

AGREEMENT NO. _____

**Agreement Between Yolo County and J. Robert Spangler
for Conflict Indigent Defense Services**

This Agreement (“Agreement”) is effective as of November 12, 2024, by and between J. Robert Spangler, a California licensed attorney (“Attorney”) and the County of Yolo (“County”).

RECITALS

WHEREAS, persons charged with commission of a crime have a constitutional right to be represented by counsel; and

WHEREAS, for a defendant who is unable to employ counsel, California Penal Code Section 987 requires the Court to assign counsel; and

WHEREAS, Section 987.2(a)(3) of the Penal Code provides that in a case where the Court finds that because of a conflict of interest or other reasons, the Public Defender has properly refused to represent a defendant in a criminal trial, proceeding or appeal, the Court shall assign other counsel to represent that defendant; and

WHEREAS, Section 987.2(b) of the Penal Code provides that counsel assigned pursuant to Penal Code Section 987.2(a) shall receive a reasonable sum for compensation and necessary expenses, the amount of which shall be determined by the Court, to be paid out of the general fund of the County; and the sum provided for in subdivision (a) may be determined by contract between the Court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases; and

WHEREAS, County and Attorney would like to enter into this Agreement in furtherance of Penal Code Section 987.2(a) and related provisions of law concerning the appointment of counsel in matters where the Public Defender is unable to serve; and

WHEREAS, as authorized by Penal Code Section 987.2(c), County and Attorney each acknowledge that County will utilize an assigned private counsel system as the method of appointing counsel in cases where the Public Defender is unavailable, with cases assigned to panel attorneys on a rotational basis; and

WHEREAS, Attorney is willing, qualified and available to provide competent, zealous representation to their clients as required by this Agreement and has competently provided similar services to indigent criminal defendants; and

WHEREAS, in Phillips v. Seeley, 43 Cal. App. 3d 104 (1974), the Court of Appeal held that the judicial act of assigning an attorney to represent an indigent defendant with knowledge of a compensation contract between a board of supervisors and an attorney constitutes judicial approval and ratification of the

contract and recognition that the contract provides reasonable compensation to the attorney;

NOW, THEREFORE, the County and Attorney agree as follows:

AGREEMENT

I. SERVICES TO BE PROVIDED BY ATTORNEY

A. Attorney shall perform the following legal services and shall be eligible for compensation pursuant to this Agreement for all services performed on and after the commencement dates indicated below:

1. Commencing December 1, 2024, perform all services necessary to handle indigent criminal misdemeanor appeals filed by a defendant after conviction. Additionally, provide all services necessary to handle indigent criminal misdemeanor appeals filed on or after the Effective Date filed by the District Attorney.

2. Commencing November 12, 2024, following appointment by the Yolo Superior Court, perform all services necessary to handle matters (typically, habeas petitions) filed under the Racial Justice Act, as amended by Assembly Bill 256 (2022).

For purposes of this Agreement, all attorneys providing criminal defense services and juvenile court representation pursuant to similar agreements with the County for conflict indigent defense services shall be referred to as the “Conflict Indigent Defense Panel.”

B. In providing the legal services required by this Agreement, Attorney agrees to provide, at his/her own expense, all necessary and adequate facilities, equipment, and support staff to enable Attorney to provide zealous, competent legal representation to clients following appointment by the Court. Appropriate staff may include such paralegals, clerks, and any and all secretarial and other professional staff as are necessary to fully discharge in a professional manner all obligations herein assumed by Attorney. Attorney represents and warrants that at all time his/her personnel shall be competent and that all services rendered will be sufficient to meet all constitutional and other applicable legal requirements relating to legal services for the persons for whom he or she provides the services.

Additionally, in rare or complex cases, or cases with voluminous discovery, the County in its sole discretion may reimburse Attorney for miscellaneous items such as, but not limited to, binders, hardware for data storage, or specialized computer software if such items are required for Attorney to effectively perform the services required by this Agreement. Consent for such reimbursement must be obtained in advance by the County Counsel via writing (including e-mail) to Attorney.

C. In providing the legal services required by this Agreement, subject to reimbursement as set forth in Section II.B, below, Attorney shall obtain ancillary services that are necessary and appropriate to provide competent representation. Ancillary services shall include, but not be limited to, investigator services, expert witnesses, transcription, interpreters, and other

similar services. The selection of such other service providers shall be the determination of Attorney subject to the provisions of this Agreement, provided that such service providers shall be paid the usual and customary rate for similar services.

Prior to obtaining ancillary services, Attorney will seek the prior written approval of another member of the Conflict Indigent Defense Panel as to the necessity of the services and the reasonableness of related costs. Prior approval by the reviewing Panel member may take one or more of the following forms: a preapproved rate schedule with a separate statement by the reviewing Panel member affirming the need for such services; a response to a specific written request from Attorney that provides the information required by this Section II.B; or any other writing that approves the necessity and reasonableness of the proposed financial expenditure prior to its incurrence. Attorney agrees that when acting as a reviewing Panel member, his or her approval shall not be unreasonably withheld. In cases of disagreement between Attorney and the consulted Panel member, the matter shall be submitted to the County Counsel for a determination as to the necessity for incurring the cost and/or the reasonableness of the expected costs, with input from the assigned Judge (or Presiding Judge) if desired by Attorney or requested by the County Counsel.

- D. All legal services required of Attorney by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of a competent legal defense and the minimum qualifications and other requirements applicable to criminal defense attorneys performing the same or similar services as set forth herein.

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

- A. **Compensation.** Attorney shall be reimbursed at the hourly rate of \$100/hour, billed in quarter hour increments, for all services performed in connection with this Agreement. Attorney shall submit monthly invoices reflecting, in a general level of detail, the nature of services provided and the amount of time spent for each appeal or similar matter. Attorney agrees that this Agreement provides reasonable compensation for the matters covered by this Agreement. This hourly compensation amount shall increase automatically at the beginning of each subsequent fiscal year during the Agreement term by an amount commensurate to the increase in the Social Security inflation adjustment factor for the then-current calendar year or in an amount otherwise mutually agreed by the parties. Total compensation under this Agreement shall not exceed \$35,000 for the initial, partial fiscal year (through June 30, 2025) and \$50,000 for the subsequent fiscal year.
- B. **Reimbursement of Ancillary Expenses.** Attorney shall be reimbursed for actual out-of-pocket expenses for those ancillary expenses properly incurred pursuant to Section I.C of this Agreement. No other expenses incurred by Attorney in the performance of this Agreement shall be reimbursed. Unless otherwise amended, the total maximum of any such reimbursement for the entire Conflict Indigent Defense Panel shall be \$100,000.00 per fiscal year during the term of this Agreement. Unless there is written concurrence regarding both the need and reasonableness of ancillary expenses by at least two other members of the Conflict Indigent Defense Panel, reimbursement for expenses in any one case shall not exceed \$2,500.00.

- C. Attorney will be required to assist the Court and/or County in determining whether a client has the financial ability to employ counsel. Such assistance may include, but is not limited to, requiring each client to file a financial statement under penalty of perjury within the timeframe and format required by the Court or County. The Attorney will also be required to assist its clients, if needed, in completing such statements. If the Court determines (following Attorney's appointment) that a client has the financial ability to employ counsel, Attorney will thereafter not be required to provide services under this Agreement except in a proceeding to review a determination of that issue, or unless otherwise ordered by the Court subject to reimbursement to County.
- D. In cases where the Court has ordered venue changed from Yolo County, services and costs accrued following the Court-ordered change in venue are not included in the terms of this Agreement.

III. METHOD OF PAYMENT

Attorney shall be compensated within 30 days of submitting an invoice pursuant to Section II.A, above. County shall advise Attorney of any questions or concerns with an invoice within 15 days of receipt. In the event any questions or concerns are raised, the Parties shall work cooperatively to resolve those concerns at their earliest convenience to avoid any delay in payment.

IV. TERM AND TERMINATION

- A. Unless otherwise terminated in accordance with this Section, the term of this Agreement shall be from the date first set forth above through June 30, 2026.
- B. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice and specifying the date of such termination, at least five (5) business days before the effective date of such termination. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.
- C. Either party may terminate this Agreement at any time by giving at least ninety (90) calendar days advance written notice to the other party of the effective date of such termination. Upon termination under this paragraph, Attorney shall be paid for actual services rendered to the County to and inclusive of the specified date of termination.
- D. In the event of termination for cause or for any reason, reproducible copies of all finished or unfinished documents, data, studies, photographs, reports, and other work product prepared by or for Attorney in connection with services rendered pursuant to this Agreement shall become the property of the County upon County's payment of any amounts owed Attorney for services rendered prior to the date of termination.

- E. The termination of this Agreement notwithstanding, Attorney agrees to handle to completion all matters accepted by Attorney during the term of this Agreement. Unless otherwise agreed by the parties, any other matters accepted by Attorney shall also be handled to completion following termination. The terms of this Agreement regarding representation, payment, and other matters shall continue to apply in all respects to post-termination representation in such cases.

Notwithstanding the foregoing, the County may elect in its sole discretion to request that Attorney seek to withdraw from any matter accepted and not completed upon termination. Should the Court nonetheless require Attorney to continue to provide services, County will honor payments to the Attorney pursuant to this Agreement upon judicial verification that continued representation is required.

- F. When a notice of termination is provided by either party, no new matters shall be accepted by Attorney within 30 days of the designated termination date unless the County requests otherwise, in which event Attorney shall continue accepting assignments until the termination date.
- G. County may at any time during the term of this Agreement, in its sole discretion, elect to initiate a “request for proposal,” “request for qualifications,” or other similar competitive process pertaining to the services set forth in this Agreement. Unless County commences such a process within six months of the end of the term of this Agreement, County agrees to provide at least 45 days advance notice to Attorney and to meet and confer with Attorney (together or separately with other similarly-situated attorneys, in County’s sole discretion) prior to formally initiating such a process.

V. APPLICABLE LAWS

In the performance of the services required by this Agreement, Attorney shall comply with all applicable Federal, State, or County statutes, regulations, and ordinances, as well as the current Rules of Professional Conduct. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in a California State court located in Woodland, California.

VI. RESERVED

VII. RECORDS RETENTION

Attorney shall maintain all files and records pertaining to services provided under this Agreement for at least five (5) years following disposition of the cases. All such files and records shall be organized by case or matter numbers and be made available for inspection by County or the Courts at all reasonable times. At least thirty (30) calendar days prior to any destruction of these records following the five years, Attorney shall notify the County Counsel. Upon such notification, the County Counsel shall either agree to the destruction or authorize the records to be forwarded to the County for further retention. This provision shall survive the termination or expiration of this Agreement.

VIII. NON-DISCRIMINATION IN SERVICES AND BENEFITS

Attorney certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

IX. COUNTY PRIMARY CONTACT

The primary County contact for Attorney with regard to the services to be provided by Attorney pursuant to this Agreement shall be the County Counsel. The County Counsel shall represent the County in all matters pertaining to the services to be rendered under this Agreement except when approval is specifically required by the Board of Supervisors.

X. ATTORNEY'S RESPONSIBILITIES

Attorney shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement. With the exception that this section shall in no event be construed to require indemnification by Attorney to a greater extent than permitted under the public policy of the State of California, Attorney shall indemnify, defend and hold harmless the County and its officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the Attorney or its employees, agents, or volunteers. State laws of comparative negligence shall also apply in the event County is found to have also been at fault. Attorney's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. In providing any defense under this paragraph, Attorney shall use counsel reasonably acceptable to the County Counsel.

XI. INSURANCE

A. Coverage.

1. During the term of this Agreement, Attorney shall at all times maintain, at its expense, the following coverages:

Comprehensive General Liability. \$1,000,000 aggregate. Coverage shall include broad form property damage insurance.

Professional Liability. \$300,000 aggregate.

2. The County, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured on all but the professional liability insurance. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

- a. The Additional Insured coverage under the Attorney's policy shall be "primary and non-contributory" and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.

- b. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Attorney changes insurance carriers Attorney shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Attorney changes to a new carrier prior to receipt of any payments due.

4. The Attorney shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may

be satisfied either by the named Insured or Yolo County.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).
 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.
 8. The policies shall cover all activities of Attorney, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
 9. For any claims relating to this Agreement, the Attorney's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Attorney's liability insurance policy.
 10. The Attorney shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.
- B.** Prior to commencing services pursuant to this Agreement, Attorney shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Attorney shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C.** During the term of this Agreement, Attorney shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Attorney shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

XII. NOTICE

- A.** All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Attorney at their respective addresses as follows:

ATTORNEY:

COUNTY: Philip J. Pogledich

J. Robert Spangler
Attorney at Law
P.O. Box 99
West Sacramento, CA 95691

County Counsel of Yolo County
625 Court Street, Room 201
Woodland, CA 95695

- B. In lieu of written notice to the above addresses, any party may provide notices through the use of e-mail provided the following e-mail addresses are used:

To Attorney: jrspangler2@sbcglobal.net

To County: philip.pogledich@yolocounty.org

- C. Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.
- D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XIII. CONFLICT OF INTEREST

- A. It is acknowledged by County that in some cases, Attorney may not be available to represent any or all defendants because rules relating to conflicts of interest, including but not limited to the Rules of Professional Responsibility, and in such event, Attorney is required to provide services for only the defendant or defendants which Attorney may properly represent under said conflict rules.
- B. Attorney covenants that it presently has no interest and shall not acquire any interest, direct, or indirect, which would conflict in any manner or degree with the performance of Attorney's obligations and responsibilities hereunder. Attorney further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Attorney completes performance of the services required of it under this Agreement.
- C. Attorney agrees that if any fact comes to its attention which raises any question as to the applicability of any conflict of interest law or regulation, Attorney will immediately inform County and provide all information needed for resolution of the question.

XIV. AVAILABILITY

Attorney shall be available on a reasonable basis to confer and meet with clients. Attorney will maintain a telephone answering machine or similar voicemail service during times when its office is closed. Attorney shall maintain an office or offices in Yolo County, California, at the sole expense of Attorney, which shall be open at reasonable times so as not to create an undue hardship on clients. If Attorney shares office space with another attorney, Attorney will structure and manage its office in a manner consistent with

the Rules of Professional Responsibility and ensure that client confidences are not compromised as a result of sharing office space.

XV. COVENANT AGAINST CONTINGENT FEES

Attorney warrants that it has not employed or retained any company or person, other than a bona fide employee working for Attorney, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XVI. ASSIGNMENT AND SUBCONTRACTS

No performance of the legal services required of Attorney by this Agreement may be assigned or subcontracted by Attorney.

XVII. STATUS OF ATTORNEY

- A. It is understood and agreed by all the parties hereto that Attorney is an independent Attorney and that no relationship of employer-employee exists between County and Attorney. Neither Attorney nor Attorney's assigned personnel shall be entitled to any benefits payable to employees of County. Attorney hereby indemnifies and holds the County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed to by all the parties hereto that neither Attorney nor Attorney's assigned personnel shall have any right to act on behalf of County in any capacity whatsoever as an agent or to bind County to any obligation whatsoever.
- C. It is further understood and agreed to by all the parties hereto that Attorney must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Attorney's assigned personnel.

XVIII. RENEGOTIATION

In the event that any or all of the provisions of this Agreement or any similar agreement are determined to be invalid by a court of competent jurisdiction, County may elect to renegotiate the provisions of this Agreement, and upon thirty (30) days' written notice of such election the parties shall meet and renegotiate the affected provisions of this Agreement.

XIX. NON-APPROPRIATION

Notwithstanding any other provision of this Agreement, County shall not be obligated for payments hereunder for any future County fiscal year unless and until County's Board of Supervisors appropriates

funds for this Agreement in County's budget for that fiscal year. If funds are not appropriated for this Agreement, then this Agreement shall end as of June 30 of the last County fiscal year for which funds for this Agreement were appropriated. For purposes of this Agreement, the County fiscal year commences on July 1 and ends on June 30 of the following year. County shall notify Attorney in writing of any such non-appropriation at the earliest possible date.

XX. AMENDMENT

This Agreement may be amended only by written instrument signed by County and Attorney. Minor amendments that do not result in a substantial or functional change to the original intent of this Agreement and do not cause an increase in the maximum amount of compensation may be agreed to in writing by Attorney and the Office of the County Counsel, provided that the amendment is in substantially the same format as the County's standard formal amendment then in effect.

XXI. WAIVER

The waiver by County or any of its officers, agents, or employees or the failure of County or its officers, agents, or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants, or conditions of this Agreement.

XXII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between County and Attorney and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

Attorney

County of Yolo

By: _____
Robert Spangler

By: _____
Lucas Frerichs, Chair
Yolo County Board of Supervisors

Attest:
Julie Dachtler, Senior Deputy
Clerk Board of Supervisors

Approved as to Form:

By:  _____
Philip J. Pogledich, County Counsel

By: _____
Deputy (Seal)