

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

941



FROM: Public Defender

SUBMITTAL DATE:
November 29, 2012

SUBJECT: APPROVAL OF THE AGREEMENT WITH BROWN, WHITE AND NEWHOUSE, LLP TO PROVIDE LEGAL INDIGENT CONSERVATEE AND GUARDIANSHIP SERVICES FOR RIVERSIDE COUNTY

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the one-year (1) professional service agreement with Brown, White and Newhouse, LLP for \$654,000 annually, which contains an option to renew the agreement for four (4) additional one-year (1) periods, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise the renewal option, based on the availability of fiscal year funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provisions that do not exceed the annual CPI rates, and;
3. Direct the Clerk of the Board to return three (3) original signed agreements to the Public Defender.

BACKGROUND: Legal representation is required for legal proceedings pursuant to the Welfare and Institutions Code Section 5000 et seq. commonly known as LPS Conservatorships (Lanterman-Petris-Short Act), wherein the Public Defender has declared a conflict. Therefore, the County Law Offices of the Public Defender

(Continued on Page 2)

Brian L. Boles

Brian L. Boles
Interim Public Defender

FINANCIAL DATA

Current F.Y. Total Cost: \$381,500
 Current F.Y. Net County Cost: \$
 Annual Net County Cost: \$654,500

In Current Year Budget: Yes
 Budget Adjustment: No
 For Fiscal Year: FY 12/13

SOURCE OF FUNDS: Indigent Defense Budget

Positions To Be Deleted Per A-30
 Requires 4/5 Vote

C.E.O. RECOMMENDATION:

APPROVE

BY: *Stephanie Persi*
Stephanie Persi

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
 BY: *MS Victor* 12/6/12 DATE
 MARSHA L. VICTOR
 Departmental Concurrence
 Purchasing: *Mark Seiler*
 Mark Seiler, Assistant Director
 Policy Policy
 Consent Consent
 Dept't Recomm.: Per Exec. Ofc.:

Prev. Agn. Ref.:

District: ALL

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.40

BOARD OF SUPERVISORS

FORM 11: APPROVAL OF THE AGREEMENT WITH BROWN, WHITE AND NEWHOUSE, LLP TO PROVIDE LEGAL INDIGENT CONSERVATEE AND GUARDIANSHIP SERVICES FOR RIVERSIDE COUNTY

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BACKGROUND CONTINUED

is obligated to retain legal services for the representation of indigents in the matters of indigent conservatees, or proposed conservatees for probate matters, and for the legal representation of minors in probate proceedings. Pursuant to Probate Code Section 1470 (c) (3), guardianship counsel is appointed to represent a minor in a legal proceeding to establish the guardianship of the person of the minor upon the Court's determination.

PRICE REASONABLENESS

Purchasing released a Request for Proposal (RFP PDARC-011) on behalf of the Law Offices of the Public Defender, mailing solicitations to 110 legal firms, and advertised on the County's Purchasing Website, with four proposals received at the Clerk of the Board of Supervisors with sealed cost proposals. Cost proposals were sealed during the technical evaluation process. An evaluation team consisting of personnel from the Executive Office, Mental Health, and San Bernardino County reviewed the proposals. The evaluation team scored each proposal based on the bidders overall responsiveness to the requirements of the scope of service, the ability to perform, experience and capability, references, overall cost, and oral interviews conducted. The estimated annual cost range with expenses from the four vendor responses was from \$658,800 to \$864,000. The County made a competitive range determination and entered negotiations with the two vendors who were evaluated the highest based on the weighted criteria, including cost and presentations. Final negotiations were conducted with JDP and Brown, White and Newhouse, LLP and each were given the opportunity to submit sealed revised cost schedules. In addition each vendor met with County Purchasing and the Public Defender to review and clarify their negotiation response letter and cost schedule.

In summary, as a result of the technical evaluation conducted by three vetted evaluators scoring independently, it was determined both finalists were technically capable to perform the contract in accordance with the Statement of Services. Therefore, the final recommendation came down to price. Both vendors throughout the process were given three opportunities to submit cost schedules. Based on the final cost schedules it was determined Brown, White & Newhouse, LLP, offered \$654,000 annual fees and expenses compared to the second bidder's cost of \$837,000 annual fee and expenses. Awarding to the low bidder will result in a savings of \$183,000 annually.

The recommendation is to award the contract to Brown, White, and Newhouse, LLP., as the lowest responsive/responsible bidder for all Riverside County geographical areas, (Desert, Western, and Mid-County), for an annual aggregate cost of \$654,000.

REVIEW/APPROVAL: Purchasing concurs with this request and County Counsel approves the agreement to form.

**LEGAL SERVICES FOR INDIGENT CONSERVATEES
AND MINORS IN GUARDIANSHIP MATTERS**

between

COUNTY OF RIVERSIDE

and

BROWN, WHITE AND NEWHOUSE, LLP



THIS CONTRACT is made this _____ day of _____, _____, between the County of Riverside (hereinafter "COUNTY") and Brown, White and Newhouse, LLP, (hereinafter "ATTORNEY"), for Conservatorship and Guardianship services to be provided in the Superior Court of the County of Riverside, all Regions, as set forth herein.

RECITALS

WHEREAS, the California Probate Code and Welfare and Institutions Code provide for the protection of the rights of conservatees or proposed conservatees in specified proceedings as set out in Probate Code Sections 1471, 1852, 2356.5, 2357, 3140, and 3205; and Conservatorship proceedings instituted pursuant to Welfare and Institutions Code Section 5000 et. seq commonly referred to as LPS (Lanterman-Petris-Short Act.) Conservatorships: and,

WHEREAS, the cost and expense of each counsel in the representation of indigent conservatees or proposed conservatees in the specified proceedings are a proper and lawful charge upon the COUNTY; and

WHEREAS, it is in the public interest in circumstances wherein the Riverside County Public Defender declares a conflict of interest under Welfare & Institutions Code Section 5000 et seq. or is otherwise unavailable, that the COUNTY contract with private counsel to render the usual and customary legal services required by law to be provided to those individuals; and

WHEREAS, a ward, a proposed ward, a conservatee, or a proposed conservatee may be furnished with legal counsel in a guardianship or conservatorship proceeding and the cost of counsel may be a proper charge upon the County as set out in Probate Code Section 1470 or 1472;

NOW, THEREFORE, the parties hereto agree as follows:

1. DESCRIPTION OF SERVICES. COUNTY contracts with ATTORNEY to provide legal representation for indigent conservatees and for wards in guardianship proceedings in the Superior Court of the County of Riverside, all Regions, when appointed by the Court as required by law, or upon a declaration that a conflict of interest exists which causes the Public Defender to be unable to represent the conservatee, or the Public Defender is relieved by the Court for extraordinary reasons, for specified probate proceedings as set forth in Section 3.1 and in Section 3.2.

2. TERM OF PERFORMANCE. This Contract shall take effect February 1, 2013, and continue in

effect to and including January 31, 2014, unless terminated sooner as provided herein, or amended in writing by the parties, and may be renewed for up to four (4) additional years, renewable in one year increments. The Board of Supervisors and the County Purchasing Agent and/or his designee are the authorized County representatives who may at any time by written order make alterations to this Contract.

3. SCOPE OF SERVICES. ATTORNEY shall assume full responsibility for furnishing counsel necessary to provide daily representation in the Superior Courts within the entire Region, within the funding provisions of this Contract. For the purpose of providing such professional legal services, ATTORNEY, at his/her own discretion, may perform the services, or cause them to be performed by other attorneys, who shall not be parties to this Contract, but are independent contractors and not agents or employees of ATTORNEY or COUNTY.

3.1 ATTORNEY shall be required to provide counsel in the following proceedings in conservatorship cases where the conservatee or proposed conservatee has been determined to be indigent utilizing the standard for indigency in 45 Code of Federal Regulations §1611 as adopted by the Riverside County Public Defender, pursuant to Government Code § 27706(d), or when the Court determines indigency pursuant to Government Code § 27707:

- a. When appointed by the Court pursuant to Probate Code § 1471(a), (b) & (c).
- b. When appointed by the Court pursuant to Probate Code §1471(a) (1) including a request for Dementia Powers pursuant to Probate Code §2356.5.
- c. When appointed by the Court pursuant to Probate Code §1471(a) (1) which includes a Petition for appointment of a Temporary Conservator.
- d. When appointed by the Court in a proceeding under Probate Code §§ 1852, 2357, 3140, 3201 and 3205.
- e. When appointed by the Court in a proceeding pursuant to Welfare and Institutions Code Sections 5000 et. seq. wherein the Office of the Riverside County Public Defender has declared a conflict or has been relieved due to extraordinary circumstances.
- f. When appointed by the Court pursuant to Probate Code §§ 1470 or 1472.
- g. ATTORNEY shall represent the conservatee in Court Trials or Jury Trials in the foregoing proceedings. ATTORNEY shall not withdraw from the case at the conclusion of the proceeding but remains counsel of record for all mandatory and discretionary appointment proceedings. When applicable, ATTORNEY shall comply with California Rule of Professional Conduct 3-700.

h. At the end of each proceeding, pursuant to Probate Code Section 1472, ATTORNEY shall request from the Court a determination of the conservatee or the conservatorship's estate ability to pay all or a portion of attorney fees and expenses. If the Court determines that the conservatee or the conservatorship estate has adequate funds to pay attorneys' fees and expenses, ATTORNEY shall request an order from the Court. Any award of attorneys' fees shall be made payable to the County of Riverside, to the attention of the Law Offices of the Public Defender referencing *Indigent Defense*.

i. Expenses such as mileage (in accordance with COUNTY Policy D-1 cost) outside of the California Region to visit a conservatee or extraordinary postage may be reimbursed from the trust account.

3.2 Pursuant to California Probate Code Section 1470(c) (3) effective January 2008, the County of Riverside is obligated to compensate counsel appointed to represent a minor in a legal proceeding to establish the Guardianship of the Person of the minor, the Guardianship of the Person and Estate, and the Guardianship of the Estate, upon the Court's determination that there is no other viable source of payment.

a. COUNTY has determined that it would be in the best interest of the minor and would benefit the Superior Court to have well qualified, experienced counsel represent the minor when appointed by the Court in Guardianship matters filed in the Superior Court.

b. ATTORNEY shall assume full responsibility for representing minors in Guardianship Proceedings in the Departments of the Riverside Superior Court as designated by the Court. ATTORNEY shall perform or cause to have performed all professional legal services for the minor(s) in Guardianship Proceedings from the time of appointment, at every stage of the proceeding including trial until relieved by the Court or upon substitution of counsel. ATTORNEY shall not withdraw from the case at the conclusion of the petition but remains counsel of record for the annual reviews. When applicable, ATTORNEY shall comply with California Rule of Professional Conduct 3-700.

c. If the investigation in the case finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 327 of the Welfare and Institutions Code is completed and a report is provided to the Court in which the guardianship proceeding is

pending.

d. Each case where counsel is appointed for a minor is a separate case except that all minors named in one Guardianship Petition (Proceeding) may be joined as one appointment if only one attorney is necessary to provide conflict free representation for the minors. A “case” is defined as a Court Proceeding to establish the Guardianship of the Person of the minor or minors, Guardianship of the Person and Estate, or Guardianship of the Estate including all acts necessary to the conclusion of the matter, including but not limited to the following: 1) Communication with the minor, parents, relatives, non-custodial parents, and others as necessary; 2) Investigation of the circumstances; 3) Representation of the minor in Court; 4) Preparation of documents or pleadings as necessary; 5) Annual Review Hearings.

e. ATTORNEY shall assume full responsibility for assigning only sub-contracting attorneys who have the necessary experience, qualifications, and capabilities to handle Guardianship cases in the Superior Court. The assigned attorneys shall meet the requirements established by the Judicial Council and set out in the Rules of Court pursuant to Probate Code Section 1456, including CRC 7.1101.

f. ATTORNEY is an independent contractor and may represent minors in Guardianship Proceedings when retained, or appointed by the Court and when there is a source of payment other than the COUNTY.

g. ATTORNEY shall request that the Court make a determination of the financial ability of the parent or parents of the minor or from the minor’s estate to compensate counsel in total or in part at the conclusion of each Guardianship Proceeding. Any award of attorneys fees shall be made payable to the County of Riverside, to the attention of the Law Offices of the Public Defender referencing *Indigent Defense*.

h. ATTORNEY understands that it is important to the Court and to the COUNTY to have counsel available to represent the minor in Guardianship Proceedings upon appointment of counsel and at the time designated for hearing.

i. ATTORNEY shall accept all appointments, including “Discretionary Appointments” pursuant to Probate Code §§ 1470 or 1472 under the Contract.

3.3 In subcontracting with other attorneys, ATTORNEY shall consider the factors enumerated in the Rules of Professional Conduct governing lawyers in Business & Professions Code § 6000 et. seq., State Bar of

California Guidelines on Indigent Defense Services Delivery Systems, Probate Code Section 1456, and Rules of Court promulgated pursuant thereto, including CRC 7.1101, and the State Bar Rules of California, as appropriate, including Rule 3-310. ATTORNEY shall assure that all subcontractors are competent and provide constitutionally effective assistance.

3.4 ATTORNEY shall perform or cause to be performed all professional legal services reasonably and legally required herein from the time of appointment, to and including, a final adjudication or disposition of such case. ATTORNEY is appointed for the life of the case and remains the attorney of record until the case is completed.

4. PERFORMANCE MANAGEMENT. ATTORNEY shall have the responsibility for administrative duties under this Contract to avoid conflicts of interest and monitoring subcontracting attorneys. The purpose of monitoring individual attorney caseloads is to ensure that all clients represented under this contract receive effective assistance of counsel under the Constitutions of the United States and the State of California.

4.1 ATTORNEY shall require each subcontracting attorney to participate in Mandatory Continuing Legal Education programs focusing on applicable law including but not limited to trial advocacy, juvenile law, probate, guardianships and conservatorships. ATTORNEYS shall review on a yearly basis the performance of each subcontracting attorney. This review shall include inquiry and/or observation by ATTORNEY of the performance of the independent subcontractor in a trial or other relevant courtroom setting. ATTORNEY will require the subcontracting attorney to provide proof of attendance at MCLE programs and to report participation in educational programs or other informal training. ATTORNEY will do his/her best to assure that only attorneys with the requisite skill and experience handle particular category of cases and are assigned to such cases.

4.2 ATTORNEY shall meet at least semi-annually with the COUNTY representative to discuss caseloads, MCLE programs, and certify that ATTORNEY has reviewed the performance of each independent subcontractor as described above. In addition to any oral report, ATTORNEY shall submit written reports monthly including a summary of subcontractor-attorney evaluations and observations, and average number of MCLE approved training hours, and report participation in other educational programs related to the practice of probate law. The written reports should also contain any information that may be indicative of the quality of representation provided by ATTORNEY.

5. COMPENSATION. The parties agree that the total number of cases is uncertain. As a performance

range, the COUNTY and ATTORNEY agree that between Forty (40) and Sixty (60) conservatorship cases, and/ or, guardianship cases will be assigned to ATTORNEY during the term of this Contract and ATTORNEY shall be compensated forty six thousand dollars (\$46,000) per month for all cases within the specified ranges, wherein ATTORNEY is appointed hereunder, plus expenses during the term of this Agreement as set out in Section 6. Should the cases assigned to ATTORNEY fall outside the ranges set forth herein, the parties agree that the cases are compensated at the following rates - conservatorship cases will be \$800.00 per case, including expenses, and guardianship cases will be \$800.00 per case, including expenses. It is expected that if the caseload does not fall within the ranges set forth herein, ATTORNEY and COUNTY shall make adjustments to the Contract as necessary to determine payback by ATTORNEY to COUNTY for the ATTORNEY falling below the agreed case range and possible reduction in the future caseload range and associated compensation. If the caseload as set forth herein is exceeded, ATTORNEY and COUNTY shall make adjustments to this Contract as necessary to determine additional compensation due ATTORNEY at the Contract rate for the additional caseload, and possible adjustment in the future caseload range and associated compensation.

a. A “case” for purposes of Guardianship matters is defined as a Court Proceeding to establish the Guardianship of the Person of the minor or minors, Guardianship of the Person and Estate, and/or Guardianship of the Estate, including all acts necessary to the conclusion of the matter, including but not limited to the following: 1) Communication with the minor, parents, relatives, non-custodial parents, and others as necessary; 2) Investigation of the circumstances; 3) Representation of the minor in Court; 4) Preparation of documents or pleadings as necessary; 5) Annual Review Hearings.

b. A “case” for purposes of Conservatorship matters is set forth in Section 3.1

c. COUNTY shall pay ATTORNEY the monthly sum in arrears. Said compensation shall be paid in accordance with an invoice submitted to COUNTY by ATTORNEY within ten (10) days from the last day of each calendar month, and COUNTY shall process the invoice within twenty (20) working days from the date of receipt of the invoice. The invoice shall contain the case name and number, date of appointment, all §1470(c)(3) orders, and the total compensation requested. Cases shall not be invoiced until after the ability to pay hearing has been held, and then shall be invoiced only once as ATTORNEY is the attorney of record for the life of the case.

5.1 It is understood that, to the extent, ATTORNEY’S constitutional and necessary level of legal

representation under the Contract may tend to justify additional payment, such necessary services in all but the most extreme circumstances, will all be considered by the ATTORNEY to be their pro bono publico contribution to the administration of justice.

6. EXPENSES. Pursuant to Probate Code § 1471(a), (b) & (c), §1471(a) (1) including a request for Dementia Powers pursuant to Probate Code §2356.5. §§ 1852, 2357, 3140, 3201 and 3205 and guardianship proceedings as set out in Probate Code Section 1470; ATTORNEY shall pay all costs of specialized and professional services reasonably necessary to assist in the preparation and presentation of his/her case, including medical and psychiatric examination, investigative services, expert testimony, forensic services, language interpretation, discovery costs, travel expenses in accordance with COUNTY Policy D-1, reporter's transcripts, and fees for experts appointed pursuant to statute from a trust account they hold for the County of Riverside. For these services during the contract term, the additional sum of eight thousand five hundred dollars (\$8,500) per month, in arrears, shall be paid to ATTORNEY and set aside monthly and maintained in a separate interest bearing trust account for the purpose of providing specialized and professional services, EXCEPT that payments shall be suspended when the balance in ATTORNEY'S trust account exceeds \$20,000.

6.1 Additionally, upon written agreement of ATTORNEY and the Law Offices of the Public Defender, or designee, the monthly expenses may be modified in amount or timing but in no event shall exceed the maximum amount of \$102,000 (\$8,500 X 12 months) per twelve month contract period. Any interest accrued from these funds will be redeposited into the respective trust account and used by the ATTORNEY to pay the costs incurred herein (Business & Professions Code §6211(b)). These funds remain the property of the County of Riverside and at the end of the Contract, or upon request of COUNTY, all or a portion of the unexpended funds shall be returned to the COUNTY, and an accounting provided to the Law Offices of the Public Defender within 30 days of termination, for all sums expended, including accrued interest.

7. TERMINATION. Either Party may cancel this Contract, in whole or in part, on ninety (90) day's written notice to the other party. In the event this Contract is canceled, ATTORNEY shall be responsible for the matters currently assigned to ATTORNEY.

8. INDEPENDENT COUNSEL. ATTORNEY is, and shall at all times, deemed independent and shall be wholly responsible for the manner in which she performs the services required by this Contract. ATTORNEY exclusively assumes responsibility for the acts of his/her employees as they relate to the services to be provided

during the course and scope of their employment. ATTORNEY, his/her agents, employees and independent contractors and their agents and employees shall not be considered in any manner to be employees of the County of Riverside.

9. RECORDS. ATTORNEY shall keep sufficient records to enable COUNTY to establish the cost of representing each individual in Court proceedings and allow County of Riverside to attempt to recover such costs from whoever may be obligated to reimburse the COUNTY. COUNTY may, at its discretion, audit or inspect ATTORNEY's book and/or financial records relating to the Contract, at any reasonable time. ATTORNEY shall be audited by an outside auditor a minimum of once every twelve months and at the end of the Contract period. ATTORNEY shall be responsible for the cost of the audit. ATTORNEY agrees to make available for inspections, without restrictions, all books, statements, ledgers and other financial records for a period of five (5) years from the termination of this Contract. All financial records shall be kept, or made available to County of Riverside, at ATTORNEY's principal place of business at 300 East State Street, Suite 300, Redlands, California.

9.1 ATTORNEY understands that they are accountable for public funds and that they must maintain all records that support their expenditures of this money included but not limited to expert and investigator's invoices, activity/time logs, bank statements, canceled checks, and receipts.

9.2 ATTORNEY shall maintain statistics showing the following data and information on each Guardianship Case to which counsel is appointed and submit a monthly report to the Law Offices of the Public Defender, within ten (10) days of the end of each month:

1. Name of minor(s) represented;
2. Case Number;
3. Disposition, date of disposition, was there a contested hearing;
4. Number of hours expended on case;
5. Number of cases opened and closed on a monthly basis;
6. The number of ability to pay hearings conducted per month with totals as to the number of cases where COUNTY is ordered to pay and the total number of cases where the parent, ward, or estate is ordered to pay.
7. The number of Probate Code Section 1513(c) motions made by ATTORNEY.
8. A copy of the Court's Order or Minute Order pursuant to Section 1470(c)(3) as to the

Court's finding of ability to pay ATTORNEY's fees.

9.3 ATTORNEY shall also furnish a monthly report of expenditures of trust account funds that includes the vendor, type of service (e.g., investigation, expert, etc.), client/case identifier (not name and/or case number of defendant), and amount of expense, within ten (10) days of the end of each month. The report shall additionally include the current balance of the account. ATTORNEY shall utilize a standard electronic accounting system to input and maintain data and compile records.

9.4 ATTORNEY shall maintain statistics showing the following data and information on each Probate case assigned under this Contract, which shall be submitted with the monthly invoice:

- a. Name of party represented;
- b. Case Number;
- c. Code Section of each proceeding for which appointed,
- d. Disposition;
- e. The number of ability to pay hearings conducted per month with totals as to the number of cases where COUNTY is ordered to pay and the total number of cases where the person or conservator of the estate is ordered to pay.
- f. A copy of the Court's Order on a Probate Code Section 1472 hearing with the finding of the Court as to the estate's ability to pay all or a portion of the attorney's fees; or a copy of the Minute Order on a Probate Code Section 1472 hearing with a finding of indigency.

9.5 ATTORNEY shall file monthly reports with the Law Offices of the Public Defender in a form agreed upon by the parties, including any or all of the above information and any other costs and/or information reasonably requested by the Law Offices of the Public Defender. ATTORNEY understands that COUNTY relies on the monthly reports to determine the cost of services and that any corrections or adjustments to the reports must be done in a timely manner not to exceed thirty days from the required submission date of the monthly report, and that ATTORNEY will not be compensated for cases reported beyond the thirty days.

10. HOLD HARMLESS. ATTORNEY shall indemnify and hold the COUNTY, Special Districts, their respective directors, officers, Board of Supervisors, agents, elected officials and employees free and harmless from any liability whatsoever, based or asserted upon any act(s) or omissions(s) of ATTORNEY for property damage, bodily injury, or death or any other element of damage of any kind or nature, relating to or in any way connected

with or arising from the accomplishment of the services to be performed by ATTORNEY hereunder; and ATTORNEY shall defend, at its sole expense, including attorney fees, COUNTY, Special Districts, their respective directors, officers, Board of Supervisors, agents, elected officials and employees in any legal action (s) or claims(s) based upon such alleged act(s) or omission(s) whether the subject action(s) or claim(s) are well-founded, properly filed or pleaded, or not commenced in a court of competent jurisdiction.

11. INSURANCE. Without limiting or diminishing the ATTORNEY'S obligation to indemnify or hold the COUNTY harmless, ATTORNEY shall procure and maintain or cause to be maintained, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the County herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

11.1 Workers' Compensation: If ATTORNEY has employees as defined by the State of California, ATTORNEY shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the County of Riverside.

11.2 Commercial General Liability: ATTORNEY shall maintain Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of ATTORNEY'S performance of its obligations hereunder. Policy shall name the County as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

11.3 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then ATTORNEY shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County as Additional Insured.

11.4 Professional Liability: ATTORNEY shall maintain Professional Liability Insurance providing coverage for ATTORNEY'S performance of work included within this Agreement, with a limit of liability of not less than \$250,000 per occurrence and \$500,000 annual aggregate. If ATTORNEY'S Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ATTORNEY shall purchase at his/her sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or, 3) demonstrate through Certificates of Insurance that ATTORNEY has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue as long as the law allows.

11.5 Blanket Commercial Crime Policy: ATTORNEY shall maintain a Blanket Commercial Crime Policy including, but not limited to, coverage provided under Forms 'A', 'B' and 'F' for all Directors, Officers, employees, agents and representatives who may be involved in any way with the direction, handling, depositing, payment or other function that involves COUNTY funds associated with the performance of this Contract with a limit of liability of not less than an amount per loss equal to, or greater than, the maximum amount of COUNTY money that may be in trust with the ATTORNEY at any one time. The coverage will remain in force for at least three (3) years subsequent to the termination of this Agreement or until that time when all moneys have been reconciled and the COUNTY has agreed in writing that all financial issues have been completed and the ATTORNEY no longer has any COUNTY assets held in the Trust as defined herein. If this coverage is written on a claims-made basis, the ATTORNEY will provide either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or, 3) demonstrate through Certificates of Insurance that ATTORNEY has maintained continuous coverage with the same or original insurer. Such extended claims made coverage shall be maintained for a period of three years or until that time when all moneys have been reconciled and the COUNTY has agreed in writing that all financial issues have been completed and the ATTORNEY no longer has any COUNTY assets held in the Trust as defined herein.

11.6 General Insurance Provisions - All lines:

a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived,

in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b. The ATTORNEY must declare its insurance self-insured retentions for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence, each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the COUNTY, at the election of the County's Risk Manager, ATTORNEY'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

c. The ATTORNEY shall cause their insurance carrier(s) to furnish the County of Riverside with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; or, 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County prior to any material modification, cancellation, expiration, or reduction of such insurance. In the event of a material modification, cancellation, expiration or reduction of coverage, this Agreement shall terminate forthwith, unless the County receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's and the insurance required herein is in full force and effect. *ATTORNEY shall not commence operations until the County has been furnished original Certificate(s) of Insurance and certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to o so on its behalf shall sign the original endorsements for each policy and the Certificate of insurance.*

d. It is understood and agreed by the parties hereto that the ATTORNEY'S insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

e. If, during the term of this Agreement or any extension thereof, there is a material change in

the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Contract, including any extensions or performance of work the Risk Manager of the County of Riverside reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's required herein, if; in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the ATTORNEY has become inadequate.

f. ATTORNEY shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Contract.

g. ATTORNEY agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Contract.

12. MATERIAL BREACH. Notwithstanding the provisions of Section 2., the failure of ATTORNEY or his/her agents or employees to comply with the terms of this Contract and any reasonable directions, by or on behalf of the COUNTY, issued pursuant thereto shall constitute a material breach of Contract by ATTORNEY, and, in addition to any other remedy authorized by law, COUNTY shall have the right to terminate said Contract immediately. Failure to exercise this right of termination shall not constitute a waiver of such right, which may be exercised at any subsequent time. At the option of COUNTY, this Contract may be terminated upon the happening of any of the following:

(a) Violation of any material provision of this Contract;

(b) Institution of proceedings by, or against, any ATTORNEY under the bankruptcy laws of the United States;

(c) Discovery that this Contract was obtained through fraud by commission or omission;

(d) Suspension of business operation, or receivership, of ATTORNEY;

(e) Any assignment of this Contract without prior COUNTY approval;

(f) The institution of disciplinary proceedings against any ATTORNEY by the California State Bar; or

(g) The commencement of criminal prosecution of any ATTORNEY in any Court anywhere.

(h) Failure to observe the Rules of Professional Conduct, including Rule 3-310.

12.1 It is understood that the above-noted items are not exclusive of any other causes for termination, and failure of COUNTY to exercise its rights to terminate shall not constitute waiver of such right, which may be

exercised at any subsequent time.

13. CONFLICT OF INTEREST. ATTORNEY shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict of interest. This obligation applies to ATTORNEY, ATTORNEY'S employees, agents, relative sub-tier contractors, and third parties associated with or accomplishing work for ATTORNEY under this contract.

13.1 ATTORNEY will establish measures to prevent employees or agents from making, receiving, providing, or offering gifts, entertainment, payment, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of the COUNTY.

13.2 ATTORNEY shall not sit as Judge Pro Tem in any of the Courts that ATTORNEY provides representation for indigent services under this contract.

13.3 ATTORNEY shall provide conflict free representation. ATTORNEY is aware of *Christian v. Jackson* (1996) 41 C.A. 4th 986, and *Castro v. Los Angeles Board of Supervisors* (1991) 232 C.A.3d 1432, and the guidelines expressed therein.

14. PRIVATE PRACTICE. ATTORNEY shall not be prohibited from engaging in the private practice of law, including any and all proceedings in the Courts of the County of Riverside. ATTORNEY shall not accept in his/her private practice any case which may cause a conflict of interest which would preclude ATTORNEY from providing representation to conservatees or minors pursuant to this Contract.

15. WAIVER. No waiver by any party of any existing default by any other party shall be deemed to waive any subsequent default by such party.

16. ASSIGNMENT. This Agreement shall not be assigned by ATTORNEY, either in whole or in part, without prior written consent of COUNTY. Any assignment or purported assignment of this Agreement by Consultant without the prior written consent of COUNTY will be deemed void and of no force or effect.

17. CUMULATIVE RIGHTS. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law.

18. ENTIRE AGREEMENT. This Contract supersedes any prior agreements between the Parties and is the sole basis for Contract between the Parties. This Contract expresses the understandings of the Parties concerning all matters covered.

19. ALTERATION. No addition to, or alteration of, the terms of this Contract, whether by written or

oral understanding of the Parties, their officers, agents or employees, shall be valid unless made in the form of written amendment to this Contract and formally approved by the Parties.

20. SUBCONTRACTS. The Parties agree that ATTORNEY shall not sign contracts with subcontractors wherein there is a clause in said contracts prohibiting subcontractors from submitting proposals when COUNTY solicits proposals for Indigent Defense, Conservatorship, or Guardianship legal services.

21. PERIODIC REVIEW. ATTORNEY and COUNTY agree that there exists some uncertainty as to the number of cases hereunder. Consequently, the Parties agree to a mandatory quarterly meeting, to evaluate the case filings and any other matters affecting this Contract. ATTORNEY however, may request a meeting at any other time during the Contract period to discuss any matters related to this Contract. Either ATTORNEY or COUNTY may request a meeting at any time during the Contract period to discuss adjustments to the Contract when the case load falls below or exceeds the case range set out in Section 6 or to discuss any matter related to this Contract.

22. CONTINUITY OF REPRESENTATION. The Parties agree that at the conclusion of this Contract term, or earlier if the Contract is canceled by either Party, that there will be a need to provide for the existing caseload through its completion. Continuity of counsel is desired where there is an established attorney-client relationship. The parties thus agree that ATTORNEY has been paid for cost of handling the cases assigned hereunder and shall handle all cases assigned through completion of the case despite the termination or conclusion of this Contract.

23. NOTICES. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:

County of Riverside,
Law Offices of the Public Defender
4200 Orange St. Ste 120
Riverside, CA 92501
Attn: Indigent Defense

ATTORNEY
Brown, White and Newhouse, LLC
300 East State Street Suite 300
Redlands, CA 92373
Attn: Jack Osborn, Managing Attorney

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement below.

DATED: 12/3/12

ATTORNEY
By 

DATED: _____

By _____

DATED: _____

County of Riverside

