

MODEL CONTRACT FOR INDIGENT DEFENSE SERVICES

The [City, County, State], referred to as “the Contracting Authority,” and [law firm or non-profit organization], referred to hereafter as “the Agency,” agree to the provisions of public defense services as outlined below for the period [date] to [date].

The Contracting Authority Administrator is [], and the Managing Director of the Agency is [].

Following are the underlining bases for the Contract:

1. The right to counsel in criminal cases is protected by the Sixth and Fourteenth Amendments to the United State Constitution; Article 1, Section 8 of the Nevada Constitution, and Nevada Revised Statutes (hereinafter “NRS”) §§ 171.188 and 178.397.
2. The Contracting Authority desires to have legal services performed for eligible persons entitled to public representation in _____ [City, County, State] by the Agency, as authorized by law.
3. The Agency agrees to provide, and the Contracting Authority agrees to pay for, competent, zealous representation to its clients as required by Nevada Rules of Professional Responsibility.
4. The Contracting Authority and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of indigent defense services to eligible clients of the Agency.

The Parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on [DATE] and terminate on [DATE], unless extended or terminated earlier in a manner allowed by this Contract.

II. DEFINITIONS

The following definitions control the interpretation of this Contract:

- A. Eligible client: means a defendant, juvenile, parent or person facing civil commitment or any other person who has been determined by a finding by the Contracting Authority or Court to be entitled to a court-appointed attorney pursuant to NRS 62D.030, 62D.100, 171.188, NRS 128.100, 432B.420, or NRS 433A.270.

B. Case; Final Adjudication: “Case” shall have the meaning prescribed to it in NAC_____. Completion of a case occurs upon final adjudication. “Final adjudication” shall have the meaning prescribed to it in NAC_____.

C. Representational Services: The services for which the Contracting Authority is to pay the Agency are “representational services,” including lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and social work services, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the Contracting Authority is to pay the Agency do not include capital cases; cases in which the most serious crime is a felony punishable by life, with or without the possibility of parole; or extraordinary expenses incurred in the representation of eligible clients.

D. Other Litigation Expenses: “Other Litigation Expenses” shall mean those expenses which are not part of the contract with the Agency, including investigations, expert witness services, language translators, laboratory analysis, and other forensic services. It is anticipated that payment for such expenses will be applied for pursuant to Section IX(D) and granted out of separate funds reserved for that purpose. Payment for mitigation specialists in capital cases is included in this category. See NRS 7.135 for further guidance.

E. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but not obtained.

III. DEPARTMENT OF INDIGENT DEFENSE SERVICES

Oversight of the Contracting Authority and Agency in matters such as interpretation of indigent defense standards, recommendation of compensation and reasonable caseloads, and response to community and client concerns, shall be provided by the Department of Indigent Defense Services [hereinafter “the Department”] as set forth in NRS 180.400, et. seq. The Department shall be responsible for:

A. Determining whether attorneys are eligible to provide indigent defense services in accordance with the requirements of the Board;

B. Identifying and encouraging the use of best practices for delivering the most effective indigent defense services;

C. Monitoring caseloads and compensation of attorneys providing indigent defense services;

D. Determining whether the regulations established by the Board are being followed;

E. Determining whether court rules regarding the provision of indigent defense services are being followed;

F. Determining whether indigent defendants are being asked to provide reimbursement for indigent defense services; and

G. Determining whether indigent defense services are being provided in an effective manner.

IV. AGENCY'S EMPLOYEES AND EQUIPMENT

The Agency agrees that it has secured or will secure at the Agency's own expense, all person, employees, and equipment required to perform the services contemplated/required under this Contract.

V. MINIMUM QUALIFICATION FOR AGENCY ATTORNEYS

A. Basic Requirements.

1. Every Agency attorney shall be admitted to practice law within the State of Nevada and satisfy the training and education requirements of the Board of Indigent Defense Services (hereinafter "Board") pursuant to NAC _____ and _____.

2. Attorneys who previously served as a county prosecutor, shall not be eligible for an indigent defense contract in the same county before 18 months of their last date of employment as a prosecutor. Exceptions to this requirement may be made in extraordinary circumstances by the Department, who shall evaluate any potential conflicts of interest and ensure the county has a process to notify indigent defendants of any such potential conflicts and ensure any conflict waivers obtained are knowing and voluntary and in compliance with legal ethics rules.

3. Attorneys must only practice in the indigent defense areas for which he or she is qualified through the Department. See NAC _____.

B. Minimum Qualifications for Criminal Proceedings.

1. Each Agency attorney representing a defendant accused of a misdemeanor shall satisfy the basic requirements (as defined by NAC _____) and have sufficient training or experience to provide competent representation. Attorneys beginning to represent clients in misdemeanor matters should consider seeking the participation of a supervising or more experienced attorney prior to undertaking representation in an enhanceable misdemeanor or misdemeanor jury trial, pursuant to NRS 260.060 if applicable.

2. Each Agency attorney representing a defendant accused of a category B offense for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings must:

- a. satisfy basic requirements; and
- b. have been trial counsel, alone or with other counsel, in two bench or jury trials tried to completion; or
- c. demonstrate equivalent experience and skills as determined by the Department.

3. Attorneys seeking to represent individuals charged with non-capital category A offenses or category B offenses for which the maximum penalty is 10 years or more, must:

- a. satisfy the basic requirements;
- b. have practiced criminal law for three full years; either as a prosecutor, provider of indigent defense services, or retained counsel; and
- c. have been trial counsel, alone or with other trial counsel, and handled a significant portion of the trial in three criminal jury trials tried to completion; or
- d. demonstrate equivalent experience, have a significant record of quality criminal trial court representation, and the ability to handle complex felony matters as determined by the Department.

4. Attorneys seeking to represent individuals charged with category A offenses in which the state seeks death must meet the criteria established pursuant to SCR 250.

5. Attorneys seeking to represent individuals in direct or post-conviction appeals of felonies other than capital proceedings shall satisfy basic requirements and have sufficient experience or training to undertake the representation. Attorneys seeking to represent individuals convicted of category A offenses in which the state sought death must meet the established criteria pursuant to SCR 250.

C. Minimum Qualifications for Juvenile Delinquency Proceedings.

1. Attorneys seeking to represent individuals in juvenile delinquency proceedings shall:
 - a. satisfy basic requirements and

b. have the knowledge and skill necessary to represent a child diligently and effectively.

2. Attorneys seeking to represent individuals in juvenile delinquency proceedings should be familiar with:

a. the Department of Juvenile Justice Services and other state and local programs;

b. competency and developmental issues;

c. attorney/client interaction issues;

d. school-related conduct and zero tolerance policy issues specific to juvenile representation.

3. Attorneys beginning to represent clients in delinquency proceedings should consider working with an experienced juvenile delinquency practitioner as a mentor, pursuant to NRS 260.060 where applicable.

4. Attorneys representing children in certification proceedings in accordance with NRS Chapter 62B shall have litigated at least two criminal jury trials or be assisted by co-counsel with the requisite experience, pursuant to NRS 260.060 where applicable.

D. Minimum Qualifications for Dependency and Neglect and Termination of Parental Rights Proceedings.

1. Attorneys seeking to represent individuals in dependency and neglect and termination of parental rights cases, must:

a. satisfy basic requirements,

b. have a minimum of 20 hours training or equivalent experience in dependency and neglect and/or termination of parental proceedings, and rights

c. must be familiar with the relevant areas of law, policy, research and practice, including:

i. NRS Chapter 128, NRS 432B, Nevada Rules of Civil Procedure, Nevada Rules of Evidence, Nevada Rules of Criminal Procedure, Nevada Rules of Professional Responsibility, and relevant local court rules;

ii. permanency timelines;

iii. federal statutes, regulation, policies, and rules including the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Family First Prevention Services Act;

iv. federal and state child welfare caselaw;

v. child development principles and research, particularly the importance of attachment and bonding and the harms of parental separation;

vi. child welfare and family preservation services available in the community;

vii. the role and authority of the Department of Child and Family Services (“DCFS”) and any administrative regulations, policies or laws that govern DCFS practices; and

viii. a working knowledge of the types of experts who can consult with attorneys and/or testify on parenting, remedial services and other child welfare issues.

VI. PERFORMANCE REQUIREMENTS

A. The Agency agrees to provide representational services in the following types of cases [*each party initial the case types for which representational services are provided*]:

CRIMINAL PROCEEDINGS

- _____ Misdemeanor Proceedings
- _____ Category B offense for which the maximum penalty is less than 10 years, C, D, E felony or Gross Misdemeanor proceedings
- _____ Category B offenses for which the maximum penalty is 10 years or more
- _____ Non-capital category A offenses, to be paid the statutory hourly rate in accordance with NRS 7.125
- _____ Capital cases, to be paid the statutory hourly rate in accordance with NRS 7.125
- _____ Appeals

JUVENILE DELINQUENCY PROCEEDINGS

_____ _____ Juvenile Delinquency Proceedings

_____ _____ Certification Proceedings in accordance to NRS
62B

DEPENDENCY AND NEGLECT AND TERMINATION OF PARENTAL RIGHTS

_____ _____ Dependency and Neglect

_____ _____ Termination of Parental Rights

B. The Agency agrees to staff its cases according to the following provisions:

1. The Agency may receive assistance from associate attorneys, mentees, or other approved attorneys in carrying out his/her responsibilities however, the Agency shall ensure, to the greatest extent possible, consistency in the representation of indigent defendants so that the same attorney represents a defendant through every stage of the case without delegating the representation to others, except that administrative or other tasks which do not affect the rights of the defendant may be delegated.

2. The Agency agrees that an attorney will contact clients within 7 working days from notification of case assignment. See NAC _____.

3. Conflicts of interest may arise in numerous situations in the representation of indigent defendants. The Agency agrees to screen all cases for conflict upon assignment and throughout the discovery process. The Agency will refer to the Nevada Rules of Professional Conduct, as interpreted by the State Bar of Nevada and/or opinions of the state judiciary, and to the American Bar Association Standard for Criminal Justice in order to determine the existence and appropriate resolution of conflicts. If a conflict is determined to exist, counsel will promptly file a Motion to Withdraw with the Court pursuant to NRS 7.115 or follow the procedure for handling conflicts of interest provided in the plan for provision of indigent defense services.

4. It is agreed that the Agency will participate in any Department workload study to determine an appropriate caseload. Prior to the completion of a workload study, the Agency shall reasonably comply with the workload guidelines as determined by the Board of Indigent Defense Services.

5. The Agency may use legal interns. If legal interns are used, they will be used in accordance with Nevada Supreme Court Rule (hereinafter "SCR") 49.5.

6. The Agency agrees that it will consult with experienced counsel as necessary and will provide appropriate supervision for all its staff.

7. If the Agency is to be responsible for representing defendants in capital litigation, the following provisions apply. Appointment of attorneys to represent defendants charged in capital cases shall comport with SCR 250 and ADKT 0411. Two lawyers must be appointed as soon as possible in all open murder cases which are reasonably believed to result in a capital charge. Capital cases typically require the full-time equivalent of one investigator and mitigation specialist. See ADKT 0411, Standard 2-1.

C. Significant Changes.

Significant increases in work resulting from changes in court calendars, including the need to staff additional courtrooms, shall not be considered the Agency's responsibility within the terms of this Contract. Any request by the courts for additional attorney services because of changes in calendars or work schedules will be negotiated separately by the Agency and Contracting Authority and such additional services shall only be required when funding has been approved by the Contracting Authority, and payment arranged by contract modification.

VII. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes and developments in the law and assure continued rendering of competent assistance of counsel. Attorneys providing indigent defense services shall annually complete a minimum of five (5) hours of CLE courses relevant to the areas of indigent defense services in which they practice. Attorneys providing indigent defense services shall be guided by NAC _____ in determining CLE courses relevant to the areas of indigent defense services. Proof of compliance with annual CLE requirements shall be submitted to the Department by the first day of January, as required by NAC ____, by submitting a copy of the Nevada Board of Continuing Legal Education's annual transcript by mail or electronic submission as provided on the Department's website.

In addition, the Department will develop and provide CLE programs for attorneys who provide indigent defense services. These may include, but is not limited to, regular CLE courses and/or annual training programs that include topics relevant to indigent defense services.

VIII. ATTORNEY EVALUATION

The quality of the representation provided by indigent defense providers must be monitored and regularly assessed. In conducting the review, the Department may obtain information from a variety of sources including client feedback, client surveys, other providers of indigent defense services, office staff, judicial personnel, observation of a deputy director of the Department, and statistical data provided to the Department

pertaining to attorney workload. The Agency will ensure that any client-surveys authorized by the Board are provided to clients at the conclusion of the representation.

IX. COMPENSATION AND METHOD OF PAYMENT

A. The parties contemplate that attorneys working under this Contract will be compensated pursuant to NAC _____ and _____. For the term of this contract, the Contracting Authority shall pay the Agency a rate of \$_____ (_____ hours times \$ _____ per hour) for work performed, excepting capital cases and cases in which the most serious charge may be punished by life imprisonment. [*Worksheet A from the NLADA Model Contract could also be used in this Section*]. Payments will be made on a monthly basis.

It is possible that the actual amount of compensation will vary according to other terms of this Contract [*“Other terms” may include (1) felonies punishable by death or imprisonment for life with or without the possibility of parole pursuant to NRS 7.125; (2) cases alleging the commission of any crime while a prisoner in the state prison pursuant to NRS 212.070*]

It is agreed that the Agency will provide at least _____ attorney/legal assistant/support staff hours annually for all cases assigned. The Agency will reimburse the Contracting Authority at the rate of \$_____ per hour times the number of attorney/legal assistant/support staff hours that fall below the required _____ hours annually. If the Agency exceeds the _____ hours required, the Agency may request additional compensation pursuant to Section IX(C), *infra*.

B. Capital and Life Cases.

1. The compensation in Section IX(A) may be in lieu of the statutorily prescribed fees generally codified in NRS 7.125. *See* NRS 7.125(1). However, capital cases or cases where the most serious crime is punishable by life imprisonment, with or without the possibility of parole, shall be paid the appropriate statutory hourly rate. *Id.* Workloads under this contract should be adjusted in accordance with the Board's regulation pertaining to attorney workloads when the Agency undertakes a capital case or case where the most serious crime is punishable by life imprisonment. The Agency and Contracting Authority may agree to a reduction in other cases in lieu of additional compensation for capital or life cases.

C. Additional Compensation.

1. The Agency may seek additional compensation where the attorney/legal assistant/ support staff hours exceed the hours specified in this agreement. Requests for additional compensation must be justified using the criteria provided in NRS 7.125(4) and include an itemized, sworn claim of time expended. To achieve independence of the defense function from the judiciary, the Agency shall submit requests for additional compensation to the [*Administrator/Department*] for review. The [*Administrator/Department*] shall promptly review the request and submit a

recommendation to the Contracting Authority forthwith. Requests for additional compensation denied by the [Administrator/Department] may be submitted to the magistrate or district court for review.

D. Other Litigation Expenses.

1. The defendant has the right to proper investigation of his/her case and for the appointment of expert witnesses when necessary for the reasonable defense of his/her case. To achieve independence of the defense function from the judiciary in counties where counsel does not have direct access to a Litigation Expense budget, the Agency shall submit requests for other litigation expenses to the [Administrator/Department] for review. The [Administrator/Department] shall promptly review the request and submit a recommendation to the Contracting Authority forthwith. Requests for other litigation expenses denied by the [Administrator/Department] may be submitted to the magistrate or district court for review.

E. In the event of Agency failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the Contracting Authority reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the Contracting Authority's right to termination of this Contract.

X. REQUEST FOR CONTRACT MODIFICATIONS

The Agency may submit a request for modification to the Contracting Authority in order to request supplemental funding if the Agency finds that the funding provided by the Contract is no longer adequate to provide the services required by the Contract. Such a request shall be based on an estimate of actual costs necessary to fund the cost of services required and shall reference the entire Agency budget for work under this Contract to demonstrate the claimed lack of funding. Contracting Authority shall respond to such a request within 30 days of receipt. Should such supplemental funding not be approved, Contracting Authority shall notify the Agency within 30 days of the finding of the request that the supplemental funds shall not be available.

XI. REPORTS AND INSPECTIONS

This Agency agrees to submit to the Department the following reports at the times prescribed below. Failure to submit required reports may be considered a breach of this contract and may result in the Contracting Authority withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures.

A. Workload Reports.

The Agency will provide monthly reports to the Department pertaining to caseloads and time spent providing indigent defense services in accordance with NAC ____ and

_____. The reports shall be due within seven (7) calendar days from the end of the reporting month.

B. Bar Complaints.

The Agency will immediately notify the Contracting Authority and the Department in writing when it becomes aware that the complaint lodged with the State Bar of Nevada has resulted in reprimand, suspension, or disbarment of any attorney who is a member of the Agency's staff or working for the Agency.

C. Inspections.

The Agency agrees to grant the Contracting Authority and the Department full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the Contracting Authority and/or Department may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, the Agency shall provide to the Contracting Authority and/or the Department right of access to its facilities, including those of any subcontractor, to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by the Agency in a way that allows access by the Contracting Authority and/or the Department without breaching such confidentiality or privilege. The Agency agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the Department agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The Contracting Authority and Department will respect that attorney-client privilege.

XII. ESTABLISHMENT AND MAINTENANCE OF RECORDS

A. The Agency agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract, including the time spent by the Agency on each case.

B. The Agency agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts. Such records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.

C. The Agency shall have its annual financial statements relating to this Contract audited by an independent Certified Public Accountant and shall provide the Contracting Authority with a copy of such audit no later than the last working day in July.

The independent Certified Public Accountant shall issue an internal control or management letter and a copy of these findings shall be provided to the Contracting Authority along with the annual audit report. All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow.

D. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the Department.

XIII. HOLD HARMLESS AND INDEMNIFICATION

A. The Contracting Authority assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by the Agency to Agency employees or others by reason of the Contract. The Agency shall protect, indemnify, and save harmless the Contracting Authority, the Department, their officers, agents, and employees from and against any and all claims, costs, and losses whatsoever, offering or resulting from Agency's failure to pay any compensation, wages, benefits or taxes except where such failure is due to the Contracting Authority's wrongful withholding of funds due under this Contract.

B. The Agency agrees that it is financially responsible and liable for and will repay the Contracting Authority for any material breaches of this contract including but not limited to misuse of Contract funds due to the negligence or intentional acts of the Agency, its officers, employees, representatives or agents.

C. The Contracting Authority shall indemnify and hold harmless the Agency and its officers, agents, and employees, the Department, or any of them, from any and all claims, actions, suits, liability, loss, cost, expenses, and damages of any nature whatsoever, by reason of or arising out any action or omission of the Contracting Authority shall defend the same at its sole cost and expense and if a final judgment is rendered against the Agency and the Contracting Authority and their respective officers, agents, and employees, or any of them, the Contracting Authority shall satisfy the same.

XIV. INSURANCE

Without limiting the Agency's indemnification, it is agreed that the Agency shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance

The Agency shall maintain continuously public liability insurance with limits of liability not less than: \$_____ for each person, personal injury, \$_____ for each occurrence, property damage, liability, or a combined single limit of \$_____ for each occurrence, personal injury and/or property damage liability.

B. Professional Liability Insurance

The Agency shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Agency which constitute professional services in the performance of this Contract.

For purposes of this Contract, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than \$_____ combined single limit per claim/aggregate. The Agency further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but limited to the amount of the deductible under the insurance policy. The Agency shall not be required to make any payments for professional liability if such liability is occasioned by the sole negligence of the Contracting Authority. The Agency shall not be required to make payments other than its judicially determined percentage, of any professional liability which is determined by a court of competent jurisdiction to be the result of a comparative negligence of the Agency and the Contract Authority.

Such insurance shall not be reduced or canceled without 30 days prior written notice to the Contracting Authority. The Agency shall provide certificates of insurance or, upon written request of the Contracting Authority, duplicates of the policies as evidence of insurance protection.

C. Automobile Insurance

The Agency shall maintain in force at all times during the performance of this contract a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Agency to transport clients of the Agency.

Such insurance policy or policies shall specifically name the Contracting Authority as an additional insured. Said insurance coverage shall be primary insurance with respect to the Contracting Authority, and any insurance, regardless of the form, maintained by the Contracting Authority shall be excess of any insurance coverage which the Agency is required to maintain pursuant to this contract.

Automobile liability as stated herein shall be maintained at \$_____ combined single limit per accident for bodily injury and property damage.

D. Workers' Compensation

The Agency shall maintain Workers' Compensation coverage as required by the state of Nevada. The Agency shall provide a certificate of insurance or, upon written request of the Contracting Authority, a certified copy of the policy as evidence of insurance protection.

XV. EVALUATION GUIDELINES

The Contracting Authority and/or the Department will review information obtained from the Agency to monitor Agency activity, including attorney caseloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, and the compensation provided to attorneys and support staff to assure adherence.

XVI. CORRECTIVE ACTION

If the Contracting Authority reasonably believes that a material breach of this Contract has occurred, warranting corrective actions, the following sequential procedure shall apply:

A. The Contracting Authority will notify the Agency and the Department in writing of the nature of the breach.

B. The Agency shall respond to the Contracting Authority and the Department in writing within five (5) working days of its receipt of such notification. The response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.

C. The Contracting Authority will notify the Agency and the Department in writing of the Contracting Authority's determination as to the sufficiency of the Agency's corrective measures. The determination of the sufficiency of the Agency's corrective measures will be at the discretion of the Contracting Authority and will take into consideration the reasonableness of the proposed corrective measures in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole.

D. The Department may assist in the resolution of any material breach and provide ameliorative advice to the Agency.

In the event that the Agency does not respond to the Contracting Authority's notification within the appropriate time, or the Agency's corrective measures for a substantial breach is determined by the Contracting Authority to be insufficient, the Contracting Authority may commence termination of this Contract in whole or in part.

In addition, the Contracting Authority reserves the right to withhold a portion of subsequent payments owed the Agency which is directly related to the breach of the

Contract until the Contracting Authority is satisfied the corrective action has been taken of completed.

XVII. TERMINATION AND SUSPENSION

A. The Contracting Authority may terminate this Contract in whole or in part upon 10 days' written notice to the Agency in the event that:

1. The Agency substantially breaches any duty, obligation, or services required pursuant to this Contract;
2. The Agency engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the Contracting Authority terminates this Contract, the Contracting Authority shall provide the Agency written notice of termination, which shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the Contracting Authority within 10 working days from the date of the Contracting Authority's notice. If the Agency elects to submit a written response, the Department will review the response and make a determination within 10 days after receipt of the Agency's response. In the event the Department affirms termination, the Contract shall terminate in 10 days from the date of the final decision of the Department. The Contract will remain in full force pending communication of the Department to the Agency. A decision by the Department affirming termination shall become effective 10 days after it is communicated to the Agency. If the Department does not affirm the decision to terminate the contract in light of the Agency's response, the Department shall submit a written basis for the decision to the Contract Authority and Agency within 10 days.

B. The Agency reserves the right to terminate this Contract with cause with 30 days written notice should the Contracting Authority substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reason other than good cause resulting from a substantial breach of this Contract by the Contracting Authority, the Agency shall be liable for damages, including the excess costs of the procurement of similar service from another source, unless it is determined by the Department that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

C. In the event of the termination or suspension of this Contract, the Agency shall continue to represent clients that were previously assigned, and the Contracting Authority will be liable for any payments owed for the completion of that work. The Agency will remit to the Contracting Authority any monies paid for cases not yet assigned or work not performed under the Contract. The Department may request that the Agency attempt to withdraw from any case assigned and not completed. Should a court require, after the Agency has attempted to withdraw, the appearance by the Agency where such

representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the Contracting Authority will honor payment to the Agency upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the Contracting Authority those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the Contracting Authority.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the non-prevailing party shall be required to reimburse the prevailing party for all attorney's fees.

XVIII. ASSIGNMENT/SUBCONTRACTING

The Agency shall not assign or subcontract any portion of this Contract without notice to the Department and Contracting Authority and consent from the Contracting Authority. Any consent sought must be requested by the Agency in writing not less than five days prior to the date of any proposed assignment or sub-contract, provided that this provision shall not apply to short-term personal services contracts with individuals to perform work under the direct supervision and control of the Agency. Short-term personal service contracts include any contract for a time period less than one year. Any individuals entering into such contracts shall meet all experience and reporting requirements imposed by this Contract. The Contracting Authority shall be notified of any short-term contracts which are renewed, extended or repeated at any time throughout the Contract.

The term "Subcontract" as used above shall not be read to include the purchase of support services that do not directly relate to the delivery of legal services under that Contract to clients of the Agency.

The term "Personal Service Contract" as used above shall mean a contract for the provision of professional services which includes but not limited to counseling service, consulting services, social work services, investigator services and legal services.

XIX. RENEGOTIATION

Either party may request that the provision of this Contract be subject to renegotiation. After negotiations have occurred, any changes which are mutually agreed upon shall be incorporated by written amendments to this Contract. Oral representations or understandings not later reduced to writing and made a part of this agreement shall not in any way modify or affect this agreement.

XX. ATTORNEYS' FEES

In the event that either party pursues legal remedies, for any reason, under this agreement, the non-prevailing party shall reimburse costs and attorneys' fees of the prevailing party.

XXI. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing and directed to the Chief Executive Officer of the Agency and the director/manager of the Contracting Authority specified on page one (1) of this contract.

Any time limit by which a party must take some action shall be computed from the date that notice is received by said party.

XXII. THE PARTIES' ENTIRE CONTRACT/WAIVER OF DEFAULT

These parties agree that this Contract is the complete expression of the terms hereto and any oral representation of understanding not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of this agreement unless stated to be such through written mutual agreement of the parties, which shall be attached to the original Contract.

XXIII. NONDISCRIMINATION

During the performance of this Contract, neither the Agency nor any party subcontracting with the Agency under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

The Agency shall comply fully with applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibits such discrimination.

XXIV. CONFLICT OF INTEREST

A. Interest of Members of Contracting Authority and Agency

No officer, employee, or agent of the Contracting Authority, or the State of Nevada, or the United States Government, who exercises any function or responsibility in connection

with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract, or the Agency.

B. Interests of Agency Directors, Officers, and Employees

The following expenditures of Contract funds shall be considered conflict of interest expenditures and prima facie evidence of misappropriation of Contract funds without prior disclosure and approval by the Department:

1. The employment of an individual, either as an employee of the Agency or as an independent consultant, who is either: (a) related to a director of the Agency; (b) employed by a corporation owned by a director of the Agency, or relative of a director of the Agency. This provision shall not apply when the total salary is paid to the individual pursuant to his employment agreement or employment contract would be less than \$1500 per annum.

2. The acquisition or rental by the Agency of real and/or personal property owned or rented by either: (a) an Agency officer, (b) an Agency director, (c) an individual related to an Agency officer or Agency director, or (d) a corporation owned by the Agency, an Agency director, an Agency officer, or relative of an Agency officer or director.

Agreed:

Agency

Contracting Authority

Date: _____

Date: _____