

1 **AMENDMENT NO. 2 TO SERVICE AGREEMENT**

2 This Amendment No. 2 to Service Agreement (“Amendment No. 2”) is dated
3 _____ and is between Fitzgerald, Alvarez, & Ciummo, a Professional Law
4 Corporation (“Attorney”), and the County of Fresno, a political subdivision of the State of
5 California (“County”).

6 **Recitals**

7 A. On June 21, 2022, the County and the Attorney entered into a Service Agreement, which
8 is County agreement number 22-249 (“Agreement”), to provide legal representation of indigent
9 defendants in the event of the unavailability or conflict of the Public Defender.

10 B. On February 7, 2023, the County and the Attorney entered into Amendment No. 1 to
11 Service Agreement to provide additional funding for cases declined by the Public Defender
12 available by reimbursement from funds awarded to the County by the Board of State and
13 Community Corrections through the Public Defense Pilot Program (“PDPP”).

14 C. The County has identified PDPP services and Public Defender unavailability services
15 performed during prior and current agreement years that require additional compensation
16 authority under the Agreement.

17 D. The County and the Attorney now desire to amend the Agreement, retroactive to July 1,
18 2022, to add compensation authority for Public Defense Pilot Program services and Public
19 Defender unavailability services, revise the compensation schedule for Years 1, 2, 3, and 4,
20 reallocate certain Public Defense Pilot Program funding to Public Defender unavailability
21 services, clarify the Agreement’s annual compensation limits, and replace Exhibit C-1 with
22 Exhibit C-2.

23 The parties therefore agree as follows:

- 24 1. This Amendment No. 2 shall be retroactive to July 1, 2022.
- 25 2. The first two paragraphs of Section 8, subdivision A, Total Contract Price, of the
26 Agreement, located at Page 17, Lines 11 through 18, and as previously amended by
27 Amendment No. 1 at Page 1, Lines 18 through 28, are deleted in its entirety and replaced with
28 the following:

1 "A. The Total Contract Price to be paid Attorney by County shall not exceed thirty million,
2 sixty-nine thousand, eight hundred seventy-five dollars, and fifty-six cents
3 (\$30,069,875.56), consisting of twenty-nine million, one hundred sixty-nine thousand,
4 eight hundred seventy-five dollars and fifty-six cents (\$29,169,875.56) for the services to
5 be provided hereunder, including all of the administration, management and supervision,
6 attorney services, support services, Public Defense Pilot Program services, Public
7 Defender unavailability services, and other services identified herein, and nine hundred
8 thousand dollars (\$900,000) for enumerated Reimbursable Ancillary Services, which are
9 set forth in subsection B below, all as further defined and specified in this Agreement
10 (the "Total Contract Price").

11 The Total Contract Price includes all of the prices, fees, charges, and expenses
12 necessary in accordance with this Agreement to provide the services hereunder and to
13 meet the requirements of Attorney to provide the services hereunder. The annual base
14 compensation amounts identified in Section 8, subdivision D, Payment, include the Flat
15 Fee for base alternate indigent defense services. Additional compensation for Public
16 Defense Pilot Program services and Public Defender unavailability services is authorized
17 in the amounts set forth in Section 8, subdivision D, Payment, and Exhibit C-2. Except
18 for Reimbursable Ancillary Services and any other compensation expressly authorized in
19 this Agreement or by amendment approved by County's Board of Supervisors, only the
20 amounts specified in this Section 8 shall be billed to or paid by County. Attorney shall not
21 assign any payments or portions of payments without prior written consent of County."

22 3. Section 8, subdivision D, Payment, of the Agreement, located at Page 20, Lines 13
23 through Page 21, Lines 6, is deleted in its entirety and replaced with the following:

24 "D. Payment – Attorney shall receive payment according to the following schedule:

25 1) Year One (1) compensation, excluding Reimbursable Ancillary Services Fund,
26 shall not exceed five million, four hundred ninety thousand, four hundred twenty-
27 eight dollars and eighty-seven cents (\$5,490,428.87), consisting of: annual
28 compensation in the amount of five million, three hundred sixty-six thousand, two

1 hundred fifty-five dollars (\$5,366,255.00); Public Defense Pilot Program services
2 in the amount of one hundred eight thousand, two hundred seventy-nine dollars
3 and eighty-seven cents (\$108,279.87); and Public Defender unavailability
4 services in the amount of fifteen thousand, eight hundred ninety-four dollars
5 (\$15,894.00);

6 2) Year Two (2) compensation, excluding Reimbursable Ancillary Services Fund,
7 shall not exceed five million, six hundred sixty-four thousand, four hundred sixty-
8 three dollars and ninety-one cents (\$5,664,463.91), consisting of: annual
9 compensation in the amount of five million, five hundred twenty-seven thousand,
10 two hundred forty-two dollars (\$5,527,242.00); Public Defense Pilot Program
11 services in the amount of one hundred thirty-six thousand, eight hundred ninety-
12 six dollars and seventy-eight cents (\$136,896.78); and Public Defender
13 unavailability services in the amount of three hundred twenty-five dollars and
14 thirteen cents (\$325.13);

15 3) Year Three (3) compensation, excluding Reimbursable Ancillary Services
16 Fund, shall not exceed five million, eight hundred twenty-three thousand, eighty-
17 seven dollars and seventy-eight cents (\$5,823,087.78), consisting of: annual
18 compensation in the amount of five million, six hundred ninety-three thousand,
19 sixty dollars (\$5,693,060.00); and Public Defense Pilot Program services in the
20 amount of one hundred thirty thousand, twenty-seven dollars and seventy-eight
21 cents (\$130,027.78);

22 4) Optional Year Four (4) compensation, excluding Reimbursable Ancillary
23 Services Fund, shall not exceed six million, thirty-four thousand, two hundred
24 eighty-two dollars (\$6,034,282.00), consisting of: annual compensation in the
25 amount of five million, nine hundred twenty thousand, seven hundred eighty-two
26 dollars (\$5,920,782.00); and Public Defense Pilot Program services in the
27 amount of one hundred thirteen thousand, five hundred dollars (\$113,500.00);
28 and

1 5) Optional Year Five (5) compensation, excluding Reimbursable Ancillary
2 Services Fund, shall not exceed six million, one hundred fifty-seven thousand, six
3 hundred thirteen dollars (\$6,157,613.00), consisting of: annual compensation in
4 the amount of six million, one hundred fifty-seven thousand, six hundred thirteen
5 dollars (\$6,157,613.00).”

6 4. Exhibit C-1 to the Agreement is deleted in its entirety and replaced with Exhibit C-2,
7 attached to this Amendment No. 2 and incorporated by reference.

8 5. When both parties have signed this Amendment No. 2, the Agreement, Amendment No.
9 1 and this Amendment No. 2 together constitute the Agreement.

10 6. The Attorney represents and warrants to the County that:

11 a. The Attorney is duly authorized and empowered to sign and perform its obligations
12 under this Amendment.

13 b. The individual signing this Amendment on behalf of the Attorney is duly authorized to
14 do so and his or her signature on this Amendment legally binds the Attorney to the
15 terms of this Amendment.

16 7. The parties agree that this Amendment may be executed by electronic signature as
17 provided in this section.

18 a. An “electronic signature” means any symbol or process intended by an individual
19 signing this Amendment to represent their signature, including but not limited to (1) a
20 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
21 electronically scanned and transmitted (for example by PDF document) version of an
22 original handwritten signature.

23 b. Each electronic signature affixed or attached to this Amendment (1) is deemed
24 equivalent to a valid original handwritten signature of the person signing this
25 Amendment for all purposes, including but not limited to evidentiary proof in any
26 administrative or judicial proceeding, and (2) has the same force and effect as the
27 valid original handwritten signature of that person.

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- c. 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).
- d. 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.
- e. This Amendment is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this Amendment with an original handwritten signature.

8. This Amendment may be signed in counterparts, each of which is an original, and all of which together constitute this Amendment.

9. The Agreement, as previously amended, and as amended by this Amendment No. 2 is ratified and continued. All provisions of the Agreement, and as previously amended, and not amended by this Amendment No. 2 remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

1 The parties are signing this Amendment No. 2 on the date stated in the introductory
2 clause.

3 Fitzgerald, Alvarez, & Ciummo

COUNTY OF FRESNO

4
5
6 Antonio Alvarez, Chief Executive Officer

Garry Bredefeld, Chairman of the Board of
Supervisors of the County of Fresno

7 123 East Fourth St
8 Madera, CA 93638

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

9
10
11 By: _____
Deputy

12 For accounting use only:

13 Org No.: 2875
14 Account No.: 7301
15 Fund No.: 0001
16 Subclass No.: 10000
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Exhibit C-2

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
BASE COST		\$5,366,255.00	\$5,527,242.00	\$5,693,060.00	\$5,920,782.00	\$6,157,613.00
7. PDPP Grant (BSCC) Services Allocation		\$108,279.87	\$136,896.78	\$130,027.78	\$113,500.00	\$0.00
8. Public Defender Unavailability Services Allocation		\$15,894.00	\$325.13	\$0.00	\$0.00	\$0.00
TOTAL (Excluding Reimbursable Ancillary)		\$ 5,490,428.87	\$5,664,463.91	\$5,823,087.78	\$6,034,282.00	\$6,157,613.00
Estimated Ancillary Services - Reimbursable Fund		\$180,000.00	\$180,000.00	\$180,000.00	\$180,000.00	\$180,000.00
TOTAL COST		\$5,670,428.87	\$5,844,463.91	\$6,003,087.78	\$6,214,282.00	\$6,337,613.00
MAXIMUM CONTRACT COMPENSATION						\$30,069,875.56
9. Hourly rate for cases where the Public Defender declares unavailability.		\$60.00	\$60.00	\$60.00	\$60.00	\$ 60.00