

AGREEMENT BETWEEN COUNTY OF MONTEREY AND SCOTT ERDBACHER FOR LEGAL REPRESENTATION FOR INDIGENT ADULT CRIMINAL CASES VIA ALTERNATE DEFENDERS OFFICE

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and **Scott Erdbacher**, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, County has invited qualifications packages through the **Request for Qualifications (RFQ) # 10379 for Legal Representation for Indigent Adult Criminal and Juvenile Delinquency Cases via the Alternate Defenders Office**, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible qualifications package to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

1.1 After consideration and evaluation of the CONTRACTOR'S qualifications package, the County hereby engages CONTRACTOR to provide the services set forth in RFQ #10379 and in this AGREEMENT on the terms and conditions contained herein and in RFQ #10379. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT including all attachments, exhibits and appendices; and RFQ #10379 dated August 20, 2012, including all attachments and exhibits; and CONTRACTOR'S qualifications package dated September 21, 2012; and Certificate of Insurance; and Additional Insured Endorsements.

1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be

done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendices, RFQ #10379, CONTRACTORS' qualifications package including all attachments and exhibits, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 CONTRACTOR is responsible for all cases assigned to him/her assigned by County.
- 2.2 **The Scope of Services is described as (but not limited to) the following:**
 - 2.2.1 Adult Criminal Attorney Services: CONTRACTOR shall accept all case assignments by County in which Penal Code section § 987 et seq. is applicable to act as legal counsel and to provide representation for indigent defendants in Adult Criminal Cases. Each CONTRACTOR shall be assigned up to 300 clients per year by County. Therefore, CONTRACTOR shall expect to effectively process this volume if awarded an AGREEMENT. Concurrent cases, concurrent probation violations, and clients who cannot be represented due to conflict of interest do not count as one of the 300 clients.
 - 2.2.3 Volume: Of the potentially 300 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.

- 2.2.3 Rotational Assignments: All Adult Criminal clients assigned shall be done so on a fair rotational basis to the multiple CONTRACTORS awarded an AGREEMENT per RFQ #10379. Should a conflict exist upon assignment, that particular client shall then be reassigned to another CONTRACTOR.
- 2.2.4 Deliverables: CONTRACTOR is responsible for monthly reports reflecting client assignments and client cases closed during the previous months (a sample Closed Case Report is attached hereto as EXHIBIT 1). Reports shall be submitted to County monthly.
- 2.2.5 EXCLUDED from the scope of services are;
 - 2.2.5.1 CONTRACTOR shall not be required to accept cases returned to the trial court by the Appellate Court following orders made in appeals, writs or other extraordinary proceedings;
 - 2.2.5.2 Cases transferred to Monterey County due to change in venue;
 - 2.2.5.3 Capital and special circumstance cases;
 - 2.2.5.4 Prison cases assigned pursuant to Penal Code section § 4570;
 - 2.2.5.5 Cases declined by the Public Defender based on excessive case loads; and
 - 2.2.5.6 Cases in which the Public Defender is relieved as counsel based on ineffective assistance of counsel.
- 2.2.6 Retrials: In a case where a new trial motion or a mistrial is granted the assigned ADO Attorney shall be paid on a hourly basis for proceedings following the granting of that motion.
- 2.2.7 Discovery and Special Master: The ADO Attorney shall not be appointed as a special master or to facilitate discovery matters.
- 2.2.8 Stand by Counsel: The ADO Attorney shall not appointed to act as stand by or advisory counsel.
- 2.2.9 Conservatorship, LPS, SVP, MDO, and Civil Cases: The ADO Attorney shall not be appointed on any such appointments.

3.0 TERM OF AGREEMENT

- 3.1 The term of the AGREEMENT(s) shall begin upon execution of this AGREEMENT through one (1) year with the option to extend the AGREEMENT for up to four (4) additional one (1) year periods.
3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.2 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.
3.2.1 Both parties shall agree upon rate extension(s) or changes in writing.
- 3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in an amount not to exceed \$138,000.00 annually. Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
4.1.1 Subject to the limitations set forth herein, County through the Auditor-Controller shall pay CONTRACTOR a monthly payment equal to 1/12 of the total annual amount referenced in the above section 4.1 over the full term of this Agreement, payable on or before the fifth day of each month during the term of this Agreement for those services rendered in the immediately preceding month pursuant to this Agreement.
- 4.2 County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 CONTRACTOR shall submit monthly a Closed Case Report as per EXHIBIT 1 attached hereto. CONTRACTOR is allowed up to 20 hours of billed expert services per client and will be processed and accepted with a signature of approval on the invoice from the requesting CONTRACTOR. Any amount in excess of 20 hours in any given case shall require an exparte order from the judge as per EXHIBIT 2 attached hereto.
- 4.4 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.5 Tax:
4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
4.5.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. County is exempt from Federal Transportation

Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to County's Alternate Defender's Office at the following address:

County of Monterey Alternate Defender's Office
111 W. Alisal St., Modular 4
Salinas, CA 93901

- 5.2 CONTRACTOR shall reference "RFQ 10379" on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless 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 attorneys' 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 CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes

CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform 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.

7.3.1.2 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 \$1,000,000 per occurrence.

7.3.1.3 Workers' Compensation Insurance, **if** CONTRACTOR 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.

- 7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons 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, CONTRACTOR 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.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to 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 CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR 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 subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, 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 CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10

10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR 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.
- 7.4.5 CONTRACTOR 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 Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.

8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 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.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 10.3 Any subcontractor's approved for use by County shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in SAMPLE AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws, that may affect in any manner the Project or the performance of the services or those engaged to perform services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the services.
- 12.3 All documentation prepared by CONTRACTOR shall conform to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

- 13.1 In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made.

14.0 TRAVEL REIMBURSEMENT

- 14.1 Travel reimbursements are not permitted under this AGREEMENT.

**15.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT—
HIPAA COMPLIANCE**

- 15.1 CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards").

16.0 NOTICES

- 16.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing

168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
derm@co.monterey.ca.us

TO CONTRACTOR:

Scott Erdbacher

21 W. Alisal St., Suite 100
Salinas, CA 93901
wselaw@sbcglobal.net

17.0 LEGAL DISPUTES

- 17.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted

by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

- 17.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be heard in the Superior Court of California in Monterey County, California.
- 17.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 17.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: _____
Signature of Chair, President, or Vice-President

Dated:

SCOTT ERDBACHER OWNER

Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 1/15/13

Deputy Auditor/Controller

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated:

Approved as to Liability Provisions:

Printed Name and Title

Risk Management

Dated:

Dated:

Approved as to Form:

WILLIAM M. LITT
Deputy County Counsel

Dated: 1/25/13

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

Exhibit 2

EXHIBIT 2 of RFP #10375

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(Name of Attorney)
STATE BAR NO.
ATTORNEY AT LAW
STREET ADDRESS
CITY, STATE, ZIP

Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY

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THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

vs.

"DEFENDANT NAME"

Defendant.

) Case No.

EX PARTE REQUEST
ATTORNEY HOURS
AND COMPENSATION
AT CLASS A HOURLY
RATE

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, that (Attorney name), be compensated at the CLASS A rate of \$75.00 per hour for ___ hrs.

DATED:

Judge of the Superior Court