



Board Agenda Item 45

DATE: June 16, 2026

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, County Administrative Officer

SUBJECT: Retroactive Amendment No. 2 to Agreement with Fitzgerald, Alvarez & Ciummo, Budget Resolutions, and Resolution for Alternate Indigent Defense Services

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute retroactive Amendment No. 2 to Agreement No. 22-249 with Fitzgerald, Alvarez & Ciummo, A Professional Law Corporation, for alternate indigent defense services, effective July 1, 2022, with no change to the term of July 1, 2022 through June 30, 2027, and increasing the maximum compensation by \$380,425 to a total of \$30,069,876;**
- 2. Adopt Budget Resolution increasing FY 2025-26 appropriations for Alternate Indigent Defense Org 2875 in the amount of \$458,555 and estimated revenues in the amount of \$52,041 (4/5 vote);**
- 3. Adopt Budget Resolution decreasing FY 2025-26 appropriations for Approp for Contingencies Org 8210 in the amount of \$483,257 (4/5 vote); and**
- 4. Adopt Resolution authorizing the County to use interest accrued and any additional interest that may accrue on advanced Public Defense Pilot Program grant funds to pay for eligible Public Defense Pilot Program costs, subject to compliance with applicable grant requirements.**

The is no increase in Net County Cost (NCC) associated with the recommended actions. The recommended actions approve a retroactive amendment to Agreement No. 22-249 (Agreement) with Fitzgerald, Alvarez & Ciummo (FAC), A Professional Law Corporation, to align the Agreement's compensation schedule, annual compensation limits, and exhibit with Public Defense Pilot Program (PDPP) services and Public Defender unavailability services provided during prior and current agreement years; adopt budget resolutions increasing FY 2025-26 appropriations and estimated revenues in Alternate Indigent Defense (AID) Org 2875 and decreasing FY 2025-26 appropriations in Approp for Contingencies Org 8210; and authorize use of interest accrued and any additional interest that may accrue on advanced PDPP grant funds for eligible PDPP program costs. The budget resolutions are necessary to provide sufficient appropriations in Org 2875 due to higher than anticipated alternate indigent defense claims and costs, including court-ordered claims for court-appointed attorneys and eligible costs previously expected to be offset by PDPP grant revenue. This item is countywide.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved, the Agreement's compensation schedule, annual payment limits, and compensation exhibit will not be updated to align with PDPP services and Public Defender

unavailability services provided during prior and current agreement years. In addition, sufficient appropriations may not be available in Org 2875 to fund increased claims and costs associated with alternate indigent defense services through the end of FY 2025-26, and the County would not have Board authorization to use interest accrued on advanced PDPP grant funds for eligible PDPP program costs.

RETROACTIVE AMENDMENT:

The recommended retroactive Amendment No. 2 is retroactive to July 1, 2022, because Public Defender unavailability services were provided during Year 1 and Year 2 of the Agreement. Although the Agreement authorized Public Defender unavailability services at an hourly rate, the compensation schedule and annual payment limits did not include a corresponding funding allocation for those services. During review of the Agreement, Amendment No. 1, and related compensation exhibits, staff determined that Amendment No. 2 was necessary to add and align compensation authority for Public Defender unavailability services and PDPP services for prior and current agreement years. To help prevent similar issues in future amendments, staff will continue ongoing contract monitoring and perform a comprehensive review of compensation-related provisions, including total contract maximums, annual payment limits, exhibits, service allocations, and budget authority.

FISCAL IMPACT:

There is no increase in NCC associated with the recommended actions. Approval of the first recommended action will authorize retroactive Amendment No. 2 to the Agreement with FAC, increasing the maximum compensation by \$380,425 to a total of \$30,069,876. The Agreement is funded through AID Org 2875.

The portions of Amendment No. 2 related to Years 1 through 3 of the Agreement address compensation authority for costs that were previously paid and absorbed within prior fiscal year budgets and do not result in an additional fiscal impact in FY 2025-26. The Year 4 increase includes four PDPP-related invoices that were previously anticipated to be reimbursed with PDPP grant funds. Two of those invoices will be covered by available PDPP grant funds; however, available PDPP grant funding was exhausted earlier than anticipated and the remaining two invoices, estimated at \$58,493, will not be reimbursed with PDPP grant revenue. As a result, those costs will be supported through existing budgeted General Fund appropriations made available by the recommended decrease in Approp for Contingencies Org 8210.

Approval of the second recommended action will increase FY 2025-26 appropriations in AID Org 2875 by \$458,555 and estimated revenues by \$52,041 due to unanticipated refunds received in attorney court claim fees. The approval of the third recommended action will decrease FY 2025-26 appropriations in Approp for Contingencies Org 8210, releasing \$483,257 in NCC, to allow the re-budgeting of appropriations in Org 2875. The decrease in appropriations in Org 8210 will provide existing budgeted General Fund support for the increased appropriation need in Org 2875 and the PDPP-related revenue shortfall resulting from the earlier-than-anticipated exhaustion of available PDPP grant funds.

Approval of the fourth recommended action will authorize the use of interest accrued and any additional interest that may accrue on advanced PDPP grant funds for eligible PDPP program costs, subject to applicable grant requirements. The County estimates approximately \$123,472 in interest has accrued to date; however, the final amount may change based on additional interest earnings and final accounting.

DISCUSSION:

Penal Code section 987.2 requires that the County pay a reasonable sum for compensation and 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 unavailability or conflict of the Public Defender.

AID Org 2875 funds costs associated with providing representation for indigent defendants in the event of

unavailability or conflict of the Public Defender. Costs paid through Org 2875 include the County's agreement with FAC, eligible PDPP costs, and court-ordered claims for other court-appointed attorneys that are not part of the FAC Agreement.

On June 21, 2022, your Board approved Agreement No. 22-249 with FAC to provide alternate indigent defense services for a period of three years, commencing July 1, 2022 through June 30, 2025, with two optional one-year extensions. The Agreement provides representation of up to seven conflict indigent defendants in a single case before the Fresno County Superior Court.

The Agreement authorized Public Defender unavailability services at an hourly rate; however, the compensation schedule and annual payment limits did not include a corresponding funding allocation for those services. Public Defender unavailability services were provided during prior agreement years, during in Year 1 through Year 2 of the Agreement. In addition, PDPP funding allocations for later agreement years need to be added and aligned in the compensation schedule and exhibit in the proposed agreement.

The Budget Act of 2021 (Senate Bill 129) established the Public Defense Pilot Program and allocated funds for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities providing indigent defense in eligible post-conviction criminal matters. On April 5, 2022, your Board approved the retroactive submittal of the County's PDPP grant application to the Board of State and Community Corrections (BSCC), effective March 1, 2022 through March 1, 2025, in the amount of \$1,204,165. On February 7, 2023, your Board approved Amendment No. 1 to Agreement No. 22-249 with FAC to add Year 1 funds earmarked specifically for AID within the PDPP grant, increasing the FAC Agreement maximum compensation by \$124,499, from \$29,564,952 to \$29,689,451.

Subsequent amendments to the PDPP Grant increased available grant funding for eligible PDPP costs. On April 25, 2023, your Board approved Amendment No. 1 to the PDPP Grant, which increased the grant maximum by \$1,185,405 to a total of \$2,389,571. Of the Year 2 funding, \$151,556 was earmarked for Professional Services to reimburse FAC for eligible PDPP casework. On January 28, 2025, your Board approved Amendment No. 2 to the PDPP Grant, which extended the grant term to December 31, 2026, and increased the grant maximum by \$1,077,406 to a total not to exceed \$3,466,977. Of the Year 3 funding, \$150,000 was earmarked within Professional Services to help reimburse FAC for eligible PDPP casework.

The proposed Amendment No. 2 to Agreement will amend the FAC Agreement, retroactive to July 1, 2022, to add and align compensation authority for Public Defender unavailability services and PDPP services, revise the compensation schedule, clarify annual compensation limits, and replace Exhibit C-1 with Exhibit C-2. Amendment No. 2 will also reallocate available PDPP funding in Years 1 and 2 to Public Defender unavailability services and add PDPP funding allocations for Years 2 through 4. These revisions are intended to align the FAC Agreement's total contract maximum, annual compensation limits, and compensation exhibit with services provided during prior and current agreement years and with PDPP funding made available through the grant amendments.

The recommended budget resolutions are needed because Org 2875 is experiencing higher than anticipated claims and costs, including increased court-ordered claims for court-appointed attorneys that are not part of the FAC Agreement, and because available PDPP grant funds were exhausted earlier than anticipated. Approval of the budget resolutions will provide sufficient appropriations in Org 2875 to continue paying alternate indigent defense claims and costs through the end of FY 2025-26.

The County received PDPP grant funds in advance and has used those funds to pay eligible program costs. While held by the County prior to expenditure, the advanced funds accrued approximately \$123,472 in interest. Approval of the recommended resolution will authorize use of the interest accrued on and any additional interest that may accrue for eligible PDPP program costs, subject to applicable grant requirements.

Approval of the recommended actions will align the FAC Agreement's compensation provisions with

services provided during prior and current agreement years, provide sufficient FY 2025-26 appropriations in Org 2875, and authorize use of accrued PDPP interest for eligible PDPP program costs.

REFERENCE MATERIAL:

BAI #31, January 28, 2025
BAI #23, April 25, 2023
BAI #24, February 7, 2023
BAI #30, June 21, 2022
BAI #30, April 5, 2022

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment No. 2 to FAC Agreement
On file with Clerk - Budget Resolution (Org 2875)
On file with Clerk - Budget Resolution (Org 8210)
On file with Clerk - Resolution

CAO ANALYST:

Mary Lu Valencia