

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
SWIFT ATTORNEY SERVICE**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SWIFT  
ATTORNEY SERVICE, hereinafter called "Contractor";

**W I T N E S S E T H:**

WHEREAS, pursuant to Government Code, Section 31000, County may contract  
with independent contractors for the furnishing of such services to or for County or any  
Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose  
of Service of Process.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO  
AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference  
herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment I—§504 Compliance

**2. Services to be performed by Contractor**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall  
perform services for County in accordance with the terms, conditions and specifications set  
forth herein and in Exhibit "A."

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms,  
conditions and specifications set forth herein and in Exhibit "A," County shall make payment  
to Contractor based on the rates and in the manner specified in Exhibit "B." The County  
reserves the right to withhold payment if the County determines that the quantity or quality  
of the work performed is unacceptable. In no event shall the County's total fiscal obligation  
under this Agreement exceed five hundred forty thousand dollars (\$540,000).

**4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2012 through June 30, 2015.

This Agreement may be terminated by Contractor, the San Mateo County Department of Child Support Services Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

**5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

**6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

**7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- |   |             |
|---|-------------|
| (a) Comprehensive General Liability .....   | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance ..... | \$1,000,000 |
| (c) Professional Liability .....            | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

#### **10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

#### **11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

**12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

**13. Retention of Records, Right to Monitor and Audit**

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

#### **14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

#### **15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

#### **16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Iliana Rodriguez, Director  
San Mateo County Department of Child Support Services  
555 County Center, 2nd Floor  
Redwood City, CA 94063

**In the case of Contractor, to:**

Frank Kaul, Owner  
Swift Attorney Service  
500 Allerton Street, Suite 105  
Redwood City, CA 94063

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

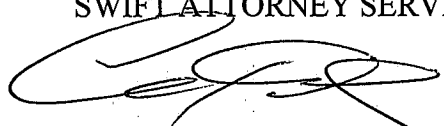
By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

SWIFT ATTORNEY SERVICE



Frank Kaul, Owner  
Contractor's Signature

Date: 5/1/12

## Exhibit "A"

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

1. Documents to be served will be picked up daily from the Department of Child Support Services at 555 County Center, 2nd Floor, Redwood City, CA and twice a day if requested by the Department.
2. When given at least seven (7) calendar days' notice, the Contractor will attempt to serve or sub-serve documents no later than sixteen (16) court business days prior to the court date.
3. The Department of Child Support Services will attach to the documents to be served a "Service Instructions" referral which will provide the Contractor with the name and description (photo if available) of the individual or company to be served and the residence and/or business address where the documents are to be served. A court date will also be provided if the matter is scheduled for a hearing.
4. After receipt of documents to be served, Contractor will attempt service within five (5) business days for the local service area, seven (7) days for the non-local service area, and seven (7) days for out of state serves.
5. The Contractor will return completed proofs of service and in the case of sub-service, declarations of due diligence to the Department within five (5) business days after the service, if the service is within the local service area. Local service area is defined as: San Mateo, San Francisco and Santa Clara counties. A ten percent (10%) discount will be assessed on each serve for which a completed proof of service is not received within five (5) business days after service. The ten percent (10%) discount will be applied to the cost for each respective serve that does not meet this guideline. A twenty-four (24) hour grace period will be given after the required five (5) business days for the contractor to return completed proofs of service. The Department agrees to assess the ten percent (10%) discount within 60 days from receipt of documents.
6. If documents are not served, the Contractor will return the documents with court dates, after due diligence has been performed, no later than five (5) days after attempted service and/or five (5) days prior to the court date indicated on the referral, whichever comes first. If a court date is not indicated on the referral, the documents will be returned within thirty (30) days of the date sent for service or by the date indicated on the referral.
7. In the case of sub-service, Contractor will make at least three (3) attempts at personal service before sub-serving any documents on an individual, provided that sub-service of the document is allowable under State or Federal statute.

8. Service of rush documents will be completed within two (2) days and if the service is unsuccessful, the Contractor will notify the Department within the same two-day time frame. Contractor will contact the Department designee via telephone to notify the Department of an unsuccessful service of a rush request.
9. The Contractor will provide the Department with an accurate description of the person served and the address where the service was accomplished. When service cannot be completed, the Contractor will return the documents and note on the referral slip why service was not completed at the address given by the Department.
10. The Contractor will respond within twenty-four (24) hours to inquiries about the status of a service request from Department staff.
11. If service cannot be accomplished at the address provided, the server will attempt to obtain a forwarding address from the current residents, neighbors and apartment managers. The server will then attempt to make service at the new address. If additional locate research is needed to serve the documents, the Contractor will return the documents as soon as possible to the Department. The Department will perform further locate research and will issue another referral at the time new positive locate information has been found.
12. The Contractor will provide wage and levy writ service for San Mateo, Santa Clara, San Francisco and Alameda counties. This service will include opening a file with the Sheriff, service of the writ, mailing copies to the judgment debtor and returning the proof of service to the Sheriff within five (5) days.
13. If both the business and home addresses provided by the Department are not valid and no new address for service can be readily obtained through contacts made at the attempted service sites, the referral will be returned to the Department un-served.
14. The Contractor will be available to testify at any court hearing.
15. The Contractor agrees to furnish the Department with an itemized list of charges for each month. This listing must detail each service request being billed; the results of the request, the charge associated with that request and shall reference Department Case Number for each set of documents referred for service.
16. For a specified fee, the Contractor will provide same day service.
17. The Contractor will provide the Department with "Work In Progress" reports on all cases that have been referred for service. The status of these reports will detail the current status of all cases referred by the Department which are still in the contractor's inventory or are included in the contractor's current monthly invoice, and will include the case reference number, known as the LCSA CASE NUMBER and the date the case was received by the Contractor.
18. The Contractor is required to maintain an on line website with status information for each request updated daily. The on line website will include the same detail as noted in the "Work In Progress" reports.

19. The Contractor shall not perform services not listed on the bid form that are subject to fees or charges without the approval of the Child Support Services Manager, Lead Attorney or Department Designee.
20. Contractor will not bill postage or mailing expense for process services to the County, all postage or mailing charges will be paid for directly by Contractor.
21. For special requests on specific serves, during non-regular services hours (between 7pm and 7am), a premium/additional charge may apply, but Contractor agrees to obtain authorization from the Department of Child Support Services designated staff prior to performing any work for which a premium charge is applicable. The Department will not pay for any premium charge for which Contractor did not obtain prior authorization.
22. The County reserves the right to cancel the contract with thirty (30) days notice if the County finds the quality of service unacceptable.
23. Prior to contract award and before providing services, the contractor must sign a County Agreement and provide the required certificates of insurance, which must be for \$1 million in general liability, \$1 million professional liability \$1 million in automobile liability and statutory Worker's Compensation coverage.

## Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

### FEE SCHEDULE FOR PROCESS SERVICE

VENDOR: Swift Attorney Service

ADDRESS: 500 Allerton Street, Suite 105, Redwood City, Ca. 94063

PHONE: 650-364-9612

County	Completed Service	Not Found/ Return	Rush/ Same-Day Service	Wage & Levy Writ Service	Locate Service
San Mateo	\$34.50	\$28.50	\$25.00	\$45.00	\$22.00
San Mateo Coastal Cities	\$48.50	\$48.50	\$25.00	\$45.00	\$22.00
San Francisco	\$38.50	\$28.50	\$25.00	\$50.00	\$22.00
Santa Clara	\$38.50	\$28.50	\$25.00	\$50.00	\$22.00
Alameda	\$43.50	\$35.50	\$25.00	\$60.00	\$22.00
Contra Costa	\$45.50	\$34.50	\$25.00	\$75.00	\$22.00
Los Angeles	\$51.50	\$41.50	\$28.50	\$85.00	\$22.00
San Diego	\$51.50	\$51.50	\$28.50	\$85.00	\$22.00
Sacramento	\$48.50	\$44.50	\$28.50	\$85.00	\$22.00
Stockton	\$48.50	\$44.50	\$28.50	\$85.00	\$22.00

For all above jurisdictions additional fees for services in rural areas will apply. The San Mateo County Department of Child Support Services shall call Contractor for fee quotes for all other service requests such as same day serves, service to other California Counties, as well as any other serves to other jurisdictions not listed in the above fee schedule

ATTACHMENT

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☒

a. Employs fewer than 15 persons.

☐

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

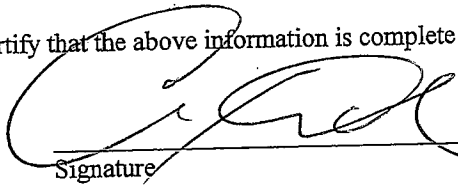
\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

  
\_\_\_\_\_  
Signature

Frank Kaul, Owner of Swift Attorney Service  
Title of Authorized Official

February 10, 2012  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."