



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: A 22-331, **Version:** 1

a. Approve and authorize the Contracts/Purchasing Officer to execute a Professional Services Agreement (“PSA”) with the Law Office of William Scott Erdbacher, to provide case management and case supervision for the Alternate Defender Office with a term of July 1, 2022 through June 30, 2023. in the amount of \$126,000; and
a. Approve non-standard insurance provisions in PSA, as recommended by the Public Defender; and
c. Approve and authorize the Contracts/Purchasing Officer to execute up to three (3) amendments, extending the term of each by one (1) fiscal year per amendment, provided there is no significant change to the scope of work or increase in cost that exceeds ten percent (\$12,600) of the original amount of the Agreement.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Contracts/Purchasing Officer to execute a Professional Services Agreement (“PSA”) with the Law Office of William Scott Erdbacher, to provide case management and case supervision for the Alternate Defender Office with a term of July 1, 2022 through June 30, 2023. in the amount of \$126,000; and
- b. Approve non-standard insurance provisions in PSA, as recommended by the Public Defender; and
- c. Approve and authorize the Contracts/Purchasing Officer to execute up to three (3) amendments, extending the term of each by one (1) fiscal year per amendment, provided there is no significant change to the scope of work or increase in cost that exceeds ten percent (\$12,600) of the original amount of the Agreement.

SUMMARY/DISCUSSION:

Monterey County addresses its Constitutional obligation to provide legal representation for indigent persons accused of criminal violations, and in certain civil proceedings (i.e. juvenile, mental health, truancy, sexually violent predator prosecutions), when the Public Defender has a disabling conflict of interest the Alternate Defender’s Office (ADO). The Chief Alternate Defender maintains operational responsibility for the ADO. The Chief Alternate Defender manages the ADO attorney contracts and individual appointment of ADO attorneys when the Public Defender has declared a conflict of interest. Examples of conflicts include situations in which multiple persons are accused in the same charging document, or the Public Defender currently represents a victim or witness in a prosecution, or where a Public Defender client provides information which is used by law enforcement to bring charges. In such cases, it would be an ethical violation for the PD to represent or continue to represent such a client.

Some counties establish a second or even a third Public Defenders Office. Others, like Monterey County, have addressed it with the appointment, by contract, of an independent attorney or law firm to fulfill this responsibility, i.e., the Chief Alternate Defender. The Chief Alternate Defender also reviews conflicts of interest for the ADO when they arise, approves expert witnesses and investigation requests above an agreed-upon amount, and arranges for the appointment of private counsel when necessary. This is not an exhaustive list but is representative of the duties that are required of the Chief Alternate Defender. The duties are required to be carried out separately and distinctly from the Public Defender’s Office (PDO), as stated in *Castro v. Los*

Angeles Board of Supervisors (1991), 232 Cal. App. 1432.

The Public Defender recommends that the Board approve a Professional Services Agreement with the Law Office of William Scott Erdbacher to provide oversight and supervision of the ADO, i.e., to serve as the Chief Alternate Defender. W. Scott Erdbacher was chosen for this agreement based on significant prior managerial, trial and litigation experience within the Public Defender and Alternate Defender Offices.

OTHER AGENCY INVOLVEMENT:

County Counsel and the Auditor-Controller have reviewed and approved these Amendments as to legal form and fiscal provisions respectively. All the insurance and indemnifications are compliant with the standard requirements set forth by the Risk Manager.

FINANCING:

Funding for this agreement is already included in the FY22-23 adopted budget. Fund 001- Public Defender PUB001-2270-Budget Unit 8168-Court Assigned Counsel. Approval of the recommended actions will have no additional impact on the County General Fund.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

PUBLIC SAFETY: The Alternate Defender strives to protect the constitutional rights of the indigent by providing them quality representation in a society free and safe from unlawful State interference, by vigorously defending individual rights where the Public Defender has a conflict of interest. Acceptance of the recommendations ensures the continuation of criminal defense services to the indigent.

Public Safety

Prepared by: Laura Henderson, Management Analyst I, ext.6054 _____

Approved by: Susan Chapman, Public Defender, ext.5806 _____

Attachments:

Professional Service Agreement with the Law Office of William Scott Erdbacher