

CONTRACT FOR PUBLIC DEFENDER SERVICES

The County of San Benito, a political subdivision of the State of California ("County"), and **Fitzgerald, Alvarez & Ciummo**, a Professional Law Corporation ("Contractor") located at **123 East Fourth Street, Madera, CA 93638-3204**, enter into this Contract on May 23, 2021, in Hollister, California, on the terms and conditions set forth herein (the "Contract").

1. Duration of Contract. This Contract shall commence on **May 1, 2021** and shall continue through **May 1, 2024**. Either party may terminate the Contract without cause upon giving one hundred twenty (120) days' written notice to the other party.
2. Scope of Services. Contractor shall perform services specified in **Attachment A** hereto, which Attachment is made a part of this Contract.
3. Supervision of Services. Contractor shall supervise the services provided under this Contract. County will address any concerns to Contractor, who shall be responsible for the proper execution of the services provided under this Contract. Contractor shall be responsible to County for the acts and omissions of Contractor's employees, subcontractors, and their agents and employees, and any other persons performing any of the services under this Contract for Contractor.
4. Subcontractors. A subcontractor ("Subcontractor") is a person or organization that has a direct contract with Contractor to perform any of the services under this Contract. Contractor agrees that it is as fully responsible to County for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by Contractor as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement or any other document associated with the performance of the services under this Contract shall create any contractual relation between any Subcontractor and County.

Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of this Agreement as to the services performed by Subcontractor, unless specifically noted to the contrary in a subcontract approved in writing by County. Subcontractor agrees to be bound to the Contractor by the terms of this Agreement and to assume toward Contractor all of the obligations and responsibilities that the Contractor assumes toward County. Contractor agrees to be bound to the Subcontractor by all of the obligations that County assumes to Contractor under this Agreement as to the services performed by Subcontractor.

5. Compensation. In consideration for Contractor's performance, County shall pay Contractor according to the terms specified in **Attachment B** hereto, which Attachment is made a part of this Contract. The compensation paid to Contractor has a condition precedent thereto that Contractor's attorneys are performing their duties diligently and professionally.
6. Contract Administrator. The County Administrative Officer, or designee, is designated by County as its Contract Administrator for this Contract. All matters concerning the Contract which are within the responsibility of County shall be under the direction of, or shall be submitted to, the Contract Administrator. County may, in its sole discretion, change its designation of the Contract Administrator and shall promptly give written notice to Contractor of such change. The Contract Administrator or his/her designee may physically be present at any

time during business hours in Contractor's Hollister office to ensure County that Contractor and his attorneys are properly executing their duties set forth herein.

7. General Insurance and Indemnity Requirements. Contractor shall provide insurance and indemnity set forth in **Attachment C** which Attachment is made a part of this Contract. Contractor shall cause any Subcontractor engaged by Contractor to provide services under this Contract to take out and maintain insurance and provide indemnity set forth in **Attachment C**.

8. Records to be Maintained. Contractor shall keep and maintain accurate records as set forth in **Attachment D** which Attachment is made a part of this Contract.

9. Independent Contractor. Contractor and his/her officers, agents and employees in the performance of this contract are independent contractors in relation to County and not officers or employees of County. Contractor, by virtue of this Contract, has no authority to bind or incur any obligation on behalf of County. Contractor shall be solely liable for all liability and payment due from work and earnings, including all federal, state and local taxes; Social Security payment, medical and other insurance premiums and retirement levies, and any other attachments or encumbrances on earnings. Except as expressly provided in this Contract, Contractor has no authority or responsibility to exercise any rights or power vested in County. It is understood by both Contractor and County that this Contract shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

10. Compliance with Applicable Laws. Contractor, at his/her sole cost and expense, shall comply with all federal, state and local laws and regulations in performing the work and providing the services specified in this Contract.

11. Nondiscrimination. No discrimination shall be made in the employment of persons under this Contract because of the race, color, national origin, ancestry, religion, age, sex or handicap of such person, or for any other reason prohibited by federal or state law.

12. Cessation of Contractor's business. Contractor shall immediately notify County in the event that Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for his/her business or assets, or avails himself/herself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors. Where such proceedings are not withdrawn or discharged within thirty (30) days, then County may at its option terminate this Contract.

13. Financial Conflict of Interest. Contractor covenants that he/she/it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this Contract, no Subcontractor or person having such an interest shall be employed. Contractor certifies that no one who has or will have any financial interest under this contract is an officer or employee of the County.

14. Alcohol-Free and Drug-Free Workplace. Contractor acknowledges that it has obtained and read a copy of the County's policy regarding alcohol-free and drug free workplace, which is hereby made a part of and incorporated herein by reference into this Contract. Contractor shall execute the policy acknowledgment attached hereto as **Attachment F**.

15. Prohibition Against Assignment and Subcontracting. Except as authorized herein, no rights under this Contract may be assigned and no duties may be delegated or subcontracted by one party without the prior written consent of the other party, and any attempted assignment, subcontracting or delegation without such consent shall be void.

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

17. Severability. Should any provision herein be found or deemed to be invalid, this Contract shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect. To this end the provisions of this Amended Contract are declared to be severable.

18. Entire Agreement. This Contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this Contract except as are expressly stated in writing in this Contract or in any document attached hereto or incorporated herein by reference.

19. Time Is of the Essence. Time is hereby expressly declared to be the essence of this Contract and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Contract.

20. Modifications. All amendments and/or modifications to this Contract must be in writing and signed by both parties. Only the San Benito County Board of Supervisors has the authority to agree to any extension of time, change in the scope of work, change in the contract price, or other term or condition affecting either Contractor's or County's duties set forth herein. Adjustments in compensation, if any, shall be determined through negotiation between the parties to the Contract and shall be subject to approval by the Board of Supervisors. Contractor acknowledges that no County staff person or County officer other than the Board of Supervisors has the power to amend the terms and conditions of this Contract. Any change not so authorized in advance in writing by the Board of Supervisors shall be null and void.

21. Notices. Notices to the parties in connection with the Contract shall be given personally or by regular mail addressed as follows:

County: County Administrative Office, County of San Benito, Attn: County Administrative Officer, 481 Fourth St., 1st Floor, Hollister, CA 95023 ,

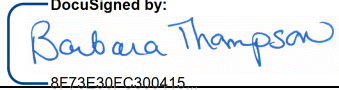
Contractor: Fitzgerald, Alvarez & Ciummo, Attn: Michael Fitzgerald, 123 East Fourth Street, Madera, CA 93638

COUNTY OF SAN BENITO

By: _____
Mark Medina, Chair

Date: _____

APPROVED AS TO LEGAL FORM:

By:  _____
Barbara Thompson, County Counsel
3/19/2021

Date: _____

CONTRACTOR

By:  _____
Michael Fitzgerald

Date: 3/19/2021

ATTACHMENT A

SCOPE OF SERVICES

A-1. Contractor hereby agrees to perform those duties described in Government Code section 27706 as well as legal services as appointed counsel in every case in which the courts of San Benito County have authority to appoint counsel.

- (a) Those cases include appointments in criminal cases (Penal Code section 987); juvenile cases (Welfare and Institutions Code Sections 634, 700); child dependency 300 cases; proceedings to terminate parental control (Civil Code section 237.5, In re Richard E (1978) 21 Cal.3d 349); probate conservatorships (Probate Code sections 1470 et seq); paternity cases (Salas v. Cortez (1979) Cal.3d.22); capital cases/death penalty; civil cases without conflict to any criminal legal representation and; habeas corpus proceedings pertinent to underlying criminal cases in which Contractor has served as defense attorney.
- (b) The foregoing enumeration of the specific instances does not limit the generality of Contractor's obligation to perform services in all instances in which a court in San Benito County has authority to appoint counsel.
- (c) Although Contractor is not required to perform services in prosecuting an appeal; to the Court of Appeal or the Supreme Court of California, he/she is required to perform services in prosecution of applications for extraordinary writs in State courts of review. Contractor is required to perform services in any court to which a case is transferred on change of venue after contractor's appointment by a San Benito County Court.
- (d) Cases arising under Yarborough v. Superior Court (1985) 39 Cal.3d 197 are excluded from cases for which Contractor shall be obligated to perform services pursuant hereto.
- (e) With respect to representation in non-criminal cases covered by this Contract, Contractor shall be obligated to provide such services to clients only if representation does not create an actual conflict of interest with Contractor's obligation to provide legal representation in any criminal case.
- (f) The only cases in which Contractor shall be excused from the performance of these duties are those in which it is judicially determined, on the basis of affidavit or declaration, that there is a conflict of interest which would preclude Contractor from so acting.

Contractor shall accept appointments to special circumstances/capital/death penalty cases and must ensure appointment of qualified attorneys to represent indigent clients as needed. Costs associated with attorney representation for such cases shall be subject to court order. Contractor agrees to take all necessary steps to insure that one attorney in the San Benito office is qualified under California Rule of Court Rule 4.117 (d)-(f) to try these cases. The San Benito office would accept no more than one special circumstances/capital/death penalty case per year without any additional charge to the County, and handle no more than two such cases concurrently.

Contractor agrees to accept appointment on additional cases above the first case per year, pursuant to the compensation schedule in **Attachment E** and up to the number limits specified for special circumstances cases.

A-2. Contractor agrees to have two (2) attorneys available to provide public defender services. Contractor shall maintain an office in Hollister California in which attorneys shall be based. One attorney shall be a supervising attorney with a minimum of ten (10) years of experience in criminal trial practice. The second attorney shall be an attorney with a minimum of five (5) years experience in criminal trial practice, or otherwise approved in writing by the County. The two attorneys that shall be initially assigned to San Benito County shall be the two attorneys present at the interview conducted on March 1, 2021 (hereinafter "Assigned Attorneys"). While personnel could be subject to some change in unforeseen circumstances, it is an expectation of both parties that the "Assigned Attorneys" will be posted to San Benito County on a long-term basis, that they will relocate to the San Benito Area and become active members of the community. At least one of the Assigned Attorneys shall be in Hollister, CA (and available by phone to the Court) during hours that the Court is in operation. County encourages Assigned Attorneys to perform some level of community service or community involvement, at their discretion, as to the amount and type. However, the parties agree an attorney shall participate as a member of the Juvenile Justice Commission

A-3. . Contractor further agrees not to accept compensation directly or indirectly from any source other than County on cases assigned pursuant to this Contract. Contractor's Attorneys and Subcontractor may accept other employment as long as it does not create a conflict with appointed cases.

A-4. Contractor agrees to maintain at all times an office in the City of Hollister from which to conduct business and for consultation with clients. Said office and Contractor's provision of services shall comply with all federal, state, and city laws and shall abide by the American Disabilities Act and its California counterpart. Contractor at his/her own expense shall furnish clerical and stenographic assistance, telephone services, and office supplies to the extent that it is usual and customary in the operation of a Public Defender's office. Contractor agrees to provide minimum office hours of 8:30 a.m. to 12 noon and 1:00 p.m. to 5:00 p.m. Monday through Friday, court holidays excepted. Attorneys shall be available on a reasonable basis to meet and confer with clients. Contractor shall maintain a telephone answering machine or answering service during those times when the office is closed.

A-5. Contractor shall furnish his/her own transportation and shall pay for all cost of meals, lodging, and personal items as may be required in the performance of his/her duties, except that County shall reimburse Contractor for his/her expenses incurred for travel, meals, and lodging when necessary out of San Benito County in the performance of his/her duties under this Contract in accordance with County's travel policy in effect at the time expenses are incurred. County shall pay for the above services only upon a court order. Such order may be obtained upon a showing of need determined by the court before performing such services.

A-6. Contractor shall pay all expenses incidental to conducting a law practice and to his/her duties under this Contract. Such expenses include but are not limited to the following: wages, office space, investigation, utilities, supplies, clerical, stenographic, library, communications, postage, photocopying, long distance telephone calls, equipment, maintenance,

training and office expenses of any kind or nature whatsoever, except as provided elsewhere in this Contract.

A-7. County agrees to pay, subject to court order, all witness fees, including expert witnesses, and for the services of court-appointed laboratories, forensic services, medical or other technical experts, interpreters, and stenographic transcriptions and other ancillary services of similar nature as well investigations for second and third level conflict offices. County shall pay for the above services only upon a court order. Such order shall be obtained upon a showing of need determined by the court before performing such services. The County shall not pay for investigation services for level two and three under the general provisions of this contract.

A-8. The clerk of the court shall provide each defendant appearing therein who requests a public defender with a financial declaration form approved and provided by the court. The form shall be completed by the defendant and delivered to the clerk of the court for review by the judge to enable the judge to determine the eligibility of the defendant for appointed counsel. Contractor shall assist clients with preparation and filing of financial information forms in order for the court to make a judicial determination of eligibility. The cost of said forms shall not be borne by Contractor.

Contractor shall assist the court's determination of whether the defendant who is assigned to Contractor has the financial ability to employ counsel and in determining the value of Contractor's services; that assistance shall include requiring each defendant assigned to Contractor to file a financial statement under penalty of perjury within the time frame and in the format required by the court. In any procedure or proceedings to determine a person's ability to repay the County for any or all of the costs of Contractor's legal assistance to that person, including but not limited to Penal Code sections 987, 987.8 and 987.81, Contractor shall assist the Court to the fullest extent possible without compromising the Contractor's attorney-client relationship. Contractor shall keep accurate records of the services including hours and expenses rendered so as to assist the Court's determination of the appropriate amount to be reimbursed. Determination of financial eligibility or "indigency" evaluation is the sole responsibility of the Court. Non-privileged information subsequently obtained by Contractor which suggests that a client is not eligible for appointment of counsel shall be provided to the Court. At the request of the Court, Contractor shall attend, as a witness, any hearing regarding the client's ability to reimburse the County for the value of Contractor's services. Contractor's participation in such a hearing remains subject to appropriate claims of privilege.

In addition, with regard to those defendants that the court has determined are able to pay in part or in full for legal services, Contractor shall provide cost and hours worked information to the court for the purpose of determining the appropriate amount of the fee. This information shall be presented, either orally or in writing, at the time of final disposition of the case or at final appearance of Contractor in the case, whichever is first to occur.

In relation to proceedings by the courts to obligate clients of court-appointed attorneys to reimburse some or all of the County's costs for provision of legal service, the Contractor shall:

- a. Notify the court in a timely fashion of the time and value of services furnished by the Contractor to the client;
- b. Cooperate with the reimbursement program generally, and also inform clients of their obligation to comply with their court-ordered reimbursement of the County, including

compliance with the procedures of the financial officer, especially as regards financial disclosure and collection arrangements.

A-9. Contractor's continued representation of defendants in change of venue cases shall be at no additional cost to County except that Contractor shall be eligible for reimbursement of travel, lodging, meal and incidental expenses in accordance with this Contract.

A-10. Contractor shall carry to conclusion at trial at the expiration of this Contract all cases pending at that time, unless a case may be transferred to a successor public defender without prejudice to the client and without unnecessary expense to County. Contractor shall provide such services for a reasonable fee to be determined by the court, but only if Contractor, successor public defender, and the Court agree that such representation is in the best interest of the client.

A-11 Performance Expectations. Contractor understands the following to be performance expectations for Contractor's successful performance under this Contract:

- a. Ensuring timely appearance in court for a scheduled appearance;
- b. Ensuring meeting with an in-custody client before scheduled court date;
- c. Avoiding being unprepared to go forward with a motion, hearing or trial;
- d. Avoiding continuances due to lack of preparation or meeting with client/witnesses or otherwise not being prepared to proceed;
- e. Avoiding not filing a motion after informing the court he/she would do so;
- f. Avoiding an attorney's being absent without just cause;
- g. Avoiding an attorney's practicing law of any kind for a client appointed by the Court;
- h. Ensuring keeping adequate time sheets as required by County;
- i. Ensuring collecting financial information from out-of-custody clients by having them fill out financial information forms and submitting the forms to court for a judicial determination as to eligibility for contractor's services to the extent this does not violate attorney-client privilege;
- j. Ensuring promptly returning clients' telephone calls;
- k. Avoiding the failure to report any Marsden oral or written motion by any defendant against Contractor or any of Contractor's attorneys (People v. Marsden [1970] 2 Cal. 3d 118).- the request for such a motion, and the results of such a motion, shall be reported in writing in the Contractor's monthly report.
- l. Avoiding any actions of unprofessionalism or dereliction in duties or ethics.
- m. Avoiding any reassignment of cases which rightfully are within the line of conflict. Any reassignment of such cases must be reported in writing in the Contractor's monthly report. .
- n. Avoiding complaints by members of the public, the Court, or other parties involved in the judicial system, whether addressed to the State Bar, the Court, or directly to Contractor or its staff regarding legal representation provided under this Contract. Any written complaint shall be forwarded to the County in the Contractor's monthly report. Names or other identifying information may be redacted to preserve Attorney-Client privilege.

A-12 Minimum Professional Qualifications: Contractor represents that he and all staff attorneys working for Contractor are members of the California State Bar in good standing and has the necessary professional qualifications and abilities to provide the services contemplated by this Contract. Contractor represents that that he and all staff attorneys working for Contractor will comply with all federal, state and local statutes, rules, regulations and ordinances regarding

such professional qualifications. Each staff attorney working for Contractor shall be an attorney duly licensed to practice law before all courts of the State of California and be approved by the court. Contractor shall provide to court and County a resume and such other information as requested by the court regarding the attorneys to be used by Contractor in providing services pursuant to this Contract. County reserves the right to perform a background investigation on those attorneys, and/or not approve the services of a specific attorney.

Every attorney working for Contractor shall satisfy the minimum requirements for practicing law in the State of California as determined by the California Supreme Court. Seven hours of continuing legal education credits shall be spent in courses relating to criminal law practice or other areas of law in which the Contractor provides legal services to eligible clients under the terms of this Contract. Compliance with the California State Bar Association's MCLE requirements shall satisfy this provision. The Contractor will maintain for inspection on its premises records of compliance with this provision.

A-13 Standards of Representation: Contractor shall provide for the maintenance of quality representation of indigent defendants consistent with constitutional and professional standards. Federal and state constitutions require provision of competent counsel in criminal cases. Contractor and all staff attorneys working for Contractor shall meet the legal standards required for providing competent representation in California pursuant to California and Federal law. Contractor and all staff attorneys working for Contractor shall also meet the standards of representation established in the legal community. In California, the test for determining competency of counsel in criminal cases is that of a "reasonably competent attorney acting as a diligent, conscientious advocate." (People v. Pope, (1979) 23 Cal. 3d 412.)

Contractor shall provide services on any and all matters necessary to provide adequate representation of the indigent, including but not limited to:

- a. Being present at regularly scheduled arraignments or other initial appearance to make the necessary contact and appointments with clients assigned to Contractor;
- b. Filing all necessary motions, including pre- and post-judgment motions;
- c. Representation through judgment or other final order of the court on the case, including but not limited to:
 1. Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;
 2. Filing necessary paperwork;
 3. All pre-judgment proceedings arising from a petition for writ of mandamus or habeas corpus related to the case on which counsel was appointed.
- d. Preparing all documents, letters, research and referrals to appropriate agencies;
- e. Continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/ client relationship;
- f. Consulting with clients regarding appellate review;
- g. Upon request, assisting in filing a notice of appeal and motion for appointment of appellate counsel and timely responding to appellate counsel's questionnaire or questions regarding the case;
- h. Timely contact and interviews with new in-custody and out-of-custody appointments and;

i. Coordination of ancillary services.

Contractor agrees that he and all staff attorneys working for Contractor will provide competent legal services in conformity with the above standard. Some examples of the duties and responsibilities of counsel which must be observed, as set forth in prior court decisions and professional standards, are as follows:

- a. Duty of careful factual and legal investigation. (See People v. Ibarra, (1963) 60 Cal. 2d 460 (duty to research the law and raise settled objections); In re Saunders (1970) 2 Cal.2d 1033 (duty to investigate medical reports and conduct psychiatric examinations to support a diminished capacity defense); ABA Standards on the Defense Function 3d ed. 1993 (hereinafter referred to as “ABA Standards”, Section 4-4.1.)
- b. Duty to take prompt action to protect a client’s legal rights (ABA Standards, 4-3.6 [includes procedural steps such as moving for pretrial release, obtaining psychiatric examination, moving for change of venue or continuance, suppression of illegally obtained evidence, severance from jointly charged defendants, or dismissal].)
- c. Duty to keep the client informed. (ABA Standards, 4-3.8.)
- d. Duty to prepare for jury selection, examination of witnesses, submission of instructions and presentation of argument at trial. (See ABA Standards, 4-7.2(a) and 4-7.2(b).)
- e. Duty to know and explore sentencing alternatives. (ABA Standards, 4-8.1.)
- f. Duty to advise concerning appeals and to take whatever steps are necessary to protect the defendant’s rights of appeal. (ABA Standards, 4-8.2(a).)
- g. Duty not to handle a legal matter which the lawyer knows or should know that he or she is not competent to handle. (ABA Model Code of Professional Responsibility, Canon 6, ABA Disciplinary Rule No. 6-101(a).)
- h. Duty to maintain client confidences and secrets. California Rules of Professional Conduct, rule 3-100.
- i. Duty to promptly contact the client and arrange to meet in a timely manner as soon as is practicable after the case is assigned to the lawyer, and to not cause any unnecessary delays in the court proceedings due to the lawyer’s failure to communicate promptly with the client. (ABA Standards, 4-1.3).

Contractor and all staff attorneys working for Contractor shall be held accountable in accordance with the terms and conditions of this Contract. Contractor’s staff attorneys shall participate in periodic meetings to discuss any problems including but not limited to written evaluations and feedback on the performance of staff attorneys. Feedback may include, but is not limited to, the review of variances among attorneys in pleadings, continuances, complaints from clients. The panel may include the County Administrative Officer (or his / her designee), , the Chief Probation Officer, or his/her designee, the supervising attorney of Contractor’s office in Hollister, California, or other invitees. The panel shall meet at least semi-annually. Other duties of the Commission shall include, but not be limited to:

- a. Monitoring the quality, accountability, contract compliance of the attorneys providing indigent defense;
- b. Development and monitoring of the implementation of policies and guidelines for assignments, review of attorney performance requirements, etc.

- c. Development and monitoring of the implementation of a complaint procedure and process on behalf of clients of indigent defense services provided by Contractor and his staff attorneys under this contract.

A-14 Contractor must have sufficient staff to accept all court appointments. If the contractor cannot meet the appointment requirements, the Contractor must notify the County immediately.

A-15 Pursuant to the California State Bar workload standards, indigent defense providers shall not maintain excessive workloads that compromise the ability of the provider to appropriately and competently represent a client. Contractor must have a plan or place in plan to track and monitor case assignments per attorney to ensure workload standards are met.

A-16 Contractor shall practice “vertical representation” (attorney first assigned handles the case through disposition). “Horizontal representation” is strongly discouraged and should be practiced on a limited basis. Contractor’s records may be requested to evaluate the case representation structure.

A-17 The use of stand-in counsel is discouraged and should be used in very limited circumstances. Stand-in counsel may not be used in any critical stage of the criminal proceedings. Stand-in counsel must be under contract with the Contractor. Any costs associated with the stand-in services shall be at no additional cost to the County. The Contractor must have a use and limitation policy for stand-in representation.

A-18 County and Contractor agree that licensed investigators with investigation training and experience in compliance with the Private Investigator Act (Div. 3 Business and Professional Code of California, Chapter 11.3) should be used. Contractor agrees to take all steps necessary to insure that the investigator used in the San Benito office becomes a licensed investigator within the next twelve months, if not already licensed.

A-19 Ancillary Services may be needed from time to time. These services may include social work services, evidence testing, special court-appointed expert witness, psychological testing, special court-appointed investigators or experts for Capital cases/death penalty in accordance with Penal Code Section 987.9 as appointed by the Court. Costs for ancillary services shall be paid based on actual hourly rate and expenses, subject to Court procedures and subject to California Government Code Sections 15202-15203 when applicable. Costs for Ancillary Services are subject to prior Court Order for good cause and shall be paid pursuant to Attachment B hereto.

A-20 Contractor will participate in providing satisfaction surveys to represented clients, attending reasonable meetings with the Citizen’s oversight committee, and shall provide such statistics as reasonably may be requested by County.

A-21. Contractor also agrees to review all extra requests for payment (invoices/bills) submitted for payment from the Public Defenders Fund, including but not limited to the bills submitted by conflict attorneys beyond the third level. Contractor will notify the County if it determines that a bill appears to be excessive, or otherwise should be flagged for further investigation by the County before payment.

ATTACHMENT B

PAYMENT SCHEDULE

B-1. Billing. Billing for general legal defense services shall be made once per month no later than the 15th of each month for the period of performance one (1) month in arrears. The billing must be accompanied by caseload detail by case docket number including attorney assigned, hours worked, type of case and status of case (new, continuing or closed).

B-2. Terms. Terms of payment shall be net thirty (30) days from the invoice date.

B-3. Compensation. General Legal Services (Firm Fixed Monthly Rate). Commencing May 1, 2021, , or whenever this Contract is in full force and effect, for year one (1) County shall pay to Contractor a firm fixed monthly rate of \$ 49,583.00, for services rendered pursuant to the terms and conditions of this Contract from that date through April 30, 2022. For year two (2) commencing May 1, 2022 and ending April 30, 2023, the firm fixed monthly rate shall be \$50,327.00 . For year three (3), commencing May 1, 2023 and ending May 1, 2024, the firm fixed monthly rate shall be \$51,082.00.

B-4 Ancillary Services – Other: As ordered by the Court ancillary services, reasonable and allowable costs shall be reimbursed subject to San Benito County Court Procedures, San Benito County Travel Policies and Procedures and Contract provision contained herein.

B-5. Extraordinary Circumstances. Contractor shall notify the Contract Administrator and consult with him/her in advance on extraordinary circumstances arising in the performance of Contractor's duties. Additional compensation for extraordinary circumstances may be allowed by County if agreement is reached before the services are provided and only after a court order has been issued finding good cause supporting the provision of said additional services.

ATTACHMENTNT C

INSURANCE AND INDEMNIFICATION

C-1 Contractor shall take out and maintain, and shall cause any Subcontractor engaged by Contractor to take out and maintain, at all times during the performance of any services to be done under the term of this Contract, a policy or policies of insurance as follows:

C-2 General Liability – Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate for bodily injury and property damage, including but not limited to endorsements for the following coverage: Premises, personal injury, and products liability if applicable.

C-3 Automobile Liability – Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage is required in the event motor vehicles are used by contractor in the performance of the Work.

C-4 Errors and Omission – Errors and Omission Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence.

C-5 Workers' Compensation Insurance – In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860), and Chapter 4, Part 1, Division 4 (commencing with Section 3700), of the Labor Code of the State of California, Contractor is required to secure the payment of compensation to its employees and shall for that purpose obtain and keep in effect adequate Workers' Compensation Insurance. Contractor is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to permissibly self-insure in accordance with the provisions before commencing the performance of the services of this Contract.

Contractor shall furnish a certificate or certificates of insurance and policy endorsements satisfactory to County as evidence that the insurance required above is being maintained. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Amendment, or for a period of not less than one year.

C-6 Certificates of insurance must include the following provisions:

1. The insurer will not cancel the insurance coverage without 30 day prior written notice to County and;

2. County, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Contract are concerned. This provision shall apply to all liability policies except workers' compensation insurance policies.

C-7 Contractor's insurance coverage shall be primary insurance in respects to County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

C-8 Contractor agrees to indemnify, defend (upon request of County) and hold harmless said County and its agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liability, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees of counsel, expert fees, costs and staff time, and investigation costs) of whatever kind or nature (collectively "Claims"), that arise out of or are in any way connected with any negligent error, act or omission of Contractor and/or its officers, agents, employees, independent contractors, subcontractors, or authorized representatives, unless such Claim arises out of the sole negligence or willful misconduct of County or its agents or employees.

ATTACHMENT D

RECORDS TO BE MAINTAINED BY CONTRACTOR

D-1. General Records to be Maintained. Contractor shall keep and maintain accurate records of all costs incurred and all time expended for work under this Contract, and Contractor shall require that all subcontractors and employees performing work under this Contract also keep and maintain such records. Generally, Contractor agrees, upon reasonable notice, to provide any and all non-privileged information required by County.

D-2. Retention Period and Destruction of Records. Contractor shall maintain in good condition all significant administrative files, i.e. personnel and financial, including time records and billing reports, for at least seven (7) years. Contractor shall maintain in good condition all files and time records for each case for at least five (5) years for misdemeanor cases and at least ten (10) years for felony cases following the last services rendered by Contractor in the case, unless such files are assigned to successor counsel in the case. Contractor shall furnish safe and secure storage for all records for the respective seven (7), five (5) and ten (10) year time periods prescribed above. Records shall be maintained longer as necessary in the view of the applicable statute of limitations for potential civil liability. Prior to closing each file, Contractor shall exercise due diligence to notify the indigent defendant of Contractor's obligations under this Section D-2. Contractor shall not destroy any records until after advising County and allowing County to accept and store the records at County's discretion. County guarantees confidential treatment of such files.

D-3. Specific Reports. To identify trends, the following items shall be reported by Contractor to County through the Contract Administrator on a monthly basis.

1. Contractor shall provide timely to County a monthly summary report that includes the following:
 - a. The number of Marsden motions filed against Contractor identifying the specific case involved and whether the motion was granted or denied.
 - b. The number of times the Contractor attorney assigned to a case fails to appear when a matter is on calendar.
 - c. To the extent not prohibited by applicable rules of ethics, the number of conflicts declared by Contractor identifying the specific case involved, the reason for the conflict, and whether the conflict was granted, and if granted whether alternate public defender counsel was appointed.
 - d. The total number of case appointments, broken down between misdemeanors, felony, juvenile delinquency, conservatorships, dependency matters, , and other cases.
2. Contractor shall provide to County no later than the 10th day of each month information disposition sheets for each case that has been closed in the preceding month and shall include at a minimum the following:
 - a. defendant's name, case number, and charges;
 - b. type of case
 - c. the dates of appointment;
 - d. court appearance date(s);
 - e. trial information;
 - f. case hours (i.e., time spent by staff);
 - g. conflict information when requested; and
 - h. final disposition of the case.

Contractor shall provide the format for the Disposition Sheets subject to County's approval.

3.

4. Reserved.

5.

6. The failure to timely provide the reports or documentation described in paragraphs 1 or 2 or 3 that results in a loss of reimbursement for the County entitled pursuant to Penal Code 4750 and Penal Code 6005 will entitle County to withhold the amount lost from Contractor's compensation.

7.

D-4. In addition to the above Contractor shall keep such records as may be required for the following:

1. To enable the court, in appropriate proceedings, to determine the amount of reasonable attorney's fees for the purpose of assessment of costs pursuant to Penal Code 4750, Penal Code 6005, Penal Code 987.8, Penal Code 987.81, and/or Penal Code 987.9;
2. To enable County to obtain reimbursement under the provisions of Penal Code 987.4 or Welfare and Institutions Code 903.1 for legal services furnished to certain minors;
3. To enable county to obtain reimbursement from the State of California under the provisions of Government code 15200-15204 and to enable the court, in appropriate proceedings, to obtain reimbursement under Division IV commencing with section 1400 of the Probate Code; and
4. To enable County to obtain reimbursement under any other provisions of law for the services rendered by Contractor.
5. To keep any record reasonably required by County to assist County in recovering any monies.
6. To account for time spent on each case. Contractor shall maintain current records of hours and fractions thereof spent on each case by attorneys and investigators and other support personnel sufficient for reimbursement as set forth herein. Contractor shall be prepared to provide this information at the last court appearance on a case or upon request of the Court.

7.

D-5. Availability to County. All records (except for materials subject to the attorney client privilege, if any), whether kept by Contractor or any subcontractor or employee, shall be made available to County for review and copying during normal business hours upon reasonable advance notice given by County. Contractor shall make such records available to County in any proceedings to recover such costs from whoever may be obligated to reimburse the County pursuant to law. County shall not be permitted access to any case file without a Court order or the written consent of Contractor. County shall maintain the confidentiality of records pursuant to all federal, state, and local laws.

D-6. Obligations upon Contract Termination. The rights and obligations established pursuant to all Sections contained in Attachment D shall be specifically enforceable and survive termination of this Agreement. Upon termination of this agreement contractor is obligated to turn over all case files to its successor within 30 days.

ATTACHMENT E

SPECIAL CIRCUMSTANCE/DEATH PENALTY CASES COMPENSATION

Upon the filing of a homicide case wherein special circumstances are alleged, Contractor would accept appointment, subject to a maximum of two open appointments at any one time. Contractor shall provide representation of one special circumstances/death penalty case per year for no additional cost. Thereafter, compensation would then be as follows:

Category 1: Attorney Fee \$35,000

A special circumstance case involving one defendant and one victim.

Category 2: Attorney Fee \$55,000

A more difficult special circumstance case than a Category 1 case involving one defendant and one victim or more than one victim killed in the same incident, or complex factual or legal issues in the trial or penalty phase warranting associate counsel may be considered a Category 2 case. A special circumstance case with more than one defendant that would be considered a Category 1 case if there was only one defendant may be considered a Category 2 case.

Category 3: Attorney Fee \$75,000

A special circumstance case involving one defendant and more than one victim killed in more than one incident or at different times; or a case that is significantly complicated by unusual publicity or notoriety over a limited period of time, or complex factual or legal issues in the trial or penalty phase that would warrant associate counsel may be considered a Category 3 case. A special circumstance case with more than one defendant that would be a Category 1 case if there was only one defendant may be considered a Category 2 case.

Category 3 Other:

For unique special circumstance cases that receive a great amount of publicity or notoriety over an extended period of time, or involve multiple victims or incidents, the firm may submit a written declaration to the Court with justification for a fee higher than established category fees. The Court shall determine if a higher fee is warranted.

When the firm is appointed to a special circumstance case the compensation shall be at the Category 1 level. If the firm is of the opinion that a higher rate of compensation is appropriate it shall apply for same to the Presiding Judge of the San Benito County Superior Court or that judge assigned to the case for all purposes by the presiding Judge. The firm shall submit declarations supporting its position and specifying its reasons that a higher level of compensation is appropriate. After submission of those declaration(s) the judge shall make a determination of the appropriate level of compensation; that decision shall be final.

If the death penalty is sought and the District Attorney continues to seek the death penalty within thirty (30) days of the actual commencement of jury selection, the firm shall receive an additional \$15,000 over and above the approved category fee as set forth above. Payments to the firm of the compensation described hereinabove shall be made pursuant to the following schedule:

After initial appointment: 20% of category fee;

Preliminary Hearing: 25% of category (must be completed by either preliminary hearing held and completed or waived or resolution of the case);

Trial Readiness Conference: 20% of category fee;

Conclusion of trial: 25% of category fee;

Completion of case at trial court level: 10% of category fee.

Each such event shall be invoiced to the County and due and payable thirty (30) days thereafter.

Regardless of the compensation of the firm as set forth herein, costs of investigation, and ancillary services would constitute additional costs which would require Court approval and payment by the County.

Any funds received from the State of California or other source for such cases would be paid to the County; the firm would have no interest in said funds.

Lead counsel assigned by the firm and second counsel (if appointed) shall satisfy the qualifications set forth in California Rule of Court 4.117(d), (3), and (f).

This schedule could be used for subsequent Special Circumstance cases, beyond contract obligation.

ATTACHMENT F

**ALCOHOL-FREE AND DRUG-FREE WORKPLACE AND DRUG & ALCOHOL
TESTING POLICY ACKNOWLEDGMENT FORM FOR CONTRACTORS**

The undersigned, authorized signatory for **Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation** (the "Contractor"), certifies as follows:

1. Contractor has received a copy of the **SAN BENITO COUNTY ALCOHOL-FREE AND DRUG-FREE WORKPLACE AND DRUG & ALCOHOL TESTING POLICY** concerning maintenance of an alcohol-free and drug-free workplace as required by 41 U.S.C. Chapter 10 and California Government Code Section 8350 *et seq.*; and drug and alcohol testing as required by the Federal Highway Administration, 49 C.F.R. Part 382 and Department of Transportation procedures for transportation workplace drug testing programs, 49 C.F.R. Part 40.
2. All of Contractor's officers, sub-contractors, and agents who perform services pursuant to the Contract to which this **Attachment "F"** is attached will abide by that policy as a condition of the Contract.
3. If any of such officers, employees, sub-contractors, or agents violates the San Benito County Alcohol-Free and Drug-Free Workplace and Drug & Alcohol Testing Policy, the County of San Benito may terminate the Contract immediately.

770401302

Federal I.D. No.: _____

Print Name: Michael Fitzgerald

Signed:  Date: 3/19/2021

Title: President and CEO