office of the Courts to Provide Legal Representation in Juvenile Dependency Matters

STAFF RECOMMENDATIONS:

Authorize the Public Defender to Finalize and Enter into an agreement with the Administrative Office of the Courts to Provide Legal Representation in Juvenile Dependency Matters.

FISCAL IMPACT:

The Agreement provides that the Administrative Office of the Courts will fund related personnel, travel and operational costs to provide legal representation for juveniles and their parents in juvenile dependency matters. The agreement covers three fiscal years, June 30, 2007 to June 30, 2010. The Agreement provided \$174,085 in funds in Fiscal Year 2007-2008 and will provide \$178,463 in Fiscal Year 2008-2009. The amount of revenue for the current fiscal year was included in the Public Defender's adopted Proposed budget. The contract amount for 2009-2010 is expected to be \$182,973.

(Continued Page 2)

BOARD ACTION AS FOLLOWS:

No. 2008-720

On motion of Supervisor Grover, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice-Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: Elizabeth A. King
ELIZABETH A. KING, Assistant Clerk

File No.

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FISCAL IMPACT (continued):

it will be commensurate with prior year contract amounts. This contract reflects reimbursement for staff, mileage and facility costs for the Public Defender's Office only, as the State has contracts directly with one of the conflict firms for a portion of the work.

DISCUSSION:

In 2005 the Administrative Office of the Courts (AOC) determined that juvenile dependency matters throughout the State could be handled more effectively by directly contracting with the provider of this service. Previously the Public Defender and the two conflict firms that the County contracts with to provide legal defense services have provided these services and have been reimbursed by the Superior Court. The Board of Supervisors approved this change in the reimbursement process. At that time a three year agreement with the Administrative Office of the Courts was approved.

In 2007 the AOC extended this agreement for an additional three years. The agreement was not approved by the Board of Supervisors at the time of the extension however, a payment of \$174,085 for Fiscal Year 2007-2008 was received from the AOC.

The agreement will cover three fiscal years and provides reimbursement for the equivalent of a full-time attorney and clerical support in the current fiscal year of \$178,463. One of the State's objectives is that the caseload for the attorney be such so the attorney handling the representation of children in these matters would be able to provide enhanced services to juveniles they represent. This would include investigation of the interest of the child clients beyond the scope of the juvenile dependency proceeding in order to notify the Court of issues on behalf of the child. This is accomplished through home visitation, review of school issues, mental health assessment and treatment and immigration issues. The contract anticipates that the Public Defender will represent a total of approximately 200 clients, which may include parents or children.

The Public Defender's Office has staff that are extremely well qualified to provide the legal representation to ensure children in our County are placed in safe and enriching homes.

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POLICY ISSUE:

Approval to enter into this agreement with the Administrative Office of the Courts will support the Board's priority of *A safe community* by funding legal representation for juveniles and their parents in juvenile dependency matters.

STAFFING IMPACT:

The agreement will fund the equivalent of one existing Attorney V position and half of a Legal Clerk III position assigned to the Public Defender's Juvenile Division.



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688

Telephone 415-865-7960 • Fax 415-865-4325 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

STEPHEN NASH
Director, Finance Division

June 19, 2007

Mr. Tim Bazar
Public Defender
Stanislaus County Public Defender
1021 I Street, Suite 201
P.O. Box 3428
Modesto, CA 95353

Sent via: U.S. Postal Services

Subject: Transmittal of Contract Document 1007827-Amendment 2

Dear Mr. Bazar:

The attached approved and fully executed Contract Counterpart is for your records. You are now authorized to provide the agreed upon services. For inquiries regarding the Contract Document, contact the undersigned at 415-865-8022.

Sincerely,

Linda McBain
Contract Specialist

cc: Stacie Clarke/Leah Wilson (with 1 copy of enclosure)

Beth Going (with 1 copy of enclosure)

State of California

STANDARD AGREEMENT

APPROVED BY THE ATTORNEY GENERAL

STD. 2 (REV. 5-91)

Table with contract details: Contract Number 1007827, Amendment Number 2, TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER 94-6000540

THIS SECOND AMENDMENT, made and entered into this 1 day of July, 2007 ("Effective Date"), in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

Table with two columns: TITLE OF OFFICER ACTING FOR STATE (Business Services Manager) and ENTITY (JUDICIAL COUNCIL OF CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS (AOC) ... hereinafter "Contractor.")

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows:

PURSUANT TO THIS AMENDMENT NO. 2 TO CONTRACT 1007827 BETWEEN THE STATE OF CALIFORNIA AND THE CONTRACTOR, THE PARTIES AGREE TO THE FOLLOWING CHANGES:

- 1. The Contractor shall continue to provide court-appointed dependency counsel services to the Superior Court of California, County of Stanislaus.
2. Exhibit A, Terms and Conditions is hereby deleted in its entirety and replaced with Exhibit A, Terms and Conditions, Revisions 1, attached herein and incorporated herewith.
3. Exhibit B, Scope of Services and Service Levels, Revision 1 is hereby deleted in its entirety and replaced with Exhibit B, Scope of Services and Service Levels, Revision 2, attached herein and incorporated herewith.
4. Exhibit C, Payment Terms is hereby deleted in its entirety and replaced with Exhibit C, Payment Terms, Revision 1, attached herein and incorporated herewith.
5. As further set forth in Exhibit C, Payment Terms, Revision 1, the amount the State may pay the Contractor under this Contract, as amended, is hereby increased by \$174,085.00 from \$491,532.00 to \$665,617.00. The amount to be encumbered is for services in Fiscal Year 2007-2008 and, the funds are available when the Budget Act of Fiscal Year 2007-2008 is passed.
6. The expiration date of the Contract has been changed from June 30, 2007 to June 30, 2010.

EXCEPT AS PROVIDED HEREIN, all the terms and conditions of the original Contract No. 1007827, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 2 has been entered into by the parties hereto, effective upon the Effective Date.

Table with two main columns: STATE OF CALIFORNIA and CONTRACTOR. Includes fields for ENTITY, BY (AUTHORIZED SIGNATURE), PRINTED NAME OF PERSON SIGNING, and TITLE.

Table with financial and program details: AMOUNT ENCUMBERED BY THIS DOCUMENT (\$174,085.00), PROGRAM/CATEGORY (45.10: Support for Operation of the Trial Courts), FUND TITLE (Trial Court Trust Fund), and a table of items with columns for ITEM, CHAPTER, STATUTE, and FISCAL YEAR.

Department of General Services Use Only EXEMPT FROM DEPARTMENT OF GENERAL SERVICES' APPROVAL.

Table with signature and date fields: I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above. SIGNATURE OF ACCOUNTING OFFICER (Rafaelo Sanchez), DATE (6/15/07)

EXHIBIT A
TERMS AND CONDITIONS
REVISION 1

A.1. DEFINITIONS

Wherever capitalized in this Agreement, the following words shall have the following meanings:

“**Amendment**” means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (1) a change in the Services; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.

“**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

“**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement.**”

“**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.

“**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to perform the Services. The Contractor is one of the parties to this Agreement.

“**Court**” means the Superior Court of California, County of Stanislaus.

“**Data**” has the meaning set forth in paragraph A.12.

“**Force Majeure**” means a delay that prevents the timely performance of any obligation because such delay or failure to perform was unforeseeable and beyond the control of the party that failed to perform. Acts of Force Majeure include, but are not limited to:

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- Acts of God or the public enemy;
- Acts or omissions of any government entity;
- Fire or other casualty for which a party is not responsible;
- Quarantine or epidemic;
- Strike or defensive lockout; and,
- Unusually severe weather conditions.

“**Services**” means the services to be performed by the Contractor pursuant to this Agreement, as set forth in Exhibit B.

“**State**” as used in this Agreement means the Judicial Council of California, Administrative Office of the Courts (which may also be referred to as the “**AOC**”).

“**State Standard Agreement**” means the form used by the State to enter into agreements with other parties.

“**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement.

“**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.

A.2. Independent Contractor

Contractor shall be, and is, an independent contractor, and is not an employee or agent of the State or the Court, and is not covered by any employee benefit plans provided to State employees or Court employees. Contractor is liable for the acts and omissions of itself, its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the State, or the Court, and Contractor. Contractor will determine the method, details and means of performing the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all Subcontractors, agents, employees or other persons assisting Contractor in the performance of the Services. Contractor shall be solely responsible for all matters relating to the payment of Contractor’s employees, including but not limited to compliance with Medicare, social security, income tax withholding, unemployment and workers’ compensation laws and regulations, withholding for/providing of any and all employee benefits, and all other laws and regulations governing such matters. Neither party to this Agreement has any authority to enter into any contract or otherwise incur any liability in the name of, or on behalf of, the other party.

A.3. Quality of Services

Contractor agrees that each of its employees, Subcontractors, and agents assigned to perform any Services under this Agreement shall have the skills, training, and background reasonably

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commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. Contractor further agrees that the Services provided shall be performed in good faith and in a competent and timely manner consistent with professional standards for such work, will conform to the requirements of this Agreement, and will not infringe upon the rights of third parties. In addition, Contractor shall, and shall cause its employees, agents and Subcontractors to:

- (a) Provide quality representation for its clients, and comply with the provisions of California Welfare and Institutions Code § 317 and California Rule of Court, No. 1438.
- (b) Provide competent attorneys to render the Services. Contractor's attorneys shall participate regularly in continuing legal education activities respecting juvenile dependency issues, and shall demonstrate adequate skills, knowledge and comprehension of the statutory scheme, purposes and goals of dependency proceedings, the specific statutes, rules of court and cases relevant to such proceedings, and the applicable procedures for filing petitions for extraordinary writs and other documents.
- (c) Not restrict its attorneys' ability to serve on countywide committees, or their ability to participate in or lead public training seminars or conferences, provided such activities are consistent with the attorneys' obligations as professionals and the performance of the Services.
- (d) Adhere to the State Bar Act and the California Rules of Professional Conduct relative to the provision of the Services.

A.4. State's Quality Assurance Plan [Revised]

The State or its agent may evaluate Contractor's performance under this Agreement. Such evaluation may include assessing Contractor's compliance with all Agreement terms and performance standards.

- (a) *The State's implementation of its Quality Assurance Plan will include annual peer, client and judicial officer evaluation of attorneys, including attorneys providing services on a subcontracting basis. Contractor agrees to participate in the evaluation process by providing information requested by the State that is necessary for this evaluation. Requested information will include but will not be limited to the following:*

For each of Contractor's attorneys, including subcontract attorneys, the names and available contact information for at least three former clients whose representation has been terminated within 12 months from the date of request.

- (b) Contractor's deficiencies which State determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to Contractor. The report may include recommended improvements and corrective measures to be taken by Contractor. If Contractor's performance remains unsatisfactory to the State, the State may terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Contractor's performance conducted by the State shall

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not be construed as an acceptance of Contractor's work product or methods of performance. Contractor shall be solely responsible for the work product it delivers under this Agreement; Contractor shall not rely on State to perform any quality control review of Contractor's work product, and Contractor shall be solely responsible for the quality, completeness, and accuracy of its own work product.

A.5. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it, unless such subcontracting is first approved by the State in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this paragraph shall confer no rights on any party and shall be null and void.

If requested by the State, Contractor shall provide documentation that the proposed Subcontractor is experienced and able to perform that portion of the Services Contractor wishes to subcontract. Contractor shall require all Subcontractors to comply with the provisions of this Agreement. Contractor shall provide copies to the State of all agreements with Subcontractors who will perform Services pursuant to this Agreement. The State's approval of subcontracts shall in no way relieve Contractor of any of its responsibilities and obligations under this Agreement.

A.6. Indemnification

Contractor shall indemnify, defend (with counsel satisfactory to the State), and hold harmless: (1) the State, its officers and employees; (2) the Court, its judges, subordinate judicial officers, court executive officers, court administrators, officers and employees; and (3) their agents, representatives, contractors, subcontractors, and volunteers (the "Indemnified Parties") from any and all losses, costs, liabilities, claims, fees, penalties, interest and damages, including but not limited to reasonable attorneys' fees and costs (individually, a "Claim" and collectively, "Claims") (i) arising from, related to or in connection with, in whole or in part, the negligent acts or omissions, or intentional misconduct, of Contractor, its agents, employees, or Subcontractors; (ii) arising from, related to or in connection with, in whole or in part, Contractor's breach of its obligations, representations or warranties under this Agreement, or the violation of any applicable law, rule or regulation or the failure to report, withhold or pay any taxes when due by Contractor, its agents, employees or Subcontractors; (iii) made or incurred by any Third Party that furnishes or provides Services, materials, or supplies in connection with this Agreement; or (iv) made or incurred by any other Third Party who may be injured or damaged by Contractor, its agents, employees or Subcontractors in connection with this Agreement.

A.7. Insurance [Revised]

- a. Insurance Required. Without limiting Contractor's indemnification obligations, Contractor shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.

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- (i) Workers' Compensation—A program of Workers' Compensation Insurance in an amount and form sufficient to meet all applicable requirements of the California Labor Code, including Employer's Liability with at least \$1,000,000.00 per accident. This coverage shall not be required when Contractor has no employees.
 - (ii) Commercial General Liability Insurance—Coverage at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. The policy shall provide limits of at least \$1,000,000.00 per occurrence, combined single limit bodily injury and property damage.
 - (iii) Commercial or Business Automobile Liability Insurance (or Personal Automobile Insurance if Contractor is an individual with no transportation or hauling responsibilities under this Agreement)—Covering bodily injury and property damage and applicable to all owned, non-owned, leased, and hired vehicles. The policy shall provide combined single limits of at least \$1,000,000.00 per occurrence.
 - (iv) Professional Liability Insurance—Covering malpractice in the performance of Services under this Agreement. The policy shall provide limits of at least \$1,000,000.00 annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the termination and acceptance of all work provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- b. Additional Insured Endorsements. All policies required in subsection (a) above with the exception of Workers' Compensation, Personal Automobile Liability, and Professional Liability must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of Services under this Agreement: The State, the Court, its judges, its subordinate judicial officers, its court executive officers, its court administrators, and any and all of their other officers, officials, agents, representatives, contractors, volunteers or employees.
- c. Required Policy Provisions. Each policy required in subsection (a) above must provide that:
- (i) The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the State.
 - (ii) The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.

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- (iii) The State will receive fifteen (15) days' advance written notice of any reduction in coverage or other change, nonrenewal, or cancellation, mailed to the address provided for notices in paragraph *A.18.j*.
- d. No Reduction or Limit of Contractor's Obligation. Insurance affected or procured by Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the State. Acceptance of Contractor's insurance by the State shall not relieve or decrease the liability of Contractor hereunder.
- e. Evidence of Coverage. Before commencing any work under this Agreement, Contractor must furnish to the State certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the State, evidencing that all required insurance coverage is in effect. The State reserves the right to require Contractor to provide complete, certified copies of all required insurance policies.
- f. Accident Reporting. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the Business Services Manager of the State by telephone. Contractor shall promptly submit a written report, in such form as may be required by the State, of all accidents which occur in connection with this Agreement. The report must include at least the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's Subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; (4) a description of the circumstances surrounding the accident, whether any of the State's equipment, materials or staff were involved and the extent of damage to State and/or other property; and (5) a description of what effect, if any, the accident will have upon Contractor's ability to perform the Services.

A.8. Termination for Cause

- a. Default. Each of the following shall constitute an event of default ("Event of Default,"):
 - (i) Contractor fails or refuses to perform any covenant contained in this Agreement at the time and in the manner provided.
 - (ii) Any representation or warranty made by Contractor is untrue when made or becomes untrue during the term of this Agreement.
 - (iii) Contractor is generally not paying its debts as they become due.
 - (iv) Contractor voluntarily files a petition in bankruptcy or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction.
 - (v) Contractor is subject to an involuntary petition in bankruptcy filed by its creditors that has not been dismissed within forty-five (45) days of its filing.
 - (vi) Contractor makes an assignment for the benefit of its creditors.

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- (vii) A custodian, receiver, trustee, or other officer with similar powers is appointed over any substantial part of Contractor's property.
 - (viii) Contractor winds up or dissolves its business, or is liquidated.
- b. Remedies. On and after any Event of Default, the State shall have the right to exercise its contractual, legal and equitable remedies, which shall include, without limitation, the right to terminate this Agreement upon written notice or to seek specific performance of all or any part of this Agreement. In addition, the State shall have the right (but no obligation) to cure or cause to be cured on behalf of Contractor any Event of Default. Contractor shall pay to the State on demand all costs and expenses incurred by the State in effecting such cure, with Interest thereon from the date of incurrence at the maximum rate then permitted by law. The State shall have the right to offset from any amounts due to Contractor under this Agreement, or any other agreement between the State or any California trial or appellate court and Contractor, all damages, losses, costs, fees, penalties, interest or expenses incurred by the State as a result of such Event of Default.

A.9. Termination for Non-Appropriation of Funds

Contractor acknowledges that funding for this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California of sufficient funds to support the activities described in this Agreement. By written notice to Contractor, the State may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the State's budget, funding or financial resources. Such termination is in addition to the State's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: (i) the State will be liable only for payment in accordance with the terms of this Agreement for Services rendered and expenses incurred prior to the effective date of termination; (ii) Contractor shall be released from any further obligation to provide the Services affected by such termination; and (iii) termination shall not prejudice any other right or remedy available to the State.

A.10. Termination for Convenience

The State shall have the option, in its sole discretion, to terminate this Agreement, in whole or in part, at any time during the term hereof, for convenience and without cause. The State shall exercise this option by giving Contractor at least 30 days' prior written notice of termination. The notice shall specify the date on which termination shall become effective.

A.11. Actions of Contractor upon Termination.

Immediately upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the State and to minimize the liability of Contractor and the State to third parties as a result of termination. All such actions shall be subject to the prior approval of the State, at the State's sole discretion, and shall be in accordance with the attorneys' obligations to their clients.

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- a. Withdrawal and Tail Representation. Contractor will continue to represent existing clients until Contractor withdraws as counsel of record (or substitutes counsel) without prejudice to the interests of Contractor's clients and without violating any law, rule or regulation.

- b. Release from Performance of Services. Contractor will be released from performing Services to the extent Contractor effectively withdraws as counsel of record (or substitutes counsel) in accordance with paragraph A.11.a above. If Contractor cannot withdraw from all existing matters, Contractor will give the State notice at least 15 days before the Termination Date. The notice must describe the affected matters and the basis for Contractor's assertions, and the Contractor and the State will then confer in good faith. If the State agrees with Contractor's assertions or Contractor is forbidden by law from withdrawing from all matters, then:
 - (i) Contractor's duties under this Agreement will continue after the Termination Date solely with respect to the affected matters;
 - (ii) Compensation following the Termination Date will be at a rate of **\$70.00** per hour for legal services provided;
 - (iii) In addition, the State will reimburse the Contractor for any direct, reasonable, actual expenditures for long distance telephone and, if contained in a court order, third-party experts;

A.12. Effect of Termination

In addition to any other remedies and actions set forth in this Agreement, if this Agreement is terminated for cause, non-appropriation of funds, or for convenience, the following will apply:

- a. Payment Upon Termination. The State shall pay for Contractor's Services satisfactorily performed through the effective date of termination; provided, however, that in no event shall Contractor's total compensation pursuant to this Agreement exceed the Contract Amount.

- b. Offset and Deduction. The State may deduct from any payment upon termination:
 - (i) All payments previously made by the State for Services covered by Contractor's final invoice.
 - (ii) The amount of any claim that the State may have against Contractor in connection with this Agreement.
 - (iii) In instances in which the State reasonably determines that the cost of any Services is excessive due to costs incurred to remedy rejected Services, the State will pay the difference between the invoiced amount and the State's reasonable estimate of the reasonable cost of replacing performance of the invoiced Services in compliance with the requirements of this Agreement.

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A.13. Ownership of Data

Everything created, developed or produced in the course of Contractor's direct or indirect performance of the Services, including, without limitation, any reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by Contractor for the State and are the sole property of the State without the payment of additional compensation to Contractor. Contractor shall provide the State with all Data within thirty (30) days of the State's written request. However, nothing in this paragraph is intended to create any right in any person or entity to any Data that is covered by the attorney work-product doctrine.

A.14. Proprietary or Confidential Information of State

Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, Contractor may have access to private or Confidential Information that may be owned or controlled by, or entrusted to, the State, the Court, their personnel or constituents and that the disclosure of such information to third parties may be damaging to the State or the Court. Contractor agrees that all information disclosed to Contractor in connection with this Agreement shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as Contractor uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.

Notwithstanding the foregoing, Contractor may disclose the Confidential Information to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that Contractor has given reasonable prior notice of its intention to disclose in order to give the State or the Court an opportunity to seek a protective order.

Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this provision and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

A.15. Audit and Retention of Records

Contractor shall permit authorized representatives of the State and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. Contractor shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. Contractor shall maintain all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than 3 years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. Contractor shall adequately protect all records against fire or other damage. The State of California, or any other

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government agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the State by this paragraph.

A.16. Accounting System Requirements

Contractor shall maintain an adequate system of accounting and internal controls in accordance with Generally Accepted Accounting Principles (GAAP).

A.17. Certifications, Representations and Warranties

By executing this Agreement, Contractor certifies under penalty of perjury under the laws of the State of California that the following representations and warranties are true and correct as of the Effective Date of this Agreement, represents and warrants as follows, and certifies that the following covenants will not be breached:

a. Nondiscrimination/No Harassment Provisions and Compliance.

- (i) Nondiscrimination. During the performance of this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. Contractor and its Subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (ii) No Harassment. During the performance of this Agreement, Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its Subcontractors interact in the performance of this Agreement. Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- (iii) FEHA. Contractor shall comply with all applicable provisions of the Fair Employment and Housing Act, California Government Code, § 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, Title 2, § 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, § 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- (iv) Compliance with Americans with Disabilities Act. Contractor shall provide the Services specified in this Agreement in a manner that complies with the Americans with Disabilities Act, 42 United States Code, § 012101 et seq. and applicable regulations and guidelines in accordance therewith (the "ADA"), and any and all other applicable federal, state and local disability rights legislation. Contractor

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agrees not to discriminate against disabled persons in the provision of Services, benefits or activities provided under this Agreement.

- (v) Notice to Labor Organizations. Contractor and its Subcontractors shall give written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or other agreement.
- (vi) Compliance. Contractor shall include the nondiscrimination and compliance provisions of this paragraph in any and all subcontracts issued to perform Services under the Agreement.

b. Conflict of Interest.

- (i) The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of: (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- (ii) The Contractor certifies and shall require any Subcontractor to certify as follows:
Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part in the decision-making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her separation from State service.
- (iii) The Contractor may withdraw from representation of the State in a specific matter, or from the representation of any person represented on behalf of the State under the Agreement, in any county where it is held that the Contractor's representation of the State, or any person represented on behalf of the State, constitutes a conflict of interest which would prevent the Contractor from appearing in the courts of such county on any matter.

c. Drug-Free Workplace. Contractor will provide a drug-free workplace as required by California Government Code §§ 8355-8357.

d. National Labor Relations Board. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of the National Labor Relations Board.

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- e. Licenses and Permits. Contractor and any Subcontractors providing Services under this Agreement have, and will maintain in full force and effect throughout the term of this Agreement, all licenses, permits, and qualifications legally required to provide the Services.
- f. Covenant Against Gratuities. No gratuities, in the form of gifts, entertainment, or otherwise, were or will be offered by Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State or the Court with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.
- g. Signature Authority. All parties who sign this Agreement on behalf of Contractor are duly authorized to do so.

A.18. General

- a. Survival. Termination or expiration of this Agreement shall not affect, alter or impair the respective rights and obligations of the parties that accrue prior to the effective date of termination or expiration, except as otherwise expressly provided herein.
- b. Limitation on Publication. Contractor shall not publish or submit for publication any article, press release, or other writing relating to Contractor's Services for the State without prior review and written consent of the State, the granting of which consent shall be in the State's sole discretion.
- c. Assignment. The Services to be performed by Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor, including delegation to one or more Subcontractors, unless such assignment or delegation is first approved by the State by written instrument executed and approved in the same manner as this Agreement. All of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives. Any assignment or delegation in violation hereof shall be null and void.
- d. Waiver. Either party's failure to enforce any of its rights pursuant to this Agreement shall not be construed as a waiver of such rights. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same, or breach of any other, term of this Agreement.
- e. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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- f. Compliance with Laws. Contractor shall keep itself fully informed of, and shall comply with, all applicable federal, state, and local laws, rules, regulations, rules of court and ordinances in any manner affecting the performance of this Agreement, as they may be amended from time to time. Contractor shall procure and keep in full force during the term of this Agreement, any and all permits, licenses and qualifications necessary for the performance of the Services at no expense to the State.
- g. Time is of the Essence. Time is of the essence in this Agreement.
- h. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with California law, without regard to any conflict of law provisions that would direct the application of the laws of any other jurisdiction. Contractor irrevocably consents to personal jurisdiction in the courts of the State of California, and any legal action filed by Contractor in connection with the Agreement must be filed in San Francisco County, California, which shall be the sole venue for any such action.
- i. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- j. Notices to the Parties. All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the following contact information or at such other address as delivered by like notice:

To the State: Judicial Council of California
 Administrative Office of the Courts
 Center for Families, Children and the Courts
 Attn: Leah Wilson, Project Manager
 455 Golden Gate Avenue, 6th Floor
 San Francisco, CA 94102-3688

with copy to: Superior Court of California, County of Stanislaus
 Attn: Don Lundy, Court Executive Officer
 P.O. Box 828
 Modesto, CA 95353-4200

To Contractor: Office of the Public Defender
 Attn: Tim Bazar, Public Defender
 10211 'I' Street, Suite 201
 P.O. Box 3428
 Modesto, CA 95353-4200

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- k. Amendments. This Agreement may not be modified or amended, except by written instrument executed and approved by all parties in the same manner as this Agreement. Amendments to any component of the Agreement can be made only with prior written approval from the AOC's Business Services Manager. Requests for Amendments shall be submitted in writing and shall be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the AOC Business Services Manager reviews the request for an Amendment, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.
- l. Entire Agreement. This Agreement, consisting of the Coversheet and all exhibits and attachments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

END OF EXHIBIT

EXHIBIT B
SCOPE OF SERVICES AND SERVICE LEVELS
REVISION 2

B.1 Scope of Services [Revised]

Contractor shall comply with Stanislaus Superior Court Rules in performance of this Contract.

Contractor shall represent a total of approximately 160 clients in juvenile dependency proceedings in the Superior Court of California, County of Stanislaus. The client number is a point-in-time figure. These clients may be parents or children. This representation requires, but is not limited to, adherence to the following performance standards:

1. Establishing and maintaining an attorney-client relationship;
2. Visiting child clients at each new placement, whenever feasible;
3. Conducting thorough, continuing, and independent investigations and interviews at every stage of the proceedings;
4. Determining their client's interests and desires and advocating for those interests and desires;
5. Contacting social workers and other professionals associated with their client's case prior to each hearing, whenever practical and appropriate:
 - For child clients, this includes contacting CASA and school personnel;
6. Requesting services (by court order if necessary) to access entitlements and to ensure a comprehensive service plan:
 - For child clients, this includes requesting services related to IEPs and attending meetings related to the child, as practical and appropriate;
7. Monitoring compliance with court orders, including provision of and effectiveness of court-ordered services;
8. Filing pleadings, motions, responses, or objections as necessary to represent the client;
9. Preparing for and participating in all hearings:
 - For child clients, preparing for and participating in 241.1 hearings pertaining to current juvenile dependents with a goal of maintaining the dependency jurisdiction wherever possible and appropriate;
10. Investigating the interests of child clients beyond the scope of the juvenile dependency proceeding and notifying the Court of issues on behalf of the child, administratively or judicially, following the procedure laid out in Stanislaus Superior Court Rules, Rule 5.06.

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These interests may include:

- a. School/special education issues;
- b. Mental health assessment and treatment;
- c. Immigration;
- d. Personal injury; and
- e. Delinquency or status offender matters;

Contractor shall not be required to provide legal representation regarding any of the above-referenced interests.

11. *Participating in alternative dispute resolution efforts, including but not limited to Family Group Conferences, Team Decision Making meetings and mediation, as appropriate and beneficial to the client;*
12. Determining if appeals and writs are appropriate and file if necessary; and
13. Arranging for substitutive representation where necessary to avoid Court delay.

B.2 Conflicts Avoidance

Contractor will ensure that conflicts are declared only when an actual conflict exists.

1. New Appointments
 - Contractor shall establish procedures to check for conflicts of interest, and shall decline appointment of new clients who present a conflict of interest with their present clients.
2. Ongoing Clients
 - Contractor shall establish procedures to determine whether actual conflicts of interest arise among current clients, including within sibling groups, and shall advise the Court when such conflicts arise and seek to be relieved of appointment in such cases.
3. With respect to both new and ongoing clients, Contractor will establish an ethical wall so that conflicts will not be declared based on past or current representation of clients in criminal proceedings.

B.3 Courtroom Staffing

Contractor shall staff the Dependency courtroom so as to ensure adequate attorney availability at all times.

B.4 Education and Training

1. Contractor shall comply with the education and training standards outlined in Stanislaus Superior Court Rules, Rule 5.02.

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2. Contractor shall attend statewide multi-disciplinary trainings or conferences, including but not limited to the AOC's annual Beyond the Bench Conference.

B.5 System Meetings

Contractor shall participate in system meetings that are intended to improve services for children and families in Dependency Court. Those meetings include but are not limited to:

1. Quarterly dependency meetings;
2. Local training sessions on dependency issues;
3. Development meetings for specialized dependency programs, e.g., Drug Court, CASA, etc.

B.6 Staffing and Service Level *[Revised]*

Contractor agrees to provide, at a minimum, the following staffing pursuant to this agreement:

- i. .8 FTE Attorney
- ii. .4 FTE Secretary

Contractor agrees to represent approximately 160 clients in dependency cases at any given point-in-time during the life of the contract. Contractor agrees to keep monthly statistics regarding the number of clients represented as identified in section B.7 below. In the event that the number of clients represented by Contractor increases or decreases by 30% or more over any consecutive three month period commencing July 1, 2005 or later within the term of the contract, State and the Contractor agree to discuss and renegotiate the level of staffing and payment to Contractor that is required under this Agreement.

B.7 Case Reports and Maintenance of Records

Contractor shall provide the following State case management reports:

1. Upon Contract Signing. A list of all current cases, including those transferred to Contractor from prior counsel;
2. Monthly Reports. Contractor shall provide statistical information on a monthly basis. Specific information will be provided in the manner prescribed by the State and will include, but will not be limited to, the following:
 - a. For newly-appointed cases:
 - i. Case number;
 - ii. Party represented;
 - iii. For sibling groups, number of children represented
 - iv. Appointment date;
 - v. Initial hearing date;
 - vi. Name of appointed attorney;

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- b. For cases where representation is terminated:
 - i. Case number;
 - ii. Date of termination of representation; and
 - iii. Reason for termination of representation.

- 3. Quarterly Reports. Starting January 2007, Contractor shall provide detailed statistical workload data to the AOC for a three-month period each year. The reporting quarter will change during each year of the Contract, and shall be specified by the State. Data will be provided by the Contractor in the manner prescribed by the State and will include, but will not be limited to, the following information for all ongoing cases:
 - a. The amount of out-of-court time spent on each case per month, including a breakdown of time spent on specific tasks for each case; and
 - b. The amount of time spent in court each month, including a daily list of the types of hearings for which an appearance is made.

B.8 Cost Recovery

The State and the Court may implement a cost recovery program for dependency counsel services during the term of this Contract. In the event that a cost recovery program is implemented, Contractor agrees to participate in that effort; participation may include, but is not limited to, the distribution of financial declaration forms to clients upon initial appointment.

END OF EXHIBIT

EXHIBIT C
PAYMENT TERMS
REVISION 1

C.1 Compensation [Revised]

As compensation in full for the Services to be performed under this Agreement, Contractor shall be paid as follows:

Fiscal Year	Annual Amt.
2004-05	\$69,591.00
2005-06	\$207,200.00
2006-07	\$214,741.00
2007-08	\$174,085.00
2008-09	\$178,463.00
2009-10	\$182,973.00

Funds for a fiscal year are available at the point the Budget Act of said fiscal year passes; e.g., Fiscal Year 2007-2008 funds are available at the point Budget Act of Fiscal Year 2007-2008 passes.

Payment for the fiscal year 2004-2005 portion of the Agreement shall be made in four (4) equal monthly payments in the manner set forth in paragraph 3 below. Payment for each subsequent year of the Agreement shall be made in twelve (12) equal monthly payments in the manner set forth in paragraph 3 below. Compensation as set forth above shall be the only payment made by the State or the Court pursuant to this Agreement except as set forth in paragraph 2 below. Except as set forth in paragraph 2 below, there shall be no reimbursement of costs, including without limitation any overhead, per diem, travel or other direct or indirect out-of-pocket costs incurred by Contractor, its agents, employees or Subcontractors in connection with this Agreement.

C.2 Compensation for Extraordinary Expenses

The State will reimburse contractor for certain expenses mutually agreed upon as extraordinary expenses, including but not limited to: out-of-state travel and court-ordered professional services.

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C.3 Manner of Payment [Revised]

- (a) Within thirty (30) days after the end of each month, Contractor shall submit one original and two copies of each invoice for payment for the Services rendered under this Agreement (“Invoices”) for approval by the State to:

Judicial Council of California
Administrative Office of the Courts
Center for Families, Children and the Courts
Attn: Melanie Jones
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102-3688

- (b) All Invoices must include a reference to this Agreement, the dates and times Contractor performed the Services during the month, a brief description of the Services performed in a format acceptable to the State, Contractor's Federal Tax Payer Identification Number, Contractor's name, address and remittance address (if different), and such other information as the State may require.
- (c) The State shall make payments to Contractor within sixty (60) days after receipt and approval by the State of the Invoices from Contractor. The State will not be in breach of this Agreement for failure to pay Contractor's Invoices on time unless (i) the State has received a reasonably detailed written notice of late payment from Contractor and (ii) the State has not made the delinquent payment(s) within thirty days of the State's receipt of such notice. *In no event will the State be in breach of this Agreement for failure to pay Contractor's Invoices on time if such failure results from the Legislature's failure to approve and adopt a budget in a timely manner.*
- (d) In no event shall the State be liable for interest or late charges for any late payments.
- (e) Contractor is responsible for paying, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the State to Contractor for the Services. The State may offset any taxes paid by the State as a result of Contractor's breach of this provision against any sums owed to Contractor pursuant to the Agreement or otherwise. The State is exempt from federal excise taxes, and no payment will be made by the State for any taxes levied on Contractor's or any Subcontractor's employees' wages. The State will pay any applicable State of California or local sales or use taxes on the services rendered pursuant to this Agreement.

C.4 Disallowance

If Contractor claims or receives payment from the State for a Service or reimbursement that is later disallowed by the State, Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement or any other agreement.

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C.5 Payment Does Not Imply Acceptance of Work

The granting of any payment by the State, or the receipt thereof by Contractor, shall in no way alter the obligation of Contractor to remedy unsatisfactory performance of the Services. Services that do not conform to the requirements of this Agreement, in the State's judgment, may be rejected by the State. In such case Contractor must remedy the unsatisfactory performance without delay to bring it into conformance with this Agreement.

C.6 Taxes

Payment of any taxes, including without limitation California sales and use taxes, levied upon this Agreement or the Services delivered pursuant hereto, shall be paid by Contractor.

END OF EXHIBIT