

**PERSONAL SERVICES CONTRACT**

County of Nevada, California

This Personal Services Contract is made between the COUNTY OF NEVADA (herein "County"), and

**William Gordon Walker III**

(herein "Contractor"), wherein County desires to retain a person or entity to provide the following services, materials and products generally described as follows:

(§1) **CONFLICT INDIGENT DEFENSE SERVICES**

**SUMMARY OF MATERIAL TERMS**

(§2) **Maximum Contract Price:** \$100,000  
(§3) **Contract Beginning Date:** 07/01/2016 **Contract Termination Date:** 06/30/2018  
(§4) **Liquidated Damages:** \$0.00

**INSURANCE POLICIES**

Designate all required policies: Req'd Not Req'd

(§6) <b>Commercial General Liability</b>	(\$1,000,000)	<u>X</u>	<u>    </u>
(§7) <b>Automobile Liability</b>	(\$ 300,000) Personal Auto	<u>X</u>	<u>    </u>
	(\$1,000,000) Business Rated	<u>    </u>	<u>X</u>
	(\$1,000,000) Commercial Policy	<u>    </u>	<u>X</u>
(§8) <b>Worker's Compensation</b>		<u>X</u>	<u>    </u>
(§9) <b>Errors and Omissions</b>	(\$1,000,000)	<u>X</u>	<u>    </u>

**LICENSES AND PREVAILING WAGES**

(§14) Designate all required licenses:  
A member in good standing with the State Bar of California

**NOTICE & IDENTIFICATION**

(§26) **Contractor: William Walker** **County of Nevada:**  
P.O. Box 1127 950 Maidu Avenue  
Nevada City, CA 95959 Nevada City, California 95959  
Contact Person: William Walker Contact Person: Elise Strickler  
( 530 ) 478-0675 ( 888 ) 262-3504 Fax ( 530 ) 470-2720 ( 530 ) 265-9839 Fax  
e-mail: [attorney@wgwlaw.com](mailto:attorney@wgwlaw.com) e-mail: [elise.strickler@co.nevada.ca.us](mailto:elise.strickler@co.nevada.ca.us)  
Fund: 0101-20111-273-1000 / 521520

**Contractor is a:** (check all that apply)  
Corporation:      Calif.,      Other,      LLC,      Non-profit  
Partnership:      Calif.,      Other,      LLP,      Limited  
Person:  X  Individ.,      Dba,      Ass'n,      Other  
**EDD:** Independent Contractor Worksheet Required:  X  Yes      No  
**HIPAA:** Schedule of Required Provisions (Exhibit D):  X  Yes      No

**ATTACHMENTS**

Designate all required attachments: Req'd Not Req'd

<b>Exhibit A: Schedule of Services</b> (Provided by Contractor)	<u> X </u>	<u>    </u>
<b>Exhibit B: Schedule of Charges and Payments</b> (Paid by County)	<u> X </u>	<u>    </u>
<b>Exhibit C: Schedule of Changes</b> (Additions, Deletions & Amendments)	<u> X </u>	<u>    </u>
<b>Exhibit D: Schedule of HIPAA Provisions</b> (Protected Health Information)	<u> X </u>	<u>    </u>

### Terms

Each term of this Contract below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

### Services

#### 1. **Scope of Services:**

Contractor shall provide all of the services, materials and products (herein "Services") generally described in **Exhibit "A"**, according to a performance schedule, if applicable, as set forth in said exhibit (herein "Performance Schedule") . If requested, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Contract.

### Payment

#### 2. **Charges and Payments:**

The charges (herein "Charges") for furnishing the aforesaid Services under this Contract are set forth in **Exhibit "B"**, including, if applicable, hourly rates, unit pricing, and expense, mileage and cost limits. Said Charges shall be presented monthly by invoice, and shall be due within thirty (30) days of receipt unless payment is otherwise set forth in said **Exhibit "B"**, and shall remain in effect for the entire term of this Contract, and any extension hereof. In no event will the cost to County for Services to be provided under this Contract, including direct non-salary expenses, exceed the **Maximum Contract Price** set forth at §2, page one (1), above.

### Time for Performance

#### 3. **Contract Term:**

This Contract shall commence on the **Contract Beginning Date** set forth at §3, page one (1), above. All Services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** set forth at §3, page one (1), above.

#### 4. **Liquidated Damages:**

County and Contractor agree that damages to County due to delays in timely providing Services in accordance with the aforesaid Performance Schedule and Contract Termination Date are impractical and difficult to ascertain. Therefore, if §4 at page one (1) hereof shall indicate a daily amount as **Liquidated Damages**, County shall have the right to assess said daily sum, not as a penalty, but as and for damages to County due to delays in providing Services not in accordance with the said Performance Schedule, or later than the Contract Termination Date (herein "Delay"). Liquidated Damages shall be offset against amounts owing to Contractor, including retention sums.

To the extent that any Delay is a result of matters or circumstances wholly beyond the control of Contractor, County may excuse said Liquidated Damages; provided however, that County may condition such excuse upon Contractor having given prompt notice to County of such delay immediately by telephone and thereafter by written explanation within a reasonable time. The time for Contractor's performance shall be extended by the period of delay, or such other period as County may elect.

#### 5. **Time of the Essence:**

Time is of the essence with respect to Contractor's performance under this Contract. Delay in meeting the time commitments contemplated herein will result in the assessment of liquidated damages, if indicated at §4 at page one (1), hereof. If Liquidated Damages are not so indicated, damages shall be as otherwise provided by law.

### Insurance

#### 6. **Commercial General Liability Insurance:** (County Resolution No. 90674)

If §6 at page one (1) hereof shall indicate a **Commercial General Liability** insurance policy is required, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount indicated at said §6;

- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

**7. Automobile Liability Insurance:** (County Resolution No. 90676)

If §7 at page one (1) hereof shall require either a Business Rated or a Commercial Automobile Liability insurance policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount indicated at said §7;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

If §7 at page one (1) hereof shall require a Personal Auto policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance for a minimum of three hundred thousand dollars, (\$300,000), in combined single limits, and naming the County as additionally insured.

**8. Worker's Compensation:** (County Resolution No. 90674)

If §8 at page one (1) hereof shall indicate a **Worker's Compensation** insurance policy is required, Contractor shall maintain said policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

Before commencing to utilize employees in providing Services under this Contract, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

**9. Errors and Omissions:**

If §9 at page one (1) hereof shall indicate **Errors and Omissions** insurance is required, Contractor shall maintain either a professional liability or errors & omissions policy in the minimum amount indicated, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

**10. Miscellaneous Insurance Provisions:** (County Resolution No. 90675)

All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Contract or any extensions hereof, then Contractor shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this agreement.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Contract.

Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Contract shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both. (See §13, ¶2, below, as these provisions additionally apply to subcontractors.)

**11. Indemnity:**

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify, defend and hold harmless the County and its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees of litigation) which result from the negligent act, willful misconduct, or error or omission of Contractor, except such loss or damage which was caused by the sole negligence or willful misconduct of County or its officers, officials, employees, agents and volunteers.

**Personal Services**

**12. Contractor as Independent:**

In providing services herein, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

**13. Assignment and Subcontracting:**

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Contractor and may not be transferred, subcontracted, or assigned without the prior written consent of County. Contractor shall not substitute nor replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at §§6, 7, 8, 9 and 10, to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**14. Licensing and Permits:**

Contractor warrants (i) Contractor is qualified and competent to provide all Services under this contract; (ii) Contractor and all employees of Contractor hold all necessary and appropriate licenses therefor, including those licenses set forth at §14, page one (1) hereof; and, (iii) Contractor shall obtain, and remain in compliance with, all permits necessary and appropriate to provide said Services. Contractor shall cause said licenses and permits to be maintained throughout the life of this Contract. Failure to do so shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

**Public Contracts**

**15. Prevailing Wage and Apprentices:**

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code §§1720, et seq.; and shall be in conformity with Title 8 of the California Code of Regulations §§200 et seq., relating to apprenticeship. Where applicable:

(i) Contractor shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.

(ii) Contractor and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those Sections must be maintained throughout the performance of the Contract.

(iii) Contracts to which these prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

(iv) The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

**16. Accessibility (County Resolution No. 00190):**

It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall be in compliance with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Contractor to provide County contracted services directly to the public, Contractor shall certify that said direct Services are and shall be accessible to all persons.

**17. Nondiscriminatory Employment:**

In providing Services hereunder, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

**18. Prior Nevada County Employment (County Resolution No. 03-353):**

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not apply when the Board of Supervisors did not approve a contract with or grant to said legal entity during the last twelve (12) months of said Board member's service.

A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this contract by County, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

**19. Cost Disclosure:**

In accordance with Government Code Section 7550, should a written report be prepared under or required by the provisions of this Contract, Contractor agrees to state in a separate section of said report the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of said report

**Default and Termination**

**20. Termination:**

A Material Breach of this Contract pursuant to the terms hereof or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this contract, or both, **without notice**.

If Contractor fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) days written notice** to Contractor.

Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Contractor shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

County, upon giving **sixty (60) calendar days written notice** to Contractor, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

### Miscellaneous

**21. Books of Record and Audit Provision:**

Contractor shall maintain complete records relating to this Contract for a period of five (5) years from the completion of Services hereunder. Said records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits

Contractor shall permit County to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by County, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charged of five percent (5%) or more of the Maximum Contract Price.

**22. Intellectual Property:**

All original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Contractor, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception. Provided however, for personal purposes only and not for commercial, economic or any other purpose, Contractor may retain a copy of Contractor's work product hereunder.

**23. Entire Agreement:**

This Contract represents the entire agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by written, fully executed agreement of the parties.

**24. Jurisdiction and Venue:**

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

**25. Compliance with Applicable Laws:**

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

**26. Notices:**

This Contract shall be managed and administered on County's behalf by the department and the person set forth at §26, page one (1) of this Contract, and all invoices shall be submitted to and approved by this Department. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed as set forth at said §26 Said notices shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

**27. Authority:**

All individuals executing this Contract on behalf of Contractor represent and warrant that they are authorized to execute and deliver this Contract on behalf of Contractor.

**IN WITNESS WHEREOF**, the parties have executed this Contract effective on the Beginning Date, above.

**CONTRACTOR:**

**COUNTY OF NEVADA:**

\_\_\_\_\_  
Name: William Gordon Walker III  
Title:

\_\_\_\_\_  
Honorable Dan Miller  
Chair, Board of Supervisors

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_  
Julie Patterson-Hunter  
Clerk of the Board of Supervisors

## **Exhibit A: Schedule of Services**

### **SERVICES TO BE PROVIDED BY ATTORNEY**

1. Attorney shall provide competent legal services in the defense of indigent defendants charged with one or more misdemeanors (including appeals), noncapital felonies, juvenile offenses, and any collateral civil proceedings related thereto, in the courts located in Nevada County, in those cases in which the Public Defender has properly declared a conflict of interest, as assigned to Attorney by the Nevada County Superior Court (hereafter "Court"). A charge of violating probation filed after the effective date of this contract, where the defendant on the case resulting in the grant of probation was defended by the Attorney, will be considered as a case falling within this contract.
2. Attorney agrees that he or she shall not accept appointments to matters for which he or she is not qualified. Attorney and all persons who perform services for or through Attorney shall exercise the care and judgment consistent with all applicable professional standards in the performance of the services required by this Agreement. In some cases, Attorney may not be available to represent a defendant in an assigned case because such representation would violate the Canons of Professional Ethics, and in such event, Attorney will notify the Court of the conflict and will request that the Court alter the assignment of Attorney.
3. The parties recognize that the assignment of conflict indigent defense cases to attorneys is a matter entirely within the discretion of the Court. This Agreement is based on the understanding that the Court will endeavor to assign cases to those attorneys who have contracted with the County to provide conflict indigent defense services. Attorney agrees to accept conflict indigent defense assignments in the courts located in Nevada County in return for compensation at the hourly rate of \$75.00 provided herein, and agrees that this Agreement provides reasonable compensation in each such case.
4. All legal services required of Attorney by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of competent legal defense and with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.
5. In providing the legal services required by this Agreement, Attorney will provide, at his or her own expense, all appropriate office and legal staff as necessary to provide competent legal services in the cases covered by this Agreement. This staff may consist of such attorneys, paralegals, clerks, and any and all secretarial services, as are necessary to fully discharge in a professional manner all obligations herein assumed by Attorney. Attorney represents and warrants that at all times his personnel shall be competent and that all services rendered will be sufficient to meet all constitutional requirements relating to legal services. County expects that Attorney will provide the legal services required under this Agreement personally, and Attorney must appear personally at all mandatory appearances, but Attorney may from time to time use other equally-competent attorneys as temporary substitutes at non-mandatory appearances if acceptable to the Court.
6. In providing the legal services required by this Agreement, Attorney will bear at his or her sole expense all normal office costs, such as and including telephone, copy expenses, computerized legal research, in-state travel, malpractice and other insurance, etc. Attorney will be entitled to reimbursement from County for reasonable ancillary services such as the costs of experts, investigators, testing services, transcripts, etc., as set forth in Exhibit B.



## **Exhibit B: Schedule of Charges and Payments**

**Compensation- Cases Within the Contract.** For the services described in Exhibit A, Contractor shall be paid according to the hourly rate as listed in the fee schedule of the current Memorandum of Understanding between the County of Nevada and the Nevada County Superior Court (Court MOU), currently \$75.00 per hour, for a maximum contract amount not to exceed \$80,000, \$40,000 per fiscal year. The parties agree to renegotiate the contract amount if Contractor reaches or exceeds 75% of the maximum contract amount.

**Compensation- Ancillary Services.** Contractor will be entitled to reimbursement from County for the reasonable cost of ancillary services, such as psychiatrists and other expert consultants or witnesses, interpreters, investigators, testing services, transcripts, out-of-state travel, etc., as necessary to provide a constitutionally competent legal defense. Contractor agrees that prior to utilizing any ancillary services in any individual case, Contractor will obtain the approval of the Court that the ancillary services are required for the case and that the cost shall be reimbursed according to the fee schedule in the current Court MOU. Contractor understands that the County does not have unlimited funds to reimburse for such ancillary services. No other expenses incurred by Contractor in the performance of this Agreement shall be reimbursed. If the County contracts with one or more investigators, Contractor agrees to use the contracted investigators.

County will be obligated to reimburse attorney monthly upon receipt of an accumulated invoice and a court order for reimbursement that complies with this Agreement. In accordance with the local rules of the court, billings or invoices shall be submitted to the Court Executive Officer no later than thirty (30) days following performance.

**Exhibit C: Schedule of Changes**  
(Amendments and Additions to Contract)

Where **Exhibit C:** revises the language in this Agreement, such revisions shall govern and are hereby incorporated.

1. Page 1, Section 9 is modified to provide that Errors and Omissions insurance minimum coverage will be \$500,000 per claim (or a combined single limit of no less than \$500,000), or up to the maximum coverage amount of the contractor's insurance policy, whichever is greater.

2. Section 10, first paragraph, relating to Miscellaneous Insurance Provisions, is deleted in its entirety and replaced with the following:

"All policies of insurance required by this Contract shall remain in full force and effect throughout the life of this Contract and shall be payable on a "claims made" basis. In order for the acts and omissions of Contractor and all its agents during the term of this Agreement to be "continually covered" there must be insurance coverage for the entire period commencing on the effective date of this Agreement and ending on the date that is two (2) years beyond the final date this Agreement is effective, including any extensions or renewals of this Agreement. Contractor acknowledges that the provision of this Section may necessitate the purchase of "tail insurance" if coverage lapses. The requirement to maintain tail insurance shall survive termination of this Agreement."

3. Paragraph 22 is hereby modified to read as follows:

**"22. Intellectual Property:**

All original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Contractor, shall be the property of County, and upon fifteen (15) days demand therefore, shall be promptly delivered to County without exception. Provided however, for personal purposes only and not for commercial, economic or any other purpose, Contractor may retain a copy of Contractor's work product hereunder. Items that would represent a violation of attorney-client privilege are excluded."

Approved as to form:

\_\_\_\_\_  
County Counsel

## EXHIBIT "D"

### SCHEDULE OF HIPAA PROVISIONS

If and to the extent, and so long as, required by both the provisions of 42 U.S.C. § 1171, et seq., enacted as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 45 U.S.C. Parts 160 – 164, enacted as the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), and those regulations promulgated thereunder, including any subsequent amendments made thereto, Contractor does hereby assure County that Contractor will appropriately safeguard Protected Health Information made available to or obtained by Contractor.

In implementation of such assurance and without limiting the obligation of Contractor otherwise set forth in this Agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to Protected Health Information and with respect to any task or other activity Contractor performs on behalf of County, to the extent County would be required to comply with such requirements.

The agreement of Contractor set forth in the two preceding sentences, and the additional provisions relating to permitted and required uses and disclosures thereof that shall from time to time be provided to Contractor by County in accordance with applicable law, constitutes a contract between County and Contractor establishing the permitted and required uses and disclosures of such Protected Health Information by Contractor.

If one or both parties to this agreement are "Covered Entities" within the meaning of 45 C.F.R. 160.103, the Covered Entity will comply with all requirements for Covered Entities in accordance with the rules and regulations promulgated under the HIPAA and HITECH Acts. In the event Contractor is determined to be a "Business Associate" within the meaning of 45 C.F.R. 160.103, then in amplification, and not in limitation, of the provisions of this Agreement, including this Section of this Agreement, Contractor agrees that Contractor shall:

1. Not use or further disclose such information other than as permitted or required by this Agreement. Contractor shall not, except as necessary for the proper management and administration of the Contractor to carry out the legal responsibilities of the Contractor for performance of Contractor's duties under this Agreement, and as applicable under law, use, reproduce, disclose, or provide to third parties, any confidential documents or information relating to the County or patients of the County without prior written consent or authorization of the County or of the patient. If Contractor uses such information for the purposes set forth above, it will only do so if the disclosure is required by law or Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which Contractor disclosed it to the person. Contractor shall also ensure that the person notifies Contractor of any instances of breach of confidentiality such person is aware of. Contractor shall ensure that its personnel, employees, affiliates, and agents maintain the confidentiality of patient health information and business of the County. As a Business Associate of the County, as that term is used under the HIPAA and HITECH Acts, the contractor shall abide by the HIPAA Privacy Rule and other Protected Health Information disclosure requirements of 45 CFR 164.504(e).
2. Not use or further disclose the information in a manner that would violate the requirements of applicable law. The County and Contractor acknowledge that Section 13404 of the HITECH Act creates a statutory obligation for Business Associates of Covered Entities to use and disclose Protected Health Information only if the use and disclosure is in compliance with the requirements of 45 C.F.R. 164.504(e), which establishes the standards and implementation specifications for Business Associate agreements, including the prohibition of Business Associates from using or disclosing Protected Health Information in a manner that is inconsistent with the HIPAA Privacy Rule and the privacy and security requirements of the HITECH Act. .

3. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such Protected Health Information that it creates, receives, maintains, transmits or destroys on behalf of County in a manner that is consistent with the standards required under the HIPAA and HITECH Acts;
4. In the event that Contractor becomes aware of any use or disclosure of Protected Health Information that is not authorized by this Agreement, it will report that event to the County within twenty-four hours of becoming aware of the unauthorized use or disclosure;
5. Ensure that any subcontractors or agents to whom Contractor provides Protected Health Information received from County agree to the same restrictions and conditions that apply to Contractor with respect to such information;
6. Make available Protected Health Information in accordance to applicable law;
7. The above requirements apply equally to all electronic records. Contractor shall not release any electronic information without complying with all above requirements;
8. Contractor will maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information in a manner consistent with HIPAA and HITECH Act standards. Contractor will notify customer of any security incident of which it becomes aware, including breach of confidentiality, integrity or availability of Protected Health Information within twenty-four hours or immediately if notification is urgent, of its discovery of the breach, and will comply with all applicable breach notification requirements as provided under the HIPAA and HITECH Acts. Contractor shall take prompt corrective action to cure any breach or action pertaining to the unauthorized disclosure of Protected Health Information;
9. Make Contractor's internal practices, books, and records relating to the use and disclosure of Protected Health Information received from County available to the Secretary of the United States Health and Human Services for purposes of determining Contractor's compliance with applicable law (in all events Contractor shall immediately notify County of any such request, and shall provide County with copies of any such materials);
10. Incorporate any amendments or corrections to Protected Health Information when notified pursuant to applicable law. Contractor agrees that this Agreement may be amended from time to time by County if and to the extent required by the provision of 42 U.S.C. § 1171, et seq., enacted by HIPAA and regulations promulgated thereunder, in order to assure that this Agreement is consistent therewith; and
11. Authorize termination of the Agreement by County if County determines that Contractor has violated a material provision of the HIPAA and/or HITECH Acts.