

**NAPA COUNTY AGREEMENT NO. 250045B  
CONFLICT PUBLIC DEFENDER SERVICES**

**THIS AGREEMENT** for Conflict Public Defender Services (Agreement) is made and effective as of July 1, 2024, by and between Napa County, a political subdivision of the State of California (County), and Brittany S. Armstrong Whittington (Attorney), whose mailing address is 490 Claiborne Rd., Suite A100, Fairfield, CA 94534. County and Attorney may be referred to as “parties” or individually as “party.”

**RECITALS**

**WHEREAS**, the right of all persons against whom criminal prosecutions are brought, including indigent persons, to be represented by legal counsel is guaranteed by the Constitution of the United States of America and the Constitution of the State of California; and

**WHEREAS**, from time to time County’s Public Defender is unable, due to a conflict of interest or other unavailability, to represent accused persons who are otherwise eligible for such representation due to indigence; and

**WHEREAS**, the costs and expenses of such counsel in the representation of indigent persons in such criminal prosecutions, as well as certain other proceedings before the Napa Superior Court in the County of Napa involving potential impairment of liberty interests are proper charges against the County; and

**WHEREAS**, in those cases where the Public Defender is unable to represent accused persons who are otherwise eligible for such assistance due to indigence, it is necessary and reasonable for the County to enter into contracts to engage the services of private criminal defense Attorneys to perform such defense services as Conflict Public Defenders (CPD) in lieu of the Public Defender;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**TERMS**

1. **Term of the Agreement.** The term of this Agreement shall commence on July 1, 2024 and shall expire on June 30, 2025, unless terminated earlier in accordance with this Agreement. The term of this Agreement shall automatically renew for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than sixty (60) days prior to the expiration of the then current term. For purposes of this Agreement, “fiscal year” shall mean the period commencing on July 1 and ending on June 30.
2. **Scope of Services.** Attorney shall provide County with Conflict Public Defender Services and Coordinator Services as further described in Exhibit “A”, attached hereto and hereby incorporated by reference.

### 3. **Compensation.**

(a) County shall pay Attorney Eleven Thousand Eight Hundred Seventy (\$11,870) per month. Subject to Paragraph 4 (Compensation for Class 1 and 2 Cases) and Paragraph 5 (Reimbursement For Essential Third Party Expenses), this amount is intended to cover and include the Attorney's customary business overhead including but not limited to the following: salaries and employee benefits; office expenses, telephone, postage, office supplies, printing and copying, insurance, accounting and travel expenses, equipment rental, maintenance and depreciation and similar expenses.

(b) The compensation under this agreement shall increase each July 1st by the Bureau of Labor Statistics, Consumer Pricing Index-U for the San Francisco Bay Area for each previous calendar year average (January-December), provided, however, that the annual increase shall be no less than 2.5% and no more than 5% each fiscal year.

(c) All requests for compensation shall be made only upon presentation by Attorney to County of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, the name, taxpayer identification or social security number, and address of the person or firm performing the services. Attorney shall submit monthly invoices for such services no earlier than the twentieth day of the month preceding the month during which such service is rendered and no later than the tenth day of the month following the billed month of service. All invoices for compensation and expenses for extraordinary cases as described in Paragraph 5 (Reimbursement For Essential Third Party Expenses) shall be submitted monthly by the tenth of the month following the month the services are rendered or expenses are incurred. All such invoices shall be submitted to the Office of the County Counsel. The County Counsel, after review and approval as to form, shall submit the invoice to the Napa County Auditor on the next available claims filing date following receipt; provided, however, that payment shall not be issued before the first day of the billed month of service. The failure to file claim(s) in a timely manner will result in the claim(s) being processed during the following month.

(d) In the event the failure to appear in a case results in other counsel being appointed, the compensation set forth in subparagraph (a) is subject to reduction in an amount equal to the billing received from such counsel and such billing offset will occur when the next monthly bill is received from Attorney; provided, however, that this provision shall not apply in cases where the failure to appear is due to a conflict of interest.

(e) If this Agreement is not renewed, Attorney shall be compensated for cases they are required to continue to handle subsequent to the effective date of termination based on hourly billings at a rate equal to 85% of the hourly rate paid by the courts to the private bar for handling conflict matters. If cancelled pursuant to Paragraph 11 (Termination For the Convenience of a Party), Attorney shall be compensated in the manner set forth in Paragraph 12 of this Agreement.

(f) The compensation provided above anticipates that the number of new cases opened annually will be a maximum of 180 cases. Violations of probation alone do not constitute a new case.

### 4. **Compensation for Class 1 and Class 2 Cases.**

(a) If Attorney is assigned a Class 1 case, as defined in Exhibit B, County shall pay Attorney, as to each such client, in addition to the monthly base amount of compensation provided for in Paragraph 3, the sum of up to \$3,500 per month for each such case from the time

of Attorney's first full month representing that client after the charge or charges meet that Class 1 definition through the duration of the representation. However, this additional compensation of up to \$3,500 per month for each client represented in a Class 1 case is capped at a maximum amount of \$42,000 for each period of eighteen consecutive months, unless the Attorney requests and obtains prior written approval of the County – which must be obtained before any monthly amounts are billed by Attorney to the County in excess of the \$42,000 maximum amount – to increase the cap during the 18-month period in question to an amount not to exceed \$63,000 for that 18-month period. The County may grant such approval in its sole discretion based on a showing by the Attorney of the complexity of a given case and any extraordinary demands on Attorney's time in representing the client and in handling the case. In the absence of such prior written approval by the County, if the Attorney bills the County for amounts of additional Class 1 compensation in excess of the \$42,000 cap per client, and if the County pays the billing so that total payments exceed the cap, the County may unilaterally credit such overpayments against the next monthly amount of base compensation to be paid to the Attorney under Paragraph 3(a). An appointment or assignment of Attorney to handle a Class 1 case or client other than on the first day of a month shall result in a proration of the monthly additional compensation during that first month. This additional compensation shall end upon the conclusion or disposition of the Class 1 case or upon any other change that renders the case no longer being a Class 1 case. Compensation for the final month of handling of a Class 1 case shall be prorated unless Attorney's final appearance in the case occurs on the last day of the month.

(b) If Attorney is assigned a Class 2 case, as provided in Exhibit B, County shall pay Attorney, as to each such client, in addition to the monthly base amount of compensation provided for in Paragraph 3, the sum of up to \$2,500 per month for each such case from the time of Attorney's first full month representing that client after the charge or charges meet that Class 2 definition through the duration of the representation. However, this additional compensation of up to \$2,500 per month for each client represented in a Class 2 case is capped at a maximum amount of \$30,000 for each period of eighteen consecutive months, unless the Attorney requests and obtains prior written approval of the County – which must be obtained before any monthly amounts are billed by Attorney to the County in excess of the \$30,000 maximum amount – to increase the cap during the 18-month period in question to an amount not to exceed \$45,000. The County may grant such approval in its sole discretion based on a showing by the Attorney of the complexity of a given case and any extraordinary demands on Attorney's time in representing the client and in handling the case. In the absence of such prior written approval by the County, if the Attorney bills the County for amounts of additional Class 2 compensation in excess of the \$30,000 cap per client, and if the County pays the billing so that total payments exceed the cap, the County may unilaterally credit such overpayments against the next monthly amount of base compensation to be paid to the Attorney under Paragraph 3(a). An appointment or assignment of Attorney to handle a Class 2 case or client other than on the first day of a month shall result in a proration of the monthly additional compensation during that first month. This additional compensation shall end upon the conclusion or disposition of the Class 2 case or upon any other change that renders the case no longer being a Class 2 case. Compensation during the final month of handling of a Class 2 case shall be prorated unless Attorney's final appearance in the case occurs on the last day of the month.

(c) In the event of a change of venue of a case to a place outside of Napa County, the County shall pay additional reasonable compensation to Attorney for the reasonable time spent

and reasonable expenses incurred, such as hotel and/or travel expenses (subject to the limitations and rules for such reimbursement set forth in the Napa County policy manual), as a result of the change of venue. The Attorney must present documentation of such expenses and an itemization and description of such additional time spent that would not have been spent in the absence of the change of venue. The additional reasonable time spent will be reimbursed by the County at the then current Napa County Superior Court rate for payment of appointed counsel, up to a maximum of \$12,000 per case absent a showing of extraordinary circumstances by the Attorney.

(d) The extra compensation provided for in subparagraphs 4(a) and (b) for Class 1 and Class 2 cases is intended to reimburse Attorney for the additional expenses and/or possible loss of income from Attorney's private practice occasioned by the time demands and/or commitment of time required by such cases since one premise of this Agreement is that the Attorney will devote roughly half of their available professional time to rendition of services under this Agreement. In light of that premise, purpose and intent of these additional compensation provisions, Attorney shall not request extra compensation for such cases for months in which: (1) the time loss due to such case(s) is minimal, or (2) there is no substantial loss of private practice income as a result of Attorney's commitment to such Class 1 or Class 2 cases. In order to demonstrate that the time spent on such cases qualifies for the additional compensation, Attorneys must provide, for each month in which the additional compensation is sought, an invoice describing the services performed for each client charged in a Class 1 or Class 2 case, including the dates of services performed and a summary of the services performed each day during the month.

(e) The extra compensation provided for in subparagraphs 4(a) and (b) does not apply to appeals of Class 1 or Class 2 cases. Such extra compensation, if any, is subject to future negotiation between Attorney and County on a case-by-case basis.

#### 5. **Reimbursement For Essential Third Party Expenses.**

(a) If in the course of providing CPD services to indigent clients, the Attorney is required by the issues in a matter to engage essential and necessary third party services or to incur essential and necessary third party costs that go beyond the customary overhead and office expenses described above in Paragraph 3(a), above, which the base amount of monthly compensation is intended to cover ("salaries and employee benefits; office expenses, including but not limited to telephone, postage, office supplies, printing and copying; insurance, accounting and travel expenses; and equipment rental, maintenance, depreciation and similar expenses"), the County will pay invoices from the Attorney or from such third parties for such essential third party services and costs, including the charges of court reporters, translation services, medical experts and tests, psychological and psychiatric experts and tests, technical experts, investigators, witness fees, and such other similar specialized services, if the following procedures are followed and the following conditions are met:

- i. Except as provided in subparagraph 5(b) below, the Court in the case in which the third party services are engaged or third party expenses are incurred must first issue an order approving and authorizing the services and/or costs and establishing a maximum amount for each service provider or category of cost in the case;
- ii. The third party service provider or source of the third party expenses or charges must provide a signed and dated invoice for the services and/or costs that details

the services performed, the date(s) of service, and the dollar amounts for each service or expense item;

iii. The Attorney must approve the invoice by signing it and verifying the fact that the services were performed and/or the costs were incurred in the billed amount in the case identified at the time(s) identified in the invoice; and

iv. Attorney shall submit all such billings for third party services and expenses to the Napa County Counsel no later than ten (10) days after receipt by Attorney of the third party's invoice or billing.

(b) The requirement in subparagraph 5(a), of Court approval of essential third party service expenses and other essential third party expenses does not apply to any third party's service or third party cost in a single case that does not exceed one thousand five hundred dollars (\$1,500.00) per service provider or source of the expense; however, if any single service provider is engaged, or any single category of cost is incurred, on multiple occasions in a single case, the total amount of the billings for that service provider or category of cost shall be limited to \$1,500 in the absence of Court approval or prior written waiver of this limitation by the County. The requirements of subparagraphs 5(a)(ii), (iii), and (iv) shall apply to all billings for such expenses and costs.

6. **Independent Contractor.** Attorney shall perform this Agreement as an independent contractor. Attorney and the officers, agents and employees of Attorney are not, and shall not be deemed County employees for any purpose, including workers' compensation and employee benefits. Attorney shall, at Attorney's own risk and expense, determine the method and manner by which duties imposed on Attorney by this Agreement shall be performed; provided, however, that County may monitor the work performed by Attorney. County shall not deduct or withhold any amounts whatsoever from the compensation paid to Attorney, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, Attorney shall be solely responsible for all such payments. This Agreement does not create the relationship of Attorney and client between Attorney (or any of Attorney's personnel) and County; such relationship is restricted to Attorney and those persons on whose behalf Attorney furnishes legal services.

7. **Specific Performance.** It is agreed that Attorney, including the agents or employees of Attorney, shall be the sole providers of the services required by this Agreement. Because the services to be performed by Attorney under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, County shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by Attorney in addition to any other rights or remedies which County may possess.

8. **Insurance.** Attorney shall obtain and maintain in full force and effect throughout the term of this Agreement, and after the termination or expiration of this Agreement as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, Attorney shall provide workers' compensation insurance for the performance of any of Attorney's duties under this Agreement, including but not limited to, coverage for

workers' compensation and employer's liability and a waiver of subrogation, and shall provide County with certification of all such coverages upon request by County's Risk Manager.

(b) Liability Insurance. Attorney shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Attorney or any officer, agent, or employee of Attorney under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of Attorney arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Attorney's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If Attorney owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph 8(b)(1) above. If Attorney or Attorney's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, Attorney shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in paragraph 8(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of County's Risk Manager, demonstrated by other evidence of coverage acceptable to County's Risk Manager, which shall be filed by Attorney with the County Counsel's Office prior to commencement of performance of any of Attorney's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its County number or title and department; shall be kept current during the term of this Agreement; shall provide that County shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in paragraph 8(b)(1) and, for the

comprehensive automobile liability insurance coverage referenced in paragraph 8(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, Attorney shall also file with the evidence of coverage an endorsement from the insurance provider naming County, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Attorney shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Attorney not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of County shall pertain only to liability for activities of Attorney under this Agreement, and that the insurance provided is primary coverage to County with respect to any insurance or self-insurance programs maintained by County. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by County's Risk Manager, Attorney shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by County's Risk Manager, which approval shall not be denied unless the County's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Attorney by this Agreement. At the option of and upon request by County's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects County, its officers, employees, agents and volunteers or Attorney shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. Attorney agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 8.

## 9. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, Attorney shall defend at its own expense, indemnify, and hold harmless County and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable Attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of Attorney or its officers, agents, employees, volunteers, and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of County or its officers, agents, employees, volunteers, or representatives. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this

Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, Attorney-client privilege, or Attorney work product privilege. Attorney's obligations under this section shall survive the termination or expiration of this Agreement and continue so long as a viable claim exists.

(b) Employee Character and Fitness. Attorney accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of Attorney under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, Attorney shall hold County and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or Attorney's actions in this regard.

10. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving fourteen (14) days prior written notice to the defaulting party in the manner set forth in Paragraph 19 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of County for cause.

11. **Termination for Convenience.** This Agreement may be terminated by the County for any reason and at any time by giving prior written notice of such termination to Attorney specifying the effective date thereof at least ninety (90) days prior to the effective date, provided, however, that no such termination may be effected by County unless an opportunity for consultation is provided prior to the effective date of the termination. County hereby authorizes the County Counsel to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of County for the convenience of County.

12. **Transfer of Cases upon Termination or Expiration.** If this Agreement is terminated or expires, Attorney must make arrangements for new counsel, acceptable to County Counsel, to take over each case and any matters being handled by Attorney under this Agreement by the effective expiration or termination date; and Attorney must (i) make arrangements to transfer all hard copy and electronic case files and records to the new attorney handling each case; and (ii) as to closed cases, make arrangements to deliver all hard copy and electronic case files to the Napa County Counsel. In the event that the Court before which any such case(s) is pending determines that the status of the case is such that Attorney should be required to complete the representation of the client in such pending case, Attorney shall do so and shall be compensated therefore at a

rate equal to 85% of the hourly rate paid by the courts to the private bar for handling CPD matters at the time the Court makes its determination.

13. **Qualifications of Attorneys.** Attorney shall, at all times during the term of this Agreement, be in good standing with the State Bar of California. Attorney shall use their best professional efforts in performing these services, in conformance with all applicable laws, rules and directives of the Court, and canons of ethics, and shall provide the services required with the level of care, skill and expertise customarily exercised by licensed attorneys practicing criminal defense in the San Francisco Bay area.

14. **Record Keeping; County Access.**

(a) Attorney shall keep a record of all duties performed under this Agreement. The records shall be segregated into the following categories: W&I 602's, violations of probation and miscellaneous juvenile matters.

(b) Attorney's records shall include, but not be limited to, the following information which information shall be provided on a calendar quarter basis (September 30<sup>th</sup>, December 31<sup>st</sup>, March 31<sup>st</sup>, and June 30<sup>th</sup>) or more frequently on request: Identify the number of cases opened and closed during the reporting period in each of the designated categories by name or case number. This information shall be submitted to the Napa County Counsel within 30 days after the close of the quarter. Interim reports identifying cases opened and closed during a portion of a fiscal year may be required if requested by the Napa County Executive Officer or the Napa County Counsel.

(c) The specified format of the reports are to be agreed upon by the parties to this agreement. Failure to provide a report in a timely manner may result in compensation being withheld until such time as the required report is provided. No more than one month's withholding may occur for the failure to provide a single quarterly report.

(d) Attorney shall not include among their records cases on which they themselves declare a conflict unless they spend substantial time on the case. For this purpose, substantial time shall mean more than eight (8) hours.

(e) For purposes of obtaining reimbursement from the State pursuant to Penal Code Sections 987.4, 987.6, 987.8 and/or 987.9, Attorney shall keep such records, including billable hours, as may be required by the State for such reimbursement.

(f) County may audit Attorney's records at any time, subject to reasonable notice, consistent with appropriate concern for confidentiality and privilege. All records shall be maintained by Attorney for a period of five (5) years.

(g) With five days prior notice, County may, on one or more occasions, require Attorney to provide copies of all papers filed by them in Court which are otherwise public records, for a specific period of time determined by the County. The County may also require copies of police reports acquired by the Attorney.

(h) With ten days prior notice, Attorney shall provide such information to County as may be needed to bill defendants, the State of California, or other counties or entities from which County is, or may be, permitted to secure reimbursement for the Conflict Public Defender services that were provided by Attorney.

(i) For copies required by subparagraphs (g) and (h) above, Attorney shall bear the expense of copying all or a portion of a file involving a single criminal case if the number of

copies involved in the request is one hundred (100) pages or less. The County shall reimburse Attorney for the cost of duplication after the first one hundred pages or of multiple criminal cases. The charge per copy shall be the actual cost to Attorney or \$.03 per page, whichever is less. The County shall not be limited to making only one request per case per year, and the copies from previous requests will not be accumulated in making the determination as to whether the one hundred (100) copy threshold has been met; provided, however, that the County agrees not to split requests in an effort to avoid incurring duplication costs.

**15. Priority of Duties; Avoidance of Conflicts.**

(a) Attorney's duties under this Agreement shall take priority over other business or legal engagements of Attorney, to the extent allowed under the California Rules of Professional Conduct.

(b) Attorney shall avoid any activity that would, or may, conflict with their duties under this Agreement.

(c) Without detracting from their obligation under the law, Attorney shall make every lawful and ethical effort to avoid the declaration of a conflict which would excuse performance of Attorney's duties under this Agreement. Attorney shall keep a record of the number of cases on which they or the Court declares a conflict and the reason for the conflict.

**16. Screening for Eligibility.** Attorney shall screen for eligibility those persons referred to them for representation. Attorney shall cooperate with County in seeking reimbursement for the costs of their defense from persons represented by Attorney.

**17. Change in State Law.** State law concerning legal services to indigents may change from time to time. In the event such laws change in a manner that significantly impacts Attorney's cost to provide legal services under this Agreement, Attorney will notify County Counsel in writing. The parties will then meet to discuss potentially amending this Agreement to compensate Attorney for such additional costs.

**18. No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

**19. Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

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COUNTY

County Executive Officer  
1195 Third St., Suite 310  
Napa, CA 94559

ATTORNEY

Brittany S. Armstrong Whittington  
490 Claiborne Rd., Suite A100  
Fairfield, CA 94534

20. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** Attorney hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Attorney also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by County employees.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of Attorney whose performance of services under this Agreement requires access to any portion of the County computer network shall sign and have on file with County's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the Board of Supervisors effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

21. **Confidentiality.** Confidential information is defined as all information disclosed to Attorney which relates to County's past, present, and future activities, as well as activities under this Agreement. Attorney shall hold all such information as Attorney may receive, if any, in trust and confidence, except with the prior written approval of County, expressed through its County Counsel. Upon termination or expiration of this Agreement, Attorney shall return to County all written and descriptive matter which contains any such confidential information, except that Attorney may retain for its files a copy of Attorney's work product if such product has been made available to the public by County.

22. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of Attorney; therefore, Attorney shall not assign any interest in this Agreement or subcontract any of the services Attorney is to perform hereunder without the prior written consent of County, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by Attorney, or to perform any of the remaining services required under this Agreement within the same time frame required of Attorney shall be deemed to be reasonable grounds for County to withhold its

consent to assignment. For purposes of this subparagraph, the consent of County may be given by the County Counsel.

(b) Effect of Change in Status. If Attorney changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by Attorney. Failure of Attorney to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

23. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of Attorney to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

24. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

25. **Compliance with Laws.** Attorney shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, Attorney and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Attorney shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Attorney shall comply with the provisions of the Fair Employment and Housing Act

(Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Attorney services or works required of County by the State of California pursuant to agreement between County and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Attorney and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. Attorney agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Attorney performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Attorney shall make the required documentation available upon request to County for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of Attorney under this Agreement are subcontracted to a third party, Attorney shall include all of the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

26. **Taxes.** Attorney agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Attorney agrees to indemnify and hold County harmless from any liability it may incur to the United States or the State of California as a consequence of Attorney's failure to pay or withhold, when due, all such taxes and obligations. In the event that County is audited for compliance regarding any withholding or other applicable taxes or amounts, Attorney agrees to furnish County with proof of payment of taxes or withholdings on those earnings.

27. **Authority to Contract.** Attorney and County each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

28. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. Attorney hereby covenants that it presently has no interest not disclosed to County and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as County may consent to in writing prior to the acquisition by Attorney of such conflict. Attorney further

warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. Attorney agrees that if such financial interest does exist at the inception of this Agreement, County may terminate this Agreement immediately upon giving written notice without further obligation by County to Attorney under this Agreement.

(b) Statements of Economic Interest. Attorney acknowledges and understands that County has developed and approved a Conflict of Interest Code as required by state law which requires Attorney to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office,” “annual,” and “leaving office” Statements of Economic Interest as a “consultant” as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that ATTORNEY, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

Attorney shall timely comply with all filing obligations for a consultant under County’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

29. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

30. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable Attorney's fees incurred in connection with such action.

31. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

32. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

33. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

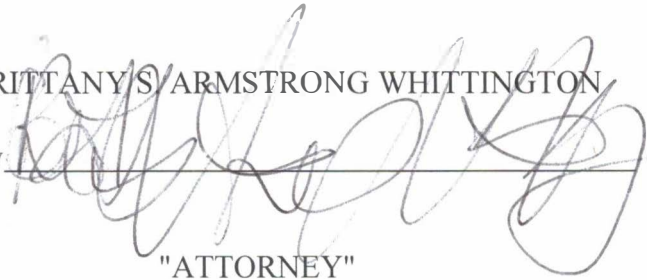
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IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

BRITTANY S. ARMSTRONG WHITTINGTON

By




"ATTORNEY"

NAPA COUNTY, a political subdivision of  
the State of California

By

JOELLE GALLAGHER, Chair  
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel  By:  Deputy County Counsel  Date: <u>June 13, 2024</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS  Date: _____ Processed By: _____  Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors  By: _____
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