

CONFIRMATION

This Form MUST be returned to CCLS at CCLS_RFP_mail@lopdm.us no later than May 27, 2022 for your response to the RFP to be accepted.

By signature below I confirm that I have received a copy of the 2022 New Mexico Law Office of the Public Defender Request for Proposal (RFP), and a copy of the proposed 2022 New Mexico Public Defender Department Professional Service Contract. Further, I attest that I have the authority to bind the undernamed firm to the LOPD Professional Services Contract.

Date: _____

Firm name

Firm address

This address has not changed since the last contract period

Firm telephone number

Cellular telephone number of firm owner

New Mexico Tax and Revenue CRS# of Firm for billing purposes

I/We do not have a current or Prior Professional Services Contract with any State Agency other than the LOPD.

I have Service Contract(s) with _____

In the space below please provide all e-mail addresses for your firm that should be included in the Contract Counsel Legal Services distribution list (attorneys and support staff).



REQUEST FOR PROPOSALS – LOPD RFP #2022-001

A. Confirmation of Receipt

Potential offerors must confirm receipt of this RFP by sending the Confirmation form via e-mail to: ccls_RFP_mail@lopdm.us with “RFP Confirmation” in the subject line. The body of the e-mail shall include the potential offeror’s name, address, e-mail address, and phone number. The e-mail confirming receipt of the RFP must be received by the above e-mail address on or before midnight MDT May 27, 2022. Only potential offerors who have confirmed receipt of the RFP will be placed on the “RFP Distribution List” and will receive written answers to questions regarding the RFP and any amendments to the RFP and/or proposed Service Contract.

B. Procurement Manager/Questions

Questions regarding this RFP must be submitted in writing to the Procurement Manager, Tom Kelley, by e-mail to: tom.kelley@ccls.lopdm.us with “LOPD RFP Question” in the subject line; or by mail to: CCLS, Attn: Tom Kelley, 4600 Montgomery Blvd. NE, Building A, Suite 201, Albuquerque, NM 87109. Written questions must be received by May 27, 2022. Written responses will be e-mailed to all offerors on the RFP Distribution List on or before June 3, 2022.

C. Purpose

In accordance with the appropriate sections of the New Mexico Procurement Code (Chapters 13-1-28 through 13-1-199 NMSA 1978 amended), the New Mexico Public Defender Department, also known as Law Offices of the Public Defender (LOPD), is requesting proposals from attorneys licensed in the State of New Mexico to provide professional criminal defense legal services for indigent clients.

D. Statement of Work

The successful offeror will provide legal services to qualified adult and juvenile clients in a professional and skilled manner in accordance with the Sixth Amendment to the United States Constitution; Art. II., §14 of the New Mexico Constitution; *Gideon v. Wainwright*, 372 U.S. 335 (1963); the Performance Standards for Representation in a Criminal Case, New Mexico Public Defender Commission and Law Offices of the Public Defender; the New Mexico Rules of Professional Conduct, applicable case law and the terms of the contract.

Copies of sample contracts may be found at: <http://www.lopdm.us/>. The LOPD reserves the



right to negotiate additional provisions with the successful bidder. All contracts must be reviewed and approved by the LOPD.

Attorneys must have completed at least 7 hours of continuing legal education in criminal defense related programming in the last 24 months.

Attorneys who accept assignments for cases will be required to enter detailed case activity into the online DefenderData system, or other LOPD case management systems, in order for contract counsel to be compensated. Attorneys required to access DefenderData, or other LOPD case management systems, must have access to the Internet and a working e-mail address.

E. Term

Proposals are being considered for the 2022/2023 term beginning November 1, 2022 through October 31, 2023 (fiscal year 2023: July 1, 2022 through June 30, 2023 and fiscal year 2024: July 1, 2023 through June 30, 2024). Under the terms of Section 13-1-150, contracts may be subject to extensions not to exceed a total of two (2) years.

F. Rejection/Cancellation/Acceptance

The LOPD reserves the right to reject any or all proposals in whole or in part and to cancel this RFP at any time when it is in its' interests to do so. Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for the award, but proposals may be accepted without such discussions.

G. Proposal Evaluation Committee and Evaluation Criteria

All proposals will be reviewed by the Procurement Manager for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

The Procurement Manager may contact the offeror for clarification of the response. Proposals will be evaluated and scored by an Evaluation Team appointed by the Contract Counsel Legal Services (CLS).

PLEASE READ CAREFULLY:

Proposals will be evaluated on the following criteria, for a total of 20 points per criterion and 260 points overall (see Attachment C):



¹) the applicant's ability to meet the Performance Standards for Criminal Defense Representation; including but not limited to, any suspension or disciplinary action by any state bar association, termination from any legal employment, as well as disclosure of any and all contracts with any other agency that the applicant is a party to at the time of his/her application,

2) the applicant's criminal law experience; including, but not limited to, Habeas, Appellate and Murder case experience,

3) the applicant's criminal jury trial and bench trial experience,

4) the applicant's office organization and calendaring/docketing system,

5) the applicant's ability to meet with clients in a confidential setting to form an appropriate attorney-client relationship, both with clients in custody and out of custody,

6) the applicant's ability to zealously advocate for clients,

7) the applicant's knowledge of relevant law, courts and rules,

8) provide a list of the following: criminal defense training attended and number of related CLEs obtained in 2021 and 2022,

9) disclose all complaints received by the LOPD and the Disciplinary Board within the last ten (10) years,

10) the applicant's compliance with LOPD policies and procedures; including, but not limited to, disclosure of a spouse, parent, children, or siblings, by consanguinity or affinity, who are employed with the LOPD,

11) the applicant's ability to advocate in writing – motions, legal research, preservation of issues, etc.,

12) the applicant's current standing with the New Mexico State Bar, and

13) positive assessment by the local judiciary. Applicant must provide a letter from a Judge in his/her area of practice. Judicial assessment includes factors such as any past court experience, court hearing attendance, timeliness, court demeanor, etc. **Applicants who have not previously appeared before the court in any capacity shall include up to three references to count towards the score compilation.**

EVALUATION PROCESS

1. All proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive may be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response.

¹ The Performance Standards for Criminal Defense Representation are available on the LOPD's website at: www.lopdnm.us/



Responsive proposals will be evaluated on the factors and assigned points by the Evaluation Committee. Each of the factors is assigned a point value. (See Attachment C - Sample Score Sheets). The responsive offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are selected or who choose to submit revised proposals for the purpose of obtaining best and final offers, will have their points recalculated based on their revised proposal. The responsive offeror whose proposal is most advantageous to the LOPD and its clients, taking into consideration the evaluation factors, will be recommended for the award of contract. Please note: a serious deficiency in the response to any one factor may be grounds for rejection of a proposal, regardless of overall score.

H. Proposal Format

Proposals must:

1. Identify the judicial district and county or counties for which the proposal is submitted,
2. Identify the types of cases for which the proposal is submitted – habeas, appellate, murder, felonies, misdemeanors and juvenile matters,
3. Address each of the numbered factors in each practice category as listed in Paragraph G above:
 - a. factors must be addressed in the order listed in Paragraph G under the heading PLEASE READ CAREFULLY and
 - b. responses should include a heading indicating the factor addressed. Responses will be concise paragraph form with examples where appropriate. (See paragraph G),
4. Include a current resume,
5. Include a signed Campaign Disclosure Form (Attachment A), and
6. A list of CLE courses attended between January 1, 2021 and February 2, 2022,
7. In addition to the firm response to items 1 through 6 above, any licensed attorney that is employed by the firm, and will be performing work pursuant to the Professional Services Contract, must provide responses to items 1, 2, 4, 5 and 6.

Proposals must be submitted electronically, in one complete submission, in Word or PDF format to: ccls_RFP_mail@lopdm.us with “LOPD RFP 2022-001” in the subject line. Proposals may be submitted beginning April 29, 2022. **The submission deadline is 4:00 p.m. MDT on June 27, 2022.**

The Campaign Disclosure Form may be signed, scanned and submitted electronically to: tom.kelley@ccls.lopdm.us; or mailed to: CCLS, Attn: Tom Kelley, 4600 Montgomery Blvd.



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Chief Public Defender
Bennett J. Baur

NE, Building A, Suite 201, Albuquerque, New Mexico 87109 or hand-delivered to: CCLS, Attn: Randy M. Chavez, 4600 Montgomery Blvd. NE, Building A, Suite 201, Albuquerque, New Mexico 87109. Mailed or hand-delivered Campaign Disclosure forms must be in a sealed envelope labeled: **“LOPD RFP Proposal”**. **No other portion of a proposal shall be mailed or hand delivered to the Procurement Manager.**

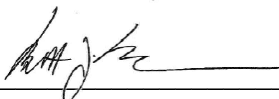
The Procurement Manager will electronically confirm receipt of each proposal within two business days of receipt. If confirmation is not received, e-mail Tom Kelley at: tom.kelley@ccls.lopdm.us. Proposals will be opened beginning on June 27, 2022.

A timeline of events relevant to the RFP and a sample scoring sheet are included as Attachments B and C respectively.

NOTE: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

By: 
Christina Keyes
Chief Financial Officer, LOPD

Date: 04.28.22

By: 
Bennett J. Baur
Chief Public Defender, LOPD

Date: 4/28/2022



Attachment A

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services**, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether he/she has a family member or a representative of the prospective contractor have made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two-year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAVE MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.



The following definitions apply:

“**Applicable public official**” means a person elected to an office, a person appointed to complete a term of an elected office who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“**Campaign Contribution**” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “**Campaign Contribution**” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“**Family member**” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person, or (b) an owner of a prospective contractor.

“**Pendency of the procurement process**” means the time-period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“**Prospective contractor**” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“**Representative of a prospective contractor**” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)



DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By:

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--



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NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)



Attachment B
Timeline/Schedule Guidelines

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
1. Issue RFP	LOPD	April 29, 2022
2. Deadline to Submit Confirmation of Receipt of Proposal	Potential Offerors	May 27, 2022
3. Deadline to Submit Written Questions	Potential Offerors	May 27, 2022
4. Response to Written Questions and RFP Amendments	LOPD	June 3, 2022
5. Submission of Proposal	Offeror	June 27, 2022 at 4:00 P.M. MDT
6. Campaign Contribution Disclosure	Offeror	June 27, 2022 at 4:00 P.M. MDT
7. Evaluation of Proposals and Selection of Finalists	Evaluation Committee	June 27, 2022 through July 18, 2022
8. Notification of Finalists	LOPD	August 8, 2022 through August 22, 2022
9. Protest Deadline	Offeror	September 2, 2022



Attachment C
Sample Score Sheet
(2 pages)

EVALUATION POINT TABLE/SUMMARY

The following is a summary of evaluation factors with a point value assigned to each factor. These factors will be used in the evaluation of individual proposals.

Applicant: _____

Factor	Score/Points	Comments
	Available	
1.) Applicant's ability to meet the Performance Standards for Criminal Defense Representation.	_____/20	
2. Applicant's criminal law experience.	_____/20	
3. Applicant's relevant criminal jury and bench trial experience.	_____/20	
4. Applicant's office organization; calendaring/docketing system	_____/20	
5. Applicant's ability to meet with clients in a confidential setting to form an appropriate attorney-client relationship both with clients' in-custody and out-of-custody.	_____/20	
6. Applicant's ability to zealously advocate for clients	_____/20	
7. Description of Applicant's knowledge of relevant law, courts and rules	_____/20	



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8. Relevant CLE	_____/20	
9. Complaints received by the LOPD and the Disciplinary Board	_____/20	
10. Compliance with policies and procedures of LOPD	_____/20	
11. Applicant’s ability to advocate in writing – motions, legal research, preservation of issues, etc.	_____/20	
12. Applicant’s standing with the New Mexico State Bar.	_____/20	
13. Judicial assessment score	_____/20	

STATE OF NEW MEXICO

**NEW MEXICO STATE PUBLIC DEFENDER DEPARTMENT d/b/a LAW OFFICES OF THE
PUBLIC DEFENDER**

Professional Service Contract # «Cont_No»

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Public Defender Department d/b/a New Mexico Law Offices of the Public Defender (LOPD), hereinafter referred to as (the "Agency") and «First» «Last», of «Firm», hereinafter referred to as (the "Contractor"), and is effective November 1, 2022 or until approved by the agency chief, whichever date is later.

IT IS AGREED BETWEEN THE PARTIES:

I. SCOPE OF WORK

A. *For the consideration set forth in this contract, Contractor agrees to perform professional legal services:*

1. Contractor shall provide legal services to qualified adult and juvenile clients in a professional and skilled manner in accordance with the Sixth Amendment to the United States Constitution, Art. II., §14 of the New Mexico Constitution, *Gideon v. Wainright*, 372 U.S. 335 (1963), the Performance Standards of the New Mexico Public Defender Commission and the Law Offices of the Public Defender, the New Mexico Rules of Professional Conduct, applicable case law, and the terms of this contract. Services will be performed in the assigned Magistrate, Metropolitan, District and Appellate Courts of the State of New Mexico.
2. Contractor shall abide by the Agency's policies and procedures. The parties shall give no effect to any earlier policies and procedures. The terms set forth in this contract and the decisions of the Director of Contract Counsel Legal Services (CCLS) (hereinafter "Director") with regard to policies and procedures shall control.

II. MONITORING AND QUALITY CONTROL

A. It is the duty of the Director to insure that clients represented by Contractor receive appropriate quality representation through random client contacts. Contractor is required to cooperate with the Director in the following evaluation, monitoring and quality control measures:

1. Periodic supervision and evaluation on whether Contractors are making contact (in-person or by phone) in a confidential setting with each new client within 72 hours of assignment or appointment. If contact cannot be made within that time-period, Contractor shall document in their file the reason(s) for the failure and whether an opportunity for confidential communications occurred prior to the client's first court hearing.
2. The Director will periodically evaluate and monitor whether Contractors are performing the following tasks when they first meet with a client following a new case assignment: (a) advising the client of the right to jury trial and right to a speedy trial, (b) advising the client of the elements of the charge and that the prosecutor must prove each element beyond a reasonable doubt to obtain a conviction, (c) advising the client of the right to present a defense, (d) advising the client that it is solely the client's decision whether to accept or reject any plea offer, and (e) discussing with the client any potential

witnesses or avenues of investigation.

3. Periodic supervision and evaluation of the first contact with clients and documenting whether Contractors are determining, if each client: (a) appears competent to proceed with the court process, (b) has a sufficient literacy level to understand written court documents such as the guilty plea form and sentencing orders, (c) needs an interpreter, and (d) is a non-citizen in need of expert immigration advice.
4. Periodic supervision and evaluation on whether Contractors are responding appropriately to information provided by the client and discovery obtained in each case, including pursuing additional discussions with the client, investigations, medical evaluations, legal research, motions, etc., as suggested by the circumstances.
5. Establishing a policy for Contractors to respond to all client contacts and complaints (including jail “kites”), including the period of time within which a response must occur. The Director shall review all client complaints obtained from any source and Contractor’s response. Use or non-use of any particular complaint process shall in no way be considered a waiver of the client’s rights.
6. Periodic supervision and evaluation on whether Contractors are appropriately using qualified interpreters and translators before any decisions are made by the client.
7. Periodic supervision and evaluation of courtroom proceedings to ensure that Contractors are fulfilling their role as advocate before the court on the client’s behalf.
8. Periodic supervision and evaluation on whether Contractors are fully advising clients of their options regarding possible dispositions, including information on treatment services, any options for a less onerous disposition based on treatment, explanations of plea offers, the consequences of convictions, conditions that may be imposed at sentencing, any applicable immigration consequences, and any other consequences about which the client has expressed concern.
9. Periodic supervision and evaluation on whether Contractors are invoicing for data collection and whether Contractors are entering data on a daily basis showing the amount of time spent on each task for each case. The time shall be entered in the LOPD online module (hereinafter “DefenderData”) and shall be recorded in HH:MM format. Contractors shall also participate in the data collection program, or other case study program, and agree to utilize DefenderData for purposes of time recording.
10. Periodic supervision and evaluation on whether cases are being allocated to individual attorneys in consideration of the entire existing workload of the attorney from all sources such as other contractual obligations, working in other jurisdictions, private clientele, the seriousness of the charge(s), any factors that make the case more complex or time-consuming, and the attorney’s experience level.
11. Periodic supervision and evaluation of Contractors on a periodic basis showing: (a) the frequency of use of investigators and expert witnesses, (b) the number of motions on substantive issues that are filed, as well as the outcome of each motion, (c) the frequency with which cases are resolved by outright dismissal or a non-conviction disposition, (d) the frequency of pleas to a lesser charge, and (e) the number of trials (enumerated by bench and jury trials) conducted, as well as the outcome of the trials.

12. The Director may require Contractor to attend specific training seminars, such as Agency training provided at an Agency District Office, or require any other practices or activities that the Director deems necessary and appropriate to insure quality representation. Refusal to comply with the provisions of this contract or to cooperate and respond in a timely manner with the efforts of the Agency to enforce the above mandates may result in a removal from the case rotation or termination of this contract.

13. Contractor agrees to participate in at least seven (7) hours of training, during each year of the term of this contract, in those areas of the criminal law in which Contractor performs services pursuant to this contract. Contractor shall provide copies of the CLE certificates, MCLE annual reports, or written confirmation of attendance by the provider or the New Mexico State Bar to the Director on or before November 1 of each year. If Contractor will not have the requisite training completed by November 1, on or before that date, they must send a detailed plan (including scheduled class plans and receipts for enrollment) for completing the requirement by not later than January 1.

14. No provision of this section or this contract is intended to nor should any person construe any such provision to create an employer-employee relationship between the Agency and Contractor.

III. ACCEPTANCE OF ADDITIONAL COMPENSATION PROHIBITED

Contractors may not accept additional compensation of any kind from a client or anyone acting on a client's behalf including cash, property, or gifts of any description for their services under this contract. A client or other person may retain Contractor on a private basis. In such case, Contractor shall return any fee paid by the LOPD. Contractors shall not in any way suggest that they will provide better services to the client if they are retained privately.

IV. COMMUNICATION WITH THE AGENCY

Communication between Contractors and the Director, CCLS Staff or the Agency will be handled primarily via e-mail. Invoicing will be accomplished via submission through DefenderData. Contractor is encouraged to telephone the Director or CCLS staff to discuss legal or administrative problems that require immediate attention.

V. FILE MAINTENANCE REQUIREMENTS

A. Contractor shall maintain all closed case files pursuant to the Retention and Disposition of Public Records schedules, NMAC 1.21.2.639-641, and the Agency's policies and procedures. Any questions regarding case file retention shall be directed to the Director to ensure compliance with the law.

B. If it is deemed necessary to return case file(s) to the Agency, upon termination of the contract or withdrawal, the contractor shall submit a transfer memorandum along with the file(s).

VI. APPLICATION FEES

Each Contractor in non-district office jurisdictions must submit orders of appointment and application fees on all assigned cases. Should the court not file an Order of Appointment, Contractor shall file an Entry of Appearance with the court and shall provide a copy of the Entry of Appearance to CCLS as an attachment to their monthly submitted voucher. If the Application Fee has not been waived or collected by the court, Contractor shall collect the \$10 application fee from the client [cash or money order only] and shall remit those fees, receipts and monthly logs to the Agency at

CCLS's mailing address. All application fees shall be sent to CCLS upon receipt from the client.

VII. CONTRACT AND CASELOAD SIZE

Contractor shall not accept the assignment of new cases, if the fees for those cases would exceed the amount of funds under their contract. Contractor shall be responsible for tracking case assignments and may also contact the Director to reconcile records of cases assigned and funds expended. The size of the contract does not bind the Agency in any way whatsoever to assign a particular number of cases to Contractor. The size of a contract may be increased or decreased by the Agency based solely on the needs of the Agency. If a Contractor accepts cases exceeding the amount of funds available to them, the Agency does not guarantee payment on the accepted cases.

VIII. PRIOR APPROVAL OF ALL SUBSTITUTE ATTORNEYS

Substitute attorney is an associate/colleague of the contract attorney who does not have a conflict and is making an appearance on behalf of the contract attorney. A substitute attorney is not paid for their services by the Agency and does not have a contractual relationship with the Agency, but is expected to abide by Contractor's obligations. The substitute attorney is not taking responsibility for the case and should only assist Contractor in minor non-substantive matters. Contractor is strongly encouraged to use any other Agency contract attorney as substitute attorney. If the substitute attorney is not an Agency contract attorney, Contractor must receive prior approval from the Director before that attorney may act as substitute counsel. Contractors are allowed to exchange cases with other Contractors, provided the Director is notified of the exchange. The LOPD is not responsible for payment to a Contractor who exchanges a case with another Contractor.

IX. CREDIT FOR CASES

A. The ordinary understanding of what constitutes a "case" is sufficient in most instances to make case-by-case reimbursement reasonable. A case with one docket number equals one case for the purposes of both, reporting and compensation, regardless of the number of charges. A case that is filed in Magistrate Court or Metropolitan Court with one docket number and subsequently bound over to District Court with a new docket number shall be considered one case for purposes of both reporting and compensation. A case assigned a District Court docket number for a Preventative Detention Hearing, which was previously assigned a Magistrate Court or Metropolitan Court docket number, is also considered the same case for both reporting and compensation. A case that is dismissed and then re-filed is also considered the same case. No additional case credit is earned, if the client is represented on related matters which are covered by a plea; or, if Supplemental Information is filed on a habitual offender proceeding. A probation violation is one case without regard to docket numbers or charges. Unless a case is disposed of by dismissal, acquittal, or a final judgment and sentence, it must remain an open case for a minimum of one year from the date of assignment [for example, if a bench warrant is outstanding] before it can be reported as a closed case. Drug Court cases must remain open until the client is sentenced either upon successful completion or unsatisfactory discharge from Drug Court. Contractor is responsible for handling reasonable post-conviction matters for thirty days from date of the filing of the Judgment and Sentence for furloughs and work release requests and 90 days for motions for reconsideration of sentence. Contractor assigned to the case prior to a conviction is responsible for timely filing notices of appeal and docketing statements.

B. As an officer of the Court, Contractor certifies and warrants, to the best of their knowledge, Contractor will:

1. review charges and gain a preliminary understanding of the case,

2. file an Entry of Appearance and initiate discovery,
3. perform a conflict check and determine that no apparent conflict of interest exists, and
4. initiate necessary steps to provide effective assistance of counsel in bringing the case to resolution in accordance with the Rules of Professional Conduct and the Performance Standards of the Agency.

Payment is contingent on Contractor complying with these requirements.

C. If a Notice of Intent to Seek Adult Sanctions is filed in a juvenile case, that case shall be designated as an adult felony case. Total compensation shall not exceed the total fee for a felony case in that district.

X. WITHDRAWING FROM THE CONTRACT OR A CASE

A. If, for any reason, Contractor is unable or personally refuses to fulfill this contract or any provision of this contract, Contractor shall provide the Agency with notice of intent to terminate the contract in writing no fewer than thirty (30) days before the contemplated date of final service. Contractor shall retain responsibility for cases previously assigned under this contract and shall not subcontract those cases to any other attorney without the prior written consent of the Agency. In addition to the 30-day notice, Contractor shall simultaneously provide the Agency with a written list of all pending LOPD cases, case transfer memos, and a plan for the disposition of those cases. Case reassignments are contingent on the Court's approval on Contractor's Motion to Withdraw. The Contractor shall follow all procedures as listed in section X. F below. The Agency reserves the right to withhold any payment due and owing to Contractor at the time of the termination until Contractor fulfills any obligations owed to the Agency. Contractor shall reimburse the Agency for any prior payment made by the Agency to Contractor for cases that must be re-assigned due to Contractor's refusal or inability to perform under the terms of the Contract in accordance with Rule 16-116 (D) of the New Mexico Rules of Professional Conduct. The Agency reserves the right to avail itself of any legal remedies available for breach of this or any other section of the contract.

B. The Agency reserves the right to terminate the contract or any part of the contract at any time. The Agency will provide Contractor with 30 days' written notice.

C. Upon termination of this contract, it is agreed between the parties that Contractor shall continue to work on all cases pending at the time of termination until such cases are completed as provided in this contract, if directed to do so by the Agency. Contractor shall not represent co-defendants or other inter-related defendants when such representation would present the appearance of a legal conflict. Conflicts of this nature shall be reported to the Agency for approval and for record keeping purposes.

D. Case assignments by the Agency shall be final. Contractor does not have the right to refuse a particular case or withdraw from a case unless Contractor has an actual conflict of interest. However, Contractor may stop taking assignments temporarily when they believe the Performance Standards for Criminal Representation cannot be met. When Contractor seeks to withdraw due to a documented conflict other than the conflicts described in Paragraph X(C), the conflict of interest must be reported to the Agency prior to filing a motion to withdraw. The Director shall then determine whether a conflict of interest exists. Once the Director determines whether a conflict exists, the Director shall notify Contractor whether he concurs or objects to the motion to withdraw. If Contractor withdraws from a case, the Director's decision regarding required reimbursement to the Agency shall be final.

E. If an order of withdrawal is obtained from a court without prior approval from the Director, and Contractor has been compensated for the case, Contractor shall reimburse the Agency for the case. The Director does have the discretion to waive the reimbursement.

F. The obligations of an attorney seeking to withdraw from a case, or their entire pending case load, include, but are not limited to:

1. obtaining approval for withdrawal from the Director,
2. filing a motion to withdraw with the court,
3. providing CCLS with a copy of the motion and order allowing withdrawal as an attachment to their voucher in DefenderData,
4. preparing a complete case file and a transfer memo for the new attorney, and
5. surrendering the file directly to the Agency or new contract counsel.

G. Failure to follow the foregoing steps will be grounds for requiring reimbursement of the entire case fee. Continued failure to follow withdrawal procedures may result in the removal from the case assignment rotation or termination of the contract.

H. Absent an order from the appellate court with jurisdiction to the contrary, the Contractor who acted as trial counsel is responsible for complying with the Rules of Appellate Procedure, including but not limited to timely filing a notice of appeal or waiver of appeal, and docketing the appeal, even if the client has filed a disciplinary complaint and the trial attorney has moved to withdraw from the case.

XI. COMPENSATION

A. The Agency shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rates listed in the following schedule. Such compensation shall not exceed \$«Cont_Amt» excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling \$«Cont_Tax_» shall be paid by the Agency to the Contractor. **The total amount payable to Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$«CONT_TOT». This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. At the discretion of the Director, and upon agreement of the parties in writing, some cases may be assigned on an hourly basis and would not be subject to the following Rate Schedule listed in Section XV. The hourly rate on such assignments shall be \$85.00 per hour of attorney time, \$35.00 per hour for paralegal time and \$42.50 per hour for attorney travel time. All hourly entries invoiced in these cases shall be documented in DefenderData. Once Contractor has entered their hourly entries in DefenderData, Contractor shall email the Director to seek approval. The Director shall notify Contractor when they have approved the hourly entries entered in DefenderData. All cases assigned hourly shall be invoiced on a monthly basis. The maximum amount to be billed in an hourly rate case

shall be \$50,000.00.

C. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and at XXIII to any negotiations between the parties from year to year pursuant to Paragraph I, Scope of Work. All monthly invoices SHALL BE received by the Agency no later than the 15th day of the following month. All fiscal year end invoices (June 30th) MUST BE received by the Agency no later than the third business day after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date may NOT BE PAID timely.

D. Contractor must submit a detailed statement accounting for all services performed and expenses incurred via DefenderData as directed by CCLS staff and prescribed by the Contract Counsel Handbook. Contractor must adhere to the documentation requirements in VI. of this contract. If the Agency finds that the services are not acceptable, within thirty (30) days after the date of receipt of written notice from Contractor that payment is requested, it shall provide Contractor a letter of exception explaining the defect or objection to the services, and outlining steps Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. The law requires that in order to receive payment due to the changing of the fiscal year, **June dates of service shall be correctly invoiced within three (3) business days of the last date of services.**

E. Regular billing schedule. Contractor shall submit invoices to the Agency's Contract Counsel Legal Services office in Albuquerque, New Mexico no later than the 15th working day of the month following the services provided. Contractor is required to submit timely bills on a monthly basis. Failure to submit timely billings will result in the suspension of case assignments to Contractor until such billing is submitted. In addition, Contractor is subject to a five percent (5%) penalty charge of the entire invoice, prior to addition of gross receipts taxes, for failure to submit timely billings. If Contractor cannot submit their monthly billings timely, they must seek approval from the Agency to submit them past the due date.

F. The Agency shall have a right to audit billings both before and after payment. Payment under the contract shall not bar the right of the Agency to recover excessive and/or illegal payments. Failure to bill timely or to follow the correct procedures for billing as specified by the Agency shall be grounds for suspension or termination of this contract.

XII. CHANGES TO THE CONTRACT

The amount of this contract was estimated based on historical case data maintained by the Agency for each county and judicial district. The size of the initial contract awarded does not bind the Agency to pay a specific amount under the contract nor to assign a specific number of cases. The Agency, in its sole discretion, reserves the right to raise or lower per case fees to a maximum of 10 percent of the current fee schedule amounts based on legislative appropriations, current budget projections, or other circumstances as the Agency deems necessary. Contractor must sign and return all requested amendments immediately upon receipt to insure that they can be timely processed and that invoice payments are not delayed.

XIII. CASE ASSIGNMENT BY ROTATION

A. In each judicial district and/or county, cases will be assigned according to rotation schedules

established by the Agency. Each Contractor’s number of cases per rotation will be based on factors considered in the RFP awards, as well as the Agency’s requirements for case coverage and client needs. The original rotation schedules and any changes to the rotation are at the sole discretion of the Agency. No Contractor shall be entitled to any specific percentage or number of cases. The Director may assign any case to a specific Contractor without regard to the rotation schedule in their sole determination that the assignment is in the best interests of the Agency and/or the client.

B. Additional assignments may be assigned at the discretion of the Director of Contract Counsel Legal Services. On occasion, CCLS may receive requests for attorney services when a district has exhausted all options available through rotation or conflict attorneys assigned to the district. In those cases, the Director of CCLS may, at their discretion, appoint any attorney currently under contract with CCLS as LOPD representation on the case. All attempts will be made to assign attorneys on a rotational basis within the geographical area of their primary place of business. **Assignments are not on a volunteer basis and cannot be refused unless there is a valid conflict.**

C. Arraignment rotations or Preventative Detention Hearing rotations may be scheduled for all Agency clients in any county or judicial district where the Agency determines that Arraignment coverage or Preventative Detention Hearing coverage can be most satisfactorily accomplished by rotation among all contract counsel rather than requiring Contractors to handle each Arraignment or Preventative Detention individually for assigned cases. Additional compensation will be paid, if this method of covering arraignments and preventative detention hearings is implemented and the Agency has the budget to provide such compensation. The Agency will continue to secure funding from the Legislature to meet this end.

XIV. BILLING

The Agency shall make payment to Contractor on a per-case basis at the rates stated in the tables below unless otherwise changed in accordance with XI(B) and XV(F). In any case, the Director may authorize additional payment, if necessary to obtain qualified representation for a client. Contractor shall bill pursuant to Section XI(E) on a monthly basis on the forms and in the manner prescribed by the Agency in the contract counsel handbook available at: <http://www.lopdm.us>.

XV. RATE SCHEDULES

A. FELONY RATES:

JUDICIAL DISTRICT:	1st Degree	2nd Degree	3rd Degree	4th Degree
1st Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
2nd Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
3rd Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
4th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
5th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
6th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
7th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
8th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
9th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
10th Judicial District	\$800.00	\$780.00	\$750.00	\$650.00
11th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
12th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00
13th Judicial District	\$750.00	\$700.00	\$645.00	\$540.00

JUDICIAL DISTRICT:	JUVENILE	MISDEMEANOR*	MISDEMEANOR DWI and DV
1st Judicial District	\$300.00	\$180.00	\$300.00
2nd Judicial District	\$300.00	\$180.00	\$300.00
3rd Judicial District	\$300.00	\$180.00	\$300.00
4th Judicial District	\$300.00	\$180.00	\$300.00
5th Judicial District	\$350.00	\$180.00	\$300.00
6th Judicial District	\$300.00	\$180.00	\$300.00
7th Judicial District	\$300.00	\$180.00	\$300.00
8th Judicial District	\$300.00	\$180.00	\$300.00
9th Judicial District	\$300.00	\$180.00	\$300.00
10th Judicial District	\$300.00	\$180.00	\$300.00
11th Judicial District	\$300.00	\$180.00	\$300.00
12th Judicial District	\$300.00	\$180.00	\$300.00
13th Judicial District	\$300.00	\$180.00	\$300.00

**Misdemeanor Trial Performance Fee:* \$100.00 [Paid, if the case goes to trial AND a court order of judgment and sentence, acquittal, or dismissal is submitted with their invoice].

Probation Violations: Felony: 4th Degree Felony rates, Juvenile and Misdemeanor: regular fee [only one fee per P.O.V. regardless of case numbers or number of violations charged].

Witness Representation: 4th Degree Felony rate.

Retrial of any case: One-half the original rate invoiced;

B. METROPOLITAN OR MAGISTRATE APPEALS:

Flat rate: \$500.00 and
Trial de Novo: \$250.00;

C. FIRST DEGREE MURDER FLAT RATE:

1st Chair \$5,400.00 and
2nd Chair \$2,700.00
(unless as outlined in Section XI(B) above);

D. FIRST DEGREE FELONY LIFE IMPRISONMENT RATES:

1st Chair \$5,400.00 and
2nd Chair \$2,700.00
(unless as outlined in Section XI(B) above);

First degree Child Abuse Resulting in Death, 30-6-1(H),

Aggravated Criminal Sexual Penetration, 31-18-15(A) (3), 31-18-25, and

Any other First Degree Felony resulting in Life Imprisonment.

E. RATE SCHEDULE FOR DISTRICT COURT APPEALS and POST CONVICTION HABEAS CORPUS RELIEF:

DISTRICT COURT APPEALS (at the discretion of the Appellate Defender, based on complexity of case):

1. First Degree Murder (NM SCt):
 - a. Brief in Chief or Answer Brief:..... \$2,700.00 to \$5,000.00,
 - b. Reply Brief:..... \$162.00 to \$540.00
2. Summary Calendar:
 - a. Memorandum in Opposition:..... \$540.00 to \$1,080.00,
 - b. Subsequent Memorandum:..... \$216.00, and
 - c. Certiorari Petitions to NM SCt:..... \$162.00 to \$540.00
3. General Calendar (Non-Summary) in the Court of Appeals or on Certiorari:
 - a. Brief in Chief or Answer Brief:..... \$1,080.00 to 3,240.00,
 - b. Reply Brief:..... \$162.00 to \$540.00,
 - c. Certiorari Petitions to NM SCt:..... \$162.00 to \$540.00
4. Oral Argument (except Capital First Degree Murder):..... \$162.00 to \$540.00,
5. Certiorari Petitions (U.S. Supreme Court upon approval of the Appellate Defender and the Director of Contract Counsel Legal Services):..... \$1,890.00, and
6. Special Motion (i.e. Reconsideration of Sentence or Appeal Bonds):. \$297.00.

Under extraordinary circumstances, cases may be eligible for Complex Litigation Compensation.

HABEAS PETITIONS (at the Discretion of the Habeas Unit Managing Attorney, based on the complexity of the case):

1. First Degree Murder and First Degree Felony (18-yr. sentence) up to \$7,500.00 (based on complexity),
2. Good Time Forfeiture Petition (based on complexity) \$1,000.00 - \$3,000.00,
3. Conditions of Confinement Petition (based on complexity) \$1,000.00 - \$3,000.00, and
4. All other State Habeas Petitions (based on complexity) \$2,000.00 to \$6,000.00.

Under extraordinary circumstances cases may be eligible for Complex Litigation Compensation.

F. Payment of costs for appeals or Habeas petitions. Contractor is responsible for making arrangements for the costs for preparing appeal documents and audio or video transcription. The Agency will pay reasonable expenses for photocopying, long distance telephone calls and postage.

G. Travel costs (mileage) and per diem, if an overnight stay is required, will be paid in amount set by the New Mexico Department of Finance.

H. Payment of costs. The rates of compensation paid under this contract for felony, juvenile and misdemeanor cases are intended to cover Contractor's costs for telephone, mail services and discovery. No other compensation for overhead expenses shall be paid by the Agency unless the Agency determines that Contractor has incurred extraordinary expenses, direct payment of which would cause undue hardship to Contractor. The Agency will pay extraordinary costs only, if they are properly documented and approved by the Director. Costs of printing and copying of discovery have been found to be extraordinary costs by the Public Defender Commission and are reimbursable at the rate of ten cents (10¢) per page and three dollars (\$3) for CDs and DVDs. The Director may in their sole discretion approve the reimbursement of case related costs necessary to the representation.

XVI. GEOGRAPHIC ASSIGNMENT OF CASES

Contractor shall primarily provide the services set forth in this Contract in the assigned geographical area. Contractors may agree to accept cases in any geographical area. Based on the needs of the Agency, Contractor may agree to provide other legal services outside their assigned district or county, notwithstanding those cases assigned from time to time at the discretion of the Director of CCLS on a non-voluntary basis. Extra credit for these assignments may be approved by the Director. Extra credit may also be approved by the Director within the geographical assignment area, if necessary to obtain qualified counsel for a client. Contractor shall be paid for that work at the rate established for that area and shall be paid for travel at the rate of (45¢) per mile and eighty-five dollars (\$85) per diem if overnight stay is required. The rates for travel and per diem may change at the direction of the State of New Mexico Department of Finance and Administration.

XVII. GROSS RECEIPTS TAX

The Agency will pay Contractor New Mexico gross receipts tax. The gross receipts tax will be paid at the rate set forth in the current tax tables provided by the State of New Mexico Taxation and Revenue Department. Notwithstanding any language in the contract regarding the Agency's intention to pay gross receipts tax to Contractors, each Contractor shall be personally responsible for payment of gross receipts tax to the Taxation and Revenue Department. Gross receipts tax is not applicable to mileage or per diem.

XVIII. EXPERT WITNESSES, INVESTIGATORS, SOCIAL WORKERS AND ALTERNATIVE SENTENCING ADVOCATES

The Agency shall provide funds for the retention of necessary expert witnesses when, in the opinion of the Agency, it is advisable to do so. Contractor shall submit requests for experts on the forms provided by the Agency. Requests for experts must be submitted to the Director before the expert provides the service. Expenses incurred for the use of experts who have not been approved by the Agency, or in excess of the approved amounts, shall be borne by Contractor. Written approval of experts may be granted via e-mail by the Director in emergency situations. Upon emergency approval via e-mail, Contractor must still complete and submit the expert witness request form.

XIX. COMPENSATION IN COMPLEX LITIGATION CASES

If Contractor believes they are entitled to complex litigation or other case compensation beyond the flat fee paid for a case, they shall provide appropriate documentation by submitting a written request for specific additional compensation to the Director for review. If the Director finds that a case is appropriate for complex litigation compensation, such compensation shall be an amount consistent with the time and effort expended in the case. A matrix of factors the Director shall consider in evaluating request for complex litigation compensation is located in the Contract Counsel Handbook, Appendix B. All time submitted in support of a request for complex litigation compensation, and any additional effort for which complex litigation compensation is requested, shall be documented in DefenderData. Detailed records of actual time spent on the case shall be considered when determining appropriate complex litigation compensation. The Director may allow periodic invoicing for cases found to be complex. Complex litigation compensation will be awarded only upon sufficient appropriations from the Legislature of New Mexico and depending on budget availability. The Director shall evaluate all requests for complex litigation compensation based on the

matrix in the Contract Counsel Handbook, Appendix B. Decisions of the Director regarding complex litigation compensation shall be final. Decisions and payments regarding complex litigation awards shall be made bi-annually. However, requests for complex litigation compensation must be submitted upon completion of a case. The Director shall inform all recipients of a complex case litigation compensation award on April 15th and December 15th. All payments for complex litigation compensation shall be made on December 30th and April 30th.

XX. COMPENSATION FOR DATA COLLECTION AND SENIOR CASE REVIEW

- A. Contractors shall be required to enter detailed time billing information into DefenderData for all assigned cases and shall be allowed a monthly administrative reimbursement of \$75 per month, with a \$150 reimbursement for the first month in recognition of additional set-up and case management requirements. If a Contractor has more than one contract with the Agency, they can submit a \$150.00 reimbursement for the first month, as well as a \$75.00 monthly administrative fee, on each contract.
- B. Attorneys who are willing and pre-approved by the Director to perform senior case reviews for other contract attorneys are allowed \$100 per month for such activity.

XXI. TERM

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL NOVEMBER 1, 2020 OR UNTIL APPROVED BY THE AGENCY CHIEF, WHICHEVER DATE IS LATER. This Agreement shall terminate on «End_Date» unless terminated pursuant to paragraph XXII or paragraph XXIII.

XXII. TERMINATION

- A. Grounds. The Agency or Contractor may terminate this Agreement for convenience or cause.
- B. Notice; Agency Opportunity to Cure
 - 1. Except as otherwise provided in Paragraph XXII(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor for the following: (a) Contractor becomes unable to perform the services contracted for, as determined by the Agency, (b) during the term of this Agreement, Contractor is suspended or disbarred, (c) the Agreement is terminated pursuant to Paragraph XXIII, "Appropriations," of this Agreement or (d) for Contractor's breach or other good cause shown.
- C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination default or breach of this Agreement. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE

CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or Contractor of notice of termination of this Agreement, Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency, 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement and the protection of the clients' rights and interests, and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

XXIII. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate or suspend all or a portion of the contract immediately upon written notice being given by the Agency to Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

XXIV. STATUS OF CONTRACTOR

Contractor and its agents and employees are independent Contractors performing professional services for the Agency and are not employees of the State of New Mexico. Contractor and its agents and employees as a result of this agreement shall not accrue leave, retirement, insurance, bonding, use of state vehicles, supplies, machinery, pleading banks, research tools, support staff, or any other benefits afforded to employees of the State of New Mexico. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor agrees not to purport to bind the State of New Mexico unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

XXV. ASSIGNMENT

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

XXVI. SUBCONTRACTING

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

XXVII. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

XXVIII. CONFIDENTIALITY

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the Agency.

XXIX. PRODUCT OF SERVICE - COPYRIGHT

All materials developed or acquired by Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

XXX. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

Contractor warrants that they presently have no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee have been followed.

XXXI. AMENDMENT

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Section XXII herein, or to agree to the reduced funding.

XXXII. MERGER

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

XXXIII. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

XXXIV. EQUAL OPPORTUNITY COMPLIANCE

Contractor agrees to abide by all federal and state laws and rules and regulations pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or

activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct the deficiencies.

XXXV. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any lawsuit arising under or out of any term of this Agreement.

XXXVI. WORKERS COMPENSATION

Contractor agrees to comply with New Mexico state laws and rules applicable to workers compensation benefits for its employees. If Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

XXXVII. RECORDS AND FINANCIAL AUDIT

Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

XXXVIII. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source, which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of Contractor, its officers, employees, servants, Subcontractors or agents, or if caused by the actions of any client of Contractor resulting in injury or damage to persons or property during the time when Contractor or any officer, agent, employee, servant or Subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or Subcontractor under this Agreement is brought against Contractor, Contractor shall, as soon as practicable but no later than two (2) business days after receiving notice thereof, notify legal counsel of the Agency and the Risk Management Division of the State of New Mexico General Services Department by both electronic mail and certified mail.

XXXIX. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

XL. ENFORCEMENT OF AGREEMENT

A party’s failure to require strict performance of any provision of this Agreement shall not waive or diminish that party’s right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

XLI. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered both by electronic mail and also either in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: Director of Contract Counsel Legal Services 4600A Montgomery NE, Ste. 201 Albuquerque, NM 87109 E-mail: Randy.Chavez@ccls.lopdnm.us	To Contractor: «First» «Last» «Address», «City», «State» «Zip» «Email»

XLII. AUTHORITY

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that they have the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Agency below.

By: _____ Date: _____
Bennett J. Baur, Chief Public Defender
New Mexico State Public Defender Department, d/b/a Law Offices of the Public Defender

By: _____ Date: _____
«First» «Last»
Contractor

The records of the State of New Mexico Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department to pay gross receipts and compensating taxes. CRS Tax ID Number: «State Tax ID»

By: _____ Date: _____
State of New Mexico Taxation and Revenue Department

This Agreement is exempt from processing by the DFA Contracts Review Bureau per New Mexico Statute NMSA 1978, Section **13-1-99(E)** (**Excluded from central purchasing through the state purchasing agent** procurement by the judicial branch of state government).

By: _____
 Christina Keyes
 Chief Financial Officer, LOPD

Date: _____

Certified as to Legal Sufficiency:

By _____
 Randy Chavez
 Director, Contract Counsel Legal Services, LOPD

Date: _____

ASSIGNED DISTRICTS

DISTRICT	COUNTIES AND TYPES
«AT»	«A_TYPE»
«BT»	«B_TYPE»
«CT»	«C_TYPE»
«DT»	«D_TYPE»

AFFIDAVIT

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

I, _____, being first duly sworn upon my oath, depose and state the following:

1. [] I am NOT a former employee of any Department/Agency with the State **OR**

[] I am a former employee of the _____ (name of Department/Agency),
having **separated/retired** from state employment as of _____ (date) **OR**

[] I am a current employee of the _____ (name of Department/Agency),
or a legislator with the state, or the family member (spouse, parent, child, sibling by consanguinity
or affinity) of a current employee or legislator with the state. Being a current employee or legislator
or family member of a current employee or legislator of the state, I hereby certify that I obtained
this Professional Services Agreement pursuant to Sections 10-16-7 or 10-16-9 NMSA 1978, that is,
in accordance with the Procurement Code except that this Professional Services Agreement has
NOT been awarded via the sole source or small purchase procurement methods.

2. The **Law Offices of the Public Defender** and I have entered into a professional services agreement.

3. [] I am NOT a former employee **OR** [] I am a former employee, but Section 10-16-8.A(1)
NMSA 1978 of the Governmental Conduct Act does not apply to this Professional Services
Agreement because I neither sought a contract with the Department/Agency, nor engaged in any
official act which directly resulted in the formation of the Professional Services Agreement while
an employee of the Department/Agency.

4. [] I do not have a spouse, parent, children, or siblings, by consanguinity or affinity, who is
employed by the Law Offices of the Public Defender **OR**

[] I do have a spouse, parent, children, or siblings, by consanguinity or affinity, who is employed
by the Law Offices of the Public Defender and their name : _____.

5. To the best of my knowledge, this Professional Services Agreement was awarded in compliance
with all relevant provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

name

Subscribed and sworn to before me by _____ (name of former employee) this
____ day of _____, 2022.

NOTARY PUBLIC

My Commission Expires:
