

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 21st day of June, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("COUNTY"), and Fitzgerald, Alvarez & Ciummo, a Professional Law Corporation, whose address is 123 East Fourth Street, Madera, CA 93638 ("ATTORNEY").

WITNESSETH:

WHEREAS, Penal Code section 987.2 provides that the County shall pay a reasonable sum for compensation and for necessary expenses, out of the County general fund, for assigned counsel for indigent defendants, including one or more responsible attorneys contracted for by the County in the event of the unavailability or conflict of the Public Defender;

WHEREAS, COUNTY is in need of competent and adequate legal representation of indigent defendants, for whom the Public Defender is unable to provide representation by reason of a legal conflict of interest or other reason;

WHEREAS, ATTORNEY represents that it has the ability to provide legal defense services for up to seven conflict levels for individual indigent defendants in a case; and

WHEREAS, COUNTY desires to retain ATTORNEY to provide legal representation of indigent defendants pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS

A. "ATTORNEY" shall mean Fitzgerald, Alvarez, & Ciummo, a Professional Law Corporation, and includes its staff attorneys, employees, agents, servants, representatives, assignees and subcontractors.

B. "Court" shall mean the Superior Court of California, County of Fresno, including the branch courts and Juvenile Courts of Fresno County, unless otherwise specifically indicated.

C. "Glass Wall" shall mean the structure, policies, procedures and practices established by relevant case law, including *Castro v. Los Angeles County Board of*

1 *Supervisors*, (1991) 232 Cal.App.3d 1432, which shall be implemented herein to ensure that no
2 conflicts of interest shall exist or be possible between the Level One Conflict Office, the Level
3 Two Conflict Office, and Wheel Attorneys (as the foregoing terms are defined herein).

4 D. "Indigent" shall mean a person for whom the Court is required, by
5 statute or case law, in effect during the term of this Agreement, to appoint counsel at public
6 expense, but for whom the Public Defender is unable to provide representation by reason of a
7 legal conflict of interest or other reason, and whom the Court has deemed to be an indigent
8 person.

9 E. "Level One Conflict Office" shall mean that legal office within
10 ATTORNEY that shall handle those cases and/or represent indigent defendants for which the
11 Public Defender has declared a conflict of interest. Such cases and representation shall be
12 assigned to the Level One Conflict Office for assignment to its attorneys. The functions,
13 responsibilities and duties of the Level One Conflict Office shall be borne and carried out by
14 ATTORNEY's primary office.

15 F. "Level Two Conflict Office" shall mean that legal office within
16 ATTORNEY that, for the purposes of maintaining separate representation and avoidance of a
17 conflict of interest, is separate and distinct from the Level One Conflict Office, and that shall
18 handle those cases and/or indigent defendants for which the Public Defender and Level One
19 Conflict Office both have declared a conflict of interest. Such cases and/or defendants shall be
20 assigned to the Level Two Conflict Office for assignment to its attorneys. The functions,
21 responsibilities and duties of the Level Two Conflict Office shall be carried out and borne by the
22 ATTORNEY's second office.

23 G. "Public Defender" shall mean the Office of the Public Defender,
24 County of Fresno.

25 H. "Special Circumstance" shall apply to indigent persons, as defined in
26 this Agreement, requiring representation in cases in which the death penalty is sought pursuant
27 to Penal Code section 190.2.
28

1 I. "Stand In Attorney(s)" shall mean those independent attorneys under
2 contract to ATTORNEY to accept appointments on behalf of ATTORNEY due to the
3 unavailability of a Wheel Attorney.

4 J. "Wheel Attorney(s)" shall mean those independent attorneys under
5 contract to ATTORNEY to provide legal defense services to cases and/or indigents where a
6 conflict has been declared by the Public Defender, the Level One Conflict Office, and the Level
7 Two Conflict Office. Wheel Attorneys maintain offices separate from the Public Defender, the
8 Level One Conflict Office, the Level Two Conflict Office and such other attorneys that
9 ATTORNEY engages to act as a Wheel Attorney. The use of separate Wheel Attorneys is to
10 avoid conflicts of interest with the Level One Conflict Office, the Level Two Conflict Office and
11 other Wheel Attorneys.

12 2. **OBLIGATIONS OF THE ATTORNEY**

13 A. General Duties – ATTORNEY agrees to provide competent and
14 adequate legal representation of indigent defendants in the Court when appointed to do so by a
15 judge of the Court. ATTORNEY shall only accept appointments when the Court has previously
16 determined that a conflict of interest or potential conflict of interest exists, causing the Public
17 Defender to be unable to represent that defendant.

18 ATTORNEY's representation shall be of the kind usually and customarily provided by a
19 public defender as a complete legal defense service in criminal cases for indigent defendants
20 who the Court appoints ATTORNEY to represent. Such complete legal defense services shall
21 include, without limitation, all necessary court appearances for arraignments, bail, motions,
22 trials, adjudications, hearings, dispositions, and sentencing; preparation of writs, legal research
23 and trial preparation; necessary support services, including, without limitation, investigative,
24 paralegal and clerical support services; necessary reimbursable ancillary services including,
25 without limitation, polygraphs, expert witnesses, psychological evaluations, interpreter services,
26 transcripts and court appearance clothing for defendants; all necessary motions and
27 appearances to the conclusion of the proceeding, including without limitation, requests for
28 modification of probation determined to be meritorious by the Court, review hearings, alleged
violations of probation or failure in a diversionary program or other representation of a

1 previously sentenced or adjudicated client not involving new criminal charges and collateral
2 appearances for such actions as dismissals under Vehicle Code Section 41500 or as part of a
3 plea bargain agreement; all legal defense services reasonably and legally required therein from
4 time of appointment through a final adjudication of the proceeding, including those duties
5 required by Penal Code Section 1240.1(a); and all other and such other legal representation or
6 services necessary to provide complete legal defense services to disposition of a defendant's
7 case.

8 B. Provide up to Seven Levels of Conflict Defense – ATTORNEY shall
9 provide legal defense services for up to seven conflict levels for individual indigent defendants in
10 a case. ATTORNEY shall employ that combination of the Level One Conflict Office, the Level
11 Two Conflict Office, and Wheel Attorneys as are necessary to ensure the delivery of complete
12 legal defense services for up to seven defendants in a single case.

13 C. Attorney Staffing in Level One and Level Two Conflict Offices -
14 ATTORNEY shall deploy such attorneys in the Level One Conflict Office and Level Two Conflict
15 Office in such sufficient numbers, and with the requisite preparation, experience and availability
16 as will provide the legal representation contemplated in this Agreement, and as will ensure that
17 the business of the Court is not unreasonably delayed or impeded. ATTORNEY shall provide a
18 sufficient number of competent attorneys to staff the Level One Conflicts Office, presently
19 estimated to be at least seventeen (17) full-time attorneys, and one (1) part-time attorney, in
20 order to deliver legal services to indigent defendants and provide adequate coverage to the
21 Court. ATTORNEY shall provide a sufficient number of competent attorneys to staff the Level
22 Two Conflicts Office, presently estimated to be at least seven (7) full-time attorneys, and one (1)
23 part-time attorney, in order to deliver legal defense services to indigent defendants and to
24 provide adequate coverage to the Court.

25 D. Wheel Attorneys – ATTORNEY and COUNTY have the mutual
26 objective to achieve a legal defense system that provides indigent defense services for up to
27 seven (7) levels of conflict defense. ATTORNEY recognizes that a minimum of five (5) Wheel
28 Attorneys are to be utilized to deliver legal services beyond the Level One Conflict Office and

1 the Level Two Conflict Office. The five (5) Wheel Attorneys are designed to deliver legal
2 defense services to indigent defendants for the third through seventh levels of conflict, and to
3 provide adequate coverage to the Court. Therefore, ATTORNEY shall maintain under contract a
4 sufficient number of attorneys to ensure that five (5) Wheel Attorneys are available to provide
5 legal defense services to indigent defendants. To enable ATTORNEY to meet its obligation to
6 provide five (5) Wheel Attorneys, ATTORNEY may choose to use up to two (2) attorneys
7 employed by ATTORNEY in any office of ATTORNEY other than those offices providing Level
8 One and Level Two Conflict services under this Agreement. The use of such employed
9 attorneys shall be credited against the obligation to provide at least five (5) Wheel Attorneys on
10 a case.

11 ATTORNEY recognizes COUNTY's objective to obtain legal services across all seven
12 (7) levels of conflict defense. A Wheel Attorney declaring a conflict in representing an indigent
13 defendant exposes COUNTY to increased costs for court-appointed attorneys to represent the
14 indigent defendant. COUNTY desires that such conflicts be minimized so that the maximum
15 numbers of indigent defendants receive representation under this Agreement, instead of
16 through court-appointed attorneys. To that end, and to the extent permitted by law, ATTORNEY
17 shall endeavor to minimize the number of Wheel Attorneys who allege a conflict of interest.
18 ATTORNEY shall provide COUNTY with a monthly statistical report on the number of declared
19 conflicts by Wheel Attorneys that resulted in court-appointed attorneys representing indigent
20 defendants. In addition, ATTORNEY shall promptly initiate such procedures as will assist
21 ATTORNEY in minimizing declared conflicts of interest. ATTORNEY shall also meet with
22 COUNTY, upon COUNTY's request, and as needed to consult over changes or refinements to
23 the Agreement or the parties' implementation of the Agreement that are reasonably needed to
24 minimize the number of conflicts resulting in court appointments of private attorneys. An
25 important purpose of the reports, meetings and consultation is to avoid causing COUNTY to
26 incur additional costs from a Court appointment of private counsel at COUNTY expense.

27 ATTORNEY's contracts with private attorneys shall be in writing, and shall contain
28 provisions that: (1) prohibit them from seeking court appointment directly from the Court to

1 represent any indigent defendant ATTORNEY previously assigned to them; (2) prohibit them
2 from converting any indigent defendant ATTORNEY previously assigned to them into a private
3 criminal defense client; (3) identify COUNTY as an intended beneficiary to the contract between
4 ATTORNEY and the private attorney and that COUNTY has the power and authority to enforce
5 said contract to protect COUNTY's interest; (4) prohibit the private attorney from receiving
6 compensation from any source other than ATTORNEY in providing legal defense services to the
7 indigent defendant that ATTORNEY assigned to them; (5) require all Wheel Attorneys to obtain
8 the insurance policies required of ATTORNEY in Section 22 of this Agreement, and to name
9 COUNTY as an additional insured in each such insurance policy; notwithstanding the foregoing,
10 the minimum required aggregate professional liability coverage for each Wheel Attorney shall be
11 \$1,000,000 per year; (6) require all Wheel Attorneys to notify ATTORNEY a minimum of sixty
12 (60) days prior notice of an intention to terminate the contract, and provide that Wheel
13 Attorney(s) representation of indigent defendant(s) must continue until case(s) are completed or
14 transferred, before said contract may be terminated; and (7) ATTORNEY shall include in each
15 contract with a private attorney the provisions set forth in this Section 2.D.

16 E. Stand In Attorney – If permissible, attorneys from either of the two (2)
17 offices described herein shall specially appear to accept appointment on a case on behalf of a
18 Wheel Attorney if the assigned Wheel Attorney cannot respond within 30 minutes of the Court's
19 request. If said staff attorneys cannot appear, ATTORNEY shall make arrangements to have
20 another attorney specially appear to accept appointment on a case ("Stand In Attorney"). The
21 cost of a Stand In Attorney's appearance shall be borne by ATTORNEY. ATTORNEY shall
22 establish a clear policy regarding the acceptance of appointments on behalf of another attorney
23 that includes how Wheel Attorney shall accept and be notified of appointments. Stand In
24 Attorneys shall be responsible for notifying ATTORNEY or Wheel Attorney(s) of the appointment
25 in a timely manner. ATTORNEY shall maintain a list of attorneys committed to making such
26 special appearances on behalf of the Wheel Attorneys in the circumstances described above.

27 F. Appointment Process - The Court will first appoint the Public Defender
28 to represent an indigent defendant. Whenever the Public Defender declares a conflict of

1 interest, the Court will appoint ATTORNEY to represent the indigent defendant through its Level
2 One Conflict Office. Whenever the Public Defender and the Level One Conflict Office declare a
3 conflict of interest, the Court shall appoint ATTORNEY to represent the indigent defendant
4 through its Level Two Conflict Office. If the Public Defender, the Level One Conflict Office and
5 the Level Two Conflict Office declare a conflict of interest, the Court will appoint ATTORNEY to
6 represent indigent defendants through Wheel Attorneys.

7 G. Office Meetings With Clients - ATTORNEY shall maintain two
8 separate and adequate Fresno offices open during normal business hours to allow indigent
9 defendants who are not in custody to meet with their attorneys from the Level One Conflict
10 Office and Level Two Conflict Office. ATTORNEY shall maintain published office addresses and
11 telephone numbers and a telephone answering service, or devices for the taking of telephone
12 messages during non-business hours. ATTORNEY shall employ adequate numbers of Spanish-
13 speaking staff in order to service Spanish-speaking clients. In-custody clients generally shall be
14 interviewed within thirty-six (36) hours of ATTORNEY's appointment. Out-of-custody clients
15 generally shall be interviewed within seventy-two (72) hours of ATTORNEY's appointment.

16 H. Obligation to Keep Courts Informed - ATTORNEY shall keep all courts
17 informed of the status of pending cases for which ATTORNEY has been appointed, and shall
18 advise the Court at the earliest possible time as to whether cases will be settled or go to trial,
19 whether continuances are needed, whether and when interpreters will be needed, and other
20 such matters bearing on the scheduling of cases before the courts. At the commencement of
21 this Agreement, ATTORNEY shall submit to the Presiding Judge of the Court written plans
22 setting forth the deployment of attorneys in the Level One Conflict Office, Level Two Conflict
23 Office, and Wheel Attorneys. ATTORNEY shall submit to the Court updates of the deployment
24 plans reflecting changes in the deployment of attorneys, as soon as reasonably possible.

25 Staffing maintained by the Level One Conflict Office and the Level Two Conflict Office
26 shall be sufficient such to assure the timely appearance of attorneys of those offices when
27 requested by the Courts to accept appointment on a case. ATTORNEY shall make all efforts to
28 assure the timely appearance of the Wheel Attorneys upon request of the Courts to accept

1 appointment on a case. If permissible, attorneys from either of the two (2) offices described
2 herein shall specially appear to accept appointment on a case on behalf of a Wheel Attorney, if
3 the assigned Wheel Attorney cannot respond within one half (1/2) hour of the Court's request. If
4 said staff attorneys cannot appear, ATTORNEY shall make arrangements to have another
5 attorney specially appear to accept appointment of a case.

6 In the event the Court notifies ATTORNEY of any proposed changes in the Court
7 calendars or other operational changes which may impact the deployment plans, ATTORNEY
8 shall promptly notify all Level One Conflict Offices, Level Two Conflict Offices, and Wheel
9 Attorneys of said operational changes to assure adequate coverage.

10 I. Administration of Attorneys - ATTORNEY shall generate, and
11 maintain and update as necessary, written practices and procedures to govern the Level One
12 Conflict Office, the Level Two Conflict Office and Wheel Attorneys. The written practices and
13 procedures will regulate conduct in the above offices so as to avoid conflicts of interest or the
14 appearance of a conflict of interest that would impede or negate legal representation by
15 assigned attorneys. The written practices and procedures are attached as Exhibit "A" and
16 incorporated by this reference. ATTORNEY shall provide copies of the written practices and
17 procedures, as well as necessary instruction, to each attorney in the Level One Conflict Office
18 and the Level Two Conflict Office, as well as to each Wheel Attorney and Stand-in Attorneys.

19 J. Covered Proceedings – ATTORNEY agrees to accept appointments
20 to represent indigent defendants regarding any case, which for this Agreement is defined to
21 encompass any and all of the proceedings enumerated below (the "Covered Proceedings"), and
22 in which the Public Defender is unable to or has refused to provide representation because of a
23 conflict of interest or other reason. ATTORNEY shall defend, without additional expense outside
24 the terms of this Agreement to the defendant, an indigent defendant at any and all stages of a
25 Covered Proceeding.

26 Covered Proceedings are as follows:
27
28

1 1) Representation in criminal matters pursuant to Penal Code
2 Section 683, including all changes, counts or cases pending against a single individual and
3 disposed of at one time.

4 2) Representation of an adult defendant, including a juvenile tried
5 as an adult or juvenile ward in any misdemeanor or felony matter in the Court continuing to final
6 disposition or adjudication.

7 3) Representation of an Adult defendant or juvenile ward in a
8 matter that commenced as a misdemeanor and was subsequently reduced to an infraction
9 pursuant to Penal Code Section 19.6, where the Court has determined that the individual is
10 legally entitled to representation.

11 4) Representation of a juvenile ward in a Juvenile Court
12 proceeding pursuant to Welfare and Institutions Code Sections 601 or 602.

13 5) Representation of a parent in a Juvenile Court proceeding
14 pursuant to Welfare and Institutions Code Section 634 in Sections 601 and 602 proceedings.

15 6) Review hearings, violation of probation hearings detention or
16 commitment hearings, supplemental modification, set aside and/or termination petitions, and
17 other related hearings pursuant to Welfare and Institutions Code Sections 601, 602, 625, 775,
18 777, 779, 780, 781, 782, and/or 785 held within eighteen (18) months of disposition; except that
19 ATTORNEY's representation under this subsection J- 6 shall not extend beyond six (6) months
20 following the expiration or termination of this Agreement, it being the intent of the parties that
21 ATTORNEY's successor take over such representation after the six (6) month period.

22 7) Representation of a witness in the prosecution of an adult
23 defendant, including a juvenile tried as an adult, or of a juvenile ward where the Court has
24 determined that the witness is legally entitled to appointed counsel and the Public Defender has
25 declared a conflict of interest in that matter or as to the witness.

26 8) Pre-trial appeals and extraordinary writs to the Court, or the
27 District Court of Appeals, related to proceedings referred to in subsections 1 through 7 above,
28 provided that ATTORNEY may decline appellate appointments when ATTORNEY has

1 represented the client in related trial court proceeding such that a conflict of interest exists, but
2 subject to appointment to a higher level of conflict defense.

3 9) Representation in any criminal matters arising from Public
4 Defender unavailability, to be charged at a 25% discount of the current Court appointed attorney
5 rate of \$80.00 per hour, which equals \$60.00 per hour.

6 10) ATTORNEY will in all cases of appointment assist assigned
7 indigent defendant or ward in perfecting his or her right to appeal.

8 11) ATTORNEY will accept two (2) special circumstance homicide
9 conflict of interest cases per year for each year of the Agreement, not to exceed a total of ten
10 (10) cases for the Term of the Agreement and pursuant to Section 3 of this Agreement. If
11 ATTORNEY cannot accept such appointment due to a conflict of interest or after appointment
12 must declare that it has a conflict of interest, that case shall not count against the numerical
13 limits set forth in this subsection.

14 Attorney shall not be required to provide Reimbursable Ancillary Services (as that term is
15 defined in Section 2.-L herein) in special circumstance homicide cases. Reimbursable Ancillary
16 Services, as needed in special circumstance homicide cases, including investigative services,
17 shall be approved and compensated pursuant to the policy of the Fresno County Superior Court
18 regarding appointment of private counsel unless approved at a different rate through a court
19 order.

20 K. Excluded Proceedings - This Agreement does not require
21 ATTORNEY to accept appointments for the following proceedings:

- 22 1) Contempt citations, including, but not limited to, Family
23 Support proceedings;
- 24 2) Conservatorships or guardianships;
- 25 3) Determination of motions for new trial alleging including
26 incompetence of former counsel; and
- 27 4) Any other action or proceeding not specified in this
28 Agreement.

1 L. Reimbursable Ancillary Services - ATTORNEY shall provide such
2 ancillary and supportive services as may be necessary to provide adequate representation,
3 including but not limited to, investigative services, expert witnesses, and polygraph
4 examinations where deemed necessary by ATTORNEY, and such other services properly
5 required by ATTORNEY designed to assist the indigent defendant in the preparation and
6 presentation of his or her case ("Reimbursable Ancillary Services"). ATTORNEY shall retain a
7 sufficient number of licensed investigators on staff at all times for both the Level One Conflict
8 Office and the Level Two Conflict Office. ATTORNEY shall employ at least two (2) full-time
9 licensed investigators at all times in the Level One Conflict Office to provide investigative
10 services adequate to service the projected caseload. ATTORNEY shall employ at least one (1)
11 full-time licensed investigator for the Level Two Conflict Office. ATTORNEY shall utilize office
12 staff to provide interpreter services. At least three (3) office staff members shall be
13 English/Spanish bilingual in the Level One Conflict Office. At least one (1) office staff member
14 shall be English/Spanish bilingual in the Level Two Conflict Office. Non-Spanish interpreter
15 services will be provided on a fee-for-service basis.

16 The following services shall be provided by ATTORNEY on a fee-for-
17 service basis, to be paid from the Reimbursable Ancillary Services Fund provided in
18 Section 8.B of this Agreement:

- 19 1) All interpreter services not provided by ATTORNEY's
20 bilingual staff;
 - 21 2) Expert witness fees;
 - 22 3) Depositions and transcripts;
 - 23 4) Polygraph services;
 - 24 5) Clothing for court appearances for incarcerated defendants
25 as required; and
 - 26 6) Other specialized services which cannot reasonably be
27 provided by ATTORNEY's staff.
- 28

1 M. Private Practice of Law - ATTORNEY shall be allowed to engage in
2 the private practice of law, including the defense of those charged with crimes, provided that no
3 private case may cause a conflict of interest which would prevent the ATTORNEY from
4 providing the contracted services. ATTORNEY shall not accept any compensation or other
5 material benefit for providing legal defense services to any indigent defendant in a case that is a
6 Covered Proceeding under this Agreement. Under no circumstances shall ATTORNEY receive
7 compensation for providing legal defense services to an indigent defendant in a Covered
8 Proceeding except pursuant to this Agreement. ATTORNEY shall also refrain from any actions
9 resulting in a referral of an indigent defendant, subsequently determined to be eligible to receive
10 legal defense services under this Agreement in a Covered Proceeding, to a different attorney
11 already employed by ATTORNEY's Level One Conflict Office, Level Two Conflict Office or
12 Wheel Attorney, for compensation other than from this Agreement. For purposes of this Section
13 2.-M, the use of the term "ATTORNEY" is specifically intended to include attorneys in the Level
14 One Conflict Office, the Level Two Conflict Office, and Wheel Attorneys.

15 N. Maintenance of Contract Records/Reporting Requirements –
16 ATTORNEY must maintain accounts and records, including personnel, property, financial, and
17 programmatic records, which sufficiently and properly reflect all costs and expenses incurred in
18 performance of services in this Agreement including the direct and indirect costs of services
19 performed. ATTORNEY must maintain records which sufficiently and properly reflect all direct
20 and indirect costs of any subcontracts or personal service contracts. Such records shall include
21 but not be limited to, documentation of funds expended by ATTORNEY for said personal service
22 contracts or subcontracts and documentation of the nature of the services rendered.

23 For auditing and statistical purposes, ATTORNEY shall provide to the COUNTY monthly
24 reports in the standard format required by COUNTY. In addition, ATTORNEY shall submit an
25 annual narrative and statistical report in the format required by COUNTY. Failure to provide
26 required monthly and/or annual reports shall be considered a material breach of contract and
27 shall be cause to withhold payment to ATTORNEY until such time as the required report or
28 reports are filed.

1 ATTORNEY shall at any time during normal business hours, and as often as the
2 COUNTY deems necessary, make available for examination by COUNTY, or its authorized
3 representatives, all of its records and data with respect to all matters pertaining to services
4 provided under this Agreement. Upon request by the COUNTY, ATTORNEY shall provide
5 copies of such records and/or make such records available for audit and inspection for the
6 period of this Agreement and up to three years following the date of termination or expiration of
7 this Agreement.

8 **3. TERM; RENEWAL OPTIONS; DURATION OF REPRESENTATION**

9 A. The term of this Agreement shall be for a period of three (3) years,
10 commencing on July 1, 2022, through and including June 30, 2025. ATTORNEY shall accept
11 appointments for such cases assigned, whether newly appointed or transferred from the
12 previous provider, within the term of this Agreement beginning on July 1, 2022. This Agreement
13 may be extended for two (2) additional consecutive twelve (12) month periods upon written
14 approval of both parties no later than one hundred and eighty (180) days prior to the first day of
15 the next twelve (12) month extension period. The County Administrative Officer, or his/her
16 designee, is authorized to execute such written approval on behalf of COUNTY, based on
17 ATTORNEY'S satisfactory performance.

18 B. Upon termination or expiration of this Agreement, ATTORNEY shall
19 transfer any misdemeanor case without a set trial date immediately to the new provider(s). Any
20 misdemeanor case set for trial shall remain with ATTORNEY until the case is concluded within
21 the meaning of this Agreement (See Section 14, herein). Any felony case assigned to
22 ATTORNEY with a set preliminary hearing date shall remain with ATTORNEY through
23 preliminary hearing. If said case involves the defendant entering a guilty plea at the preliminary
24 hearing, the case shall remain with ATTORNEY through sentencing. If the outcome at said
25 preliminary hearing is Held To Answer, the Court will appoint new counsel (new provider) at the
26 time the defendant is arraigned on information. If a felony case is scheduled for a Jury Trial, the
27 case shall remain with ATTORNEY through trial or until the case is concluded within the
28 meaning of this Agreement.

1 ATTORNEY shall use its best efforts to transfer all cases to the new provider(s) of
2 services as soon as possible, provided however, in the event ATTORNEY's representation to
3 such conclusion of cases described above will, despite such best efforts, need to continue
4 beyond the termination or expiration of this Agreement so that ATTORNEY may wind up its
5 performance of legal services to such affected clients, the terms and conditions of this
6 Agreement (except that Section 4-C [termination without cause] shall continue to apply to such
7 cases, but only such cases (collectively, "Holdover Cases").

8 If ATTORNEY is required to provide legal services in any Holdover Cases, ATTORNEY
9 shall, not later than five (5) days after the termination or expiration of this Agreement, give
10 COUNTY written notice of the Holdover Cases (and specify the names and general nature of
11 the relevant Holdover Cases, e.g., misdemeanor, felony). Compensation for services relating to
12 Holdover Cases shall be the amounts defined in the then-current rate schedule set forth by the
13 Court for cases subject to Penal Code Section 987.3. The extended services payment shall
14 continue to be in accordance with Section 8 of this Agreement.

15 In the event of a transition between ATTORNEY and another provider(s), the transition
16 process shall be monitored through the COUNTY's Contract Administrator.

17 4. **TERMINATION**

18 A. **Non-Allocation of Funds** - The terms of this Agreement, and the services
19 to be provided thereunder, are contingent on the approval of funds by the appropriating
20 government agency. Should sufficient funds not be allocated, the services provided may be
21 modified, or this Agreement terminated, at any time by giving the ATTORNEY thirty (30) days
22 advance written notice.

23 B. **Breach of Contract** - The COUNTY may immediately suspend or
24 terminate this Agreement in whole or in part, where in the determination of the COUNTY there
25 is:

- 26 1) An illegal or improper use of funds;
- 27 2) A failure to comply with any term of this Agreement;
- 28 3) A substantially incorrect or incomplete report submitted to

COUNTY;

4) An improperly performed service;

5) Any of the following or inactions by the ATTORNEY:

a. Pleading no contest to or being found guilty of a felony or a crime involving moral turpitude;

b. Persistent failure or inability to perform the duties of the Agreement, whether willful or otherwise;

c. Disability that seriously interferes with the performance of duties and is permanent or is likely to become permanent;

d. Willful misconduct by the ATTORNEY pertaining to contract performance;

e. Habitual intemperance or the use of intoxicants or drugs; and

f. Conduct prejudicial to the administration of COUNTY's interests in entering into the Agreement, specifically additional expense to COUNTY resulting from ATTORNEY actions contrary to the spirit of this Agreement. Persistent failure or inability to perform shall not be construed to encompass actions within the discretionary duties of ATTORNEY.

6) Any of the following occurrences:

a. Institution of proceedings by or against ATTORNEY under the United States bankruptcy laws;

b. Suspension of business operations, failure or receivership of ATTORNEY;

c. Any assignment of this Agreement without prior written approval of COUNTY; and

d. Failure by ATTORNEY to administer the Level One or Level Two Conflicts Offices in full compliance with any and all constitutional, legal and professional obligations or requirements, duties and responsibilities governing such Conflict Offices as are required under this Agreement.

1 7) Any other occurrence or omission constituting a breach of
2 contract.

3 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any
4 breach of this Agreement or any default which may then exist on the part of the ATTORNEY.
5 Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect
6 to the breach or default. The COUNTY shall have the right to demand of the ATTORNEY the
7 repayment to the COUNTY of any funds disbursed to the ATTORNEY under this Agreement,
8 which in the judgment of the COUNTY were not expended in accordance with the terms of this
9 Agreement. ATTORNEY shall promptly refund any such funds upon such demand.

10 C. Without Cause - Under circumstances other than those set forth above, this
11 Agreement may be terminated by COUNTY by giving ATTORNEY one hundred eighty (180) days
12 advance written notice of an intention to terminate. ATTORNEY may terminate this Agreement
13 upon written notice to COUNTY at least one hundred eighty (180) days prior to the effective date of
14 termination.

15 5. **FINANCIAL ELIGIBILITY DETERMINATION**

16 The determination of financial eligibility or indigence is the sole responsibility of the Court.
17 Non-privileged information subsequently obtained by ATTORNEY that suggests that a client is not
18 eligible for appointment of counsel, shall be provided to the Court. At the request of the Court,
19 ATTORNEY shall attend, as a witness, any hearing regarding the client's ability to reimburse
20 COUNTY for the value of ATTORNEY's services. ATTORNEY's participation in such a hearing
21 remains subject to appropriate claims of privilege. Upon commencement of representation,
22 ATTORNEY shall advise client of the requirements of this Section 5.

23 6. **FINANCIAL ELIGIBILITY RECORDS**

24 Determination of financial eligibility or indigence is the sole responsibility of the Court.
25 ATTORNEY shall nevertheless prepare and maintain records sufficient to enable County to
26 determine the cost of representing each person represented by ATTORNEY, and shall make such
27 records available to COUNTY upon COUNTY's request. ATTORNEY shall obtain from each and
28 every person ATTORNEY is appointed to represent, a completed questionnaire verifying the

1 person's eligibility for conflict Public Defender services. At no additional expense to COUNTY,
2 ATTORNEY shall participate and assist COUNTY in the preparation of any questionnaire, and
3 shall provide the applicable courts with a copy of each such completed questionnaire upon
4 disposition of each case for which ATTORNEY is appointed. ATTORNEY's participation and
5 disclosure remains subject to appropriate claims of privilege.

6 7. **FEE REIMBURSEMENT**

7 ATTORNEY shall be responsible for the completion of both attorney and registration fee
8 forms. The Attorney Fee form is to be completed and provided to the Court at the conclusion of a
9 case. The Registration Fee form shall be presented to clients at the time of appointment.

10 8. **CONTRACT PRICE:**

11 A. Total Contract Price - The Total Contract Price to be paid ATTORNEY
12 by COUNTY shall not exceed twenty-nine million, five hundred sixty-four thousand, nine hundred
13 fifty two dollars (\$29,564,952), consisting of twenty-eight million, six hundred sixty-four thousand,
14 nine hundred fifty two dollars (\$28,664,952) for the services to be provided hereunder, including all
15 of the administration, management and supervision, attorney services, support services, and other
16 services identified in herein, and nine hundred thousand dollars (\$900,000) for enumerated
17 Reimbursable Ancillary Services, which are set forth in subsection B below, all as further defined
18 and specified in this Agreement (the "Total Contract Price").

19 The Total Contract Price includes all of the prices, fees, charges, and expenses
20 necessary in accordance with this Agreement to provide the services hereunder and to meet the
21 requirements of ATTORNEY to provide the services hereunder. The Total Contract Price or "Flat
22 Fee," is the sole consideration to be paid to ATTORNEY hereunder, and includes provision for all
23 out-of-pocket costs, such as computer time, freight, long distance telephone charges, travel
24 expenses, copying, telecopying, faxing and postage, and for all items or services necessary to
25 deliver the services described herein. Accordingly, only the specified in this Section 8 shall be billed
26 to or paid by COUNTY, except pursuant to an amendment to this Agreement authorized by
27 COUNTY's Board of Supervisors. ATTORNEY shall not assign any payments or portions of
28 payments without prior written consent of COUNTY.

1 ATTORNEY's agreement to this Flat Fee, described in more detail in ATTORNEY's Cost
2 Proposal, attached as Exhibit "C", is based on ATTORNEY's independent investigation and review
3 of the statistical information provided by COUNTY as part of the RFP process. The parties agree
4 and represent to each other that the Flat Fee basis of compensation has been established after
5 consideration of the facts set forth in California Penal Code Section 987.3.

6 ATTORNEY'S agreement to this Flat Fee shall include ATTORNEY'S representation fees
7 for special circumstance – homicide cases as specified in Section 2 of this Agreement. Additional
8 special circumstance – homicide case costs, including the cost of second counsel if required,
9 investigation and ancillary services shall be approved and compensated pursuant to the policy of
10 the Fresno County Superior Court (unless approved at a different rate through a court order)
11 regarding appointment of private counsel in said cases, and shall be entirely outside of this
12 Agreement.

13 The parties to this Agreement acknowledge that the compensation for ATTORNEY is
14 based in part on the number of judicial positions existing in the Court as of the date of this
15 Agreement. In the event additional judicial positions(s) are created in the Court during the term of
16 this Agreement, the parties agree to meet and confer regarding the impact of such additional
17 positions(s). If ATTORNEY's duties and responsibilities are materially impacted by such additional
18 positions(s), the parties shall negotiate in good faith to increase ATTORNEY's compensation so
19 that ATTORNEY will continue to be able to meet its obligations under this Agreement. In the event
20 the parties cannot agree upon such increase in ATTORNEY's compensation within sixty (60) days
21 of the commencement of such negotiations, then either party may terminate this Agreement by
22 giving ninety (90) days written notice of intent to terminate to the other party.

23 B. Reimbursable Ancillary Services Fund - For the purposes of this
24 Agreement, there are two classes of ancillary services. The first class is the Spanish interpreter
25 and investigative services to be provided by the in-house staff of ATTORNEY. The second class in
26 Reimbursable Ancillary Services is limited to non-Spanish interpreter services, expert witness fees,
27 court reporters utilized in depositions, transcript services, polygraph services, defendant clothing
28 for courtroom appearances of incarcerated defendants, and other specialized services which

1 cannot reasonably be provided by ATTORNEY's own staff. To provide funds for the purpose of
2 reimbursement of the reasonably necessary charges for these Reimbursable Ancillary Services,
3 the parties agree to hereby identify and segregate a portion of the Total Contract Price to serve as
4 a fund from which ATTORNEY may seek reimbursement, and to operate that fund (hereinafter
5 referred to as "Fund") as follows:

6 1) The parties agree and understand that the funds to be
7 appropriated by COUNTY for identification and use in the Fund are included within and are a part
8 of the Total Contract price.

9 2) COUNTY will appropriate One Hundred Eighty Thousand Dollars
10 (\$180,000) each fiscal year of the Agreement. The total five-year appropriation by COUNTY for the
11 Fund shall not exceed nine hundred thousand dollars (\$900,000).

12 3) COUNTY shall only approve Reimbursable Ancillary Services
13 payments that do not exceed the current rate schedule set forth by the Court and in accordance
14 with Penal Code Section 987.3, unless approved at a different rate through a court order.

15 4) ATTORNEY shall submit an invoice for up to ten thousand dollars
16 (\$10,000) as a first draw on these funds for each of the Level One and Level Two Conflicts Offices.
17 ATTORNEY shall place said monies in a trust fund which shall be equally accessible to the
18 attorneys to whom an indigent defendant case is assigned. ATTORNEY may request as needed
19 throughout each year of the Agreement up to an additional ten thousand dollars (\$10,000.00)
20 drawn down by invoice, supported by such accounting and reporting as specified in Section 13,
21 submitted to COUNTY.

22 5) Any part of the annually appropriated Fund which is not used or
23 utilized for payment of invoices for charges incurred in that year shall revert to COUNTY, and is not
24 subject to further charges hereunder.

25 6) Charges in any year which exceed the annual amount
26 appropriated by COUNTY for that year will be applied against the appropriation for the succeeding
27 year or years remaining in the Agreement.

28 7) ATTORNEY shall have no personal interest in the funds

appropriated by COUNTY for use in the Fund, and ATTORNEY agrees and understands that the sole purpose of the Fund is reimbursement of the reasonable and necessary charges incurred by ATTORNEY for Reimbursable Ancillary Services.

8) In the event that the total appropriations to the Fund for the potential five-year period of this Agreement have been fully exhausted hereunder by ATTORNEY through invoices for reasonable and necessary charges for the provision of Reimbursable Services, the parties agree that they will mutually review the amounts and funding levels set forth in this subsection and explore an adjustment thereof through agreement renegotiations and agreement modification.

C. Holdover Cases Funding – Compensation for Holdover Cases shall not exceed the amounts defined in the then-current rate schedule set forth by the Court for cases subject to Penal Code Section 987.3.

D. Payment – ATTORNEY shall receive payment according to the following schedule:

1) Year One (1) compensation, excluding Reimbursable Ancillary Service Fund, shall not exceed four hundred forty-seven thousand, one hundred eighty-seven dollars and ninety-two cents (\$447,187.92) each month, and shall not exceed five million, three hundred sixty-six thousand, two hundred fifty-five dollars (\$5,366,255) annually;

2) Year Two (2) compensation, excluding Reimbursable Ancillary Service Fund, shall not exceed four hundred sixty thousand, six hundred three dollars and fifty cents (\$460,603.50) each month, and shall not exceed five million, five hundred twenty-seven thousand, two hundred forty-two dollars (\$5,527,242), annually;

3) Year Three (3) compensation, excluding Reimbursable Ancillary Service Fund, shall not exceed four hundred seventy-four thousand, four hundred twenty-one dollars and sixty-seven cents (\$474,421.67) each month, and shall not exceed five million, six hundred ninety-three thousand and sixty dollars (\$5,693,060), annually;

4) Optional Year Four (4) compensation, excluding Reimbursable Ancillary Service Fund, shall not exceed four hundred ninety-three thousand, three hundred ninety-eight

dollars and fifty cents (\$493,398.50) each month, and shall not exceed five million, nine hundred twenty thousand, seven hundred eighty-two dollars (\$5,920,782), annually; and

5) Optional Year Five (5) compensation, excluding Reimbursable Ancillary Service Fund, shall not exceed five hundred thirteen thousand, one hundred thirty-four dollars and forty-one cents (\$513,134.41) each month, and shall not exceed six million, one hundred fifty-seven thousand, six hundred thirteen dollars and forty-one cents (\$6,157,613), annually.

Payment for services, other than Reimbursable Ancillary Services, shall occur within ten (10) days after COUNTY's receipt of an invoice after the end of each month in which such services were rendered.

The compensation payable under this subsection is the maximum amount which COUNTY shall pay ATTORNEY for providing legal defense services to indigent defendants under this Agreement, and ATTORNEY shall assume and pay all other expenses incurred in ATTORNEY's performance of this Agreement.

COUNTY shall receive all funds collected pursuant to Penal Code sections 987.4, 987.6, and 987.8, Government Code section 27712, and any other statutes or case law providing for reimbursement for the cost of legal defense services rendered under this Agreement, and no portion of said funds shall inure to ATTORNEY's benefit or otherwise affect the amounts specified in this Section 8.

E. Other Compensation Prohibited – In no event shall ATTORNEY, including ATTORNEY's Level One Conflict Office, Level Two Conflict Office, and any Wheel Attorney, accept anything of value as consideration for services rendered on behalf of an indigent defendant pursuant to this Agreement, except from COUNTY as prescribed by the terms of this Agreement.

If an appointed Indigent is subsequently determined to be ineligible for representation hereunder, ATTORNEY is prohibited from subsequently representing such person on a fee for service basis in matters included within the original appointment or referring the indigent defendant to an ATTORNEY already receiving compensation, either directly or indirectly from this Agreement.

9. **CASELOAD AND WORK LEVELS:**

COUNTY has disclosed to ATTORNEY information it possesses concerning the type and number of cases handled by COUNTY's prior provider for these services for the three-five years immediately preceding this Agreement. The information derives from reports submitted by ATTORNEY (as COUNTY's prior provider) to COUNTY, concerning the type and number of cases handled by ATTORNEY during the term of such ATTORNEY's prior agreement with COUNTY. ATTORNEY represents to COUNTY that it is experienced as an attorney in the representation of indigent defendants, and that its projections are based upon its independent investigation and consideration of the circumstances, policies and practices within Fresno County and has recommended a flat rate fee for the provision of services hereunder. ATTORNEY and COUNTY acknowledge that many factors outside the control of the parties can affect the ability of ATTORNEY to accurately project caseloads and work levels with certainty. The court and the prosecution largely control such factors, and the length of time between arraignment and trial, local sentencing practices, and pleading negotiation practice. ATTORNEY has anticipated and liquidated in its flat fee rate, to the extent possible, all additional expenses arising from such changes, and ATTORNEY assumes the risk of and hereby waives any claim(s) to additional compensation for expenses which may be incurred by reason of such or similar circumstances.

The foregoing representations by ATTORNEY are a significant and substantial inducement to COUNTY to enter into this Agreement with ATTORNEY, and COUNTY relies upon ATTORNEY's experience and understanding of the criminal justice system, as well as ATTORNEY's understanding of the circumstances likely to occur during the term of this Agreement.

Notwithstanding the foregoing, extraordinary changes beyond the reasonable expectations of the parties may give rise to a need to modify this Agreement to ensure that ATTORNEY will be able to perform the obligations of this Agreement and to provide adequate legal representation. In the event of extraordinary events or conditions, ATTORNEY may request COUNTY to modify this Agreement, upon reasonable notice and satisfactory proof of the need therefor, to provide for such extraordinary events or conditions to allow ATTORNEY to perform the obligations of this Agreement.

1 10. **MINIMUM PROFESSIONAL QUALIFICATIONS:**

2 ATTORNEY shall maintain two (2) full-time offices within the COUNTY, and shall ensure
3 that all attorneys performing legal services under this Agreement are active members in good
4 standing of the State Bar of California. ATTORNEY shall maintain ongoing communications with
5 the local Bar Association and other interested professional groups to assure that ATTORNEY's
6 operations meet the established professional standards for adequate representation.

7 ATTORNEY shall provide to COUNTY the names of all attorneys performing legal defense
8 services under this Agreement, their experience, qualifications, and areas of specialization, and
9 shall update this information promptly as necessary. ATTORNEY shall develop and establish
10 categories of minimum special qualifications and categories of cases which each attorney is
11 eligible to handle.

12 The legal representation provided by ATTORNEY and all attorneys performing services
13 under this Agreement shall be of such high quality as will meet all constitutional, statutory, case
14 law, and professional standards and requirements. Federal and State Constitutions require
15 provision of competent counsel in criminal cases. In California, the adopted test for determining
16 competence of counsel in criminal cases is that of a reasonably competent attorney acting as a
17 diligent, conscientious advocate (Strickland v. Washington (1984) 466 U.S. 668, 694, 104 S.Ct.
18 2052, 80 L.Ed.2d 674). ATTORNEY agrees to provide competent legal services in conformity with
19 the above standards. Specifically, the following duties and responsibilities of counsel as set forth in
20 prior court decisions and professional standards will be observed. These include:

21 1) The duty of careful, factual and legal investigation. (See Strickland
22 v. Washington (1984) 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 – duty to research the
23 law and raise objections; In re Saunders (1970) 2 Cal.3d 1033 – duty to investigate medical reports
24 and conduct psychiatric examinations to support a diminished capacity defense; and ABA
25 Standards for Criminal Justice: Prosecution and Defense Function, 3d ed., © 1993 American Bar
26 Association (hereinafter referred to as "ABA Standard"), Standards 4-1.1 through 4-8.6).

27 2) The duty to take prompt action to protect a client's legal rights.
28 (ABA Standards, Section 3.6a (includes procedural steps such as moving for pre-trial release,

1 obtain psychiatric examination, moving for change of venue or continuance, suppression of illegally
2 obtained evidence, severance from jointly charged defendants, or dismissal)).

3 3) The duty to keep a client informed. (ABA Standards, Section 3.8.)

4 4) The duty to prepare for jury selection, examination of witnesses,
5 submission of instructions and presentation of argument at trial. (ABA Standards Sections 7.2(a)
6 and 7.2(b).)

7 5) The duty to know and explore sentencing alternatives. (ABA
8 Standards Section 8.1(b).)

9 6) The duty to advise concerning appeals. (ABA Standards Section
10 8.2(a).)

11 7) The duty not to accept more cases than can be competently
12 handled. (See *Martin v. State Bar* (1978) 20 Cal.3d 717.)

13 8) The duty not to handle a legal matter which the attorney knows or
14 should know that he or she is not competent to handle. (Code of Responsibility, Canon 6,
15 disciplinary rule no. 6-101(a).)

16 9) The duty to maintain confidence and secrets.

17 10) The duty to administer the Level One and Level Two Conflict
18 Offices in full compliance with any and all constitutional, legal, ethical, professional obligations,
19 duties and responsibilities governing such conflict as required under this Agreement, as specified in
20 Exhibit "A" (ATTORNEY's policies, procedures and practices for multiple conflicts services).

21 This Agreement shall be construed so no breach occurs if ATTORNEY's conduct is dictated by any
22 constitutional or statutory requirement, ATTORNEY's duties to the courts, clients rules of
23 professional responsibility, or considerations of professional ethics.

24 ATTORNEY, in the performance of this Agreement, shall comply with all applicable federal,
25 state and local laws, and the regulations, guidelines, procedures and standards that are
26 promulgated thereunder, as well as applicable professional standards.

27 11. **PROFESSIONAL TRAINING AND DEVELOPMENT:**

28 ATTORNEY shall ensure that each attorney providing services under this Agreement shall

1 be provided professional training, and ATTORNEY agrees that the compensation to be provided to
2 ATTORNEY pursuant to this Agreement includes the amount to defray such training expense.
3 ATTORNEY shall require all attorneys performing services under this Agreement or any
4 subcontract thereto, to obtain ongoing professional training at a level and cost which does not fall
5 below minimum professional standards. ATTORNEY shall also be responsible for reasonable
6 professional training of non-attorney professional staff.

7 12. **CONFLICTS OF INTEREST AND APPEARANCE OF IMPROPRIETY:**

8 The parties recognize that ethical considerations such as those referred to in the California
9 Rules of Professional Conduct may prohibit attorneys in the Level One Conflict Office from
10 accepting some appointments normally included in the contract caseload. ATTORNEY agrees to
11 establish a system for screening appointments upon intake to discover potential conflicts of interest
12 and make appropriate referrals to the Level Two Conflict Office or to Wheel Attorneys to provide
13 legal defense services.

14 Upon discovery of a conflict of interest or other ethical consideration precluding further
15 representation, ATTORNEY shall immediately notify the affected client and refer the case to the
16 Level Two Conflict Office, or to Wheel Attorneys, or to the Court as necessary.

17 ATTORNEY's Level One Conflict Office shall not decline to represent any eligible person
18 except for a conflict of interest or disqualification pursuant to written order from the Court.

19 13. **REPORTS:**

20 ATTORNEY shall provide to the Presiding Judge of the Court notice of the attorneys so
21 designated by Attorney for services provided under this Agreement, and ATTORNEY agrees to
22 promptly notify the courts of any additions or deletions to the attorneys so employed, with a copy of
23 such correspondence or notice provided to COUNTY's Contract Administrator.

24 A. **Required Reports** – ATTORNEY shall provide COUNTY's Contract
25 Administrator each month with a case report on each case handled in a format required by
26 COUNTY as provided in Exhibit D. Additionally, ATTORNEY shall provide Monthly reports of an
27 accounting of the Reimbursable Ancillary Services funds spent during that month in a format
28 required by COUNTY as provided in Exhibit E, including any and all receipts, invoices or other

1 billing documents with each defendant's name and case numbers referenced on each invoice for
2 the Reimbursable Ancillary Services rendered. Monthly reports shall be filed on or before the 15th
3 day of the month following the month of activity reported. In addition, ATTORNEY will submit an
4 annual narrative and statistical report as specified by the COUNTY. The annual report shall be
5 available in an electronic format and filed with COUNTY's Contract Administrator and the Court's
6 Executive Officer no later than August 15th of each year. Failure to provide the case, monthly or
7 annual reports shall be cause to withhold payment to ATTORNEY until such time as the required
8 reports are filed.

9 B. Examination of Records – While conforming with Section 15 of this
10 Agreement, ATTORNEY shall at any time during its normal business hours and as often as
11 COUNTY may deem necessary, make available to COUNTY for examination, its records and data
12 with respect to all matters covered by this Agreement, and shall permit COUNTY to audit and
13 inspect all invoices, materials, payrolls, records of personnel, conditions of employment and other
14 data relating to all matters covered by this Agreement.

15 ATTORNEY shall maintain the confidentiality of records pursuant to all federal, state and
16 local laws and professional ethics and standards.

17 14. **RETENTION OF FILES:**

18 All files, including time records, for any legal services provided under this Agreement shall
19 be the responsibility of ATTORNEY. ATTORNEY shall maintain all misdemeanor files and time
20 records for each misdemeanor case for a period of five (5) years following closure of the file.

21 ATTORNEY shall maintain all felony files and time records for each felony case for a period of at
22 least ten (10) years following closure of the file. Closure of the file is defined as the last date
23 ATTORNEY renders legal defense service to an indigent defendant in an assigned case.

24 ATTORNEY shall take all necessary steps to ensure that any successor counsel to this Agreement
25 shall be under the same obligations as stated herein. ATTORNEY shall furnish safe and secure
26 storage for all of ATTORNEY's files for the respective five (5) and ten (10) year time period
27 prescribed above. ATTORNEY shall notify COUNTY within thirty (30) days prior to any changes in
28 storage location. Neither COUNTY nor any other person or entity shall be permitted to access any

1 such file without the written consent of ATTORNEY, or upon Court order. Prior to closing each file,
2 ATTORNEY shall exercise due diligence to notify the indigent defendant of ATTORNEY's
3 obligations under this Section 14.

4 15. **AUDITS AND INSPECTIONS:**

5 ATTORNEY shall at any time during business hours, and as often as the COUNTY may
6 deem necessary, make available to the COUNTY for examination all of its records and data with
7 respect to the matters covered by this Agreement. The ATTORNEY shall, upon request by the
8 COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to
9 ensure ATTORNEY's compliance with the terms of this Agreement. ATTORNEY shall be subject to
10 the examination and audit of the California State Auditor for a period of three (3) years after final
11 payment under contract (Government Code Section 8546.7).

12 16. **INDEPENDENT CONTRACTOR:**

13 ATTORNEY shall employ attorneys to provide representation necessary to fulfill
14 ATTORNEY's case obligations under this Agreement in Court or any other court where trial is held
15 in the event of a change of venue.

16 In performance of the work, duties and obligations assumed by ATTORNEY under this
17 Agreement, it is mutually understood and agreed that ATTORNEY, including any and all of the
18 ATTORNEY's officers, agents, subcontractors, and employees will at all times be acting and
19 performing as an independent contractor, and shall act in an independent capacity and not as an
20 officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
21 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method
22 by which ATTORNEY shall perform its work and function including but not limited to legal defense
23 services. However, COUNTY shall retain the right to administer this Agreement so as to verify that
24 ATTORNEY is performing its obligations in accordance with the terms and conditions thereof.
25 ATTORNEY and COUNTY shall comply with all applicable provisions of law and the rules and
26 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

27 Because of its status as an independent contractor, ATTORNEY and ATTORNEY's staff
28 shall have absolutely no right to employment rights and benefits available to COUNTY employees.

1 ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all
2 legally required employee benefits. In addition, ATTORNEY shall be solely responsible and save
3 COUNTY harmless from all matters relating to payment of ATTORNEY's employees, including
4 compliance with Social Security withholding and all other regulations governing such matters. It is
5 acknowledged that during the term of this Agreement, ATTORNEY may be providing services to
6 others unrelated to the COUNTY or to this Agreement. This aforementioned indemnification
7 provision shall survive the expiration or termination of this Agreement.

8 17. **MODIFICATION:**

9 Any matters of this Agreement may be modified from time to time by the written consent of
10 all the parties without, in any way, affecting the remainder.

11 18. **NON-ASSIGNMENT:**

12 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties
13 under this Agreement without the prior written consent of the other party, except in the case of
14 ATTORNEY's contracts with Stand-in Attorneys or Wheel Attorneys, as specified in Section 1 of
15 this Agreement.

16 19. **NON-DISCRIMINATION:**

17 No person shall, on the grounds of race, sex creed, color, age handicapped status or
18 national origin, be excluded from participation in, be refused the benefits of, or otherwise be
19 subjected to discrimination in any activities, programs, services, or employment under this
20 Agreement.

21 20. **HOLD HARMLESS:**

22 ATTORNEY agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend
23 the COUNTY, its officers, agents, and employees from any and all costs and expenses (including
24 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to
25 COUNTY in connection with the performance, or failure to perform, by ATTORNEY, its officers,
26 agents, or employees under this Agreement, and from any and all costs and expenses (including
27 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any
28 person, firm, or corporation who may be injured or damaged by the performance, or failure to

1 perform, of ATTORNEY, its officers, agents, or employees under this Agreement.

2 The provisions of this Section 20 shall survive termination or expiration of this Agreement.

3 21. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER**
4 **RESPONSIBILITY MATTERS:**

5 ATTORNEY must sign an appropriate Certification Regarding Debarment, Suspension, and
6 Other Responsibility Matters. Additionally, ATTORNEY must immediately advise COUNTY in
7 writing if, during the term of the agreement: (1) ATTORNEY, or any attorney, employed or
8 subcontracted, becomes suspended, debarred, excluded or ineligible for participation in federal or
9 state funded programs or from receiving federal funds as listed in the excluded parties list system
10 (<http://www.epls.gov>); or (2) during the applicable term of this Agreement, ATTORNEY, including
11 employees, agents and subcontractors, is convicted or, or had a civil judgment rendered against
12 them for:

13 1) Fraud or a criminal offense in connection with obtaining,
14 attempting to obtain or performing a public (federal, state, or local) transaction or contract under a
15 public transaction;

16 2) Violation of a federal or state antitrust statute;

17 3) Embezzlement, theft, forgery, bribery, falsification, or destruction
18 of records;

19 4) False statements or receipt of stolen property; or

20 5) Any State Bar discipline or discipline by the Department of
21 Consumer Affairs, Bureau of Security and Investigative Services, current or prior license
22 revocations and suspension, and any other criminal history.

23 ATTORNEY shall indemnify, defend and hold the County harmless for any loss or damage
24 resulting from a conviction, debarment, exclusion, ineligibility or other matter listed in the signed
25 Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

26 22. **INSURANCE:**

27 Without limiting the COUNTY's right to obtain indemnification from or any third
28 parties, ATTORNEY, at its sole expense, shall maintain in full force and effect, the following

1 insurance policies throughout the term of the Agreement:

2 A. Commercial General Liability - Commercial General Liability Insurance
3 with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual
4 aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence
5 basis. COUNTY may require specific coverages including completed operations, products liability,
6 and contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability
7 insurance deemed necessary because of the nature of this contract.

8 B. Automobile Liability – Comprehensive Automobile Liability Insurance
9 with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per
10 person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of
11 not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of
12 Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned
13 vehicles used in connection with this Agreement.

14 C. Attorney at Law Professional Liability and Errors and Omissions – Such
15 program of insurance shall be in the amount of not less than One Million Dollars (\$1,000,000) per
16 occurrence, One Million (\$1,000,000) annual aggregate, and such insurance shall be primary to
17 any other similar insurance maintained by COUNTY. This coverage shall be issued on a per claim
18 basis. ATTORNEY agrees that it shall maintain, as its sole expense, in full force and effect for a
19 period of three (3) years following the termination of this Agreement, one or more policies of
20 professional liability insurance with limits of coverage as specified herein.

21 D. Workers' Compensation - A policy of Workers' Compensation insurance
22 as may be required by the California Labor Code.

23 ATTORNEY shall obtain endorsements to the Commercial General Liability insurance
24 naming the County of Fresno, its officers, agents, and employees, individually and collectively, as
25 additional insured, but only insofar as the operations under this Agreement are concerned. Such
26 coverage for additional insured shall apply as primary insurance and any other insurance, or
27 self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only
28 and not contributing with insurance provided under ATTORNEY's policies herein. This insurance

1 shall not be cancelled or changed without a minimum of thirty (30) days advance written notice
2 given to COUNTY.

3 Within Thirty (30) days from the date ATTORNEY signs and executes this Agreement,
4 ATTORNEY shall provide certificates of insurance and endorsement as stated above for all of the
5 foregoing policies, as required herein, to the County of Fresno, **(Greg Reinke, Fresno County**
6 **Administrative Office, 2281 Tulare Street, Room 304, Fresno, CA 93721)**, stating that such
7 insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
8 agents and employees will not be responsible for any premiums on the policies; that such
9 Commercial General Liability insurance names the County of Fresno, its officers, agents and
10 employees, individually and collectively, as additional insured, but only insofar as the operations
11 under this Agreement are concerned; that such coverage for additional insured shall apply as
12 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
13 agents and employees, shall be excess only and not contributing with insurance provided under
14 ATTORNEY's policies herein; and that this insurance shall not be cancelled or changed without a
15 minimum of thirty (30) days advance, written notice given to COUNTY.

16 In the event ATTORNEY fails to keep in effect at all times insurance coverage as herein
17 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
18 Agreement upon the occurrence of such event.

19 All policies shall be issued by admitted insurers licensed to do business in the State of
20 California, and such insurance shall be purchased from companies possessing a current A.M.
21 Best, Inc. rating of A FSC VII or better.

22 23. **DISCLOSURE OF SELF-DEALING TRANSACTIONS:**

23 This provision is only applicable if the ATTORNEY is operating as a corporation (a for-profit
24 or non-profit corporation) or if during the term of the agreement, the ATTORNEY changes its status
25 to operate as a corporation.

26 Members of ATTORNEY's Board of Directors shall disclose any self-dealing transactions
27 that they are a party to while ATTORNEY is providing goods or performing services under this
28 Agreement. A self-dealing transaction shall mean a transaction to which ATTORNEY is a party and

1 in which one or more of its directors has a material financial interest. Members of the Board of
2 Directors shall disclose any self-dealing transactions that they are a party to by completing and
3 signing a Self-Dealing Transaction Disclosure Form (Exhibit "B") and submitting it to COUNTY prior
4 to commencing with the self-dealing transaction or immediately thereafter.

5 24. **GOVERNING LAW:**

6 Venue for any action arising out of or related to this Agreement shall only be in Fresno
7 County, California. The rights and obligations of the parties and all interpretation and performance
8 of this Agreement shall be governed in all respects by the laws of the State of California.

9 25. **NOTICES:**

10 The persons and their addresses having authority to give and receive notices under this
11 Agreement include the following:

12 COUNTY

13 COUNTY OF FRESNO

14 County Administrative Office
15 2281 Tulare Ave, Room 304
 Fresno, CA 93721

12 ATTORNEY

13 Fitzgerald, Alvarez, & Ciummo, a
14 Professional Law Corporation
 Attn: Michael Fitzgerald
15 123 Fourth Street
 Madera, CA 93638

16 All notices between the COUNTY and ATTORNEY provided for or permitted under this
17 Agreement must be in writing and delivered either by personal service, by first-class United States
18 mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice
19 delivered by personal service is effective upon service to the recipient. A notice delivered by first-
20 class United States mail is effective three COUNTY business days after deposit in the United
21 States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight
22 commercial courier service is effective one COUNTY business day after deposit with the overnight
23 commercial courier service, delivery fees prepaid, with delivery instructions given for next day
24 delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when
25 transmission to the recipient is completed (but, if such transmission is completed outside of
26 COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning
27 of a COUNTY business day), provided that the sender maintains a machine record of the
28 completed transmission. For all claims arising out of or related to this Agreement, nothing in this
section establishes, waives, or modifies any claims presentation requirements or procedures

provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

26. **ADVICE OF ATTORNEY**

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys, or the opportunity to seek such advice.

27. **ELECTRONIC SIGNATURES**

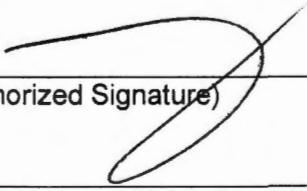
The parties agree that this Agreement may be executed by electronic signature as provided in this section. An "electronic signature" means any symbol or process intended by an individual signing this Agreement to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a handwritten signature. Each electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person. The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1). Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation. This Agreement is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Agreement with an original handwritten signature.

28. **ENTIRE AGREEMENT:**

This Agreement constitutes the entire agreement between the ATTORNEY and COUNTY with respect to the subject matter hereof, and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

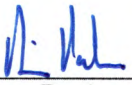
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
2 and year first hereinabove written.

3 **ATTORNEY-CONTRACTOR**

4 
5 _____
6 (Authorized Signature)

7 _____
8 Antonio Alvarez, Vice President
9

COUNTY OF FRESNO

10 
11 _____
12 Brian Pacheco, Chairman of the Board of
13 Supervisors of the County of Fresno

ATTEST:

14 Bernice E. Seidel
15 Clerk of the Board of Supervisors
16 County of Fresno, State of California
17

18 By: 
19 _____
20 Deputy
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27 FOR ACCOUNTING USE ONLY:
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Fund: 0001
Sublcass: 10000
ORG No.: 2875
Account No.: 7301

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FITZGERALD, ALVAREZ, & CIUMMO, A PROFESSIONAL LAW CORPORATION
POLICY AND PROCEDURES
FOR
MULTIPLE CONFLICTS SERVICES
EXHIBIT A

POLICY AND PROCEDURES

I.

GENERAL OVERVIEW

The multiple conflicts offices of Fitzgerald, Alvarez & Ciummo, a Professional Law Corporation ("the firm") will represent clients whose cases present a conflict of interest within the Fresno County Public Defender's Office. The scope of services is inclusive of the first (1st) through seventh (7th) levels of conflict defense. To provide said services, the firm will maintain two (2) in-house offices and will contract with five (5) independent attorneys to be assigned cases on a rotational basis. Assignment of cases is as follows:

When the Fresno County Public Defender declares a conflict of interest or in the event of a multiple-defendant case, the court shall appoint Fitzgerald, Alvarez & Ciummo, ("FAC") as the first alternate attorneys for said conflict or second defendant. If FAC declares a conflict or the case is a three-defendant case, the court shall appoint Alternate Defense Office, ("ADO"). If ADO declares a conflict or there are additional defendants in the case, the court shall contact ADO for the next available contract attorney to be assigned the aforementioned defendant(s). ADO will maintain a list of contract attorneys to be assigned to said cases and shall notify the court of the next attorney available on a rotational basis.

The attorneys employed in the offices of FAC and ADO will be employees of the firm. The attorneys will be supervised by the Chief Defense Attorney ("CDA") in their respective offices. All pleadings filed or submitted to a court of record on behalf of clients will bear the name of the applicable office.

The CDA will report directly to the firm's Administrative Office CEO or his designee.

The CDA will bear responsibility for supervising, directing, coordinating and evaluating the work of all the attorneys and staff employed in his/her office. In matters regarding decisions and judgments about how to represent individual clients on matters pending before the court, the CDA will have sole responsibility for providing guidance and direction to the attorneys in his/her office. The Administrative Office of Fitzgerald, Alvarez & Ciummo will not seek to intervene in, influence or exert control either directly or indirectly

over the professional and legal work of staff attorneys on any assigned case to FAC or ADO.

With regard to matters concerning the professional conduct of employees, internal office procedures, relationships with county departments and other firm offices, and the presentation of matters of policy and public interest unrelated to representation of a client on specific cases, the attorneys and staff assigned to FAC and ADO shall have the same duties and responsibilities as other staff members of the firm.

II.

IMPLEMENTATION OF SERVICES

A. PHYSICAL SEGMENTATION OF FAC AND ADO

1. Office Space. FAC and ADO will be located and housed in office space separate from each other. The offices provided by FAC and ADO to their attorneys for meeting with clients as well as case preparation will both individually and in the aggregate be separate and apart from each other's office space.
2. Clerical Staff and Communications Systems. Separate clerical staff and space, telephone and fax equipment and any other clerical equipment (e.g., computers) will be provided to the FAC and ADO staff for their exclusive use so as to minimize any possibility of confidential communications with clients or other parties being purposefully or inadvertently compromised.

FAC and ADO will have separate telephone and fax numbers. Each office will also have letterhead, pleading paper, and business cards separate and distinct from each other.

3. Investigation Staff. FAC and ADO will have an investigation staff separate from each other. Investigators will report directly to their CDA.

4. File Management and Client Confidentiality. FAC and ADO will establish its own set of client files and such files will be kept separate and confidential so that no employee of one office will have access to the files of the other office. The same policy will apply to closed client files of FAC and ADO.
5. Accounting and Budget. Any Staff requests for funds from the ancillary services account made by staff in preparation for cases assigned to FAC and ADO will be submitted to their respective CDA. Upon approval by the CDA, requests for funds will be processed and the paperwork sent to the County Administrative Office pursuant to contract.

Any matters of accounting and budget within FAC and ADO which could possibly contain client confidential information or present a risk of conflict shall be processed by staff in each office and kept separate from the other.

B. SUPERVISION OF PERSONNEL OF FAC AND ADO

1. Duties and Responsibilities of the Office CDA. The CDA will supervise all attorneys and staff and have sole responsibility for providing guidance and direction to the attorneys and staff. The CDA will report directly to the Administrative Office CEO or his designee.
 - a. Hiring, Firing and Promotions. Attorneys and staff may be initially recruited, screened and selected by the Administrative Office of the firm.

Once staff is assigned to FAC or ADO, however, any changes in any staff member's salary or working conditions can be made by the firm's Administrative Office upon a recommendation initiated by the CDA. Consistent with the function of FAC and ADO, every effort shall be made to achieve promotional salary parity with the other offices of the firm.

All evaluations of the work performance of staff members assigned to FAC and ADO will be submitted only by the CDA to the Administrative Office CEO or his designee for review and no other member of the firm will have any input or comment upon such recommendations or any action to be taken by the Administrative Office CEO or designee.

Any recommendation for transfer of an attorney or other staff member from FAC or ADO to another office of the firm will be made only by the CDA to the Administrative Office CEO or designee.

Any disciplinary measures--up to and including termination of an employee--can be initiated only by the CDA and are subject to review and approval by the Administrative Office CEO or his designee.

- b. Case Workload and Conditions for Employment. It is the policy of the firm to maintain appropriate workloads. The CDA shall have the responsibility of maintaining caseloads and working conditions that are consistent with the proper representation of clients.
- c. Requests for Funds. Requests for funds for the use of experts, investigation, or travel relating to a case assigned to a member of the FAC or ADO staff shall be submitted to the CDA for approval. The CDA shall make the final decision on all requests for ancillary funds.

- 2. Transfer of Employees Between Offices. Every effort will be made to minimize transfers between FAC and ADO. In the event an employee of FAC or ADO transfers to or from the other, procedures shall be followed

in order to appropriately identify and prevent potential conflicts of interest.

- a. Transfer of Attorneys. Should an attorney transfer into or out of FAC or ADO, that attorney must present to the new CDA a list of all clients represented by that attorney while working for the other office. That list will then be compared with the computerized list of clients, co-defendants, and witnesses of the new office.

If any matches are discovered, the client whose case has been identified as being in conflict will be notified. Each attorney affected will be instructed about the conflict and advised not to discuss the case in the presence of the other or to seek any information about the case in conflict. The CDA will distribute a memorandum to the appropriate parties, including all staff of the new office, notifying them of the screening of each affected attorney from the case in conflict.

If either CDA feels that the transfer cannot be accomplished with adequate safeguards for the client, then the transfer will not occur and the attorney will be returned to the sending office. The CDA will maintain accurate records of each case involving conflicts with transferring attorneys and will monitor attorney compliance with these rules and the California Rules of Professional Conduct. As each matched case in conflict is closed, the transferring attorney will be notified.

- b. Transfer of Supervisors. In the event a supervisor of attorneys, investigators, or other staff member, transfer to or from FAC or ADO, the same procedures as described above for attorney transfers shall be followed.

The supervisor will be screened off from any case in the new office which would present a conflict of interest with any case he

or she worked on in the other office. The affected supervisor will be instructed about the conflict and advised not to discuss the case or to seek information about the case in conflict. The CDA will distribute memoranda to appropriate staff members notifying them of the screening.

C. PROTECTING CLIENT CONFIDENTIALITY

1. Control of Files. The CDAs in each office will be responsible for maintaining the confidentiality of client files through the use of division identification on all case numbers, other appropriate file security, both physical and electronic; and by arranging for segregated storage of closed files; and by the maintenance of correct centralized conflict data base files clearly identifying District Attorney, City Attorney or County Counsel numbers and FAC or ADO (office specific) case numbers.

2. Education of Staff re Parameters of Glass Walls and Coves of Silence. All staff members of the firm's Fresno office will be held responsible for reading and properly abiding by the Policy and Procedures Manual multiple conflicts offices.

CDAs and supervising attorneys will notify all attorneys and staff in their respective offices of the multiple conflicts offices and the importance of avoiding situations where a conflict of interest may occur with clients represented by their respective offices.

In addition, all attorneys and staff will be made aware of the procedures to follow in case a conflict should arise on a case on which he/she is working. Once a conflict has been identified, all attorneys and staff will strictly abide by the rules regarding screening of the affected staff members from communication or information on the particular case in conflict.

D. CONFLICTS OF INTEREST

1. Identification of Potential Conflict Areas. Conflicts of interest may arise in a variety of circumstances. Each attorney must be alert to recognize when he or she has a case which may involve a conflict and act accordingly. Conflicts typically arise in the following types of circumstances although this list is not exhaustive:

- a. Multiple defendants charged in the same case;
- b. Situations in which a prosecution witness or alleged victim in one case is currently our client on a separate case or was previously our client on a past/closed case;
- c. The victim or prosecution witness is a member of the staff of the firm or is a member of the immediate family of an employee;
- d. a member of the staff of the firm previously acted adversely to the client's interest in the case;

2. Reporting Conflicts. When a disabling conflict of interest occurs, the conflict must be declared at the earliest possible moment in the case. This will minimize cost and duplication of effort and will also ensure that the client is provided with proper counsel as early in the proceedings as possible. Conflicts shall not be declared, however, without completing the appropriate "Declaration of Conflict of Interest" letter and securing the appropriate authorization.

In any case involving multiple defendants there is such a strong likelihood of a conflict that the declaration should be made at the arraignment. If the arraignment attorney has personal knowledge of any conflict, this too should be declared at the arraignment. This may be done without prior supervisory approval. However, the attorney declaring the conflict must complete the appropriate conflict letter and submit it to his or her supervisor immediately following the court hearing. This requirement for completing a report is essential so that the names

of the parties will be available to other attorneys who may be researching conflict information on their own cases.

In all other cases, the Declaration of Conflict of Interest must be completed and approved by the attorney's supervisor before declaring the conflict in court. The original conflict letter, signed by the appropriate supervisor, is maintained in the client file. A copy will be forwarded to the CDA.

3. Procedure for Determining if a Conflict Exists. Prior to declaring a conflict of interest, attorneys are responsible for verifying that sufficient factual basis for a conflict exists. This should involve:

- a. Reviewing the complaint;
- b. Reviewing the police report and other discovery material;
- c. Reviewing the intake report or pretrial service report, if available;
- d. Interviewing the defendant concerning other cases which may be pending or for which he or she may have outstanding warrants;
- e. Reviewing the office's data base, including the data base of other offices if it appears warranted by the facts of the case, to determine whether the office is currently representing or has represented a witness or co-defendant on a separate case. If a conflict is identified, the attorney **will not** pull the file to review it. Doing so may well disclose client confidences which will then guarantee the necessity to declare a conflict. Notify the CDA or supervising attorney.

If the review process reveals a conflict, the attorney should proceed through the steps required to file a conflict.

4. Procedure in Court. When a conflict has been discovered and declaration of the conflict has the appropriate approval, the attorney will set the matter for declaration in court at the earliest possible date.

Neither the prosecuting agency nor the court has the right to know the reason for the conflict. Uhl v. Municipal Court (1974) 37 CA3d 526. Attorneys should be particularly careful to not disclose the reason for a conflict which would divulge privileged information.

5. Personal Antagonism Between Attorney and Client. Disagreement between the client and the attorneys to trial strategy or tactics is not grounds for declaring a conflict. People v. Stewart (1970) 6 Cal.App.3d 456; People v. Williams (1970) 2 Cal.3d 894, 905-906; People v. Floyd (1970) 1 Ca1.3d 694, 704-705. However, when such disagreement results in a "breakdown in the attorney/client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel, a substitute may be required. People v. Robels (1970) 2 Cal.3d 205, 215.

If a client seeks a hearing under People v. Marsden (1970) 2 Ca1.3d 118, the attorney must advise his or her CDA or supervising attorney. If any attorney is relieved from representing a client as the result of a Marsden hearing, the appropriate supervisor must be notified. Adherence to this policy will ensure that the attorney's and the defendant's rights will be protected and that a record will be maintained for others who are researching conflict issues in their own cases.

III.

INDEPENDENT CONTRACTORS

The applicable provisions of the policy and procedures set forth above shall apply to those attorneys with whom Fitzgerald, Alvarez & Ciummo contracts to provide representation in Level III through Level VII conflict cases.

The contract attorneys have complete autonomy and sole responsibility for their offices and staff members.

If any questions or problems arise pertaining to contract services, the contract attorney should address the concerns to the CEO of the firm or his/her designee.

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Budget

Company Name: Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation

1. Budget

Budget Component	No. of Staff	Year 1	Year 2	Year 3	Year 4 (First extension)	Year 5 (Second extension)
1. Administration		\$ 497,479.00	\$ 512,403.00	\$ 527,775.00	\$ 548,887.00	\$ 570,842.00
2. Management & Supervision		\$ 556,631.00	\$ 573,330.00	\$ 590,530.00	\$ 614,151.00	\$ 638,717.00
3. Attorney Services						
Full-Time Attorneys	27.00	\$ 2,607,428.00	\$ 2,685,651.00	\$ 2,766,221.00	\$ 2,876,869.00	\$ 2,991,944.00
Part-Time Attorneys	3.00	\$ 168,793.00	\$ 173,857.00	\$ 179,072.00	\$ 186,235.00	\$ 193,685.00
Contract Attorneys	6.00	\$ 542,737.00	\$ 559,019.00	\$ 575,790.00	\$ 598,821.00	\$ 622,774.00
Paralegal Staff	1.00	\$ 30,165.00	\$ 31,070.00	\$ 32,002.00	\$ 33,282.00	\$ 34,613.00
4. Support Services		\$ 605,125.00	\$ 623,279.00	\$ 641,977.00	\$ 667,656.00	\$ 694,362.00
5. Ancillary Services - in house						
6. Investigation Services		\$ 357,897.00	\$ 368,633.00	\$ 379,693.00	\$ 394,881.00	\$ 410,676.00
7. Other Services						
ANNUAL COST		\$ 5,366,255.00	\$ 5,527,242.00	\$ 5,693,060.00	\$ 5,920,782.00	\$ 6,157,613.00
ACCUMULATED TOTAL			\$ 10,893,497.00	\$ 16,586,557.00	\$ 22,507,339.00	\$ 28,664,952.00
Estimated Ancillary Services - Reimbursable Fund		\$ 180,000.00	\$ 180,000.00	\$ 180,000.00	\$ 180,000.00	\$ 180,000.00
TOTAL		\$ 5,546,255.00	\$ 11,253,497.00	\$ 17,126,557.00	\$ 23,227,339.00	\$ 29,564,952.00
8. Hourly rate for cases where the Public Defender declares unavailability.		\$ 60.00	\$ 60.00	\$ 60.00	\$ 60.00	\$ 60.00

Second Alternate Monthly Caseload Statistics

Exhibit D

Name of Provider

Start Date

End Date

Second Alternate	Beg. Cases	Cases Apptd	Cases Closed	Balance	Dismissed	Relieved	Conflict	Guilty Pleas	Other Outcome	Trials	Prop 47
Felony											
Homicides											
PRCS											
VOP Felony											
Misdemeanor											
VOP Misdemeanor											
Juvenile											
VOP Juvenile											
Other*											
Mental Health											
Total											
Wheel Cases											

*Other Cases - witness, motion, Felony 1170, Prop 36, VOP Prop 36, etc.

Ancillary Accounting

Exhibit E

[illegible]



**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
- (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name Fitzgerald, Alvarez & Ciummo

Date June 9, 2022

By Antonio R. Alvarez, Vice-President

Name and Title of Authorized Representative


Signature of Authorized Representative



INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.