

## **CONTRACT FOR PUBLIC DEFENDER SERVICES**

The COUNTY OF MODOC, a political subdivision of the State of California ("County"), and Tom Gifford, Esq. ("Contractor"), enter into this contract dated on December 10, 2019, in Alturas, California, on the terms and conditions set forth herein,

1. Duration of Contract. This contract shall commence on July 1, 2020 and end December 31, 2020.
2. Scope of Services. Contractor shall perform the services specified in Attachment A hereto, which attachment is made a part of this Contract.
3. Compensation. In consideration for Contractor's performance, County shall pay Contractor according to the terms specified in Attachment B hereto, which attachment is made a part of this Contract.
4. Contract Administrator. The County Administrative Officer for County is designated by County as its Contract Administrator for this Contract. All matters concerning the Contract which are within the responsibility of County shall be under the direction of, or shall be submitted to, the Contract Administrator. County may, in its sole discretion, change its designation of the Contract Administrator and shall promptly give written notice to Contractor of such change.
5. Indemnification. Contractor and County each agree to indemnify, defend and save harmless the other party and the other party's performance under this Contract, including, but not limited to, claims for professional liability. Property damage, personal injury, and death, including any legal expenses (such as attorney's fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers, employees, agents, and employees.
6. General Insurance Requirements. Without limiting Contractor's duty to indemnify County, Contractor shall comply with the insurance coverage requirements set forth in Paragraph 7 hereof. Those insurance policies mandated by Paragraph 7 shall satisfy the following requirements.
  - (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
  - (b) Each policy shall provide that County shall be given notice in writing at least thirty (30) days in advance of change, cancellation or non-renewal thereof.
  - (c) The comprehensive motor vehicle liability policy, professional liability policy, and comprehensive general liability policy shall each provide an endorsement naming County and its officers, agents and employees as additional insureds.

- (d) Any subcontractor of Contractor who provides legal services shall maintain insurance as provided for in Paragraph 7(b) and provide adequate proof thereof as provided in Section 8 to County.
  - (e) The required coverages shall be on an occurrence basis and shall insure against any injury occurring during the term thereof.
7. Insurance Coverage Requirements. Contractor shall maintain the following insurance policies in full force and effect during the term of this Contract:
- (f) Comprehensive General Liability Insurance. Contractor shall maintain comprehensive general liability insurance covering all of Contractor's operations with a combined single limit of not less than \$1,000,000.
  - (g) Professional Liability Insurance. Contractor shall maintain professional liability insurance with liability limits of not less than \$1,000,000 per claim and in the aggregate.
  - (h) Comprehensive Motor Vehicle Liability Insurance. Contractor shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this Contract, with a combined single limit of not less than \$1,000,000:
  - (i) Worker's Compensation Insurance. Contractor shall maintain a workers' compensation plan covering all of his/her employees as required by Labor Code 3700, either through workers compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If Contractor elects to be self-insured, the certificate of insurance otherwise required by this Contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.
  - (j) Abuse and Sexual Molestation Insurance. Abuse and Sexual Molestation Endorsement for Minors: If the services provided in relation to this Agreement relate in any way to minors, then this policy shall also include an endorsement for abuse and sexual molestation.
8. Certificate of Insurance. Prior to the execution of this Contract by County, Contractor shall file certificates of insurance with County, showing that Contractor has in effect the insurance required by this Contract. Contractor shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
9. Records to be Maintained. Attorneys shall maintain all files and records for each case for which services are provided under this Contract for a least ten (10) years following the last date attorneys rendered services in the case, unless such files are

assigned to successor counsel in the case. Attorneys may require the County to furnish safe storage for the files of all closed cases until the expiration of the 10-year period. Attorneys shall have access to such files as necessary, and County guarantees the confidentiality and protection of such files. Neither the County nor any other person or entity shall be permitted access to any Such files without the written consent of attorneys, or court order: Prior to closing each case, attorneys shall notify the client of the requirements of this clause.

10. Independent Contractor. Contractor and his/her officers, agents and employees in the performance of this Contract are independent contractors in relation to County and not officers or employees of County. Nothing in this agreement shall create in Contractor any of the rights, powers, privileges or immunities of any employee of County. Contractor shall be solely liable for all applicable taxes, including, but not limited to, federal and state income taxes and social security taxes, arising out of the performance of this Contract.
11. Conflict of Interest. Contractor covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this Contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that no one who has or will have any financial interest in this Contract is an officer or employee of County or engaged in litigation against the County that could result in financial gain for Contractor.
12. Compliance with Applicable Laws. Contractor, at his/her sole cost and expense, shall comply with all applicable federal, state and local laws and regulations including rules of professional conduct and the Rules of the California State Bar in performing the work and providing the services specified in this Contract.
13. Nondiscrimination. No discrimination shall be made in the employment of persons under this Contract because of race, color, national origin, ancestry, religion, age, sex or handicap of such person.
14. Cessation of Contractor's Business. Contractor shall immediately notify County in the event that Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for his/her business or assets, or avails himself/herself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors. Where such proceedings are not withdrawn or discharged within thirty (30) days, then County may at its option terminate this Contract.
15. Prohibition Against Assignment and Subcontracting. Except as authorized herein, no rights under this Contract may be assigned and no duties may be delegated or subcontracted by one party without the prior written consent of the other party, and

any attempted assignment, subcontracting or delegation without such consent shall be void.

16. Negotiated Agreement. This Contract has been arrived at through negotiations between the parties. Neither party is to be deemed the party which prepared this Contract within the meaning of Civil Code 1E54.
17. Severability. Should any provision herein be found or deemed to be invalid, this Contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end the provisions of this Contract are declared severable.
18. Entire Agreement. This Contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this Contract except as are expressly stated in writing in this Contract or in any document attached hereto or incorporated herein by reference.
19. Time is of the Essence. Time is of the essence in the performance of this Contract.
20. Termination.
  - (a) County may terminate this Contract, with or without cause, at any time upon giving ninety (90) days advance write notice to Contractor. Contractor may terminate this Contract, with or without cause, at any time upon giving ninety (90) days advance written notice to County. Such notice shall set forth the effective date of the termination. Notice shall be effective as specified in paragraph 21, below. In the event of termination, County shall pay Contractor for all work satisfactorily performed prior to the effective date of the termination.
  - (b) The County may terminate this agreement on thirty (30) days' notice for failure of Contractor to perform to the standards customarily expected of attorneys in a similar position and performing similar duties. The County Agrees to give Contractor fifteen (15) days to correct the problem before invoking paragraph (b).

21. Notice. Notice to the parties in connection with the Contract shall be given personally or by regular mail addressed as follows:

County: Mr. Chester Robertson  
County Administrative Officer  
County of Modoc  
204 South Court Street, Room 100  
Alturas, CA 96101

Contractor: Mr. Tom Gifford  
Law Office of Tom Gifford  
113 W North St,  
Alturas CA 96101

COUNTY OF MODOC

\_\_\_\_\_  
Elizabeth Cavasso,  
Chair, Board of Supervisors

Date: \_\_\_\_\_

\_\_\_\_\_  
Chester Robertson  
County Administrative Officer

Date: \_\_\_\_\_

CONTRACTOR:

By: \_\_\_\_\_  
Tom Gifford

Date: \_\_\_\_\_

*APPROVED AS TO FORM:*

\_\_\_\_\_  
Margaret E. Long, County Counsel

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Tiffany Martinez, Clerk of Board

Date: \_\_\_\_\_

**ATTACHMENT A**  
**SCOPE OF SERVICES**

A-1. Contractor hereby agrees to perform those duties described in Government Code 27706 as well as legal services as counsel to approximately all of the cases which the Modoc County have authority to appoint counsel.

- (a) Those cases including appointment in criminal cases (Penal Code 987); juvenile cases (Welfare and Institutions Code Sections 634, 700); proceedings to terminate parental control (Civil Code 237.5, In re Richard E. (1978) 21 Ca1.3d 349); family law proceedings (Family Code 3150); probate conservatorships and guardianships (Probate Code 1754, 1461); paternity cases (Salas v. Cortez (1979) 24 Ca1.3d 22); and habeas corpus proceedings pertinent to underlying criminal cases in which Contractor has served as defense attorney.
- (b) All of the County Courts misdemeanor and felony criminal cases are assigned and calendared so that there are court appearances every other week. Attorney will appear at the arraignment calendar to meet clients, schedule office appointments, and schedule further court appearances. Conflict appointments in multiple defendant cases may mean court appearances in weeks other than normal court weeks.
- (c) The foregoing enumeration of the specific instances does not limit the generality of the Contractors obligation to perform services and all instances in which a court in Modoc Court has authority to appoint counsel.
- (d) Although Contractor is not required to perform services in prosecuting an appeal to the Court of Appeal or the Supreme Court of California, he/she is required to perform services in prosecution of appeals in misdemeanor cases and applications of extraordinary writs in the state court of review. Contractor is required to perform services in any court to which a case is transferred on change of venue after Contractor's appointment by a Modoc County Court.
- (e) This contract does not include Contractor being assigned to homicides with special circumstance(s) cases.
- (f) This contract does not include Contractor being assigned to cases filed under the 300 sections of the Welfare and Institutions Code. Contractor may on occasion be assigned cases under those sections by the Courts at which time the courts will reimburse the contractor separate from this contract.

- (g) The only cases in which contractor shall be excused from the performance of these duties are those in which it is judicially determined on the basis of affidavit or declaration that there is a conflict of interest which would preclude the Contractor from doing so.
- (h) Contractor shall provide services under SB 395 Custodial Interrogations: Juveniles, including consultations before a minor under the age of 15, gives a confession to law enforcement officer in a custodial setting which would be legally admissible in a court of law. Welfare and Institutions Code 625.6. The Contractor shall not leave the County for more than 14 consecutive days and confirm who will cover the SB 395 services during his/her absences.

A-2. Contractor agrees to have one full-time attorney who shall have a minimum of three years professional legal experience, primarily in the area of criminal law, including two years of criminal trial experience, available to provide public defender services.

In addition to the foregoing, Contractor shall contract in writing with an attorney or attorneys, possessing sufficient skill and experience in criminal defense matters, to accept appointments in matters in which the firm's employee (described in the preceding paragraph) is unable to accept appointment due to a conflict of interest. Contractor shall advise County of said attorney and provide a resume upon request. Contractor shall notify County of any change in contracting attorney. The County has the right to reject the proposed attorney at any point during the term of the agreement.

A-3. Contractor will provide a part-time secretary/receptionist to support the activities of the full-time attorney described herein.

A-4. Contractor will establish and maintain an office in Alturas. The office will be staffed on a full-time basis and interviews with out-of-custody clients will be conducted there. Contractor will pay the rent, utilities and all other associated expenses of the law office. The office will have an answering machine to be utilized when staff are unavailable and after normal business hours.

A-5. Contractor will furnish his/her own transportation, shall pay for all costs of meals, lodging and personal items as may be required in the performance of his/her duties. The exception to this is the County shall reimburse Contractor for his/her expenses incurred for travel, meals and lodging necessary when out of Modoc County in the performance of his/her duties under this contract. Reimbursement for contractor expense under this exception shall be in accordance with County's travel policy in effect at the time the expenses are incurred.

A-6. Contractor shall pay all expenses incidental to conducting a law practice and to his/her duties under this contract. Such expenses include, but are not limited to, the following: wages, office space, utilities, supplies, and clerical, stenographic, library, communications, postage, long distance telephone calls, equipment maintenance, and other kinds of expenses of any nature whatsoever except as provided elsewhere in this Contract. County will allow use of the County copy machine for Public Defender work.

A-7. County agrees to pay, subject to court approval, all witness fees, including expert witnesses, and for the services of court-appointed laboratories, forensic services, medical and other technical experts, interpreters, and stenographic transcriptions and investigative services. County shall pay for the above as determined by the court before performing such services.

A-8. County shall receive all funds collected pursuant to Penal Code Sections 987.4, 987.6 and 987.8, Government Code Section 27712, and any similar statute providing for reimbursement for the cost of legal services rendered under this contract, and no portion of said funds shall inure to the benefit of attorneys or otherwise affect the amount specified in Attachment B, Paragraph B-2.

A-9. Contractor's continued representation of defendants in change of venue cases shall be at no additional cost to the County except that Contractor shall be eligible for reimbursement of travel, lodging, and meal expenses in accordance with paragraph A-5.

A-10. Contractor may engage in the private practice of law, including the defense of those charged with crimes or involved in juvenile court proceedings, providing that no private client shall be accepted which may cause a conflict of interest to arise whereby either Contractor or his staff attorneys or subcontractors would be unable to represent any indigent who would otherwise be eligible for services under this agreement.

A-11. County reserves the right to renegotiate or terminate this agreement and contract with another if in any six-month period more than 10% of the total cases assigned to attorney results in conflicts as provided in Section A-1(g), Contractor shall submit monthly reports to the County showing the total number of cases assigned and the total number of cases resulting in conflict.

A-12. Neither Contractor nor any of Contractor's staff attorneys or subcontractors may file on behalf of a client a claim or lawsuit against the County of Modoc or any of officers, agents or employees. Nothing herein is intended to prevent the Contractor from litigating a claim arising out of the interpretation of this agreement. Nor is this provision intended to prevent Contractor from representing a client appointed pursuant to this contract from seeking return of property or assets seized by law enforcement authorities.

A-13. It is the intent of the parties that the two (2) Contractor attorneys provide two (2) levels of representation. In other words, if one (2) attorney is unable to represent a person due to a legal conflict of interest then the other attorney could be appointed to represent that person. Or, in a common situation, if there are two (2) co-defendants in the same case (whether joined or not) then each attorney could be appointed to represent one (1) defendant thus providing representation for both defendants.

Representation in such a manner is sanctioned in Castro v. Los Angeles County Board of Supervisors, 232 Cal.App.3d 1432, 284 Cal.Rptr. 154 (1991), so long as certain policies establish what is commonly known as a "glass wall." Such policies and procedures are set forth below and said policies and procedures shall be followed by Contractor in the delivery of

services provided pursuant to this contract.

- (a) Each attorney shall keep the confidences and secrets of their respective clients and shall not disclose them to anyone.
- (b) Each attorney shall be housed in a separate office from the other. Neither attorney shall have access to the other's office.
- (c) Each attorney's files shall be kept separate and confidential so that the other attorney, or staff working for that other attorney, will not have access to those files. This shall apply to open and closed cases.
- (d) The attorneys shall not use the same investigator on the same case.
- (e) Each attorney, to the extent feasible, shall have separate equipment including telephones, copiers, computers, facsimile machines so as to avoid the inadvertent disclosure of confidential client information.
- (f) All staff shall be regularly instructed on the terms and conditions of this contract specifically as they relate to the maintenance of a "glass" Wall between the attorneys.
- (g) Each attorney shall have separate letterhead and business cards separate and distinct from each other. Pleadings filed by each attorney shall use the same designation as does that attorney's letterhead and business card.

A-14. Cases at Expiration. At the expiration of the agreement as to matters then pending as to which the Modoc County Superior Court refuses to relieve the present Public Defender's staff of representation, Contractor shall carry to conclusion all such matters pending at that time. Compensation for such services as are mandated by the Court shall be based upon documented actual costs for such services and at the same rates paid to attorneys appointed by the Court in criminal matters in place at the time services are rendered. A prerequisite to any payment for such services shall be the submission by Contractor to County of full documentation of the services rendered, the rates changes, and the activities billed. As to all other cases then pending and over which the courts are willing to authorize a substitution of counsel for any new attorney providing Public Defender services, Contractor shall be relieved of his obligation to provide further representation at the expiration of the agreement. At such expiration, Contractor agrees to assign all existing open and closed case files and records to the successor Public Defender.

## **ATTACHMENT B** **PAYMENT SCHEDULE**

B-1. Payment. County will send payments for services on the first of the month in which services are rendered.

B-2. Compensation. County shall pay to Contractor the sum set forth herein payable in equal

monthly installments for services rendered pursuant to the terms and conditions of this Contract:

\$18,488.25 per month

B-3. Extraordinary Circumstances - Capital Cases. Contractor shall notify the Contract Administrator and consult with him/her in the event that a need arises for the Public Defender to defend capital cases (Penal Code 987(b)). Contractor and County may choose to negotiate a separate agreement regarding Contractor providing services in such cases.

**ATTACHMENT C**  
**PENAL CODE SECTIONS**

Homicides

§187

Murder

Sexual Assault

§220

assault with intent to commit mayhem, rape, sodomy, Oral copulation.

§243.4

Sexual battery charged as a felony.

§261

Rape.

§269

Aggravated sexual assault on child (Life Top case).

§286	Sodomy.
§288	Lewd act on a child or dependent person.
§288.5	Engaging in three or more acts of substantial sexual conduct with child under 14.
§288.7	Sexual acts with child 10 years old or younger (Life Top case).
§288a	Oral copulation.
§289	Sexual punctuation by foreign or unknown object.

Felonies with Gang Enhancement

§186.22(b)(1)(A)	Committing felony while violating provisions against participating in criminal street gang.
§186.22(b)(1)(B)	Committing a serious felony while participating in criminal street gang.
§186.22(b)(1)(C)	Committing violent felony while participating in criminal street gang.
§186.26(d)	Soliciting, recruiting, coercing or threatening minor to participate in criminal street gang.

Sexually Violent Predators (SVP)

§6600 et al.	Welfare & Institutions Code.
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"Life Top" Cases

Life Top cases include, but are not limited to, murder (P.C. 187), sex crimes under certain circumstances, cases with two or more serious or violent felonies under P.C. 667(b)(i) (Three Strikes), and P.C. 12022.53(d), discharging firearm causing CBI or death while committing designated felony.