

**RURAL ATTORNEY RECRUITMENT PROGRAM
CONTRACT/LETTER OF AGREEMENT
FOR CONTRACTUAL SERVICES BETWEEN**

**[ATTORNEY NAME HERE]
[ATTORNEY ADDRESS HERE]
[CITY, STATE, ZIP]
hereinafter referred to as
ATTORNEY**

**South Dakota Unified Judicial System
500 E. Capitol Avenue
Pierre, SD 57501
hereinafter referred to as
UJS**

**State Bar of South Dakota
222 E. Capitol Avenue
Pierre, SD 57501
hereinafter referred to as
STATE BAR**

**[COUNTY NAME HERE]
[COUNTY ADDRESS HERE]
[CITY, STATE, ZIP]
hereinafter referred to as
COUNTY**

The South Dakota Unified Judicial System, State Bar of South Dakota, County and Attorney hereby enter into a contract for participation in the South Dakota Rural Attorney Recruitment Program.

1. DEFINITIONS:

- A. Eligible County – a county having a population of 10,000 persons or less that the UJS has determined to be eligible for participation in the South Dakota Rural Attorney Recruitment Program. For purposes of this specific contract, the Eligible County is **[COUNTY NAME HERE]** County.
- B. Incentive Payment – Participating attorneys within the program will receive an incentive payment, payable in five equal annual installments, each payment equal to 90% of one year's resident tuition and fees at the University of South Dakota School of Law, as determined on July 1, 2013. This amount is \$12,513.60.
- C. Attorney – an attorney licensed to practice law in the State of South Dakota or a lawyer who seeks to be licensed by the date specified below, who is determined to be eligible for participation in the South Dakota Rural Attorney Recruitment Program.

2. OBLIGATIONS OF THE ATTORNEY:

- A. This contract is effective only if the Attorney successfully passes the bar exam and becomes a licensed attorney in South Dakota by **[DATE, YEAR]**.
- B. The Attorney agrees to practice law in the Eligible County a minimum of 35 hours per week for a minimum of 49 weeks per year, for a period of 5 continuous years, with this obligation commencing **[DATE, YEAR]**, and concluding **[DATE, YEAR]**. As set forth in IP Rule, 13-10, Attorney is allowed 21 days of leave per service year, excluding federal and state holidays. This leave may not be accumulated from one year to the next. If the Attorney fails to comply with the terms herein, UJS, State Bar and County may withhold payments for nonperformance.
- C. The Attorney must reside within the County that he is providing services to under this contract.
- D. The Attorney attests to not having previously participated in this or any other state or federal scholarship, loan repayment, or tuition reimbursement program which obligates the Attorney to provide legal services within an underserved area.
- E. The Attorney must remain licensed as an attorney by the South Dakota Supreme Court throughout the period of this contract. The Attorney further agrees to provide a Certificate of Good Standing to the UJS, the State Bar, and the County, upon request.
- F. The Attorney attests to having never been disbarred, suspended, or publicly censured from the practice of law in any jurisdiction.

- G. The Attorney must procure and maintain professional malpractice insurance with a limit of not less than \$100,000 per incident. The Attorney further agrees to provide a properly executed Certificate of Insurance that clearly evidences the malpractice insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Attorney agrees to provide immediate notice to the UJS and provide a new Certificate of Insurance showing continuous coverage in the amounts required. The Attorney must furnish copies of insurance policies if requested by UJS. Loss of malpractice insurance will nullify this contract.
- H. The Attorney will give written notice to UJS, State Bar and County within 30 days after any of the following events: 1. Attorney's name and/or address changes; 2. Attorney intends to not fulfill his service obligation; or 3. Attorney ceases to practice law as an attorney.
- I. The Attorney will provide UJS with a quarterly accounting of all hours worked per week, receipt of all payments made by the County under the terms of this contract and any discipline complaints or lawsuits filed against him.
- J. The Attorney must abide by all state and federal laws. Minor traffic offenses will be evaluated case-by-case.
- K. **The Attorney agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Attorney to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.**
- L. The Attorney is an independent attorney and neither the Attorney nor any employee or agent thereof will hold themselves out as or claim to be an officer or employee of the UJS, the State Bar or the County and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the UJS, the State Bar or the County, including, but not limited to, workers' compensation, health, life, malpractice insurance, unemployment insurance and retirement benefits. This contract may not be deemed a waiver of sovereign immunity or any other type of immunity by the State of South Dakota or any of its political subdivisions either in litigation against a party to this contract or any third party.
- M. The Attorney agrees to perform pro bono work through the State Bar of South Dakota's Access to Justice, Inc. (A2J) program, as a condition of this contract. The minimum amount of pro bono work required of Attorney is: **a case per year**. Upon confirmation of participation in the Rural Attorney Recruitment Program (RARP), the Attorney shall contact A2J to inform them of their participation in the program.

The Attorney may meet the yearly minimum pro bono requirement in one of two ways: 1) accept a case referral directly from A2J; or, 2) the Attorney may choose to funnel one of their own prospective pro bono client cases through the A2J program, so long as the client is eligible for legal assistance through A2J and the case falls within the A2J case-type guidelines. **NOTE: the same case may be counted in more than one contract year, so long as the Attorney is still providing pro bono representation on the same case during the following contract year.**

The A2J eligibility criteria include: 1) verification that a conflict check is cleared with both the Attorney and A2J, and 2) income/asset and case-type guidelines are met. If the Attorney would like to funnel one of their own prospective pro bono clients through A2J, they will need to contact the A2J coordinator directly. The A2J coordinator can assist the Attorney in gathering the information required to determine if their prospective client/case meets A2J eligibility criteria.

It is the attorney's responsibility to contact A2J periodically to determine if a case is available in their area and/or to determine if the Attorney's prospective pro bono client is eligible for legal assistance through A2J. Attorneys are encouraged to seek out prospective clients in their area as A2J receives a limited amount of rural attorney applications each year. To meet the minimum contract obligation of one pro bono case each year, it is the attorney's responsibility to either find an A2J eligible pro bono client/case or accept an A2J referral each year.

If the attorney refuses an A2J referral, A2J will notify the Rural Attorney Recruitment Program that the Attorney has refused an A2J referral.

The A2J program assists low-income residents of South Dakota with various types of non-fee generating in-state civil legal matters. The most common types of cases accepted through A2J include:

- Family Law (Divorce, Custody, Child Support, Guardianship, Adoption, Protection Orders)
- Bankruptcy, Debtor/creditor matters, collections
- Wills/POA, other small estate matters
- Landlord/tenant and other housing issues
- Other types of civil legal matters

A2J pro bono legal assistance income caps are based upon gross household income information (*in most cases, the household includes all residents residing in the same house as the applicant*). The current A2J pro bono income caps are as follows:

- Veterans, Senior Citizens (60 years and older), or individuals with a disability/receiving monthly disability income: gross household income up to 200% of the current federal poverty guidelines.
- Victims of Domestic Violence, Sexual Assault, Stalking and/or Human Trafficking: gross household income up to 150% of the current federal poverty guidelines.
- Non-Priority applicant: gross household income up to 125% of the current federal poverty guidelines.

Access to Justice contact information:

Access to Justice
111 W. Capitol Ave. #1
Pierre, SD 57501
(855) 287-3510
Access.to.justice@sdbar.net
A2J Coordinator: Denise Langley

N. The Attorney agrees to attend the “Nuts and Bolts” continuing legal education program, or equivalent programming put on by the State Bar of South Dakota, each year during the contract.

O. The Attorney agrees to participate in the Hagemann-Morris Mentorship Program.

3. OBLIGATIONS OF THE COUNTY:

A. The County attests that it has 10,000 or less persons living within the county limits.

B. The County agrees it is responsible for 35% of the total amount of the incentive payment, or \$4,379.76 per year for five years for a total contribution of \$21,898.80. The first payment of \$4,379.76 is due and payable on **[DATE, YEAR]**, and on **[DATE]** of every year thereafter, for a total of five years. The County may prepay, to the Attorney, its portion of the incentive payment at any time during the five-year period. If, however, Attorney fails to comply with the terms herein, then County can withhold payment for nonperformance and may seek reimbursement for the amounts previously paid, consistent with the terms and conditions herein.

C. The County will provide the UJS with written notice certifying the Attorney has been paid the County's financial obligation pursuant to this contract.

D. The County agrees, after the initial assessment, to report to the UJS any substantial change in the:
Demographics of the county;
Age and number of current attorneys residing and practicing law within the county; and
Programs of economic development within the county.

The County agrees to actively participate in any subsequent review / assessment as determined necessary by the UJS to reflect any change in conditions within a county.

E. The County agrees to hold harmless and indemnify the UJS, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of

performing services hereunder. This section does not require the County to be responsible for or defend against claims or damages arising solely from errors or omissions of the UJS, its officers, agents or employees.

4. OBLIGATIONS OF THE STATE BAR OF SOUTH DAKOTA:

- A. Once the County certifies payment to the Attorney, the State Bar will pay to the UJS 15% of the total amount of the incentive payment, payable in five equal annual payments of \$1,877.04 each. The UJS shall forward this amount to the Attorney, pursuant to the terms and conditions of this contract. The State Bar may prepay, to the UJS, its portion of the incentive payment at any time during the five-year period. The specific total amount the State Bar is obligated to pay for the Attorney's service is \$9,385.20. If, however, the Attorney fails to comply with the terms herein, then the State Bar can withhold payment for nonperformance and may seek reimbursement for the amounts previously paid, consistent with the terms and conditions herein.
- B. The State Bar will provide the UJS with written notice certifying that the County has paid its financial obligation pursuant to this contract.
- C. **The State Bar agrees to hold harmless and indemnify the UJS, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the State Bar to be responsible for or defend against claims or damages arising solely from errors or omissions of the UJS, its officers, agents or employees.**

5. OBLIGATIONS OF THE UNIFIED JUDICIAL SYSTEM (UJS):

- A. After the County and State Bar meet their financial obligations, as described above, the UJS agrees to pay the Attorney 50% of the total amount of the incentive payment, payable in five equal annual payments of \$6,256.80 each. The specific total amount the UJS is obligated to pay the Attorney is \$31,284.00. The UJS shall also forward to Attorney the amount due from the State Bar to Attorney under the terms of this contract. If, however, Attorney fails to comply with the terms herein, then the UJS can withhold payment for nonperformance and may seek reimbursement for the amounts previously paid, consistent with the terms and conditions herein.
- B. Incomplete performance by Attorney, as determined by the UJS, constitutes a material breach of this contract and excuses the UJS from any commitment to pay.

6. CANCELLATION, SUSPENSION AND WAIVER OF OBLIGATION:

- A. If Attorney dies prior to the completion of his service obligation, the obligation will be cancelled in its entirety. No liability will be transferred to the Attorney's heirs.
- B. The UJS requires the Attorney to fulfill this contract without excessive absences or significant interruptions in service. The Attorney is allowed 21 days of leave per service year, excluding federal and state holidays; however, there are some circumstances that occur which will prevent the Attorney from staying within this timeframe. In these cases, the UJS may, under certain circumstances, suspend (put "on hold") or waive (excuse) the obligated service or payment obligation.
 - 1. **Suspension.** A suspension of the service commitment may be granted if compliance with the commitment by the Attorney: (i) is temporarily impossible or (ii) would involve a temporary extreme hardship such that enforcement of the commitment would be unconscionable. Periods of approved suspension of service will extend the Attorney's service commitment end date. The major categories of suspension are set forth below.

a. **Leave of Absence for Medical or Personal Reasons.** A suspension may be granted for up to one year, if the Attorney provides independent medical documentation of a physical or mental health disability, or personal circumstances, including a terminal illness of an immediate family member, which results in the Attorney's temporary inability to perform the service obligation.

b. **Maternity/Paternity/Adoption Leave.** Before taking this leave, the Attorney must notify the UJS of pending maternity/paternity/adoption leave and provide appropriate documentation upon request. If eligible under the Family Medical Leave Act, maternity/paternity/adoption leave of 12 weeks or less will be automatically approved, if properly documented. If the Attorney's maternity/paternity/adoption leave will exceed 12 weeks during that service year, the Attorney must request a medical suspension, which may or may not be approved by the UJS.

c. **Call to Active Duty in the Armed Forces.** If the Attorney is also a military reservist and is called to active duty, the Attorney will be granted a suspension, for up to one year, beginning on the activation date described in the reservist's call to active duty order. In addition to the written request for a suspension, a copy of the order to active duty must be submitted to the UJS. The suspension will be extended if the applicable Armed Forces entity continues the period of active duty. The period of active military duty will not be credited toward the service obligation but will not be considered a breach of this contract.

2. **Waiver.** A waiver permanently relieves the Attorney of all or part of the service commitment. A waiver may be granted only if the Attorney demonstrates that compliance with their commitment is permanently impossible or would involve an extreme hardship such that enforcement of the commitment would be unconscionable. A timely waiver request must be submitted to the UJS and include the reasons the waiver is sought and any necessary medical and financial documentation necessary to support the waiver.

7. **CONTRACT EXTENSION:**

If the Attorney is granted a suspension during a contract year, the Attorney must extend this contractual agreement for the length of time Attorney was absent, beyond any allowable absences pursuant to this contract.

8. **QUARTERLY ASSESSMENTS:**

The UJS verifies every 3 months that Attorney is meeting program requirements and fulfilling his service obligation. The In-Service Verification (ISV) is completed by both the Attorney and the UJS. By completing and signing the verification, the Attorney is certifying the Attorney's compliance or noncompliance with the applicable requirements during that 3-month period. The verification will also record the total number of days during the 3-month period that the attorney fell below the minimum service requirement of 35 hours per week.

Attorneys who fail to complete and submit their quarterly ISV on time may be determined by the UJS to have failed to comply with the terms of this contract and be subject to withheld payment for non-performance.

9. **FUNDING TERMINATION:**

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by UJS if the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by UJS nor does it give rise to a claim against UJS.

10. **FEDERAL AND STATE LAWS:**

The Attorney and the County agree that they will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract.

11. **RETENTION AND INSPECTION OF RECORDS:**

The parties agree to maintain or supervise the maintenance of all records that are pertinent to this contract for a period of 3 years following the final payment against the contract. If such records are under pending audit, the parties agree to hold such records for a longer period upon notification from any party. The parties, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this contract.

12. AMENDMENT PROVISIONS:

This contract may not be amended except in writing, which writing shall be expressly identified as an amendment to this contract and be signed by an authorized representative of each of the parties hereto.

13. ASSIGNMENT AND SUBCONTRACT PROVISIONS:

This contract may not be assigned or otherwise transferred without the express prior written consent of the UJS. The Attorney may not use subcontractors to perform the services described herein without the express prior written consent of the UJS, the State Bar, and the County. The Attorney's efforts to assign, transfer, or subcontract this contract, or any portion thereof, without the express written consent from the UJS, the State Bar and the County constitutes a material breach of contract. In the event such consent to the subcontract is obtained, the Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this contract, including the provision to indemnify the UJS, the State Bar and the County. The Attorney will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements, and will adopt such review and inspection procedures as are necessary to assure such compliance.

14. SUPERCESSION:

All other prior agreements, discussions, communications and representations concerning the subject matter of this contract are superseded by the terms of this contract, and except as specifically provided herein, this contract constitutes the entire agreement of the parties with respect to the subject matter hereof.

15. SEVERABILITY:

In the event that any provision of this contract is held unenforceable or invalid by any court or competent jurisdiction, such holding may not invalidate or render unenforceable any other provision hereof.

16. NOTICE:

Any notice or other communication required under this contract must be in writing. Notices must be given by and to the designated contact person listed below or such authorized designees as any party may from time to time designate in writing. Notices or communications to or between any of the parties are deemed to have been delivered 3 days after mailing by First Class US Mail service, provided that notices of default or termination must be sent by registered or certified mail. Any notices or communications personally delivered to another party are deemed to have been delivered when received by such party.

17. CHOICE OF LAW:

The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract that cannot be resolved by mutual agreement will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.

18. FORCE MAJEURE:

The parties agree that none of them are liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, if such delay or failure is caused by "force majeure." As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

19. EXECUTED COPIES:

This contract may be executed in one or more counterparts, each of which will be deemed to be an original copy of this contract and all of which, when taken together, will be deemed to constitute one and the same contract. The facsimile, email or other electronically delivered signatures of the parties will be deemed to constitute original

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signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicate originals. A fully executed copy of this contract will be retained by the UJS. A second fully executed copy will be provided to the Attorney. The County and the State Bar shall receive photocopies of the fully executed contract.

This contract is not effective until it is fully executed by all parties.

In witness hereto the parties signify their agreement by signatures affixed below:

_____ UJS, State Court Administrator Greg Sattizahn	_____ Date
_____ County – [AUTHORIZED AGENT]	_____ Date
_____ State Bar of South Dakota – [AUTHORIZED AGENT]	_____ Date
_____ Attorney	_____ Date

--Contact information of contact person in UJS who can provide additional information regarding this contract.

Greg Sattizahn	(605) 773-3474	Greg.Sattizahn@ujs.state.sd.us	500 E. Capitol Avenue
Name	Phone	Email	Address