

<p>PIMA COUNTY DEPARTMENT OF THE OFFICE OF COURT APPOINTED COUNSEL</p> <p>PROJECT: Appeals Panel</p> <p>ATTORNEY:</p> <p>AMOUNT: \$25,000.00</p> <p>FUNDING: General Funds</p>	<p>(STAMP HERE)</p>
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PROFESSIONAL SERVICES CONTRACT

THIS Contract (CONTRACT) entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY and hereinafter called ATTORNEY.

WITNESSETH

WHEREAS, COUNTY requires the services of an attorney qualified to provide mandated legal defense services to indigent persons appealing their conviction and sentence to the Arizona Court of Appeals, hereinafter referred to as "Court", as well as provide representation in any proceeding for post-conviction relief filed simultaneously with, or during the course of, the appeal, pursuant to Rule 32, Arizona Rules of Criminal Procedure, hereinafter referred to as "appellate Rule 32"; and

WHEREAS, ATTORNEY is an attorney duly licensed to practice law in the State of Arizona and is qualified and willing to provide such services; and

WHEREAS, both parties recognize and acknowledge that the Court, (Court), through its Chief Judge or designee, has both the initial and continuing appointment authority in all matters concerning ATTORNEY'S provision of services under this Contract; and

WHEREAS, pursuant to RFQ #85033 issued pursuant to Pima County Procurement Code Section 11.12.030 ATTORNEY has met the requirements to provide professional legal services under this Contract.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL

This Contract shall commence on the 1st day of July, 2005 and shall terminate on the 30th day of June, 2006, unless sooner terminated or further extended pursuant to the provisions of this Contract. The COUNTY shall have the option to extend this Contract for up to four one-year period(s) or any portion thereof. Any modification or extension shall be by formal written amendment executed by the parties hereto.

ARTICLE II – SCOPE

This Contract establishes the agreement under which the CONTRACTOR will provide COUNTY with products and services in accordance with the attached Exhibit A: Scope of Services (1 Page).

CONTRACTOR shall provide COUNTY the goods and services as defined in this Contract. All goods and services shall comply with the requirements and specifications as called for in this Contract and solicitation documents contained or referenced in Pima County Solicitation No. 85033; these documents are incorporated into the Contract the same as if set forth in full herein.

ARTICLE III - ASSIGNMENT/WITHDRAWAL/SUBSTITUTE REPRESENTATION

- A. Assignment of Cases. Appointments and substitution of counsel will be made by the Court. ATTORNEY shall accept all assignments made by the Court unless either a genuine conflict of interest prevents ATTORNEY from ethically representing a Client or unless ATTORNEY'S caseload is likely to impact the rendering of quality representation or to lead to a breach of professional obligations. Immediately upon assignment, ATTORNEY shall make every effort to determine whether there is a genuine conflict or other reason justifying refusal of the appointment, and if so, shall promptly notify the Court and OCAC as provided in this Article.
- B. Deferring Assignments Temporarily. ATTORNEY may defer acceptance of assignments for any period of time up to six months without terminating this Contract by notifying OCAC and shall notify OCAC if ATTORNEY is unavailable or cannot be readily contacted because of vacation or illness or for any other reason. OCAC shall maintain a current list of attorneys available for appeals appointments under the terms of this Contract.
- C. Discontinuance of Appointments/Termination of Representation by Court. Both parties recognize and acknowledge that the Court has discretion to appoint or not appoint ATTORNEY to any case, with or without cause, and may terminate ATTORNEY'S representation in pending cases for good cause.
- D. Withdrawal from Cases. In the event of a conflict of interest or other circumstances which ATTORNEY believes justifies the reassignment of any appointed case, ATTORNEY shall be compensated at the rate of \$50 an hour for all reasonable and necessary time spent as determined by the Court or OCAC, as appropriate.

ARTICLE IV - REDETERMINATION OF INDIGENCE

Should ATTORNEY become aware of assets, income, or change in circumstances of a client such that a question exists as to the client's continued eligibility to receive counsel at the public's expense, ATTORNEY shall promptly bring the instance of non-indigence to the attention of the Court. This section shall not, however, require the disclosure of any privileged information which is considered a confidential communication under Court Rules or the Arizona Rules of Professional Conduct; the inquiry and decision as to the client's eligibility will be the responsibility of the assigned judge or the Presiding Judge.

ARTICLE V - COMPENSATION

In consideration for the goods and services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in an amount not to exceed twenty-five thousand dollars (\$25,000.00). Pricing for work or products/materials will be as set forth in Exhibit B: Compensation Schedule (1 Page).

CONTRACTOR shall provide detailed documentation in support of requested payment. Payment requests shall assign all costs to items identified by Exhibit B.

CONTRACTOR shall not provide goods and services in excess of the Contract Compensation Amount without prior authorization by an amendment executed by COUNTY. Goods and Services provided in excess of Contract Compensation Amount without prior authorization by a fully executed amendment shall be at CONTRACTOR'S own risk.

For the period of record retention required under Article XXI, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefore by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

ARTICLE VI - PRIVATE COMPENSATION

ATTORNEY shall neither charge nor accept any fee or other compensation for services rendered pursuant to this Contract except as provided for herein. The ATTORNEY may not represent the Client for a fee on an appointed

case, except as provided for herein, without prior written approval of the Court. ATTORNEY must then notify OCAC of any change in status. UNDER NO CIRCUMSTANCES MAY ATTORNEY SOLICIT SUCH OUTSIDE COMPENSATION.

ARTICLE VII - METHOD OF PAYMENT

- A. Procedure. In appeals cases, ATTORNEY must submit to the Clerk of the Court an original plus one (1) copy of Payment Request with itemization of time spent on the case and back-up documentation for reimbursement of any expenses. In appellate Rule 32 cases, attorney must submit to OCAC a typed Payment Request with itemization of time spent on the case and back-up documentation for reimbursement of any expenses. All bills for services rendered by expert witnesses, investigators and any other approved vendors, must be submitted on a Payment Request form with appropriate documentation to OCAC and must be in accordance with this Contract and/or the Pima County Guidelines for Payment established by OCAC. OCAC and/or the Court will be responsible for reviewing and verifying all bills and back-up documentation, and may request from ATTORNEY additional back-up documentation or explanation. Backup documentation submitted by ATTORNEY and other approved vendors will remain confidential and will not be disbursed to the COUNTY Finance Department or any other COUNTY Department. **THERE WILL BE NO REIMBURSEMENT FOR UNNECESSARY OR EXCESSIVE FEES AND COSTS.**
- B. Timely Submission of Payment Requests. **ALL PAYMENT REQUESTS SHOULD BE SUBMITTED TO OCAC NO LATER THAN 30 DAYS AFTER TERMINATION OF THE CASE.** Pursuant to ARS § 11-622, ATTORNEY understands and agrees that ATTORNEY has no right to payment and that the COUNTY will not honor any claim for payment submitted six months after the date of the provision of the last service for which payment is sought.
- C. Filing Payment Requests.
 - 1. ATTORNEY may file a Payment Request for Appeals:
 - a. Upon filing the Opening Brief; and
 - b. Upon filing of the Reply Brief, or a notice that a Reply Brief will not be filed.
 - 2. ATTORNEY may file a Payment Request for appellate Rule 32:
 - a. Upon the filing of the Petition for Post-Conviction Relief; and
 - b. Final payment shall be made upon the completion of the case.
 - c. Attorney may bill monthly with the prior approval of OCAC.

ARTICLE VIII - AUDIT AND AUDIT DISALLOWANCES

If OCAC determines that a cost for which payment has been made is a disallowed cost, OCAC shall notify ATTORNEY in writing of the disallowance and of the required course of action, which, at OCAC=S option, may be to adjust any future claim submitted by ATTORNEY by the amount of the disallowance or to require ATTORNEY to pay the disallowed amount immediately to COUNTY.

ARTICLE IX - INSURANCE

- A. Types of Required Insurance. ATTORNEY shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
 - 1. Professional liability insurance in the amount of \$100,000.00 per claim, \$300,000.00 in the aggregate; and,
 - 2. If required by law, workers= compensation coverage including employees= liability coverage.
- B. Current Certificates. ATTORNEY shall provide COUNTY with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change.

ARTICLE X - INDEMNIFICATION

ATTORNEY shall indemnify, defend, and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the ATTORNEY, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

ARTICLE XI - COMPLIANCE WITH LAWS

ATTORNEY shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

ARTICLE XII - INDEPENDENT CONTRACTOR

The status of the ATTORNEY shall be that of an independent contractor. Neither ATTORNEY nor ATTORNEY=S officers, agents or employees shall be considered an employee of COUNTY or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. ATTORNEY shall be responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of ATTORNEY=S failure to pay such taxes.

ARTICLE XIII - SUBCONTRACTOR

ATTORNEY shall be fully responsible for all acts and omissions of any subcontractor and of persons directly or indirectly employed by any subcontractor and of persons for whose acts any of them may be liable to the same extent that the ATTORNEY is responsible for the acts and omissions of persons directly employed by it. Nothing in this contract shall create any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

ARTICLE XIV - ASSIGNMENT

ATTORNEY shall not assign its rights to this Contract, in whole or in part, without prior written approval of the COUNTY. Approval may be withheld at the sole discretion of COUNTY, provided that such approval shall not be unreasonably withheld.

ARTICLE XV - NON-DISCRIMINATION

ATTORNEY shall not discriminate against any COUNTY employee, Client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out ATTORNEY=s duties pursuant to this Contract. ATTORNEY shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Contract by reference as if set forth in full herein.

ARTICLE XVI - AMERICANS WITH DISABILITIES ACT

ATTORNEY shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

ARTICLE XVII - AUTHORITY TO CONTRACT

ATTORNEY warrants its right and power to enter into this Contract. If any court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY shall not be liable to ATTORNEY or any third party by reason of such determination or by reason of this Contract.

ARTICLE XVIII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing at any time shall not be construed as an accord and satisfaction.

ARTICLE XIX - CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

ARTICLE XX - TERMINATION

- A. Without cause. COUNTY reserves the right to terminate this Contract at any time and without cause by serving upon ATTORNEY 30 days advance written notice of such intent to terminate. In the event of such termination, the COUNTY'S only obligation to ATTORNEY shall be payment for services rendered prior to the date of termination.
- B. Default. This Contract may be terminated at any time without advance notice and without further obligation to the COUNTY when ATTORNEY is found by COUNTY to be in default of any provision of this Contract.
- C. Non-appropriation. Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY shall have no further obligation to ATTORNEY, other than to pay for services rendered prior to termination.

ARTICLE XXI - NOTICE

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

COUNTY:
Philip J. Maloney, Jr.
Office of Court Appointed Counsel
130 W. Congress, 2nd Floor
Tucson, Arizona 85701

ATTORNEY:

ARTICLE XXII - NON-EXCLUSIVE CONTRACT

ATTORNEY understands that this Contract is nonexclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

ARTICLE XXIII - OTHER DOCUMENTS

ATTORNEY and COUNTY in entering into this Contract have relied upon information provided by ATTORNEY in the application and review process approved by the County Administrator under Procurement Code 11.12.030(B). These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract.

ARTICLE XXIV - REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE XXV - SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE XXVI - BOOKS AND RECORDS

- A. ATTORNEY SHALL keep and maintain proper and complete books, records and accounts and complete files, including final disposition records and itemized time sheets for each case assigned under the contract. All records shall be made available to COUNTY for inspection, audit and copying upon request. ATTORNEY shall keep and preserve each file and all records pertaining thereto on cases referred under this contract, for a period prescribed by the Arizona State Bar Association, or applicable statute or rule. This section shall not require the disclosure of any privileged information which is considered a confidential communication under Court Rules or the Arizona Rules of Professional Conduct.
- B. In addition, ATTORNEY shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE XXVII – SUSPENSION OR DEBARMENT

ATTORNEY represents that it, its principals, and its key employees (collectively for purposes of this article, ‘Principals’) have never been convicted of an offense or found liable for an event constituting cause for suspension or debarment under Pima County Code § 11.28-040. ATTORNEY shall inform County if any Principal is or becomes subject to any of the following:

- 1. a criminal charge, whether due to indictment or complaint,
- 2. a criminal conviction,
- 3. an investigation by an agency or organization through which the professional license of a Principal is maintained, which investigation may result in action against the Principal’s professional license, or
- 4. suspension, debarment, or any type of action by another governmental entity disqualifying or prohibiting the Principal from participating in any procurement.

ATTORNEY’S failure to truthfully and promptly fulfill this continuing duty of disclosure to County shall constitute cause for termination of this Contract and may result in ATTORNEY’S and its Principals’ suspension or debarment from receiving any contract award from County as provided in Pima County code Chapters 11.28 and 11.32. For purposes of this section, dismissal of any criminal charge following the completion of any type of deferred prosecution program constitutes a conviction on the underlying criminal charge.

The remainder of this page is intentionally left blank.

ARTICLE XXVIII - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

PIMA COUNTY

ATTORNEY

Procurement Director
Date: _____

Signature
Date: _____

APPROVED AS TO FORM

Deputy County Attorney

Exhibit A: Scope of Services (1 Page)

- A. Assignment. ATTORNEY shall provide legal assistance and representation to those eligible persons (AClient@ or AClients@) as appointed by the Court. Assignments will be limited to representation in appellate proceedings.
- B. Completion of Representation. Subject only to withdrawal or substitution permitted by the Court, ATTORNEY=S representation shall be from the date of appointment throughout the appellate proceeding and, if applicable, the appellate Rule 32 proceeding. It is understood that the duty of representation continues until the appeal and, if applicable, the appellate Rule 32 proceeding is terminated by the Court. Once appointed, ATTORNEY’S duty to represent a Client shall survive the expiration date of this Contract.
- C. Contract Administration. This Contract shall be administered by the Office of Court Appointed Counsel (AOCAC@). ATTORNEY shall:
1. maintain a confidential e-mail address so that the Court and OCAC can send and receive e-mail attachments; and
 2. check daily for messages from OCAC sent via e-mail, voice mail and fax
- D. Service After Completion of Representation. ATTORNEY is not entitled to reimbursement for work performed after completion of representation, as described in this Section, unless such work is expressly authorized by the Court.
- E. Interpreters. Qualified interpreters for non-English speaking Clients for all in-court proceedings and out-of-court interviews shall be provided by the Court through the Office of the Court Interpreter. ATTORNEY shall contact Office of the Court Interpreter (740-3888) at least 48 hours in advance to schedule an interpreter for out-of-court interviews.
- F. Case Assignment Discretion. No maximum or minimum number of case assignments is anticipated by this Contract. Appointments shall be made at the sole discretion of the Court.
- G. Mandatory Continuing Legal Education. ATTORNEY shall comply with all mandatory continuing legal education requirements (ACLE@) of the State Bar of Arizona and shall attend at least six hours of continuing legal education in the area of criminal law and/or procedure during the time period encompassed by this Contract. Proof of attendance shall be furnished to OCAC upon request.
- H. Professional Services Pursuant to This Contract. ATTORNEY shall comply with the Arizona Rules of Professional Conduct, state and local court rules, and the written administrative and procedural policies and procedures established by the Court or OCAC. ATTORNEY shall devote such time to the cases assigned so as to provide competent, effective, and timely legal assistance and representation and shall perform the work in accordance with the terms of the Contract to the best of ATTORNEY=S ability. If ATTORNEY uses any employee(s) to perform professional services under this contract, said employee(s) shall be suitably trained and skilled professional personnel.

End of Exhibit A: Scope of Services

Exhibit B: Compensation Schedule (1 Page)

In consideration of the professional services provided pursuant to this Contract, and subject to the availability and authorization of funds, COUNTY shall pay ATTORNEY, but only for properly authorized work performed during ATTORNEY'S appointment, as follows:

- A. Compensation. For each case assignment, ATTORNEY shall receive \$50 an hour ***not to exceed a presumptive cap of \$2,000 without the approval of the Court.*** If the time necessary to effectively represent a Client exceeds forty (40) hours for an appeal, or twenty (20) hours for an appellate Rule 32 proceeding, because of the complex or protracted nature of the case, application may be made to the Court (for appeals) or OCAC (for appellate Rule 32s) for payment in excess of the presumptive cap. If the petition is approved, Attorney shall be compensated at the rate of \$50 an hour for all reasonable and necessary time expended and approved in excess of the 40 hours (appeal), or 20 hours (appellate Rule 32). ATTORNEY seeking such additional compensation for an appellate Rule 32 shall submit to OCAC a properly completed Request for Extraordinary Fees form prior to exceeding the presumptive cap amount. ATTORNEY seeking such additional compensation for an appeal shall submit to the Court an original and three (3) copies of his/her Petition for Additional Compensation and Supporting Affidavit of all time spent in the appeal, along with the original and one (1) copy of the Payment Request and back-up documentation for reimbursement of any expenses. The Court will review the Petition and prepare an order for the County to pay the amount decided.
1. Withdrawal/Substitution of Counsel. Cases in which ATTORNEY subsequently withdraws shall not be compensated as an assignment under the terms of this Contract. Upon withdrawal from assigned case, ATTORNEY shall submit a Payment Request for services rendered at the rate of \$50.00 per hour, together with a detailed typed itemization of the services provided and the time spent on each service.
- B. Change in rates of compensation. The rates of compensation established in this Article are subject to the provisions of ARS § 13-4013 and may be changed if the Court, through its Chief Judge or designee, determines that it is necessary to change the rates of compensation. Any change to the total payment amount of this Contract is subject to the approval of the Board of Supervisors or its designee.
- C. Ancillary Services Compensation. All ancillary expenses shall be in accordance with the Pima County Guidelines for Payment located at www.pima.gov/OCAC/. All sub-contractors shall submit billing through the ATTORNEY. ATTORNEY shall review any billing, certify to its reasonableness and that all costs were expended in the defense of the assigned case and forward the billing with ATTORNEY'S certification to OCAC for payment.
- D. OCAC Authorized Case-Specific Compensation. For reimbursement of any case-specific costs, including but not limited to, travel beyond a fifty mile radius of the Pima County Court Building, use of an expert, rush rate for transcriptions or trial clothing for a defendant, ***ATTORNEY must make a specific request to OCAC before incurring the expense. In the event OCAC denies the request, ATTORNEY may apply to the Court for authorization. ATTORNEY must submit a copy of the OCAC approval or Court order along with a copy of the OCAC denial with the billing.***
- E. Failure to obtain prior approval. Failure to obtain prior approval for certain expenditures as set forth in this Article shall constitute a waiver of ATTORNEY'S right to additional compensation. However, the parties acknowledge the right of the Court or OCAC to allow additional compensation to prevent manifest injustice.
- F. Filing a Payment Request. Upon filing a Payment Request, if applicable, ATTORNEY shall include a copy of:
1. any OCAC approval authorizing compensation under this section (appellate Rule 32); or
 2. any Court authorization along with a copy of the OCAC denial (appellate Rule 32); and
 3. an itemization of the specific services provided together with the time spent on each particular service (Appeal and appellate Rule 32)

End of Exhibit B: Compensation Schedule