

AGREEMENT FOR SPECIAL LEGAL SERVICES
OFFICE OF INDEPENDENT REVIEW

This Agreement for Special Legal Services (“Agreement”) is entered into as of September 1, 2008 by and between the County of Orange (“County”) and Stephen Connolly (hereinafter referred to as “Connolly” or “Executive Director”) for the purpose of providing for the services of Executive Director for the Office of Independent Review (“OIR”).

RECITALS

WHEREAS, the Board of Supervisors has, in Sections 1-2-225 and 1-2-226 of the Codified Ordinances of Orange County (“the OIR Ordinance”) established an Office of Independent Review (hereinafter “OIR”) to monitor, assist, oversee and advise the Orange County Sheriff-Coroner in the investigation of: (1) selected internal and citizen complaints in which it is alleged that peace officers and custodial officers employed by the County in the Sheriff-Coroner Department committed certain actions or inactions in the performance of their duties; and (2) selected incidents of death or serious injury occurring to persons while in the custody of employees of the Sheriff-Coroner Department; and

WHEREAS, the Connolly has been determined to be uniquely qualified to serve as such a resource,

NOW THEREFORE, the County and Connolly agree as follows:

1. Scope of Services – Executive Director of the Office of Independent Review

Connolly shall, during the term of this Agreement, serve as Executive Director for the OIR. Connolly shall ensure that the OIR shall, consistent with existing state law:

- (1) Provide periodic status reports on all investigations and significant matters within the purview of the OIR to the Board of Supervisors and the Sheriff-Coroner.

- (2) Be authorized to provide such periodic reports to the public concerning its activities and findings as it deems proper and appropriate.
- (3) In coordination and cooperation with the Sheriff-Coroner, provide ongoing counsel for the initiation, structuring and development of investigations conducted by the Internal Affairs unit of the Sheriff-Coroner (hereinafter "the I.A. Unit").
- (4) In coordination and cooperation with the Sheriff-Coroner:
 - (i) Monitor, as necessary and appropriate, investigations arising from complaints or custodial deaths or injuries;
 - (ii) Respond, as necessary and appropriate, to scenes of investigations;
 - (iii) Have access to, and participate in, confidential meetings and proceedings in order to monitor cases in real time;
 - (iv) Provide advice and counsel to the I.A. Unit so as to ensure a thorough, unbiased, and impartial fact-finding process and consistent and appropriate conclusions; and
 - (v) Review and critique completed investigations and conclusions of the I.A. Unit.
- (5) Establish and maintain liaison with the District Attorney, Sheriff-Coroner Department Executives, the Probation Department, the County Counsel, the County Executive Office, the County Human Resources Department, employee unions, the United States Attorney, the Federal Bureau of Investigation, and community based organizations;
- (6) In coordination and cooperation with the Sheriff-Coroner, review and analyze selected investigations by the I.A. Unit to determine whether departmental

policies, practices and procedures should be reexamined to prevent the future occurrence of similar allegations of misconduct, and when warranted, develop, propose and make independent recommendations as follows:

- (i) Regarding the outcomes of investigations and reviews, and
 - (ii) For revisions of the implicated policies, practices, or procedures.
- (7) Devise and recommend mechanisms to provide positive recognition and incentives to employees who perform duties in an exemplary fashion, *e.g.*, the proper and appropriate use of force, integrity, professionalism, and other matters that frequently may be the subject of complaints;
- (8) Set the operational philosophy of the OIR to ensure that the needs and goals of the Sheriff-Coroner Department, the community, and the County are met; and
- (9) Create, with the Sheriff-Coroner, the written protocols referenced in the OIR Ordinance.
- (10) Serve as lead counsel for the OIR and coordinate the activities of other OIR personnel.

Connolly acknowledges and agrees that the OIR is not authorized to engage in any conduct prohibited by state law or by Section 1-2-226(f) of the OIR Ordinance.

The Executive Director or his designee shall provide a form for citizen complaints which shall be substantially similar to that in use by the Sheriff-Coroner Department and shall keep a log for citizen complaints as well as provide copies of the complaints to the Sheriff-Coroner Department for its review as set forth in the OIR Ordinance.

In the event that the County of Orange, either administratively or by ordinance, establishes a protocol or mechanism for mediating certain citizen, peace officer, or peace officer supervisor complaints, and if the Executive Director of the OIR, in his absolute discretion, determines that such complaints do not warrant exercise of the authority set forth

in the OIR Ordinance, the Executive Director may refer such complaint or complaints to the body selected by the County of Orange to provide such mediation.

Within 30 days of the commencement of this Agreement, Connolly, after consultation with the County Executive Office and the Sheriff-Coroner, is to submit an OIR operations plan and proposed budget to the Board of Supervisors.

2. Term.

Unless otherwise amended or terminated earlier as provided herein, the term of this Agreement shall be for the period commencing September 1, 2008 and extending to and including August 31, 2011, subject to continuing appropriations each Fiscal Year by the Board of Supervisors.

Either party may, at its sole option and discretion, cancel or terminate this Agreement, for any or no reason, by giving the other party 30 days written notice of such termination. The term of this Agreement may be renewed in the sole and exclusive discretion of the Board of Supervisors. In the event that the Board of Supervisors terminates this Agreement prior to the end of the Term set forth herein or any extensions or renewals thereof, Connolly shall be paid, as a buyout of this Agreement, the lesser of three months' prorated Annual Compensation Amount (as defined in Section 3 below) or the prorated Annual Compensation Amount payable for the remainder of the term of this Agreement.

3. Compensation and Expenses.

Connolly shall be paid an annual amount of \$210,000.00 per year for all services performed ("Annual Compensation Amount"), in twelve monthly payments plus actual and necessary expenses incurred by Connolly pursuant to this Agreement. Reimbursement for necessary expenses shall be paid for such items, at the same rates and on the same terms as for County executive employees pursuant to applicable County policies.

Reimbursement of actual and necessary expenses shall be payable on a monthly basis within ten (10) working days after submission to and approval of an invoice by the County Executive Officer. Such invoices shall specify in detail the dates and reasons for incurring each item of expense for which reimbursement is claimed. Invoices shall be mailed or delivered to the County Executive Office, 333 W. Santa Ana Blvd., Santa Ana, California 92701.

Connolly shall have the option of a car allowance at the same rate and on the same terms as County Executive Managers, or provision of a County-maintained vehicle to be used for OIR business and travel to and from the offices of the OIR only.

Executive Director is required to maintain timesheets of his work and that of his professional staff and provide monthly summary reports to the Board of Supervisors.

The Annual Compensation Amount may be increased on or about the annual anniversary date of the effective date of this Agreement in the sole and exclusive discretion of the Board of Supervisors, following an annual performance review conducted by an *ad hoc* committee of the Board of Supervisors.

4. Access to Records and Confidentiality.

Connolly shall have an attorney-client relationship with the County of Orange and the Sheriff-Coroner in performing the special legal services provided pursuant to this Agreement.

As special counsel to the County of Orange and the Sheriff-Coroner in performing the specialized legal assistance and independent review services provided pursuant to this Agreement, Executive Director shall have access on an attorney-client basis to such confidential records of the County, its departments and officers as may be material and relevant to performance of his services and responsibilities pursuant to this Agreement.

All communications and reports to the County, including the Board of Supervisors and

Sheriff-Coroner, shall be made or submitted on a confidential attorney-client basis as permitted by law. Any public reports by the Executive Director which are authorized by the County shall preserve all statutory and constitutional requirements of confidentiality with regard to records and individuals. All such information will be information acquired in confidence by a public employee in the course of his or her duties and not open, or officially disclosed, to the public within the meaning of Evidence Code Section 1040.

All internal observations and determinations by the Executive Director in the performance of the specialized legal assistance and independent review services provided pursuant to this Agreement are and shall be considered attorney work product and subject to the appropriate claims of privilege therein.

The confidentiality of all records and materials collected and used by Executive Director shall be preserved consistent with the terms of this Agreement, and shall within ten (10) days from the date of expiration or termination of this Agreement be delivered to the County Counsel for confidential retention in the manner and for the periods required by law for confidential records of the County Counsel.

5. County's Contract Managers.

The County of Orange County Executive Officer and County Counsel will serve as County's contract managers for purposes of this Agreement.

6. No Assignment or Delegation.

This Agreement shall be deemed a Personal Services Contract, and thus shall not be assignable by Connolly, in whole or in part. Any attempt to assign shall be void and confer no rights on any third parties.

All services and duties of the Executive Director pursuant to this Agreement are solely the responsibility of Connolly, and may not be delegated without the prior written consent of County. Any person not employed by the County whose services are

utilized by Executive Director, with such prior written consent, to assist in the performance of Executive Director's services pursuant to this Agreement shall, prior to performing any such services, execute an addendum to this Agreement, approved as to form by County Counsel, agreeing to the terms of this Agreement, including all requirements of confidentiality.

No person assisting Executive Director shall have a criminal record of conviction of a felony or any crime of moral turpitude. Executive Director shall be responsible for all assisting staff within the Office of Independent Review. All communications and reports to County pursuant to this Agreement shall be made or submitted only by Executive Director, not by his assisting staff.

7. Independent Contractor Status.

The Board of Supervisors has established the OIR, which shall, subject to the approval of the Board of Supervisors and within the discretion of the Executive Director, be initially comprised of an Executive Director, not more than two (2) staff attorneys, an investigations analyst and administrative support staff as the Executive Director shall determine as necessary. The Executive Director will be responsible for making individual hiring recommendations to the Board of Supervisors.

Executive Director is not, nor shall he or any of his employees or agents, except for administrative support staff, be deemed for any purposes an employee of the County; nor shall Executive Director, his employees or agents, except for administrative support staff, be entitled to any rights, benefits, or privileges of County employees.

Pursuant to the OIR Ordinance, the terms and conditions of this Agreement and the contracts of all professional staff of the OIR shall be set by the Board of Supervisors.

Connolly shall comply with all federal, state, and local statutes, laws, and ordinances

related to the payment of any employer, income, disability, or other tax which may be due by virtue of any compensation received by him under this Agreement.

Connolly represents and warrants to County, and County relies on such representation and warranty, that he has the necessary skills, competence and expertise to fully and completely perform the specialized legal services called for under this Agreement. County and Connolly understand and agree that he is wholly responsible for the means and methods of performing these specialized legal services and accomplishing the results, deliverables, objectives and/or purposes as specified and/or requested by County pursuant to this Agreement.

8. Other Contracts; Avoidance of Conflicts

Pursuant to his Independent Contractor status, Connolly reserves the right to enter into contracts with other law enforcement or other governmental agencies to perform law enforcement oversight services, consistent with his obligation to uphold in full the time commitments and work assignments described in this Agreement. Connolly agrees to obtain the informed written consent of both the County Counsel and the Chairman of the Board of Supervisors, which consent shall not be unreasonably withheld, before entering into such an outside contract.

Connolly shall not undertake any representation that would violate California Rules of Professional Conduct 3-300, 3-310, 3-320, and 3-600.

9. Indemnification.

In consideration of the benefit to County of the specialized legal assistance and independent review services to be provided by Connolly pursuant to this Agreement, County agrees to indemnify, defend and hold Connolly harmless from claims of liability resulting from acts and omissions of Connolly in the performance of services provided within the

scope of services required pursuant to this Agreement, to the same extent as if he was a County employee under Section 995 *et seq.*, of the California Government Code.

Except as specifically provided herein, Connolly agrees to indemnify, defend and hold County harmless from any and all other claims of liability for damages of any nature whatsoever arising from or connected with acts or omissions of Connolly, including any workers' compensation claims, liability or expense arising from or connected with services performed by or on behalf of Connolly by any person.

10. Office Space, Equipment and Staff Support.

County agrees to provide Connolly, at no cost to him, such office space, vehicle usage, use of related equipment, and staff support and assistance during the term of this Agreement as may be mutually agreed upon by Connolly and County's Contract Managers. Any and all other office space, equipment and/or staff support and assistance utilized by Connolly in providing services pursuant to this Agreement shall be the sole cost and responsibility of Connolly.

11. Notices.

Notices required or permitted pursuant to this Agreement shall be given in writing by personal delivery or deposit in the United States mail first class postage prepaid, addressed as follows:

To County: County Counsel
 333 W. Santa Ana Blvd.
 Santa Ana, California 92701

With a copy to:
County Executive Office
333 W. Santa Ana Blvd.
Santa Ana, California 92701

To Executive Director: Stephen Connolly
6230 E. Marita St.
Long Beach, California 90815

The address for notice may be changed by County or Connolly, as the case may be, by written notice to the other party as provided herein.

IN WITNESS WHEREOF, County and Connolly have executed this Agreement August 5, 2008.

COUNTY OF ORANGE

EXECUTIVE DIRECTOR

By _____
John M.W. Moorlach
Chairman of the Board of Supervisors

Stephen Connolly

APPROVED AS TO FORM:

Benjamin P. de Mayo
County Counsel