

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

DEPT: Chief Executive Office

BOARD AGENDA: 7.1
AGENDA DATE: February 6, 2018

SUBJECT:

Approval to Enter into Agreement with Forkner, Orlando and Echevarria for Indigent Defense Legal Services for the Period of February 6, 2018 through June 30, 2019

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2018-0069

On motion of Supervisor Withrow , Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None


Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST:


ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Chief Executive Office

BOARD AGENDA:7.1
AGENDA DATE: February 6, 2018

CONSENT

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval to Enter into Agreement with Forkner, Orlando and Echevarria for Indigent Defense Legal Services for the Period of February 6, 2018 through June 30, 2019

STAFF RECOMMENDATION:

1. Approve the agreement with Forkner, Orlando and Echevarria for indigent defense legal services for cases which the Public Defender is unable to provide representation due to conflict of interest.
2. Authorize the Chief Executive Officer to execute the agreement with Forkner, Orlando and Echevarria for the period of February 6, 2018 through June 30, 2019 in the amount of \$425,250.

DISCUSSION:

Stanislaus County currently contracts with the firms of Grisez, Orenstein and Hertle (Conflicts I) and Perry & Associates (Conflicts II) to provide representation to indigent persons whom the Public Defender cannot represent due to a conflict of interest. These contracts cover the cost of professional legal and investigative services for these indigent clients. Many of the conflicts are associated with multiple defendant cases. In these cases, the Public Defender can represent only one defendant. The co-defendants are then represented by Conflicts I and II, respectively. When there are more than three co-defendants, members of the private bar, commonly referred to as Indigent Defense Panel attorneys (Panel Attorneys), are appointed by the Superior Court to represent the co-defendants not represented by Conflicts I and II.

The legal system and code of professional conduct does not permit the Public Defender to keep all cases. It is advantageous to the County to keep a majority of cases within the Public Defender's Office, Conflicts I and Conflicts II where the total cost to the County is fixed. The Panel Attorneys bill on an hourly basis. In recent years, the costs related to Panel Attorneys, where costs can vary greatly, have been much higher than the cost paid for representation from Conflicts I and Conflicts II.

To demonstrate the higher costs paid for representation of indigent defense cases through appointed Panel Attorneys, the table below displays statistics related to Fiscal Year 2015-2016 caseloads. The table reflects the number of individuals represented by Conflicts I/Conflicts II and the Indigent Defense Panel, and the total amount paid:

	Conflicts I and II	Indigent Defense Panel
Felonies	1,832	141
Misdemeanors	1,201	36
Juvenile	311	33
Total Cases	3,344	210
Actual Amount Paid	\$1,463,552	\$3,112,432

The higher costs paid to the Indigent Defense Panel likely occurred in part because cases that work their way through the conflicts process are those that are typically more complicated. As the complexity of cases increase, we can expect that the cost also increases for each case.

In an effort to control costs related to cases that are currently being assigned to the Indigent Defense Panel, while still providing quality mandated legal defense services to indigents, Stanislaus County issued a Request for Proposal (RFP) with the intent to award a contract to a third Conflicts firm. The intent of the Conflicts III concept is to capture the majority of panel attorney costs at a fixed rate versus the variable rate we have been paying the Indigent Defense Panel.

The RFP was issued on October 3, 2017 and closed on October 31, 2017. Four local firms submitted proposals for consideration. All four proposers met the minimum qualifications set forth in Phase I of the evaluation process, which included a financial review. A committee of five evaluators was selected to further evaluate the proposals.

Phase II of the evaluation process consisted of a review and evaluation of each proposer's response, qualifications and general understanding of the services requested with a total of 120 points possible. In Phase III of the evaluation process, the pricing proposals were evaluated. Price was evaluated based upon a weighted average, with the lowest price assigned 100% of the 30 points possible. Below is a list of the firms which submitted proposals and the final proposal scores:

Proposer	Final Score
Forkner, Orlando & Echevarria	128.67
Martinez & Jacob	127.56
Channaveerappa	93.80
The Bogan Law Firm	93.42

Based on the final scores of this RFP, the firm of Forkner, Orlando and Echevarria was awarded the Conflicts III contract with a final score of 128.67 points. The award was made to the vendor whose proposal best met the criteria set forth in the RFP and provides the best value to the County, with price and all other factors considered.

On November 16, 2017, the County's General Services Agency issued a Notice of Intended Award to the firm of Forkner, Orlando and Echevarria; notices of Non-Award were provided to the other proposers. On November 21, 2017, during the five-day appeal period allowed after the RFP Award and Non-Award letters were sent, the County received one letter of protest. The protest went through the response process and was heard by the Bid Appeal Committee on January 24, 2018. The Bid Appeal Committee upheld the RFP scoring panel's decision to award the Conflicts III contract to Forkner, Orlando and Echevarria.

Recently, the Public Defender updated policies and procedures related to what constitutes a conflict in a case. This update resulted in far fewer cases in which the office has declared a conflict and thus been relieved from the case. Therefore, less cases have been going to Conflicts I and Conflicts II. In order to assess the impact that the updated policies and procedures may have on the Conflicts III firm, a re-opener period has been included in the agreement beginning in May 2018. During the re-opener period, the volume of cases that have been assigned to Conflicts III will be reviewed in order to ensure that this volume is adequate to support the Conflicts III agreement going forward and that the agreement is still supported by both the County and Conflicts III.

POLICY ISSUE:

County policy requires Board of Supervisors authorization for all contracts and transactions exceeding \$100,000.

FISCAL IMPACT:

The Conflicts III contract will cover the period February 6, 2018 through June 30, 2019. During the preliminary contract period of February 6, 2018 through June 30, 2018, Conflicts III will receive monthly compensation of \$21,000, with the first month being prorated to \$17,250, which recognizes the lower caseload of Conflicts III compared with Conflicts I and II and the need for a caseload ramp-up period. After the preliminary contract period, Conflicts III is scheduled to receive monthly compensation of \$27,000 for the balance of the contract period, contingent upon the results of a contract re-opener analysis period beginning in May 2018. The contract re-opener analysis will provide an opportunity for the County to review the Conflicts III caseload that exists at that time and ensure the higher monthly compensation is warranted. If it is determined during the re-opener period that compensation needs to be increased above \$27,000 per month, the issue will be brought back to the Board of Supervisors for consideration. The resulting maximum net county cost for the contract with Conflicts III is \$425,250.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Board's priority of *Supporting Strong and Safe Neighborhoods* and *Delivering Efficient Public Services* by ensuring indigent individuals involved in the criminal justice system receive legally required effective and efficient legal representation.

STAFFING IMPACT:

Existing Chief Executive Office staff will monitor the agreement with Conflicts III.

CONTACT PERSON:

Patrice Dietrich, Assistant Executive Officer Telephone: 209.525.6333

ATTACHMENT(S):

1. Agreement with Forkner, Orkando and Echevarria 2.6.18-6.30.19

**CONTRACT FOR LEGAL REPRESENTATION OF ELIGIBLE
INDIGENTS WHERE THE PUBLIC DEFENDER HAS A
LEGAL CONFLICT OF INTEREST OR OTHER INABILITY TO ACT**

THIS CONTRACT, made this sixth day of February 2018, between the County of Stanislaus (hereinafter referred to as "COUNTY") located at 1010 - Tenth Street, Modesto, California, 95354, and Forkner, Orlando & Echevarria (hereinafter referred to as "CONFLICTS III") located at 722 13th Street, Modesto, California, 95354.

WHEREAS, the Stanislaus County Superior Court is required by law to appoint alternative counsel in cases in which the court finds that, because of a legal conflict of interest or other inability to act, the Public Defender has properly refused, is not legally required or permitted, is otherwise unable, or has otherwise failed to represent an eligible indigent; and

WHEREAS, section 987 and following of the Penal Code provides that the court shall assign counsel to represent persons charged with commission of a public offense but who are unable to employ counsel; and

WHEREAS, section 987.2 provides that, in the case in which the court finds that because of a conflict of interest or other reasons the Public Defender has properly refused to represent the person accused, counsel shall be assigned and receive a reasonable sum for compensation and necessary expenses to be determined by the court and paid out of the general fund of the COUNTY; and

WHEREAS, section 987.2 further provides that compensation of assigned counsel may be determined by contract between the court and one or more responsible attorneys after consultation with the Board of Supervisors as to the amount thereof which shall be within the amount of funds allocated by the Board of Supervisors; and

WHEREAS, COUNTY has entered into a contract with a CONFLICTS III law firm

to provide legal services to indigent persons not served by the Public Defender; and

WHEREAS, COUNTY deems it appropriate to insure the competence and availability of counsel to discharge COUNTY'S statutory obligation to provide representation of indigent persons not served by the Public Defender, CONFLICTS I or CONFLICTS II acting as the primary conflicts law firm, and it is in the interest of justice and judicial economy that COUNTY employ by contract additional private counsel, hereinafter referred to as "CONFLICTS III", to render the usual and customary legal services where required by law to be provided to individuals and in circumstances where the Public Defender, CONFLICTS I and CONFLICTS II declare a legal conflict of interest or is unable to act as determined by the court; and

WHEREAS, COUNTY has determined that the program contemplated herein to be performed by CONFLICTS III is within its legal authority to grant and will provide competent legal representation to persons financially unable to employ counsel; and

WHEREAS, CONFLICTS III represents it has the requisite experience, training, skill, and competence to provide competent legal services as assigned counsel and is willing to provide the services agreed upon herein.

NOW, THEREFORE, the parties hereto agree as follows:

I. DUTIES:

A. CONFLICTS III shall provide legal representation for eligible indigents in the Superior Court in Stanislaus County when appointed as required by law after a determination that the Public Defender, CONFLICTS I and CONFLICTS II are unable to represent an indigent due to a legal conflict of interest or other inability to act as provided in Section VII, and where a conflict of interest is discovered after the effective commencement date provided by the terms of the contract.

B. For purposes of this contract, an "eligible indigent" shall be defined as a person for whom the Superior Court is required by current statute or case law, to appoint and compensate counsel at public expense for whom the Public Defender's Office, CONFLICTS I and CONFLICTS II are unable to represent.

C. For purposes of this contract, "unable to represent" on the part of Public Defender, CONFLICTS I or CONFLICTS II, includes, but is not limited to, cases of which either the Public Defender, CONFLICTS I or CONFLICTS II have been relieved following Marsden hearings and all cases where the court relieves the Public Defender, CONFLICTS I or CONFLICTS II. The term "unable to represent" does not include cases where there is a refusal to act for reasons other than those contemplated herein.

D. CONFLICTS III staff and subcontractors shall consist of such attorneys, in-office interpreters, paralegal and clerical personnel in sufficient quantity and abilities to meet all constitutional, statutory, and case law requirements for the defense of indigents in Stanislaus County and to adequately and professionally carry out the duties and obligations set forth in this contract.

E. Cases requiring travel outside Stanislaus County may be considered extraordinary, and COUNTY may, by prior order, provide for reimbursement for such travel and other related expenses. CONFLICTS III shall be reimbursed by COUNTY for actual and reasonable costs associated with and caused by change of venue cases. The costs reimbursed to CONFLICTS III shall include lodging, meals, transportation, and other expenses not to exceed that which is paid COUNTY employees.

F. CONFLICTS III shall complete in a professional and diligent manner all legal representation of indigent persons it is properly appointed to represent consistent with

section 27706(a) of the Government Code, but excluding post-trial appeals to the appellate and supreme courts.

G. When the Public Defender, CONFLICTS I and CONFLICTS II are unable to provide representation, CONFLICTS III shall provide legal representation and support services for all of Stanislaus County in any manner which the Public Defender, CONFLICTS I or CONFLICTS II may be appointed, including, but not limited to, all misdemeanor and felony cases in the Superior Court of Stanislaus County; or delinquency matters including periodic review hearings; commitment for developmentally disabled persons (Welfare and Institutions Code Section 6500); mental health, guardianship, and conservatorship hearings, including periodic review hearings; habeas corpus proceedings, appeals from misdemeanor cases to the Appellate Department of the Superior Court, probation violations; civil contempt matters; civil paternity matters, including minor indigents for whom a Guardian Ad Litem has been appointed; and all cases where third counsel is ordered by the respective court.

H. CONFLICTS III agrees to meet and confer with COUNTY, upon receipt of ninety (90) days notice by COUNTY, concerning any needs for further indigent legal services not specifically set forth above or in the subject contract, including modifications associated with potential changes to the indigent legal services system.

J. CONFLICTS III shall provide legal representation in the appellate courts when CONFLICTS III deems that an adequate legal representation requires application for extraordinary relief prior to conviction or pending appeal.

K. CONFLICTS III shall not be permitted to decline court appointment in any cases except for legal conflict of interest.

L. CONFLICTS III will assist in the preparation and filing of all necessary financial documents to enable the Court to determine reimbursement to the COUNTY for services under Penal Code Sections 987.4 and 987.8 and/or other law (to be heard at the same time as the probation and sentencing hearing; or immediately following verdict or judgment).

M. CONFLICTS III agrees to honor the following requests made by the Superior Court as follows:

1. CONFLICTS III shall provide adequate staffing to ensure that all adult courts are covered five (5) days a week.
2. CONFLICTS III shall attend Superior Court and Criminal Justice Forum meetings as set by the Superior Court. These typically are held on the third Monday of each month.
3. CONFLICTS III agrees to provide and maintain an e-mail address, pager number and/or cell phone number with the Superior Court.

II. OFFICES:

A. CONFLICTS III shall, at its sole expense, maintain its principal office in Modesto, California, within fifteen (15) minutes response time to the courthouse. CONFLICTS III shall maintain business hours at the principal office Monday through Friday from 8:00 a.m. to 5:00 p.m., and it shall be available in all other areas of Stanislaus County to serve all the courts in Stanislaus County as the need arises. Offices shall be of sufficient size to accommodate clients in a reasonable and professional manner at the sole expense of CONFLICTS III.

III. STAFF:

A. CONFLICTS III shall maintain sufficient staff to fulfill the terms of the contract, to provide daily representation as necessary, and to avoid otherwise unnecessary delays and continuances.

B. CONFLICTS III agrees to maintain one full-time staff Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court, or any such successor Rule of Court, to provide representation in capital cases. CONFLICTS III agrees to confirm the qualifications of the qualified Attorney by providing COUNTY a written statement from the Stanislaus County Superior Court record confirming their qualifications under Rule 4.117(d) or 4.117(f) of the California Rules of Court, or any such successor Rule of Court. CONFLICTS III agrees to notify COUNTY in writing within seven calendar days if CONFLICTS III no longer employs the Attorney qualified under Rule 4.117(d) or 4.117(f) of the California Rules of Court, or any such successor Rule of Court, and will communicate a plan to fill the vacancy with a qualified attorney. Rules 4.117(d) and 4.117(f) of the California Rules of Court are attached to this agreement for reference as Exhibit A.

C. Upon request, CONFLICTS III shall provide COUNTY, and the Court in Stanislaus County, a list of CONFLICTS III attorneys providing services. Each list shall contain a brief biographical sketch pertaining to each attorney's professional experience. CONFLICTS III shall notify COUNTY and the Court of any proposed changes in attorney staffing, to include subcontractors, and court's approval of such attorney and changes shall be obtained by CONFLICTS III prior to any work being done by such attorney.

D. CONFLICTS III shall designate, in writing, a managing attorney who shall be authorized to speak for CONFLICTS III with respect to the contract and its performance.

IV. REPORTS:

A. CONFLICTS III shall maintain proper records to enable the Court and COUNTY to verify the separate categories of costs of representing each indigent person in court proceedings including the number of persons represented and the types of proceedings and the average number of hours per type of case. CONFLICTS III shall make such records and/or copies thereof available to COUNTY and Court for inspection and/or in any proceedings to recover such costs from the state or whoever may be obligated to reimburse COUNTY.

B. CONFLICTS III shall provide the COUNTY and the Public Defender with a monthly report as shown in Exhibit C. The report includes total cases assigned and concluded per month and fiscal year, average time spent on cases, reason for case closure. The report also includes court appearances per type of case, any other activities, and open PC 187 case names and case numbers. The report shall be provided on forms designated by the COUNTY and received in final form by the COUNTY from CONFLICTS III by the fifteenth (15th) day of the month following the month in which the services are rendered. A sample of monthly report is referenced as Exhibit C. All reports shall be sent to the Chief Executive Office of Stanislaus County and the Public Defender. CONFLICTS III agrees to join in discussions with the Public Defender, COUNTY, CONFLICTS I and CONFLICTS II in order to agree to a consistent method of reporting cases handled, including those cases conflicted. At the County's request, CONFLICTS III agrees to begin tracking and reporting each month the case number and case name for cases initially referred to CONFLICTS III in which CONFLICTS III declares a conflict and refers the case to other counsel for representation. CONFLICTS III agrees to note those cases that involved a conflict due

to co-defendants in the case. CONFLICTS III agrees to join in discussion with the Public Defender, COUNTY, CONFLICTS I and CONFLICTS II to review the statistical caseload data gathered by CONFLICTS III and the potential for automated reporting of caseload data to the COUNTY.

C. CONFLICTS III shall maintain for at least ten (10) years following the completion of the case all files and time records. COUNTY shall provide reasonable space accessible for storage of those files which are five (5) or more years old. CONFLICTS III shall have access to such files as necessary, and COUNTY shall guarantee the confidentiality and protection of said files. Time records, and all reports maintained by CONFLICTS III directly related to the services performed pursuant to this contract, shall be available for inspection by COUNTY or the courts at all reasonable times.

V. TERMINATION:

A. This contract shall be effective for all cases assigned on February 6, 2018 and shall continue in effect for all cases through, and including, June 30, 2019, unless the parties agree to extend the contract an additional period of time, provided that the funds are budgeted by the COUNTY and the contract has not been canceled as provided herein.

B. Upon termination of this contract as herein provided or by natural expiration of this contract on June 30, 2019, unless the parties agree to an extension of the contract, COUNTY shall have no obligation to compensate or pay CONFLICTS III except for services provided prior to termination subject to the following terms:

Upon expiration or termination (by cancellation or otherwise), unless specifically relieved by the Superior Court, CONFLICTS III shall be required to complete

representation of all clients in all cases where previously appointed to do so where the case is resolvable within 30 days. This includes cases wherein CONFLICTS III was appointed pursuant to Section I, "DUTIES", paragraph H (non-conflict cases). All cases in post-trial litigation shall become COUNTY'S responsibility thirty (30) days following termination of the contract. In all instances where the case becomes the responsibility of COUNTY following termination of the contract COUNTY may, at COUNTY'S option, deem that the attorneys in the law firm of Forkner, Orlando and Echevarria have been appointed to handle the cases at the then prevailing COUNTY rate commencing with the day after the termination of the contract.

C. The term of this contract is from February 6, 2018, to June 30, 2019. This contract may be extended for an additional one or up to two-year period at the same or different contract price upon the consent of all contract parties beyond June 30, 2019. The parties agree to meet no less than sixty (60) days prior to the expiration of the contract to discuss an extension and the terms and conditions of an extension. Furthermore, CONFLICTS III agrees to meet with COUNTY upon request to discuss a modification of the assigned felony cases by CONFLICTS III of the appointed cases outside of the Public Defender's Office, CONFLICTS I, CONFLICTS II and CONFLICTS III.

D. Decision to cancel this contract may be made by COUNTY, without cause, upon a ninety (90) day written notice. Upon decision to cancel the contract, COUNTY will advise CONFLICTS III, in writing, with a ninety-day (90) notice of said cancellation.

E. Notwithstanding any other term or provision of this contract, the failure of CONFLICTS III to comply with the terms of this contract and any reasonable directions

by or on behalf of the COUNTY or the court pursuant thereto shall constitute a material breach of the contract by CONFLICTS III; and, in addition to other remedy authorized by law, COUNTY shall have the right to terminate the contract immediately. Failure to exercise this right of termination shall not constitute waiver of such right, which may be exercised at any subsequent time. This contract may be terminated, at the option of COUNTY with the approval of the Board of Supervisors, upon the occurrence of any of the following:

1. Violation of any material provision of the contract;
2. Institution of proceedings by, or against, CONFLICTS III or any partner of the firm providing services for CONFLICTS III under this contract pursuant to the bankruptcy laws of the United States;
3. Discovery of COUNTY that this contract was obtained through fraud, by commission or omission;
4. Suspension of business operations, failure, or receivership of attorneys;
5. Assignment of the contract without prior written approval;
6. Cancellation of malpractice liability insurance coverage or Workers' Compensation coverage;
7. The commencement of criminal prosecution against any of the individual attorneys providing services for CONFLICTS III under this contract; and
8. The commencement of a claim or lawsuit by CONFLICTS III against the County of Stanislaus.

VI. COMPENSATION:

A. COUNTY shall pay CONFLICTS III for the above-rendered services the sum as described in the following chart with the first payment of this contract made on March

1, 2018 and subsequent payments to be made on the first day of the month following the month services were rendered in the preceding month.

Time Period	Monthly Compensation Amount
February 6, 2018 – June 30, 2018 (Preliminary Period)	\$21,000 (First Month Prorated)
July 1, 2018 – June 30, 2019	\$27,000*

*Subject to review and adjustment during contract re-opener period.

The COUNTY may decrease payments to CONFLICTS III by six hundred and fifty-four dollars and fifty-four cents (\$654.54) per calendar day should CONFLICTS III not comply with the staffing standards identified in Section III-B of this agreement for greater than 120 consecutive calendar days.

B. Compensation provided for or pursuant to this contract or any amendment, addendum, or supplement to it shall be subject to offset as provided below.

C. By prior order of the court, CONFLICTS III may employ experts and expert witnesses as may be required for an adequate defense; and the expense of said experts and expert witnesses shall be paid in addition to the compensation provided under this contract upon prior order of the court.

D. CONFLICTS III is responsible for the investigative costs of representing their indigent clients. CONFLICTS III shall have the latitude in determining the appropriate level of investigative services on assigned cases. The amount provided shall cover all investigative costs and CONFLICTS III agrees and understands that petition to COUNTY for provision of these services outside of this contract may be made only in the case of extraordinary and unusual circumstances. In cases deemed death penalty eligible CONFLICTS III is authorized to petition the appropriate judge pursuant to

California Penal Code section 987.9 for funds for investigation. In the event that the "special circumstances" clause is stricken, or prosecution declares that they will not be seeking death, all additional investigations shall be at the expense of CONFLICTS III as provided by this paragraph.

E. COUNTY acknowledges its independent obligation to provide adequate legal defense to indigent criminal defendants in need thereof. The COUNTY does, and will, undertake to provide such representation and reserves the right to take any steps appropriate to meet said obligation. Under extraordinary circumstances or circumstances not contemplated within this contract, COUNTY reserves unto itself the right to consider application by CONFLICTS III for change and terms of this contract. Extraordinary circumstance shall generally be limited to prolonged capital cases or the cumulative effect of multiple homicide cases involving extreme expenses. In the event that CONFLICTS III is required to devote an extraordinary expenditure of time and effort not foreseen by this contract, CONFLICTS III shall apply to the Stanislaus County Chief Executive Officer for additional reasonable compensation. A request for such extraordinary compensation shall be provided to the COUNTY no less than fourteen (14) days prior to said request being filed with the court. The court shall conduct a hearing on the request, and the COUNTY will have a right to contest said request.

F. During the initial period for this contract, compensation will be provided at a specified rate for the first six months of the contract term. Recognizing that this initial compensation may need to be reassessed once CONFLICTS III's caseload has stabilized and the preliminary period of the contract has elapsed, the COUNTY agrees to re-open the contract and reassess compensation for the following contract year. The re-opener period will begin in May 2018 and is an attempt to appropriately match the

July 1, 2018 – June 30, 2019 monthly compensation to the existing and projected caseload of CONFLICTS III. At that time, CONFLICTS III or the COUNTY may agree to continue or elect to terminate the contract. If terminating, either party may do so via written correspondence to the other.

VII. CONFLICT:

A. It is acknowledged by the COUNTY that in cases or related matters involving more than three (3) defendants, in cases where CONFLICTS III or its staff has certain knowledge of the events or parties, and some other circumstances designated justifiable by a court, CONFLICTS III may not be available to represent all defendants because of legal prohibitions or because of canons of professional ethics relating to conflicts of interest. Such determination shall be made by the court. CONFLICTS III shall seek to immediately minimize the number of conflicts declared and seek waiver of such conflicts whenever it is ethically appropriate. The Public Defender, CONFLICTS I, CONFLICTS II and CONFLICTS III shall agree to meet to discuss possible standards for such waivers.

B. CONFLICTS III shall not knowingly or negligently provide any legal services outside the scope of this contract if the provisions of such legal services would render CONFLICTS III ineligible to provide legal services to COUNTY under this contract.

C. Should CONFLICTS III be unable, ineligible, or unavailable to provide services as provided for herein for any reason other than a legitimate conflict of interest as determined by the courts or are dilatory in providing such services, the Court may appoint other counsel. The compensation provided in Section VI shall be offset by an amount equivalent to the cost the COUNTY incurs as a result of services provided by other counsel.

D. Notwithstanding any other provision of this contract, it is agreed by the parties that the judges of the Superior Court shall have the right to review and pass upon the qualifications, experience, and competence of any attorney assigned by CONFLICTS III to a case and to reject any attorney who, in the judge's sole opinion, lacks satisfactory expertise or experience to handle the case before the court. In the event CONFLICTS III fails, within a reasonable time, to assign an attorney to a given case who is acceptable to a court, the Court may assign other counsel to the case at the sole expense of CONFLICTS III. Should COUNTY incur any expense as a result of a court's appointment of other counsel under Section VII, the compensation provided in Section VI shall be offset by an amount equivalent to the cost COUNTY incurred by providing said services.

VIII. STATUS OF CONFLICTS III:

A. The parties agree that this contract does not create the relationship of attorney and client nor employee and employer between CONFLICTS III and the COUNTY. CONFLICTS III is an independent contractor. CONFLICTS III is, and shall at all times be, deemed independent and shall be wholly responsible for the manner in which CONFLICTS III performs the services required by the terms of this contract.

B. CONFLICTS III shall be deemed to be independent attorneys and under no circumstances shall the law firm, or its employees, agents, and servants be deemed to be employees, servants, or agents of the County of Stanislaus.

C. CONFLICTS III shall be wholly responsible for the manner in which it performs the service required by the terms of this contract. CONFLICTS III exclusively assumes the responsibility for the acts of CONFLICTS III subcontractors, associates, and

employees relative to the services provided during the term and scope of their employment.

D. CONFLICTS III understands and agrees it has no right to medical, dental, retirement or other such benefits provided to COUNTY employees, and the COUNTY shall not be responsible or pay for any injury of CONFLICTS III or staff arising out of services performed under this contract.

IX. LIABILITY AND INSURANCE:

Coverage Required: CONFLICTS III shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

A. To the fullest extent permitted by law, CONFLICTS III shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by CONFLICTS III or CONFLICTS III officers, employees, agents, representatives, or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, CONFLICTS III obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of CONFLICTS III in contributing to such claim, damage, loss and expense.

B. CONFLICTS III obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not

limited to or restricted by any requirement in this Agreement for CONFLICTS III to procure and maintain a policy of insurance.

C. To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend CONFLICTS III and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

X. GENERAL:

A. CONFLICTS III shall not be prohibited from engaging in the private practice of law, including the defense of those charged with crimes in any and all proceedings, provided that no retained case shall be accepted which may cause a conflict of interest to arise wherein CONFLICTS III would be unable to represent an indigent person whom the Public Defender, CONFLICTS I and CONFLICTS II cannot represent in court.

B. If CONFLICTS III does represent a person in a retained case which then results in his or her inability to accept an appointment by way of this contract, COUNTY shall be entitled to an off-set as stated in Section VII.

C. CONFLICTS III shall in no event accept anything of value from the indigent in consideration for services rendered under this contract.


D. Upon the request of CONFLICTS III, COUNTY agrees to meet three (3) times each year for general discussion purposes.

E. Upon entering into the contract between CONFLICTS III and the COUNTY, any cases that were previously awarded to the firm of Forkner, Orlando & Echevarria through the Indigent Defense Panel will automatically become part of the CONFLICTS

III caseload. Separate billing under the Indigent Defense Panel agreement with the Superior Court and the County will be prohibited for all those previously awarded cases.

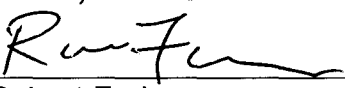
EXECUTED THIS SIXTH DAY OF FEBRUARY, 2018.

COUNTY OF STANISLAUS

By: 

Jody Hayes
Chief Executive Officer
COUNTY

FORKNER, ORLANDO & ECHEVARRIA

By: 

Robert Forkner
CONFLICTS III

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

By: 

Rob Taro
Deputy County Counsel

2017 California Rules of Court

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(d) Qualifications of lead counsel

To be eligible to serve as lead counsel, an attorney must:

- (1) Be an active member of the State Bar of California;
- (2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;
- (3) Have prior experience as lead counsel in either:
 - (A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or
 - (B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(Subd (d) amended effective January 1, 2007.)

(f) Alternative qualifications

The court may appoint an attorney even if he or she does not meet all of the qualifications stated in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

- (1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* under rule 9.40;
- (2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;
- (3) The attorney has had extensive criminal or civil trial experience;
- (4) Although not meeting the qualifications stated in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;
- (5) The attorney is familiar with the practices and procedures of the California criminal courts;
- (6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;
- (8) The attorney has ongoing consultation support from experienced death penalty counsel;
- (9) The attorney has completed within the past two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(Subd (f) amended effective January 1, 2007.)

EXHIBIT B

Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL and the Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability and Auto Liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary insurance primary coverage at least** as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Reporting: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employee's, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the County.**

Waiver of Subrogation

Consultant hereby grants to County a waiver of any right to subrogation (except for Professional Liability) which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for **at least five (5) years** after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage

Consultant shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All **certificates and endorsements are to be received and approved by the County before work commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, Insurer, coverage, or other special circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors. Consultant's obligation to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Consultant to procure and maintain a policy of insurance.

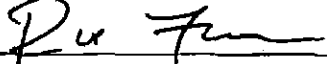
[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

_____ Exempt from Auto – I will not utilize a vehicle in the performance of my work with the County.

_____ Exempt from WC – I am exempt from providing workers' compensation coverage as required under section 1861 and 3700 of the California Labor Code.

I acknowledge the insurance requirements listed above.

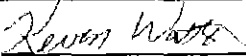
Print Name: Robert L. Forkner Date: 12/20/18

Signature:  Date: 12/20/18

Vendor Name: CONFLICTS III

For CEO-Risk Management Division use only

Exception: _____

Approved by CEO-Risk Management Division:  Date: 12/27/17

INDIGENT LEGAL SERVICES MONTHLY REPORT

Exhibit C

FIRM: _____
CURRENT MONTH: _____
FISCAL YEAR: _____

CASES PER MONTH	CASES PER FISCAL YEAR	AVERAGE TIME SPENT ON CONCLUDED CASES (on cases reported this month)
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Murder Cases Assigned _____
Murder Cases Concluded _____
Open Murder Cases: # _____

Other Felony Cases Assigned _____
Other Felony Cases Concluded _____
All Open Felony Cases: # _____

Misdemeanor Cases Assigned _____
Misdemeanor Cases Concluded _____
Open Misdemeanor Cases: # _____

Juvenile Cases Assigned _____
Juvenile Cases Concluded _____
Open Juvenile Cases: # _____

Other Cases Assigned _____
Other Cases Concluded _____
Other Open Cases: # _____

Total Cases Assigned _____

Total Cases Concluded _____

COURT APPEARANCES

<i>Per Month</i>	<i>Per Fiscal Year</i>
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Murder Cases: _____
Other Felony Cases: _____
Misdemeanor Cases: _____
Juvenile Cases: _____
All Other Cases: _____

Total Court Appearances _____

OTHER ACTIVITY

<i>Per Month</i>	<i>Per Fiscal Year</i>
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Number of Jury Trials _____
Number of Days in Jury Trial _____

Cases Closed Due to:

Conflicts of Interest: _____
Co-Defendants in Same Case: _____
Self-Representation: _____
Marsden Hearings: _____
Other: _____



APPROVAL TO CONTRACT WITH LEGAL FIRM OF FORKNER, ORLANDO, AND ECHEVARRIA

February 6, 2018

PRESENTATION OUTLINE

- ▶ What is a Conflicts firm?
- ▶ Why have a third Conflicts firm?
- ▶ How was the recommended firm selected?
- ▶ What outcome is expected from adding a Conflicts III?
- ▶ What if the expected outcome is not achieved?

WHAT IS A CONFLICTS FIRM?

- ▶ Public Defender declares a Conflict of Interest
- ▶ Client gets appointed to one of two Conflicts firms
- ▶ Conflict firms identify Conflict of Interest
- ▶ Superior Court appoints client to an Indigent Defense Panel Attorney

WHY HAVE A THIRD CONFLICTS FIRM?

- ▶ Indigent Defense Panel costs very high
- ▶ Billing for Indigent Defense Panel is done on an hourly basis vs. conflicts firms paid on a fixed rate
- ▶ Indigent Defense Panel cases at times more complex

FISCAL YEAR 2015-2016 CASE STATISTICS

	Conflicts I and II	Indigent Defense Panel
Felonies	1,832	141
Misdemeanors	1,201	36
Juvenile	311	33
Total Cases	3,344	210
Actual Amount Paid	\$1,463,552	\$3,112,432

HOW WAS RECOMMENDED FIRM SELECTED?

- ▶ Request for Proposal (RFP) Issued October 2, 2017
- ▶ RFP closed October 31, 2017, four firms submitted bids
- ▶ Five person panel reviewed bids
- ▶ Financial review conducted

RFP RESULTS

Proposer	Final Score
Forkner, Orlando & Echevarria	128.67
Martinez & Jacob	127.56
Channaveerappa & Phipps, LLP	93.80
The Bogan Law Firm	93.42

*Notice of intent to award issued on November 16, 2017. One letter of protest received on November 21, 2017. After protest went through available process, the Bid Appeal Committee upheld the original intent to award on January 24, 2018.

EXPECTED OUTCOME

- ▶ Greater cost control for cases assigned to Conflicts III
- ▶ Lower total cost of Indigent Defense Panel billing
- ▶ Maintain required legal defense services

IF EXPECTED OUTCOME IS NOT ACHIEVED

- ▶ Conflicts III contract re-opener clause in May 2018
- ▶ Assessment of caseload to date
- ▶ Decision to continue or not continue going forward

FISCAL IMPACT

- ▶ Contract period: February 6, 2018 through June 30, 2019
- ▶ Total Conflicts III contract cost will not exceed \$425,250
- ▶ February 2018 through June 2018 monthly compensation: \$21,000
- ▶ July 2018 through June 2018 monthly compensation: \$27,000*

STAFF RECOMMENDATIONS

- ▶ Approve the agreement with Forkner, Orlando and Echevarria for indigent defense legal services for cases which the Public Defender is unable to provide representation due to conflict of interest.
- ▶ Authorize the Chief Executive Officer to execute the agreement with Forkner, Orlando and Echevarria for the period of February 6, 2018 through June 30, 2019 in the amount of \$425,250.

Questions?