

**PROFESSIONAL LEGAL SERVICES AGREEMENT
ATTORNEY SERVICES**

THIS AGREEMENT for Professional Legal Services ("Agreement") is made and entered into on the date and for the terms set forth below, between the COUNTY OF MARIN, a political subdivision of the State of California ("County"), and HAAPALA, ALTURA, THOMPSON, AND ABERN, L.L.P. Tax ID No. 94-2608255 ("Attorney").

WHEREAS, County desires legal representation and services involving the claim filed by *Estate of Cary Grime, Liza Grime, Lindsay Grime, Logan Grime, Noah Grime*, Case No. L03-0025; and in the subsequent litigation entitled *Liza Grime, et al v. County of Marin, et al.*, USDC No. C 04-02507 MMC.

WHEREAS, Attorney provides professional legal services and is particularly qualified to perform the required services due to Attorney's legal competence and expertise.

NOW, THEREFORE, in consideration of the mutual promises set out below, County and Attorney agree as follows:

CONTRACT OUTLINE

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1.0 Agreement Term

1.1 The period of this agreement shall commence on October 1, 2005, and continue as needed, in rendering legal services to County in the above-identified claim and related litigation matters.

1.2 The parties may mutually agree in writing to extend the Agreement term.

1.3A If authorized and approved by County, the term of this Agreement may be extended for a time period to be specified by that extension. If Attorney does not agree to the extension as authorized by County, Attorney shall provide 30 days written notice before the Agreement term ends. Attorney will be deemed to have agreed to any County-approved extension of this Agreement if 30 days written notice is not tendered to County prior to the end of the Agreement term, and Attorney continues to provide services pursuant to the Agreement.

1.4 All references to the term of this Agreement or the Agreement term shall include any extensions or automatic renewals of the term.

2.0 Authorized Representatives

2.1 The County Counsel is the authorized representative for County and will administer this Agreement for County.

2.2 Clyde Thompson, Esq., is the authorized representative for Attorney.

2.3 Changes in designated representatives shall occur only by advance written notice to the other party.

3.0 Services to be Performed

3.1 Attorney shall provide legal services to County, and the scope of Attorney's duties shall include the following specific duties and responsibilities.

3.2 Attorney shall provide County with the necessary consultation, legal services and legal representation by staff qualified to perform the legal tasks at the least costly billing category. Attorney shall assign only competent personnel to perform services under this Agreement. In the event County, in its sole discretion, at any time during the term of this Agreement desires the removal of any person assigned by Attorney to perform services pursuant to this Agreement, Attorney shall remove such person immediately upon receiving written notice from County of its desire for removal of such person.

3.3 Attorney's legal representation shall include, but not be limited to any and all activity reasonably necessary to represent County's interest in a professionally competent manner. All activity shall be reviewed with and authorized by County Counsel on an ongoing basis.

3.4 Attorney shall provide verbal and/or written reports as may be reasonably requested by County Counsel, and as necessitated by the conduct of litigation.

3.5 Attorney shall meet with County Counsel and/or the County Board of Supervisors upon request.

3.6 Attorney shall consult with County Counsel on the retention of any consultant or expert witness to assist with any individual case assigned to Attorney.

3.7 Attorney shall consult with County Counsel on trial and tactical decisions.

3.8 Attorney shall advise County Counsel in settlement evaluations and negotiations, and shall obtain County's authority before making any settlement proposal on County's behalf or to the Court or to any other party.

3.9 Attorney shall advise County Counsel in advance of any mandatory or voluntary settlement conference or trial scheduling.

3.10 Attorney shall provide County Counsel with timely advice of all significant developments arising during the performance of services under this contract, including but not limited to when a ruling on a motion or demurrer, a judgment, a verdict, or any other award is rendered.

3.11 Attorney shall provide County Counsel with copies of all pleadings and Court rulings filed in any action in which Attorney represents County.

3.12 Attorney shall devote such time to the performance of services pursuant to the Agreement as may be reasonably necessary for the satisfactory performance of Attorney's obligations under this Agreement.

3.13 Attorney shall maintain books, records, files, documents and other evidence directly pertinent to all work under this Agreement in accordance with accepted professional practice and accounting procedures for a minimum of four years after termination of the agreement. County, or any of its duly authorized representatives, shall have access to these books, records, files, documents and other evidence for purposes of inspection, evaluation, audit or copying.

3.14 Attorney shall keep and preserve all back-up documentation to support all entries included in billings to County for legal services for a period of four years after termination or completion of the matter for which Attorney has been retained.

3.15 County's supervising attorney shall be County Counsel, or a designee of County Counsel.

3.16 Any proposed settlement recommendation is subject to approval by the County's Board of Supervisors.

3.17 Acceptance by County of work performed under this Agreement does not operate as a release of Attorney from responsibility for the work performed.

3.18 Attorney understands and agrees that the services and scope of work to performed under this Agreement can and will be performed in a timely manner, consistent with the requirements and standards established by applicable federal, state and county laws, ordinances, regulations, resolutions and decisional law, including, but not limited to, a manner in accordance with the standards of Attorney's occupation and profession.

3.19 Attorney shall perform all services required under this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Attorney is engaged. All products delivered to County by Attorney under this Agreement shall be prepared in a quality, professional manner and shall conform to the standards and quality normally observed by a person practicing in Attorney's profession and area of expertise.

3.20 Attorney represents and warrants to County that Attorney, and all of Attorney's employees and agents, have all licenses, permits, qualifications, and approvals of whatsoever nature which are necessary and legally required to perform the duties, responsibilities, and services contracted for in the Agreement. Attorney represents and warrants to County that Attorney shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits and approvals legally required for Attorney and Attorney's staff to practice the legal profession at the time the services are performed.

3.21 Attorney shall, at Attorney's sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services according to this Agreement, except as otherwise provided in this paragraph. County shall furnish Attorney only those facilities, equipment, and other materials, and shall perform only those obligations listed in paragraph 3.0.

3.22 Attorney shall devote such time to the performance of services under this Agreement as may be reasonably necessary for the satisfactory performance of Attorney's obligations under this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause which is beyond the reasonable control of the parties.

3.23 If litigation or administrative hearings ensue which relate to the subject matter of Attorney's services under the Agreement, upon request, Attorney agrees to testify at a reasonable and customary fee.

4.0 Consideration

4.1 County shall pay Attorney for Attorney's services at a flat rate of \$150.00 per hour. Except as expressly provided in this Agreement, Attorney shall not be entitled to, nor receive from County, any additional consideration, compensation, salary, wages, or other type of

remuneration for services rendered under this Agreement. Specifically, but without limitation, Attorney shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. Extraordinary travel expenses shall be subject to the preapproval of the County Counsel before such expenses will be reimbursable under this Contract.

4.2 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Attorney under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Attorney. County has no responsibility or liability for payment of Contractor's taxes or assessments.

4.3 Services performed by Contractor and not authorized in this Agreement shall not be paid for by County. Payment for additional services shall be made to Attorney by County, if and only if, this Agreement is amended by both parties in advance of performing additional services.

4.4 In no event shall total compensation paid to Attorney under this provision exceed \$250,000.00 without a written amendment to this Agreement approved by County.

4.5 Attorney shall provide County with invoices for payment of services under this Agreement in the form and manner directed by the Office of the County Counsel, and consistent with the record-keeping specificity required by Attorney's profession.

5.0 Independent-Contractor Status

5.1 It is expressly understood that in the performance of the services herein, Attorney, and Attorney's agents and employees, shall act in an independent capacity as an independent contractor and not as officers, employees or agents of County. Attorney, and Attorney's agents and employees are and at all times during the term of this Agreement shall represent and conduct themselves as independent contractors and not as employees of County. This Agreement is not an agreement for employment, and shall not under any circumstances be construed or considered to create an employer-employee relationship, or joint venture. Attorney shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding, Social Security, and Worker's Compensation.

5.2 Attorney, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in this Agreement, Attorney has no express or implied authority or responsibility to exercise any rights or power vested in the County, nor to bind County to any obligation whatsoever. No County agent, officer, or employee is to be considered an employee of Attorney.

5.3 If, in the performance of this agreement, any third persons are employed by Attorney, such persons shall be entirely and exclusively under the direction, supervision, and control of Attorney. All terms of employment including hours, wages, working conditions, discipline,

hiring and discharging, or any other term of employment or requirements of law shall be determined by Attorney.

5.4 It is understood and agreed that as an independent contractor, and not as a County employee, neither Attorney, nor Attorney's assigned personnel shall have any entitlement as a County employee, any right to act on County's behalf in any capacity whatsoever as an agent, or to bind County of any obligation whatsoever.

5.5 It is further understood and agreed that Attorney must issue W-2 forms, and/or any and all other forms as required by law for income and employment tax purposes for all of Attorney's assigned personnel under the terms and conditions of this Agreement.

5.6 As an independent contractor, Attorney hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party, that an employer-employee relationship exists by reason of this Agreement.

5.7 At all times during the term of this Agreement, Attorney shall be responsible for Attorney's own operating costs and expenses in connection with performance of services under this Agreement. County shall have the right to control Attorney only insofar as the results of Attorney's services rendered under this Agreement. County shall not have the right to control the means by which Attorney accomplishes services rendered pursuant to this Agreement.

6.0 Ownership of Information and Work Product

6.1 All professional and technical information developed under this Agreement, all reports, information, related data, work sheets, work product, findings, and conclusions furnished under this Agreement ("Work Product") become the property of County, shall be confidential until County makes the Work Product available for public inspection, and shall not be made available by Attorney to any person or entity, or published by Attorney without the prior written authorization of County.

6.2 Attorney agrees to deliver reproducible copies of such documents to COUNTY on completion of Agreement services.

7.0 Assignability

7.1 The parties recognize that a substantial inducement to County for entering into this Agreement is the reputation and competence of Attorney, including Attorney's associates, paralegals, and legal secretaries. Neither this Agreement, nor any part, may be assigned by Attorney without County's written approval, and this Agreement contemplates that Attorney will be the primary provider of services called to be performed.

7.2 Except as otherwise provided in this Agreement, Attorney shall not subcontract any portion of the Agreement services without County's written approval. Any

subcontractor, independent contractor, or any type of agent or employee ("Secondary Parties") performing or hired to perform any term or condition of this Agreement on behalf of Attorney, as may be permitted by the Agreement, shall comply with each term and condition of this Agreement. Furthermore, Attorney shall be responsible for the Secondary Parties' acts and satisfactory performance of the terms and conditions of this Agreement.

7.3 Any attempted or purported assignment or subcontracting by Attorney of any right or obligation under this Agreement without written approval shall be void and of no legal effect.

8.0 Right to Retain and Consult Additional Legal Counsel

8.1 Notwithstanding the terms of this agreement, County retains the right to seek and or retain additional legal advice, consultation and counsel should it be determined in the County's best interest to do so in the County's sole discretion.

9.0 Amendment, Modification and Waiver

9.1 No amendment, modification or waiver of any provision of this Agreement is effective unless made in writing, signed by all the parties, and then is effective only for the period, on the condition, and for the specific instance for which it is given.

9.2 A waiver by any party of any breach of any term, covenant or condition of this Agreement, or a waiver of any right or legal or equitable remedy available shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition of the Agreement or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the waiving party.

10.0 Insurance

10.1 During the term of this Agreement, Attorney shall maintain in full force and effect the following types of insurance:

10.1.1 Business Automobile Liability Insurance with minimum coverage not less than \$1,000,000 per accident for bodily injury and property damage for owned, non-owned and hired automobiles.

10.1.2 Professional Malpractice Liability Insurance (Errors & Omissions) with a minimum limit of \$1,000,000 per claim with a maximum deductible or self-insured retention of \$10,000.

If this insurance is on a Claims Made form:

1. The "retroactive date" must be shown, and must be before the date of the contract or the beginning contract work.

2. If coverage is canceled or non-renewed and not replaced with another claims made policy form with a "retroactive date" prior to the contract effective date, the Attorney must purchase "extended reporting" coverage for a minimum of 12 months after completion of contract work.

3. A copy of the claims reporting requirements must be submitted to the County of review.

10.1.3 Commercial General Liability Insurance on an occurrence form basis with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for bodily injury, personal injury and property damage.

10.1.4 Workers' Compensation insurance as required by the State of California and Employer's Liability insurance with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

10.2 Certificates of Insurance, as evidence of the above mentioned coverages in force during the term of the Agreement, shall be filed with the County Administrator's Office either prior to or concurrent with the execution of this Agreement and 10 days prior to their expiration dates. The Commercial general liability insurance policy shall contain an endorsement naming the County of Marin, its officers, officials, employees and volunteers as additional insureds and shall specifically specify that Attorney's coverage shall be primary, that the County's insurance shall be excess of Attorney's insurance and shall not contribute with it. All policies shall be required to mail written notice to the County of Marin in the event of cancellation or diminution of limits.

10.3 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:-VII.

10.3 It is understood and agreed that failure to obtain or retain the requisite insurance during the term of this Agreement will result in termination of the Agreement.

11.0 Indemnification

11.1 Each of the parties shall be solely liable for negligent or wrongful acts or omissions of its representatives, agents or employees occurring in the performance of this Agreement.

11.2 If either party becomes liable for damages caused by its representatives, agents or employees, it shall pay such damages without contribution by the other party. Attorney's obligation under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Attorney to have insurance.

11.3 To the extent permitted by law, County shall defend, indemnify, and hold harmless Attorney, and the agents, officers and employees of Attorney, from claims, damages,

losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees arising out of, or resulting from, the gross negligence or wrongful acts of County, its officers, or employees.

11.4 To the extent permitted by law, Attorney shall defend, indemnify, and hold harmless County, and its agents, officers and employees, from claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees arising out of, or resulting from, the gross negligence or wrongful acts of Attorney, its agents, officers, or employees.

11.5 It is understood and agreed that Attorney shall be liable for any acts or omissions which occur outside the course or scope of performance of this Agreement and shall defend, indemnify and hold harmless County, its agents, officers, representatives and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney fees, arising from the active negligence or wrongful act of Attorney which is outside the course or scope of the performance of this Agreement.

11.6 Nothing contained herein shall be deemed to increase County's liability beyond limitations set forth in law.

12.0 Possessory Interest

12.1 The parties to this agreement recognize that certain rights to property may create a "possessory interest," as those words are used in the California Revenue and Taxation Code, section 107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by County. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties. A taxable possessory interest may be created by this Agreement and, if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

13.0 Non-discrimination

13.1 Attorney shall not unlawfully discriminate and shall comply with all local, state, federal and decisional laws relating to discrimination.

14.0 Conflict of Interest

14.1 Attorney warrants and covenants that Attorney presently has no interest, nor shall any interest be hereinafter acquired in any manner, which will render the services under this Agreement a violation of any applicable federal, state or local law. Attorney further warrants that no officer, agent, employee or representative has influenced or participated in a decision to award this contract which has or may confer on Attorney a benefit in which the employee or officer may have an interest, pecuniary or otherwise. In the event that a conflict of interest should nevertheless hereafter arise, Attorney shall promptly notify County so County may determine whether to terminate the Agreement.

14.2 Attorney agrees to comply with California state law regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090; Chapter 7 of Title 9, commencing with Section 87100; and regulations promulgated by the California Fair Political Practices Commission.

14.3 Attorney agrees that if any facts come to Attorney's attention which raise any question as to the applicability of any conflict law, Attorney will immediately inform County and provide all information needed for resolution of the question.

14.4 In addition, Attorney is admonished that the rules and statutes of this section include prohibition against any public officer, including Attorney for this purpose, from making any decision on behalf of County in which such officer has direct or indirect financial interest. A violation occurs if the public officer influences or participates in any County decision which has the potential to confer any pecuniary benefit on Attorney, or any business firm in which Attorney has any interest of any type, with certain narrow exceptions.

15.0 Applicability of the California Tort Claims Act

15.0 No term or condition of this Agreement shall be deemed to waive the provisions of the California Tort Claims Act, Division 3.6 of the Government Code. The Act and all its related provisions shall apply to any claim arising from any acts or conduct under the terms and conditions of this Agreement.

16.0 Termination

16.1 County shall have the right to terminate this Agreement at any time by giving notice of termination in writing to Attorney. When County gives notice of termination, Attorney shall immediately cease rendering service upon receipt and the following shall apply.

16.1.1 Attorney shall deliver copies of all writings prepared by Attorney pursuant to this Agreement. The term "writings" shall include all forms of written communication or memorializations of oral communication, including but not limited to handwriting, typewriting, printing, work-processing, computer disks, photostating, photographing, facsimiles, and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof.

16.1.2 County shall have full ownership and control of all such writing or other communications delivered by Attorney pursuant to this Agreement.

16.1.3 County shall pay Attorney the reasonable value of services rendered by Attorney under this Agreement to the date of termination, in addition to that amount previously billed and approved by County. However this payment shall not exceed the amount documented by Attorney and approved by County as work accomplished to date; and shall not include lost profits which might have been made by Attorney had Attorney completed the services required by this

Agreement. Attorney shall furnish County with any financial information necessary in County's judgment to determine the reasonable value of the services rendered by Attorney. In the event of a dispute as to the reasonable value of Attorney's services, the County's decision shall be final. The forgoing is cumulative and does not affect any right or remedy County may have in law or equity.

16.2 Attorney may terminate Attorney's services under this Agreement upon 30 working days written notice to County, without liability for damages, if Attorney is not compensated according to the terms of the Agreement, or upon any other material breach of the Agreement by County, provided Attorney has first notified County in writing of any alleged breach, specifying the nature of the alleged breach and providing not less than ten working days within which County may cure the alleged breach.

16.3 In the event of termination, Attorney will cooperate with termination transition in an orderly and professional manner best calculated to avoid disruption of legal services and to protect County from potential legal exposure. Attorney shall provide a termination report which includes a brief description of the case facts, a discussion of the applicable law, a complete list and description of all future scheduled deadlines, status conferences, briefing schedules, arbitration or mediation dates, court appearances, discovery cut-offs and any pending or outstanding discovery matters.

16.4 This Agreement shall be terminable, at option of County, in the case of Attorney's voluntary or involuntary bankruptcy, or insolvency.

16.5 County may terminate this Agreement in the event Attorney becomes unable to substantially perform any term or condition of this Agreement.

16.6 Notwithstanding any other term or condition of this Agreement, either party may terminate this agreement upon thirty days written notice to the other party.

17.0 Attorney Fees

17.0 If any action at law or in equity, including a request for declaratory relief, is brought to enforce or interpret provisions of this Agreement, each party shall bear its own attorney fees and costs.

18.0 Choice of Venue and Applicable Law

18.1 Unless otherwise expressly waived in writing by the parties, any action in law or equity brought to enforce any of the Agreement provisions shall be filed and remain in a Court of competent jurisdiction in the county of Marin, State of California. The validity interpretation and performance of this Agreement, and all matters relating to it, shall be controlled by and construed under California substantive and procedural law.

19.0 Severability

19.1 If any term, covenant, condition or provision of this Agreement is held to be invalid, void, or unenforceable by a Court of competent jurisdiction, the remainder of the covenant, condition, provision or Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

20.0 Captions

20.0 The captions of this agreement are for reference convenience only and are not intended to explain, modify, amplify or aid in the interpretation, construction or meaning of the Agreement provisions.

21.0 Authority to Contract

21.1 All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entity, person, estate, firm, or corporation, represented or purported to be represented by such entity, person, estate, firm, or corporation, and that all formal requirements necessary or required by any state or federal law in order to enter into this Agreement have been fully complied. Furthermore, by entering into this Agreement, neither party shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect. If Attorney is a corporation, Attorney shall, within 30 days after execution of this Agreement, deliver to County a certified copy of a resolution of the Board of Directors of the corporation authorizing or ratifying the execution of this Agreement.

22.0 Notice

22.1 All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party to be served as follows:

If to County:

Office of the Marin County Counsel
3501 Civic Center Drive, Suite 303
San Rafael, CA 94903

If to Attorney:

Clyde A. Thompson, Esq.
c/o Haapala, Altura, Thompson & Abern, L.L.P.
1939 Harrison Street, #800
Oakland, CA 94612-3527

22.2 Each party shall provide the other with telephone and written notice of any change of address as soon as practicable.

22.3 Notice given by personal delivery or acknowledged shall be effective immediately.

23.0 Simultaneous Counterparts

23.1 This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

24.0 Complete Agreement

24.1 Except as otherwise provided in this Agreement, this Agreement and any specific references, exhibits and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any express or implied representations made.

24.2 It is the intention of the parties that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties.

24.3 The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents, if any, as may be necessary and convenient to the fulfillment of these purposes.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first set forth above.

"COUNTY"

COUNTY OF MARIN

By: _____
President
Marin County Board of Supervisors

"ATTORNEY"

HAAPALA, ALTURA,
THOMPSON &
ABERN, L.L.P.

By: _____
Clyde A. Thompson

APPROVED AS TO FORM:
PATRICK K. FAULKNER
COUNTY COUNSEL

By: _____
Mari-Ann Gibbs Rivers
Deputy County Counsel