

**RECRUITMENT ASSISTANCE PILOT PROGRAM
CONTRACT/LETTER OF AGREEMENT
FOR CONTRACTUAL SERVICES BETWEEN**

**South Dakota Unified Judicial System
500 E. Capitol Avenues
Pierre, SD 57501**

**hereinafter referred to as
ATTORNEY**

**hereinafter to referred to as
UJS**

**State Bar of South Dakota
222 E. Capitol Avenue
Pierre, SD 57501**

**hereinafter referred to as
STATE BAR**

**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 Recruitment Assistance Pilot 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 Recruitment Assistance Pilot Program. For purposes of this specific contract, the Eligible County is _____.
- 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.
- C. Attorney – an attorney licensed to practice law in the State of South Dakota and has determined to be eligible for participation in the South Dakota Recruitment Assistance Pilot Program.

2. OBLIGATIONS OF THE ATTORNEY:

- A. 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, commencing _____ and concluding _____. As set forth in IP Rule, _____, Attorney is allowed 21 days of leave per service year, excluding federal and state holidays. This leave shall not be accumulated from one year to the next. If Attorney fails to comply with the terms herein, UJS, State Bar and County can withhold payments for nonperformance.
- B. Unless otherwise agreed to with the County, the Attorney shall reside within the County that he/she is providing services to under this contract.
- C. The Attorney attests that he/she has not previously participated in this or any other state or federal scholarship, loan repayment, or tuition reimbursement program which obligates Attorney to provide legal services within an underserved area.
- D. The Attorney shall remain licensed as an attorney by the South Dakota Supreme Court throughout the period of this Agreement. The Attorney further agrees to provide a Certificate of Good Standing to the UJS, State Bar and County prior to beginning work pursuant to this Agreement.
- E. Attorney attests that he/she has never been disbarred, suspended or publicly censured from the practice of law in any jurisdiction.

- F. The Attorney shall procure and maintain professional malpractice insurance with a limit of not less than \$_____ per incident. The Attorney further agrees to provide a properly executed Certificate of Insurance which shall clearly evidence 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. Attorney shall furnish copies of insurance policies if requested by UJS. Loss of malpractice insurance will nullify this Agreement.
- G. The Attorney shall 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 or her service obligation; or 3. Attorney ceases to practice law as an attorney.
- H. The Attorney shall provide UJS with a quarterly accounting of all hours worked per week, receipt of all payments made by the UJS, including those made on behalf of the State Bar and the County under the terms of this contract and any discipline complaints or lawsuits filed against him/her.
- I. The Attorney shall abide by all state and federal laws. Minor traffic offenses will be evaluated on a case-by-case basis.
- J. 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.
- K. The Attorney agrees he/she is an independent attorney and neither he/she nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of the UJS, State Bar or 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, State Bar or County including, but not limited to, workers' compensation, health, life, malpractice insurance, unemployment insurance and retirement benefits. This contract shall 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.

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 shall pay, directly to the Attorney, 35% of the total amount of the incentive payment, payable in five equal annual payments. The County may prepay, to the Attorney, its portion of the incentive payment at any time during the five year period. The specific total amount the County is obligated to pay the Attorney is \$_____. If, however, Attorney fails to comply with the terms herein, then County can withhold payment for nonperformance.
- C. The County shall provide the UJS with written notice certifying the Attorney has been paid the County's financial obligation pursuant to this Agreement.
- D. The County agrees, after the initial assessment, to report to the UJS any substantial change in the following areas:
 - 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 shall pay to the UJS 15% of the total amount of the incentive payment, payable in five equal annual payments. 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 \$_____. If, however, Attorney fails to comply with the terms herein, then the State Bar can withhold payment for nonperformance.
- B. The State Bar shall provide the UJS with written notice certifying that the County has paid its financial obligation pursuant to this Agreement.
- 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. The specific total amount the UJS is obligation to pay the Attorney is \$_____. 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.
- B. Only full performance by the State Bar, County and Attorney binds UJS to pay the amount set forth above (section 5.A). Incomplete performance by the State Bar, County or Attorney, as determined by the UJS, constitutes a material breach of this Agreement 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/her service obligation, the obligation will be cancelled in its entirety. No liability will be transferred to Attorney's heirs.
- B. The UJS requires Attorney to fulfill this contract without excessive absences or significant interruptions in service. 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 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, Attorney must notify the UJS of pending maternity/paternity/adoption leave and provide appropriate documentation. 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 Attorney is also a military reservist and is called to active duty, he/she 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 his/her 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, which shall include the reason(s) the waiver is being sought and any necessary medical and financial documentation necessary to support the waiver request.

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/her 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 time spent away from the service site, e.g., 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, in the discretion of the UJS, jeopardize receiving service credit for that quarter.

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:

Attorney and 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 Agreement may not be assigned without the express prior written consent of the UJS. This Agreement may not be amended except in writing, which writing shall be expressly identified as an amendment to this agreement, and be signed by an authorized representative of each of the parties hereto.

13. SUBCONTRACT PROVISIONS:

Attorney may not use subcontractors to perform the services described herein without the express prior written consent of the UJS, State Bar and County. Attorney's efforts to assign or subcontract this contract, or any portion thereof, without the express written consent from the UJS, State Bar and County constitutes a material breach of contract. In the event such consent is obtained, Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this contract, to indemnify the UJS, State Bar and County. 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 shall be held unenforceable or invalid by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. NOTICE:

Any notice or other communication required under this contract shall be in writing. Notices shall 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 shall be deemed to have been delivered 3 days after mailing by First Class US Mail service, provided that notices of default or termination shall be sent by registered or certified mail. Any notices or communications personally delivered to another party shall be deemed to have been delivered when received by such party.

17. PERSONNEL:

Neither the Attorney nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of UJS, State Bar or County and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of UJS, State Bar or County including, but not limited to, workers' compensation, unemployment benefits, health, dental or life insurance, and retirement membership.

18. 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, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.

19. FORCE MAJEURE:

The parties agree that none of them shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, 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.

20. CONTRACT ORIGINALS AND COPIES:

An original of this Agreement, fully executed, shall be retained by the UJS. A second original, fully executed, shall be provided to the Attorney. The County and State Bar shall receive photocopies of the fully executed Agreement.

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 Patricia Duggan | _____ Date |
| _____ County – Authorized Agent | _____ Date |
| _____ State Bar of South Dakota – Authorized Agent | _____ Date |
| _____ Attorney | _____ Date |

- State Agency Coding: Company – Center – Account –
- State Agency Fund from which contract is to paid _____
- Name and phone number of contact person in UJS who can provide additional information regarding this contract.

| | |
|-----------------------|-----------------------|
| <u>Greg Sattizahn</u> | <u>(605) 773-3474</u> |
| Name | Phone |