

**AMENDMENT #2 TO PROFESSIONAL SERVICES A
AGREEMENT BETWEEN THE COUNTY OF MONTEREY
&
THE LAW OFFICE OF KELLY B. DUNCAN**

THIS AMENDMENT is made to the AGREEMENT for legal representation services by and between The Law Office of **KELLY B. DUNCAN**, Attorney at Law, State Bar #161488, hereinafter referred to as “Attorney”, and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County.”

WHEREAS, the County and Attorney wish to amend the AGREEMENT to extend the term and the agreement for one additional year, through June 30, 2024, and to increase the total amount of the AGREEMENT by \$92,610 to compensate Attorney for the period of July 1, 2023 through June 30, 2024.

NOW THEREFORE, the County and Attorney hereby agree to amend the AGREEMENT in the following manner:

1. Section 4.01, “**Monthly Payments by County,**” shall be amended by deleting the following language, “*During the period of July 1, 2022 through June 30, 2023, compensation in the amount of \$88,200.00 shall be paid to Attorney, in monthly payments of \$7,350.00, payable on or before the thirtieth day of each month during this time period for those services rendered in the immediately preceding month pursuant to this Agreement.*” and replacing it with, “**During the period of July 1, 2023 through June 30, 2024, compensation in the amount of \$92,610.00 shall be paid to Attorney, in monthly payments of \$7,718.00, payable on or before the thirtieth day of each month during this time period for those services rendered in the immediately preceding month pursuant to this Agreement.**”
2. Section 4.02, “**Maximum Payment by the County,**” shall be amended by removing, “*The maximum compensation to be paid by the County, except as provided in Section 4.03, over the full term of this Agreement shall not exceed one hundred seventy-two thousand two hundred dollars (\$172,200.00).*” and replacing it with, “**The maximum compensation to be paid by the County, except as provided in Section 4.03, over the full term of this Agreement shall not exceed two hundred sixty four thousand eight hundred ten dollars (\$264,810.00).**”
3. Section 5.01, “**Duration of Agreement,**” shall be amended by removing, “*This Agreement shall be in full force and effect commencing on July 1, 2021, and ending on June 30, 2023, unless sooner terminated as provided herein*” and replacing it with, “**This Agreement shall be in full force and effect commencing on July 1, 2021 and ending on June 30, 2024, unless sooner terminated as provided herein.**”

4. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by the AGREEMENT and shall continue in full force and effect as set forth in the AGREEMENT.
5. A copy of this AMENDMENT #2 shall be attached to the original AGREEMENT executed by the County on June 22, 2021, along with previous Amendment #1.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written below.

County of Monterey:

By: _____
Contracts/Purchasing Officer

Date: _____

Attorney:

By: _____
DocuSigned by:
Kelly Duncan
020A63AE18BD4FD...
Kelly B. Duncan, Attorney at Law

Date: 6/2/2023

Approved:

By: _____
DocuSigned by:
W. Scott Erdbacher
B5A53E7EABAD455
**W. Scott Erdbacher
Alternate Defender's Office Chief**

Date: 6/2/2023

Approved:

By: _____
DocuSigned by:
Susan Chapman
2D93G433446B4C5...
**Susan E. Chapman
Public Defender**

Date: 6/2/2023

Approved as to Form:

By: _____
DocuSigned by:
Stacy Saetta
C0ECE1B99F444A9...
Deputy County Counsel

Name: Stacy Saetta
Date: 6/2/2023

Approved as to Fiscal Provisions:

By: _____
DocuSigned by:
Patricia Ruiz
E79EF64E57454F6...
Deputy Auditor/Controller

Name: Patricia Ruiz
Date: 6/2/2023

Approved as to Indemnity/Insurance Language:

By _____ Date: _____
Name: _____

*INSTRUCTIONS: If ATTORNEYS is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If ATTORNEY is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If ATTORNEY is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

**AMENDMENT #1 TO PROFESSIONAL SERVICES A
AGREEMENT BETWEEN THE COUNTY OF MONTEREY
&
THE LAW OFFICE OF KELLY B. DUNCAN**

THIS AMENDMENT is made to the AGREEMENT for legal representation services by and between The Law Office of **KELLY B. DUNCAN**, Attorney at Law, State Bar #161488, hereinafter referred to as “Attorney”, and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County.”

WHEREAS, the County and Attorney wish to amend the AGREEMENT to extend the term and the agreement for one additional year, through June 30, 2023, and to increase the total amount of the AGREEMENT by \$88,200 to compensate Attorney for the period of July 1, 2022 through June 30, 2023.

NOW THEREFORE, the County and Attorney hereby agree to amend the AGREEMENT in the following manner:

1. Section 2.02, “**Monthly Reports by the Attorney,**” shall be amended by deleting the following language, “*Failure to comply may cause delay in payment.*”
2. Section 4.01, “**Monthly Payments by County,**” shall be amended by deleting the following language, “*Subject to the limitations set forth herein, the County through the Auditor-Controller shall pay the Attorney a monthly payment equal to 1/12th of the maximum amount of the County’s liability over the full term of this Agreement, payable on or before the thirtieth day of each month during the term of this Agreement for those services rendered in the immediately preceding month pursuant to this Agreement*” and replacing it with, “**During the period of July 1, 2022 through June 30, 2023, compensation in the amount of \$88,200.00 shall be paid to Attorney, in monthly payments of \$7,350.00, payable on or before the thirtieth day of each month during this time period for those services rendered in the immediately preceding month pursuant to this Agreement.**”
3. Section 4.02, “**Maximum Payment by the County,**” shall be amended by removing, “*The maximum compensation to be paid by the County, except as provided in Section 4.03, over the full term of this Agreement shall not exceed \$84,000.00*” and replacing it with, “**The maximum compensation to be paid by the County, except as provided in Section 4.03, over the full term of this Agreement shall not exceed one hundred seventy-two thousand two hundred dollars (\$172,200.00).**”
4. Section 5.01, “**Duration of Agreement,**” shall be amended by removing, “*This Agreement shall be in full force and effect commencing on July 1, 2021, and ending on June 30, 2022, unless sooner terminated as provided herein*” and replacing it with, “**This Agreement shall be in full force and effect commencing on July 1, 2021 and ending on June 30, 2023, unless sooner terminated as provided herein.**”

5. Section 5.02, “**Termination without Cause,**” shall be amended by removing, “*This Agreement may be terminated by the County without cause by giving thirty (30) days written notice of an intention to terminate*” and replacing it with, “**The Agreement may be terminated by the County or Attorney without cause by giving thirty (30) days prior written notice of an intention to terminate.**”

6. Section 5.03, “**Method of Computing Pro Rata Payment,**” shall be amended by removing

“(a) Misdemeanor - \$200 for each misdemeanor case assigned pursuant to this Agreement, through the date of termination.

“(b) Non-Serious Felonies - \$75 per hour for each non-serious felony case assigned pursuant to this Agreement, through the date of termination.

Non-serious felonies are offenses that are not listed in Penal Code sections 1192.7(c) and 667.5(c).

“(c) Serious Felonies - \$100 per hour for each serious felony case assigned pursuant to this Agreement, through the date of termination.

Serious felonies are offenses that are not listed in Penal Code sections 1192.7(c) and 667.5(c).”

and replacing it with

“(a) Misdemeanors - \$200 for each misdemeanor case assigned pursuant to this Agreement, through the conclusion of the case.

“(b) Non-Strike Felonies - \$75 per hour for each non-strike felony case assigned pursuant to this Agreement, through the conclusion of the case. Non-strike felonies are offenses not listed in either Penal Code Sections 667.5(c) or 1192.7(c).

“(c) Serious Strike Felonies - \$100 per hour for each strike felony case assigned pursuant to this Agreement, through the conclusion of the case. Felonies designated as strikes are the offenses listed in Penal Code Section 667.5(c) and 1192.7(c).”

7. Exhibit A to the Agreement, “**Scope of Work**” shall be amended by removing, “*The Attorney shall be assigned no more than 150 clients during the term of this Agreement. A client who has concurrent cases and/or probation violations will constitute one client. Clients who: (a) cannot be represented due to a conflict of interest; (b) retain private counsel, or; (c) successfully relieve counsel pursuant to People v. Marsden (1970), 2 Cal.3d 118, do not count toward the case limitation. This Agreement is concurrent client based; therefore, one client equals one client, regardless of the number of individual cases assigned to that client on a concurrent basis. These limitations cannot be exceeded unless the parties mutually agree in writing to change these limitations.*” and replacing it with “**The Attorney shall be**

assigned no more than 150 clients during the term of this Agreement. If a client has concurrent misdemeanor charges alleged in a separate Complaint, each will be counted as a separate client toward the 150-client contract maximum. However, a client who has concurrent misdemeanor violations of probation will constitute one client. Clients who: (a) cannot be represented due to conflict of interest; (b) retain private counsel, or; (c) successfully relieve counsel pursuant to *People v. Marsden* (1970), 2 Cal.3d 118, do not count toward the case limitation, unless the Attorney has performed significant work on the case. These limitations cannot be exceeded unless the parties mutually agree in writing to change these limitations.”

- 8.** Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by the AGREEMENT and shall continue in full force and effect as set forth in the AGREEMENT.
- 9.** A copy of this AMENDMENT #1 shall be attached to the original AGREEMENT executed by the County on June 22, 2021.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written below.

County of Monterey:

By: _____
Contracts/Purchasing Officer

Date: _____

Attorney:

DocuSigned by:
Kelly Duncan
By: _____
Kelly B. Duncan, Attorney at Law

5/18/2022
Date: _____

Approved:

DocuSigned by:
Juliet Peck
By: _____
**Juliet Peck or Michael Lawrence
ADO, Contract Administrator**

5/18/2022
Date: _____

Approved:

DocuSigned by:
Susan Chapman
By: _____
**Susan E. Chapman
Public Defender**

5/18/2022
Date: _____

Approved as to Form:

DocuSigned by:
Stacy Saetta
By: _____
Deputy County Counsel

Approved as to Fiscal Provisions:

DocuSigned by:
Gary Giboney
By: _____
Deputy Auditor/Controller

Name: Stacy Saetta
Date: 5/18/2022

Name: Gary Giboney
Date: 5/18/2022

Approved as to Indemnity/Insurance Language:

By _____
Name: _____

Date: _____

*INSTRUCTIONS: If ATTORNEYS is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If ATTORNEY is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If ATTORNEY is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

THE ALTERNATE DEFENDER'S OFFICE
COUNTY OF MONTEREY
168 W. Alisal Street, 2nd Floor
Salinas, CA. 93901
(831) 796-6054

**AGREEMENT TO PROVIDE
LEGAL SERVICES**

July 1, 2021 to June 30, 2022

THIS AGREEMENT is entered into by the County of Monterey, ("the County"), and the Law Office of **KELLY B. DUNCAN**, Attorney at Law, State Bar #161488 ("the Attorney.")

RECITALS

WHEREAS, the United States and California Constitutions and other provisions of state and federal law give indigent defendants, juveniles, and other qualified parties ("the Defendant") a constitutional right to competent legal representation if the Public Defender declines to represent the Defendant due to a conflict of interest; and

WHEREAS, it would be costly, unpredictable, and disruptive of orderly budget procedures if counsel was assigned on a case-by-case basis to represent Defendants where the Public Defender declines to do so due to a conflict of interest; and,

WHEREAS, the Alternative Defender Office ("ADO"), a separate office from the Monterey, California Public Defender except as to budgetary control, has been directed by the Monterey County Administrative Officer ("CAO") to administer all Agreements for legal representation of indigent defendants who cannot be represented by the Public Defender due to conflict of interest; and

WHEREAS, the Board is authorized to enter into this Agreement under Government Code § 31000; and

WHEREAS, the Attorney has offered to represent all Defendants who are referred to him/her by the ADO, subject to the limitations contained in this Agreement; and

WHEREAS, the ADO has found and determined that the Attorney is qualified as trial counsel in all aspects of felony and/or misdemeanor criminal proceedings. Minimum qualifications include the ability to perform the duties equivalent to a Deputy Public Defender II, III, or IV.

NOW THEREFORE, the Attorney agrees to furnish the County professional services and the County and Attorney agree to enter into this Agreement, both in accordance with the terms and conditions set forth herein.

Article I. GENERAL PROVISIONS

Section 1.01 **Contract Administrator.** The Chief of the Alternate Defender Office (ADO) will administer the contract. The Monterey County Public Defender is responsible for the ADO budget. The County may change the Administrator at any time with notice to the Attorney.

Section 1.02 **Independent Contractor.** The Attorney and his or her employees and agents, in the performance of this Agreement, are independent contractors in relation to the County of Monterey, and not officers or employees of the County of Monterey. Nothing in this agreement shall create any of the rights, powers, privileges or immunities of an employee of the County of Monterey. The Attorney shall be solely liable for all applicable taxes, including, but not limited to, federal and state income taxes and Social Security taxes, arising out of the Attorney's performance of this Agreement. The Attorney shall not be entitled to receive from the County of Monterey under this Agreement any compensation in the form of sick leave, vacation leave, or retirement benefits or any other kind of type of employee benefits such as workers' compensation, unemployment compensation or insurance, social security benefits or disability insurance benefits. This Agreement for provision of Attorney's professional services to the County is not exclusive; the Attorney retains the right to represent other clients of his or her choosing, so long as that representation does not pose a conflict of interest with clients referred to the Attorney by the County in a particular case.

Section 1.03 **Cooperation.** If the Internal Revenue Service or any other federal or state government agency should inquire about, question, or challenge the independent contractor status of the Attorney or his subcontractors with respect to the County, the parties hereto mutually agree that:

- (a) Each shall inform the other party hereto of such inquiry or challenge; and
- (b) The County and the Superior Court of California, County of Monterey, shall have the right to participate in any discussion or negotiation occurring with the federal or state agency, without regard to who initiated such discussions or negotiations.

In the event the federal or state agency concludes that an independent contractor relationship does not exist, the County may terminate this Agreement effective immediately upon written notice.

Section 1.04 **Non- Assignability.** Except as otherwise provided in Section 2.06 of this Agreement, none of the rights, privileges, interest, immunities, duties, or obligations created by this Agreement are assignable or delegable. Upon disability or inability to accept assigned cases or to continue as assigned counsel

in cases previously assigned, this Agreement shall terminate. The Attorney's refusal to accept assigned cases on grounds of conflict of interest among criminal defendants assigned or proposed to be assigned does not constitute "disability" or "inability" as used in this Agreement.

Section 1.05 **Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code § 1654.

Section 1.06 **Headings.** The section and paragraph headings are for convenience only and shall not be used to interpret the terms of this Agreement.

Section 1.07 **Time of Essence.** Time is of the essence in each and all of the provisions of this Agreement.

Section 1.08 **Amendment.** No alteration, variation, or amendment to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

Section 1.09 **Notices.** Notices to the parties in connection with this Agreement shall be given personally or by regular mail addressed as follows:

Contract Administrator
Chief Alternate Defender
Alternate Defender Office
County of Monterey
168 W. Alisal Street, 2nd Floor
Salinas, CA. 93901
Telephone: (831) 796-6054

Attorney:
Kelly Duncan
7960 "B" Soquel Drive, Suite 182
Aptos, CA 95003
Telephone: (831) 708-2685

Section 1.10 **Exhibits.** The following exhibits are attached hereto and incorporated by reference:

- (a) Exhibit A – Description of Services
- (b) Exhibit B – Insurance Exemption - Workers Compensation
- (c) Exhibit B.1 – Insurance Exemption - General Liability
- (d) Exhibit C – Monthly Case Report Template
- (e) Exhibit D – Expense Request Form
- (f) Exhibit E – Annual Contract Compliance Checklist

Section 1.11 **Integration.** This Agreement, including the exhibits hereto, shall represent the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties as of the effective date hereof.

Section 1.12 **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.

Article II SERVICES TO BE PROVIDED

Section 2.01 **Attorney Services.** The Attorney shall provide the legal services set forth in Exhibit A of this Agreement.

Section 2.02 **Monthly Reports by the Attorney.** The attorney shall submit Monthly Case Reports (Exhibit C) reflecting new assigned clients and charges (weighted client report), closed cases, conflicts filed, *Marsden* Motions, jury trials and court trials during the previous month. Reports shall be submitted to Alternate Defender's Office no later than the 5th day of each month following the month in which the case work was performed or as directed by the ADO. Failure to comply may cause delay in payment.

Section 2.03 **Qualifications.** At all times during the provision of professional services pursuant to this Agreement, each and every attorney performing services pursuant to this Agreement shall be and remain a member in good standing of the State Bar of California.

Section 2.04 **Training for Staff.** The Attorney shall ensure that sufficient training is provided to his or her staff, to enable them to perform effectively and to increase their existing level of skills in the performance of this Agreement.

Section 2.05 **Expert Personal Services.** It is expressly understood by the parties to this Agreement that the County is purchasing the expert personal services of the Attorney. Any other attorneys used by the Attorney must be approved by the ADO prior to referral in accordance with the subcontractor requirements set forth in Section 2.06.

Section 2.06 **Subcontractor Requirement.** The Attorney may not subcontract with another attorney for performance of work under this Agreement without the prior written consent of the ADO. However, the Attorney may, without prior approval of the ADO, and limited to a total of 30 days per fiscal year, use a duly licensed and appropriately qualified attorney for a special appearance when the Attorney is ill, on vacation, or involved in an emergency. Notwithstanding any such subcontract, the Attorney shall continue to be liable for the performance of all requirements under this Agreement. Attorney agrees that all subcontract agreements he or she enters into for performance of the work under this Agreement shall be in writing, shall include this Agreement attached as an exhibit which shall be incorporated by reference into the subcontract, and shall include:

- (a) The nondiscrimination and compliance provisions set forth in Article VIII of this Agreement.

- (b) A provision that the Attorney shall provide insurance coverage for subcontractor, or require subcontractor to maintain insurance coverage such that subcontractor's services are insured under the terms and conditions set forth in Article VII of this Agreement.

Section 2.07 **Attorney-Client Relationship.** The Attorney's relationship to defendants assigned to him or her shall be that of attorney and client. The Attorney shall remain responsible for the representation of all Defendants assigned pursuant to this Agreement until the Defendants' cases are concluded in the Monterey County Superior Court, even if the case is concluded after this Agreement expires or this Agreement is otherwise terminated by the parties

Article III. PERFORMANCE

Section 3.01 **Level of Service.** The Attorney shall meet the specified performance standards set forth in Section 3.02 of this Agreement unless prevented from doing so by circumstances beyond the Attorney's control, including but not limited to natural disasters, fire, theft, and shortages of necessary supplies or materials due to labor disputes.

Section 3.02 **Standards of Representation.** Each and every attorney performing services pursuant to this Agreement shall perform such services in a competent manner and in conformity with the highest professional standards and practices.

Section 3.03 **Compliance with Law.** Each and every attorney performing services pursuant to this Agreement shall fully comply with all applicable laws, rules, and regulations in providing services pursuant to this Agreement.

Section 3.04 **Contract Compliance Checklist:** Each attorney performing services pursuant to this Agreement must submit to an annual Contract Compliance meeting with the ADO Chief to assess contract compliance in accordance with Exhibit E.

Article IV. PAYMENTS BY COUNTY

Section 4.01 **Monthly Payments by County.** Subject to the limitations set forth herein, the County through the Auditor-Controller shall pay the Attorney a monthly payment equal to 1/12th of the maximum amount of the County's liability over the full term of this Agreement, payable on or before the thirtieth day of each month during the term of this Agreement for those services rendered in the immediately preceding month pursuant to this Agreement. Warrants for payment shall be made in the name of **KELLY B. DUNCAN**. This limit on the monthly amount may be exceeded on a case-by-case basis, with the prior written consent of the ADO, as Contract Administrator, provided the maximum amount of the County's liability over the full term of this Agreement may not be exceeded.

Section 4.02 **Maximum Payment by the County.** The maximum compensation to be paid by the County, except as provided in Section 4.03, over the full term of this Agreement shall not exceed **\$84,000.00**. The Attorney shall be liable for all payments owed subcontractors and other attorneys retained by the Attorney pursuant to Section 2.06 and all other costs incurred by the Attorney, other than those listed in Section 4.03, regardless of whether this Agreement expires, is terminated for cause by the County, or is terminated without cause by the County. Payment is due to the Attorney on the 30th or 31st of each month.

Section 4.03 **Extraordinary Expenses.** The foregoing maximum payment shall include all ordinary expenses incurred in representing defendants pursuant to the terms of this Agreement. It is understood that the compensation pursuant to this Agreement is sufficient to cover ordinary expenses, and those ordinary expenses are included in the contract maximum payment specified in Section 4.02 above. The Attorney may be allowed additional ancillary expenses, as approved by the ADO Chief, following a written request. Contractor is responsible to comply with all ADO and Monterey County Policies pertaining to ancillary expenses.

Ancillary expenses are listed below:

- (a) **Mileage and Travel Expense.** Approved reasonable and necessary mileage and travel expenses of investigators and attorneys when working beyond a 150-mile radius from their offices. All travel expenses will be paid per the Monterey County Travel Policy.
- (b) **Expert Witness and Investigation Expenses.** In a felony case, twenty (20) hours of verified investigation is authorized without prior approval. An Expense Request Form (ERF) EXHIBIT D must be submitted for advance approval by County for any investigative services in excess of 20 hours. Any expert witness fees shall be submitted for approval prior to services being rendered by an expert. Investigative fees and costs in excess of 20 hours, in felony cases, that are incurred without County advance approval and expert witness fees and costs incurred without County advance approval, are the sole responsibility of CONTRACTOR. In a misdemeanor case an Expense Request Form (ERF) EXHIBIT D must be submitted for approval for any investigative services. Any expert witness fees shall be submitted for approval prior to services being rendered by an expert. Investigative fees and costs in misdemeanor cases, that are incurred without County advance approval and expert witness fees and costs incurred without County advance approval, are the sole responsibility of CONTRACTOR.
- (c) **Interpreter expenses.**

Article V. TERM OF AGREEMENT

Section 5.01 Duration of Agreement. This Agreement shall be in full force and effect commencing on July 1, 2021 and ending on June 30, 2022, unless sooner terminated as provided herein. Termination of this agreement does not terminate the Attorney's duty to defend, indemnify or hold harmless the County, as provided in Section 7.01, or to maintain sufficient insurance, as provided in Section 7.02.

Section 5.02 Termination without Cause. This Agreement may be terminated by the County without cause by giving thirty (30) days prior written notice of an intention to terminate.

If this Agreement is terminated by the County without cause, the Attorney shall be entitled to compensation as determined by one of the following methods, whichever is greater:

- 1) The amount paid by the County pursuant to this Agreement as of the date of termination; or
- 2) A *pro rata* amount determined by the formula in Section 5.03.

In no event shall the Attorney be required to refund monies already paid by the County pursuant to this Agreement if the County terminated this Agreement without cause.

Section 5.03 Method of Computing Pro Rata Payment. If this Agreement is terminated without cause, Section 5.02 will determine use of the following weighed *pro rata* formula:

- (a) Misdemeanor - \$200 for each misdemeanor case assigned pursuant to this Agreement, through the date of termination.
- (b) Non-serious Felonies - \$75 per hour for each non-serious felony case assigned pursuant to this Agreement, through the date of termination. Non-serious felonies are offenses that are not listed in Penal Code sections 1192.7(c) and 667.5(c).
- (c) Serious Felonies - \$100 per hour for each serious felony case assigned pursuant to this Agreement, through the date of termination. Serious felonies are those offenses listed in Penal Code sections 1192.7(c) and 667.5(c).

If pro rata payments pursuant to this section are paid to Attorney, these payments shall constitute complete and final payment for services rendered pursuant to this Agreement, if this Agreement is terminated without cause.

5.04 Termination For Cause. The ADO may cancel and terminate this Agreement for cause, immediately, upon written notice to the Attorney. "Cause"

includes, but is not limited to, the revocation or suspension of the Attorney's license to practice law, the failure of the Attorney to perform a material requirement of this Agreement. The amount received by the Attorney to the date of termination for cause shall constitute full compensation pursuant to this Agreement.

Article VI. RECORDS OF CONFIDENTIALITY

Section 6.01 **Confidentiality.** The Attorney, and his or her employees, agents, and subcontractors, shall comply with any and all applicable federal, state, or local laws which provide for the confidentiality of records and prohibits them from being opened for examination for any purpose without proper court or client authorization, including, but not limited to, Business and Professions Code section 6068 (e) and Rule 1.6 of the California Rules of Professional Conduct. Confidential medical or personal records and the identities of clients and complainants shall not be disclosed unless there is proper consent to such disclosure or a court order requiring disclosure. Confidential information gained by the Attorney from access to any such records, and from contact with the Attorney's clients and complainants, shall be used by the Attorney only in connection with provision of services under this Agreement.

Section 6.02 **Maintenance and Availability of Records.** The Attorney shall prepare and maintain all reports and records that may be required by federal, state, or county rules and regulations and the ADO, as Contract Administrator, and shall furnish such reports and records to the County of Monterey and to the state and federal governments, upon request in compliance with applicable rules of confidentiality.

Pursuant to Government Code § 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000.00, the parties to this Agreement may be subject to the examination and audit of the State Auditor, and the request of the County of Monterey or as part of any audit of the County of Monterey, for a period of three years after final payment under this Agreement. As provided by Government Code § 8546.7, these audits will be confined to those matters connected with the performance of this Agreement, including but not limited to the costs of administering the Agreement.

Section 6.03 **Retention of Records.** The Attorney shall maintain and preserve all records related to this Agreement (and shall assure the maintenance of such records in the possession of any third party performing work related to this Agreement) for the minimum period as required by law or the professional rules for the retention of client records, but, in no event for less than minimum of three years from the date of the last action taken in the case.

Article VII. INDEMNIFICATION AND INSURANCE

Section 7.01 **Indemnification.** Attorney shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from, and against, any

and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney's fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Attorney's performance of this Agreement, unless such claims, liabilities or losses arise out of the gross negligence or willful misconduct of the County. "Attorney's performance" includes Attorney's action or inaction and the action or inaction of Attorney's officers, employees, agents and subcontractors. The Attorney's obligation to defend, indemnify and hold harmless County shall survive the termination or expiration of this Agreement and shall extend for a term to include the statute of limitations applicable to claims arising out of Attorney's performance of this Agreement.

Section 7.02 **Insurance.** Without limiting Attorney's duty to indemnify, Attorney shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability.

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury, Property Damage, Personal Injury, Contractual liability, Broad Form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers' Compensation Insurance, if Attorney employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident, and \$1,000,000 each disease.

Professional Liability Insurance, because insurance is required for the professional services being provided (i.e., the Attorney is authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim, and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Attorney shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date the Attorney completed its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Attorney and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontract showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as additional insureds, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the additional insureds shall not be called upon to contribute to a loss covered by the Attorney's insurance.

Prior to the execution of this Agreement by the County, Attorney shall file Certificates of Insurance with the County's ADO, as Contract Administrator, and with County's Contracts/Purchasing Division, showing that the Attorney has, in effect, the insurance required by this Agreement. The Attorney shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Attorney shall, at all times during the term of this Agreement, maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Purchasing Division. If the certificates are not received by the expiration date, County shall notify Attorney and Attorney shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Attorney to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

Article VIII. NON-DISCRIMINATION

Non-Discrimination. Attorney shall be required to submit and comply with the non-discrimination clause set forth below.

During the performance of this agreement, the Attorney shall not unlawfully discriminate against any employee, or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sexual preference, or gender. The Attorney shall ensure that the evaluation and treatment of his or her employees and applicants are free of such discrimination. The Attorney shall comply with the provisions of the California Fair Employment and Housing Act (Government Code §12900, *et seq.*) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, § 7285.0, *et seq.*).

The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12900, *et seq.*, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

The Attorney shall include the non-discrimination and compliance provisions of the clause in all agreements with subcontractors to perform work under the contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written below.

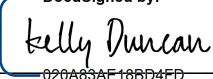
County of Monterey:

By: _____

Date: _____

Contracts/Purchasing Officer

Attorney:

By:  _____
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Date: 6/11/2021

Kelly B. Duncan
Attorney at Law

Approved:

By:  _____
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Date: 6/11/2021

Juliet Peck or Michael Lawrence
Alternate Defender Chief

Approved:

DocuSigned by:
Susan E. Chapman
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By: _____
Susan E. Chapman
Public Defender

Date: 6/11/2021

Approved as to Form:

DocuSigned by:
Grace Pak
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By: _____
Name: Grace Pak

Date: 6/11/2021

Approved as to Fiscal Provisions:

DocuSigned by:
Joey Nolasco
F60C442ED05B437...
By: _____
Name: Joey Nolasco

Date: 6/11/2021

Approved as to Indemnity/Insurance Language:

By _____
Name: _____

Date: _____

EXHIBIT A – DESCRIPTION OF SERVICES

Attorney shall accept all assignments from the ADO, pursuant to Penal Code § 987 *et seq.*, in which the court finds that the Public Defender has properly declined to represent the accused due to a conflict of interest. This obligation requires the Attorney to act as legal counsel and provide representation for indigent adult defendants charged with criminal offenses, including new felony and misdemeanor charges and probation violations.

The Attorney shall be assigned no more than 150 clients during the term of this Agreement. A client who has concurrent cases and/or probation violations will constitute one client. Clients who: (a) cannot be represented due to conflict of interest; (b) retain private counsel, or; (c) successfully relieve counsel pursuant to *People v. Marsden* (1970), 2 Cal.3d 118, do not count toward the case limitation. This Agreement is concurrent client based; therefore, one client equals one client, regardless of the number of individual cases assigned to that client on a concurrent basis. These limitations cannot be exceeded unless the parties mutually agree in writing to change these limitations.

The ADO Management Analyst shall assign cases to the multiple ADO Contractors in an equitable and efficient manner, but there is no assurance that cases will be assigned equally each month. Of the potential 150 clients assigned to each CONTRACTOR per year, there is no certainty that this amount will be divided equally each month. CONTRACTOR may, therefore, have high case volume months on occasion. The classes of cases in which the Attorney will be appointed are as follows:

1. Misdemeanors

Legal representation includes all ethically and constitutionally required pretrial and trial services and post-trial motions but no appeals following conviction and sentencing other than filing the notice of appeal. Once an assigned case is concluded at the trial level, CONTRACTOR does not continue to represent the indigent defendant in Adult Criminal cases in instances of violations of probation, unless a conflict is declared by the Public Defender and CONTRACTOR is specially assigned representation in such circumstances.

If the Court appoints the Attorney to represent Defendants in the following matters, the following special terms apply:

1. Special Circumstances Murder Cases. The Attorney shall not be appointed pursuant to this Agreement to murder cases in which special circumstances are charged.
2. In re Marsden. Where the Public Defender is relieved pursuant to a Marsden Motion, the Attorney shall accept a maximum of five such cases during the contract period and will be paid in accordance with

Article IV of this Agreement, subject to the maximum compensation limit set forth in Section 4.02.

3. Retrials. In a case in which the Attorney represented a client, and where a new trial motion or a mistrial is granted to Attorney's client, Attorney shall be paid in these motions in accordance with Article IV of this Agreement, subject to the maximum compensation limit set forth in Section 4.02.
4. Motions to Withdraw Plea. The Attorney shall accept appointment for such motions where the Public Defender has declared a conflict of interest. The Attorney will be paid for representation in these motions in accordance with Article IV of this Agreement, subject to the maximum compensation limit set forth in Section 4.02.
5. Refusal of Public Defender to Accept Appointment because of Excessive Caseload. The Attorney shall not be responsible for, or required to accept, appointment in these cases. The Attorney and the ADO may agree to Attorney's appointment in these cases, in addition to the services and compensation provided by this Agreement, at the hourly rates set forth in Section 5.03(a) and (b).
6. Prison cases. The Attorney shall not be appointed pursuant to this Agreement on cases by prisoners where the charged conduct occurs on the California Department of Corrections and Rehabilitation grounds.
7. Sexually Violent Predators. The Attorney shall not be appointed pursuant to this Agreement on cases brought pursuant to Welfare and Institutions Code § 6600.
8. Witness Advisement. The Attorney shall accept appointment to represent witnesses in cases concerning the witnesses' Fifth Amendment and CCP 1219 rights. The Attorney will be paid for witness representation in these cases in accordance with Article IV of this Agreement, subject to the maximum limitation set forth in Section 4.02.
9. Discovery and Special Master. The Attorney shall not be appointed pursuant to this Agreement as a special master or to facilitate discovery matters.
10. Stand by Counsel. The Attorney shall not be appointed pursuant to this Agreement to act as Standby or Advisory Counsel.
11. Appellate Court Reversals and Other Orders. The Attorney shall not be appointed pursuant to this Agreement to cases returned to the trial court by the Appellate Court following orders made in appeals, writs or other extraordinary proceedings.

12. MDSO Proceedings. The Attorney shall not be appointed in MDSO proceedings.
13. Conservatorship and LPS Matters. The Attorney shall not be appointed pursuant to this Agreement in Conservatorship and LPS cases.

EXHIBIT B – Insurance Exemption

Workers Compensation Justification:

Notwithstanding Section 7.02 of this Agreement, at the time of execution of this Agreement, the Attorney does not have employees and therefore, does not carry Workers’ Compensation Insurance coverage. Should the Attorney hire employees during the term of this Agreement, the Attorney shall comply with County’s insurance requirements pertaining to Workers’ Compensation, as described in Section 7.02 of this Agreement.

EXHIBIT B.1

**To Agreement by and between
Public Defender’s Office, hereinafter referred to as “County”
AND
Kelly B. Duncan, hereinafter referred to as “Contractor”**

Justification for General Liability Insurance

A. Justification

A.1 The CONTRACTOR does not use, rent, or have possession of an office or like facility. As the department head, the Public Defender has determined that the CONTRACTOR’s Homeowners insurance and \$1,000,000.00 Personal Liability Umbrella limits are sufficient for the purposes of providing the services agreed upon. Should the CONTRACTOR use, rent, or have possession of an office or like facility during the term of this Agreement, the CONTRACTOR shall comply with COUNTY’s insurance requirements pertaining to Commercial General Liability Insurance, as described in Section 7.02 of this Agreement.

DocuSigned by:

Susan E. Chapman

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Susan E. Chapman
Public Defender

6/11/2021

Date