

**LEGAL SERVICES AGREEMENT  
BETWEEN THE COUNTY OF SANTA CLARA  
AND BRIAN C. MCCOMAS  
FISCAL YEAR 2023-2024**

This legal services agreement ("AGREEMENT") is by and between the County of Santa Clara ("COUNTY"), a political subdivision of the State of California and Brian C. McComas ("ATTORNEY").

**1. Appointment of ATTORNEY**

The Director (hereinafter "DIRECTOR") of the County of Santa Clara Independent Defense Counsel Office ("IDO") screens and qualifies independent attorneys in private practice who offer to represent indigent defendants for specific fees set forth in this AGREEMENT when both the Public Defender or Alternate Defender have declared a conflict. The DIRECTOR has sole discretion to determine which attorneys qualify to be on the panel and the type of cases the attorneys are qualified to handle. Attorneys are appointed by the Court to represent indigent criminal defendants following a recommendation by the DIRECTOR to the Court. The COUNTY pays the attorney to perform legal services once the attorney is appointed by the Court. Once appointed by the Court, attorneys can only be removed as counsel of record by the Court.

The Director may delegate any of their duties and responsibilities to the Assistant Director of IDO. The Assistant Director assumes all duties and responsibilities of the Director in the Director's absence.

**2. ATTORNEY Obligations**

In addition to the other obligations set forth in this AGREEMENT, ATTORNEY will:

- a. Comply with the County of Santa Clara Independent Defense Counsel Office Policies and Procedures for Fiscal Year 2023-2024, which is attached as Exhibit C to this AGREEMENT and incorporated herein by reference;
- b. Maintain a California State Bar license in good standing;
- c. Perform all services in an ethical manner in accordance with the Rules of Professional Conduct of the State Bar of California;
- d. Maintain and provide proof of insurance coverage as set forth in Exhibit B-3 IDO (Insurance Requirements), which is attached and incorporated herein by reference; and
- e. Comply with all Federal, State, and local laws, and County of Santa Clara Board of Supervisors Policies.

### 3. Compensation

a. COUNTY will pay ATTORNEY for services and reimbursable expenses at the rates set forth in Exhibit A (IDO Fee Schedule for Fiscal Year 2023-2024). Total compensation paid pursuant to this AGREEMENT will not exceed \$300,000 ("AGREED AMOUNT"). This amount does not represent a commitment by the COUNTY. ATTORNEY will notify COUNTY when the total amount billed and the estimated amount of work in progress total \$225,000. COUNTY shall not be responsible for any services or costs exceeding the AGREED AMOUNT.

b. The County or IDO reserves the right to change the amounts set forth in the Fee Schedule periodically. If the Fee Schedule is modified, the Initial Case Fee will be compensated at the rate in effect on the date of the first court appearance for each case. The modified rates for all other services will be applied to services provided on or after the effective date of the modified Fee Schedule.

c. The fees set forth in the Fee Schedule include the performance of administrative work, services, and functions that are required by IDO. ATTORNEY will not receive additional compensation for administrative work or services including, but not limited to, the following: (1) seeking to obtain IDO business or negotiating with IDO to enter into this AGREEMENT; (2) preparation of invoices or other reports or memoranda required by IDO; (3) providing IDO with documentation, explanations, or justifications concerning the adequacy or accuracy of its invoices for the performance of services under this AGREEMENT and resolving the same to the reasonable satisfaction of IDO; (4) providing audit letters to IDO regarding any matters handled by ATTORNEY; or (5) other administrative work, services, or functions required by the DIRECTOR.

d. ATTORNEY will submit to COUNTY a completed ATTORNEY COMPENSATION FORM, a copy of which will be provided to ATTORNEY by IDO with each case assignment, no later than 30 days following the month in which services were rendered for each case, or as provided by COUNTY for the last month of the fiscal year in order to facilitate payment processing within the fiscal year. ATTORNEY COMPENSATION FORMS submitted later than this period may result in denial of payment. Additionally, ATTORNEY will ensure all experts, investigators, and other members of the defense team will submit invoices in compliance with this section and the requirements of Exhibit A and Exhibit C.

e. The ATTORNEY COMPENSATION FORM must be itemized by case and list dates of services for preliminary hearing sessions, trial sessions, and post dispositional hearing sessions. Failure to provide all required information may result in a delay in payment to ATTORNEY.

f. ATTORNEY will be reimbursed at the actual cost for reasonable and necessary out-of-pocket expenses, including filing fees, printing and photographic reproduction costs, court reporter's fees, and all other expenses directly related to the case, excluding telephone charges, prorated computer research charges, and facsimile charges. ATTORNEY will not be reimbursed for secretarial, clerical, word processing or typist services, or normal office operating expenses. All requests for reimbursement for expenses must include one of the following forms of

supporting documentation: receipt indicating who was paid and the dollar amount; cash register receipt; copy of a cancelled check; copy of a bank statement if cancelled check is not available; charge card receipt; or an invoice marked paid in full and indicating how it was paid (cash, charge, check, etc.).

g. ATTORNEY must submit all bills and supporting documentation as described in section 3f. above for reimbursable expenses and services with the completed ATTORNEY COMPENSATION FORM.

h. ATTORNEY shall submit the ATTORNEY COMPENSATION FORM via email to [IDO.Accounting@cco.sccgov.org](mailto:IDO.Accounting@cco.sccgov.org) or via U.S. mail to "Attention: IDO Accounting" at the address identified in the section of this Agreement captioned Notices. Payment by the County shall be due net thirty (30) days from the date of receipt of a correct and properly completed ATTORNEY COMPENSATION FORM and supporting documentation that satisfies the requirements of this section 3. Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded. Any invoices, documentation, or correspondence received by the County after business hours shall be deemed to have been received on the following business day. Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

i. Expenses for travel outside of Santa Clara County shall be eligible for reimbursement only if the travel is pre-approved by the DIRECTOR. All travel expenses must be reasonable and in accordance with the COUNTY's travel policy; travel-reimbursement requests must be accompanied by detailed receipts. ATTORNEY will not be reimbursed for mileage for any travel within the San Francisco Bay Area. If ATTORNEY travels outside of Santa Clara County for a Class 4 or Class 5 case, as defined in Exhibit A (IDO Fee Schedule), ATTORNEY's travel time may be paid at the hourly rate with pre-approval by the DIRECTOR.

j. ATTORNEY will keep complete records of the services provided together with all related actual, reasonable, and necessary out-of-pocket expenses applicable to the work provided under this AGREEMENT for a period of three years after final payment under this AGREEMENT was issued or the conclusion of litigation involving this AGREEMENT, whichever is later. The DIRECTOR, or an authorized representative, will be given reasonable access to these records for the purposes of an audit.

#### **4. Term of AGREEMENT**

The effective date of this AGREEMENT is July 1, 2023 and will continue in full force and effect through June 30, 2024 ("TERM"), unless it is terminated earlier as provided in this AGREEMENT.

#### **5. Termination**

a. **Termination for Convenience:** The COUNTY may, by written notice to ATTORNEY, terminate all or part of this AGREEMENT at any time for the convenience of the

COUNTY. The notice shall specify the effective date and the scope of termination. If the COUNTY terminates this AGREEMENT, the COUNTY shall pay ATTORNEY for services performed to the COUNTY's satisfaction and eligible expenses (as described in Section 3) incurred through the termination date. The COUNTY shall not be liable for any services performed or any expenses incurred by ATTORNEY after the termination date.

b. **Termination for Cause:** COUNTY will have the right to terminate this AGREEMENT after written notice to ATTORNEY and after the expiration of any cure period provided for below, upon the occurrence of any of the following events of default:

- (i) Failure of ATTORNEY to perform any covenant or obligation set forth in this AGREEMENT or any other agreement with COUNTY;
- (ii) An attempt by ATTORNEY to assign, delegate, or subcontract without COUNTY's consent as provided herein;
- (iii) Failure by ATTORNEY to maintain insurance as required under this AGREEMENT;
- (iv) Filing by or against ATTORNEY of any petition for bankruptcy, any assignment by ATTORNEY for the benefit of creditors, the levy of a writ of attachment or execution against ATTORNEY's property or the appointment of a receiver for ATTORNEY or ATTORNEY's property; or
- (v) Unauthorized or excessive billing by ATTORNEY.

c. **Budget Contingency:** This AGREEMENT is contingent upon the appropriation of sufficient funding by the COUNTY for the services covered by this AGREEMENT. If funding is reduced or deleted by the COUNTY for the services covered by this AGREEMENT, the COUNTY has the option to either terminate this AGREEMENT with no liability occurring to the COUNTY or to offer an amendment to this AGREEMENT indicating the reduced amount.

## 6. **Duties Upon Termination**

Upon termination of this AGREEMENT or in the event ATTORNEY is relieved as counsel of record by the Court, ATTORNEY will protect the rights of all clients as is ethically required by the Rules of Professional Conduct of the State Bar of California.

## 7. **Non-Exclusive Remedies**

COUNTY's right to terminate this AGREEMENT is not its exclusive remedy but is in addition to all other remedies provided to COUNTY by law, in equity, or under the provisions of this AGREEMENT.

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**8. No Special Damages**

In no event will COUNTY be liable to ATTORNEY for any indirect, special, or consequential damages or lost profits arising out of or relating to this AGREEMENT or the performance or breach thereof.

**9. Relationship of Parties; Independent Contractor**

ATTORNEY will perform all work and services described in this AGREEMENT as an independent contractor and not as an officer, agent, servant, or employee of the COUNTY. None of the provisions of this AGREEMENT is intended to create, nor shall be deemed or construed as to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of affecting the provisions of this AGREEMENT. The parties are not and will not be construed to be in a relationship of joint venture, partnership, or employer-employee.

Neither party has the authority to make any statements, representations, or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as explicitly provided herein. ATTORNEY will be solely responsible for the acts and omission of its officers, agents, employees, contractors, and subcontractors, if any. No person performing the work or services described herein will be considered an officer, agent, servant, or employee of the COUNTY, nor will any such person be entitled to any benefits available or granted to employees of the COUNTY.

**10. Governing Law; Venue**

This AGREEMENT has been executed and delivered in, and shall be construed and enforced, in accordance with the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in Santa Clara County.

**11. Entire Agreement**

This AGREEMENT, including the attached exhibits, constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this AGREEMENT. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

**12. Amendment**

This AGREEMENT may only be amended by a written instrument signed by ATTORNEY and COUNTY.

**13. Waiver**

No delay or failure to require performance of any provision of this AGREEMENT shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated. No failure by COUNTY to insist upon the strict performance of any obligation of ATTORNEY under this AGREEMENT or to exercise any right, power or remedy arising out of a breach thereof, without regard to the length of time for which such failure continues, and no acceptance of any monies, will constitute a waiver of such breach or of COUNTY's right to demand strict compliance with such term, covenant or condition of this AGREEMENT. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance, or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by COUNTY hereunder will not relieve ATTORNEY of any obligation to secure the consent of COUNTY in any other or future instance under the terms of this AGREEMENT.

**14. Contracting Principles**

All entities that contract with the COUNTY to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all ATTORNEYS shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the COUNTY copies of any financial audits that have been completed during the TERM of the contract; and (4) upon the COUNTY'S request, provide the COUNTY reasonable access, through representatives of the ATTORNEY, to facilities and financial and employee records that are related to the purpose of the contract, except where prohibited by Federal or State laws, regulations or rules.

**15. Indemnification and Insurance**

The indemnification and insurance requirements for ATTORNEY are set forth in Exhibit B-3 IDO (Insurance Requirements). For purposes of this AGREEMENT, the term "Contractor" as referenced in Exhibit B-3 IDO means ATTORNEY. ATTORNEY must comply with the requirements set forth in Exhibit B-3 IDO.

**16. Notices**

Except as otherwise stated, any notice required or permitted by this Agreement will be in writing and delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of delivery; (c) if a facsimile number is listed below, by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, upon confirmation of delivery. The parties may deliver notice as follows:

**TO COUNTY:**

Attn: Sylvia Perez-MacDonald, Director  
Independent Defense Counsel Office  
373 West Julian Street, Suite 300  
San Jose, CA 95110  
Fax: (408) 758-4288

**TO ATTORNEY:**

Brian C. McComas  
Law Office of B.C. McComas, LLP  
PMB 77 Van Ness Avenue, Suite 101  
San Francisco, CA 94102  
Fax: (415) 520-2310

**17. Interpretation**

The captions preceding the sections of this AGREEMENT have been inserted for convenience of reference only and the captions shall in no way define or limit the scope or intent of any provision of this AGREEMENT. This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters contained herein. This AGREEMENT shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this AGREEMENT. Provisions in this AGREEMENT relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday, or a bank or COUNTY holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words will not be construed to limit any general term, statement or other matter in this AGREEMENT, whether language of non-limitation, such as "without limitation" or similar words, are used.

**18. Severability**

If any provision of this AGREEMENT or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this AGREEMENT, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this AGREEMENT will be valid and enforceable to the fullest extent permitted by law. However, notwithstanding anything to the contrary in this AGREEMENT, if COUNTY determines a finding of illegality adversely affects the basic consideration for this AGREEMENT, COUNTY may, at its option, terminate this AGREEMENT.

**19. Survival**

Termination, expiration, or cancellation of this AGREEMENT will not affect any of the following provisions of this AGREEMENT, which shall survive termination, expiration or cancellation hereof: 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, and Exhibit B-3 IDO.

**20. COUNTY No-Smoking Policy**

ATTORNEY and its employees, agents and subcontractors, shall comply with the COUNTY's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking (cigarettes, cigars, e-cigarettes) : (1) at the Santa Clara Valley Medical Center Campus and all COUNTY-owned and operated

health facilities; (2) within 30 feet surrounding COUNTY-owned buildings and leased buildings where the COUNTY is the sole occupant; and (3) in all COUNTY vehicles.

**21. Food and Beverage Standards**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by ATTORNEY with COUNTY funds for COUNTY-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include: (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, ATTORNEY shall: (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the ATTORNEY should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero transfat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the COUNTY's nutritional criteria are: (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

**22. Third Party Beneficiaries**

This AGREEMENT does not and is not intended to confer any rights or remedies upon any person or entity other than the parties.

**23. Conflicts of Interest**

ATTORNEY shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this AGREEMENT and

is grounds for immediate termination of this AGREEMENT by the COUNTY.

In accepting this AGREEMENT, ATTORNEY covenants that they presently have no interest, and will not acquire any interest, direct or indirect financial or otherwise, which would conflict in any manner or degree with the performance of this AGREEMENT. ATTORNEY further covenants that, in the performance of this AGREEMENT, they will not employ any contractor or person having such an interest. ATTORNEY, including but not limited to ATTORNEY's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this AGREEMENT, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this AGREEMENT, ATTORNEY shall, upon execution of AGREEMENT, provide the COUNTY with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to ATTORNEY's employees, agents and subcontractors, that could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity "participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of ATTORNEY's service to the COUNTY under this AGREEMENT. ATTORNEY will immediately notify the COUNTY of the names and email addresses of any additional individual later assigned to provide such service to the COUNTY under this AGREEMENT in such a capacity. ATTORNEY shall immediately notify the COUNTY of the names of individuals working in such a capacity who, during the course of the AGREEMENT, end their service to the COUNTY.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this AGREEMENT, ATTORNEY shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in this section including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this AGREEMENT, annually by April 1, and within 30 days of their termination of service pursuant to this AGREEMENT.

**24. Assignment of Clayton Act, Cartwright Claims**

ATTORNEY hereby assigns to the COUNTY all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the ATTORNEY for sale to the COUNTY pursuant to this AGREEMENT.

**25. Assignment**

No assignment of this AGREEMENT or of the rights and obligations hereunder shall be

valid without the prior written consent of the other party through a written instrument executed and approved in the same manner as this Agreement. COUNTY may give or withhold such approval in its sole and absolute discretion. Any purported assignment by ATTORNEY in violation of these restrictions will confer no rights on any other party and will, at COUNTY'S sole option, be void.

**26. Contract Execution**

Unless otherwise prohibited by law or COUNTY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

**27. California Public Records Act**

The COUNTY is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If ATTORNEY's proprietary information is contained in documents or information submitted to COUNTY, and ATTORNEY claims that such information falls within one or more CPRA exemptions, ATTORNEY must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the COUNTY will make best efforts to provide notice to ATTORNEY prior to such disclosure. If ATTORNEY contends that any documents are exempt from the CPRA and wishes to prevent disclosure, they are required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Clara County before the COUNTY is required to respond to the CPRA request. If ATTORNEY fails to obtain such remedy within the time the COUNTY is required to respond to the CPRA request, COUNTY may disclose the requested information.

ATTORNEY further agrees that they shall defend, indemnify, and hold COUNTY harmless against any claim, action, or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by COUNTY of a CPRA request for information arising from any representation, or any action (or inaction), by the ATTORNEY.

**28. Compliance with all Laws, Including Non-discrimination, Equal Opportunity, and Wage Theft Prevention**

- (1) Compliance with all Laws: ATTORNEY and any subcontractor they employ to complete work under this AGREEMENT, must comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.
- (2) Compliance with Nondiscrimination and Equal Opportunity Laws: ATTORNEY

shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code section 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, ATTORNEY shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall ATTORNEY discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- (3) **Compliance with Wage and Hour Laws:** ATTORNEY shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
- (4) **Definitions:** For purposes of this section 28, the following definitions apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the Federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Civil Rights Department. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.
- (5) **Prior Judgments, Decisions or Orders against ATTORNEY:** By signing this AGREEMENT, ATTORNEY affirms that they have disclosed any final judgments that (A) were issued in the five years prior to executing this

**AGREEMENT by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that ATTORNEY violated an applicable wage and hour law or pay equity law. ATTORNEY further affirms that they have satisfied and complied with - or have reached agreement with the COUNTY regarding the manner in which they will satisfy – any such final judgments.**

- (6) Violations of Wage and Hour Laws or Pay Equity Laws During TERM of Contract: If at any time during the TERM of this AGREEMENT, ATTORNEY receives a Final Judgment rendered against them for violation of an applicable wage and hour Law or pay equity Law, then ATTORNEY” shall promptly satisfy and comply with any such Final Judgment. ATTORNEY shall inform the Office of the County Executive – Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against them within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. ATTORNEY shall also provide any documentary evidence of compliance with the Final Judgement within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11<sup>th</sup> Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this AGREEMENT and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
- (7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this AGREEMENT concerning access to ATTORNEY’S records, ATTORNEY shall permit the COUNTY and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the COUNTY’s request, ATTORNEY shall provide the COUNTY with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this section 28, except where prohibited by federal or state laws, regulations or rules. COUNTY’s access to such records and facilities shall be permitted at any time during ATTORNEY’s normal business hours upon no less than 10 business days’ advance notice.
- (8) Pay Equity Notification: ATTORNEY shall (1) at least once in the first year of this AGREEMENT and annually thereafter, provide each of its employees working in California and each person applying to ATTORNEY for a job in California (collectively, “Employees and Job Applicant”) with an electronic or paper copy of all applicable pay equity Laws, or (2) throughout the TERM of this AGREEMENT, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of ATTORNEY’s Employees and Job Applicants.
- (9) Material Breach: Failure to comply with any part of this section 28 shall constitute a material breach of this AGREEMENT. In the event of such a breach, the COUNTY may, in its discretion, exercise any or all remedies available under this AGREEMENT and law. COUNTY may, among other things, take any or all of the

following actions:

- a. Suspend or terminate any or all parts of this AGREEMENT.
  - b. Withhold payment to ATTORNEY until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
  - c. Offer ATTORNEY an opportunity to cure the breach.
- (10). Subcontractor: ATTORNEY shall impose all of the requirements set forth in this section 28 on any subcontractors permitted to perform work under this AGREEMENT. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

**29. COVID-19 Requirements**

ATTORNEY shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. If applicable, ATTORNEY shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements ("Certification"). For purposes of this AGREEMENT, the term "Contractor" as referenced in the Certification means ATTORNEY. ATTORNEY shall comply with the requirements of this section for the entire term of this Agreement.

The Certification is attached as Exhibit D.

ATTORNEY shall comply with all reasonable requests by County for documentation demonstrating ATTORNEY's compliance with this section. Failure by ATTORNEY to comply with any of the requirements of this section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Agreement, and the County may, in its sole discretion terminate this Agreement immediately or take other action as the County may determine to be appropriate.

**30. Additional Requirements for Attorney Appointments Funded by the Public Defense Pilot Program**

This section applies when ATTORNEY is appointed to handle a case funded by the Public Defense Pilot Program (PDPP). PDPP funds indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with Sections 1172.1 (previously paragraph (1) of subdivision (d) of Section 1170), 1172.6 (previously 1170.95), 1473.7, and 3051 of, the Penal Code. The County of Santa Clara is a recipient of PDPP grant funds pursuant to an Agreement with the California Board of State and Community Corrections (BSCC or the

“awarding state agency”), BSCC Agreement Number 344-21, effective March 1, 2022 (Grant Agreement).

ATTORNEY, and any of its subcontractors, shall comply with the following additional requirements if handling a case funded by the PDPP:

- (1) **Nondiscrimination.** During the performance of this Agreement, ATTORNEY shall not deny the Grant Agreement’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. ATTORNEY shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. ATTORNEY shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. ATTORNEY shall permit access by representatives of the California Civil Rights Department and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours’ notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or agency shall require to ascertain compliance with this clause. ATTORNEY shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)
- (2) **Books and Records.** ATTORNEY shall maintain adequate fiscal and project books, records, documents, and other evidence pertinent to the ATTORNEY’s work on the project in accordance with generally accepted accounting principles. ATTORNEY shall maintain adequate supporting documentation in such detail so as to permit tracing transactions from the invoices, to the accounting records, to the supporting documentation. ATTORNEY shall maintain these records for a minimum of three (3) years after the acceptance of the final grant project audit under the Grant Agreement and shall be subject to examination and/or audit by the BSCC or designees, state government auditors or designees, or by federal government auditors or designees.
- (3) **Access to Books and Records.** ATTORNEY shall make such books, records, supporting documentations, and other evidence available to the BSCC or designee, the State Controller’s Office, the Department of General Services, the

Department of Finance, California State Auditor, and their designated representatives during the course of the project and for a minimum of three (3) years after acceptance of the final grant project audit. ATTORNEY shall provide suitable facilities for access, monitoring, inspection, and copying of books and records related to the grant-funded project. ATTORNEY shall also provide access to the BSCC, any Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representative, access to any books, documents, papers, and records of the ATTORNEY which are directly pertinent to the PDPP for the purpose of making audits, examinations, excerpts, and transcriptions.

- (4) Billing and Reporting. In addition to the invoicing requirements elsewhere in this Agreement, ATTORNEY shall include in invoices additional case information in a format required by the County for reporting on the use of PDPP grant funds.

ATTORNEY shall comply with all additional requirements in the Grant Agreement and BSCC Grant Administration Guide that apply to ATTORNEY as a subcontractor to County. County will provide a copy of the Grant Agreement and BSCC Grant Administration Guide to ATTORNEY and will require a signed acknowledgement of receipt.

The parties have caused this AGREEMENT to be executed by their duly authorized representatives.

**COUNTY OF SANTA CLARA**

DocuSigned by:

*Sylvia Perez MacDonald*

F893D28050E945C

SYLVIA PEREZ MACDONALD

Director, Independent Defense Counsel Office

Date: 6/27/2023

**ATTORNEY**

DocuSigned by:

*Brian McComas*

6BA05387D19E443

BRIAN C. MCCOMAS

Date: 6/20/2023

**OFFICE OF THE COUNTY EXECUTIVE**

DocuSigned by:

*Jeffrey V. Smith*

21F8050B0108307

JEFFREY V. SMITH

County Executive

**APPROVED AS TO FORM & LEGALITY**

DocuSigned by:

*Lisa Harrison*

1ED91F52E73A474

LISA M. HARRISON

Lead Deputy County Counsel

# Independent Defense Counsel Office

## County of Santa Clara



## EXHIBIT A – FEE SCHEDULE

Fiscal Year 2023 – 2024

**ADULT CRIMINAL CASES****1. ADULT CLASS 1 - MISDEMEANOR**

DESCRIPTION: Cases where only misdemeanor crimes are charged.

**FEES:**

Initial Case Fee:<sup>1</sup> \$400.00

**Standard Written Motions:**

Drafting and filing  
\$100.00

½ day session Hearing on motion per  
\$250.00

“Standard written motions” refers to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

**Substantial Written Motions:**

Drafting and filing  
\$300.00

½ day session Hearing on motion per  
\$250.00

Substantial written motions involve more research and complex or novel arguments. This fee applies to all substantial written motions such as Penal Code section 1538.5 motions, motions for a speedy trial, demurrers, severance motions, motions to dismiss, non-standard *in limine* motions, and trial briefs. When novel and complex issues arise in drafting *in limine* motions, and trial briefs, requiring more time and attention than anticipated, an hourly rate of \$115 per hour in lieu of the \$300 flat rate fee may apply upon written request and with approval of the Director. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session: \$250.00

This fee may be billed for every half-day session in the trial department.

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<sup>1</sup> The Initial Case Fee will be compensated at the rate in effect on the date of the first court appearance for each case.

This fee may also be billed for appearances on the Master Trial Calendar (MTC) when “substantial trial preparation” was completed and is described in sufficient detail on the ATTORNEY COMPENSATION FORM. “Substantial trial preparation” for purposes of this fee includes work such as preparing trial documents, meeting with the defense team, or coordinating witnesses with the expectation that the Court will assign the case to trial. “Substantial trial preparation” is work beyond preparation for the MTC appearance itself.

In Person Appearance/Post Sentence Review Hearings: \$125.00 each

Remote Appearance: \$50.00 each

## **2. ADULT CLASS 2 - NON-SERIOUS FELONY**

DESCRIPTION: Cases where the most serious crime charged is a non-serious felony, including extradition cases. “Serious” felonies are those listed in Penal Code section 1192.7.

### **FEES:**

Initial Case Fee \$800.00

Preliminary Hearing Fee per session (1/2 day = 1 session) \$200.00

Post-preliminary Hearing Case Fee: \$450.00

### **Standard Written Motions:**

Drafting and filing  
\$100.00

½ day session

Hearing on motion per  
\$275.00

Standard written motions refer to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

### **Substantial Written Motions:**

Drafting and filing  
\$400.00

½ day session

Hearing on motion per  
\$275.00

Substantial written motions involve more research and complex or novel arguments. This fee

applies to all substantial written motions such as Penal Code section 1538.5 motions, motions for a speedy trial, demurrers, severance motions, motions to dismiss, non-standard *in limine* motions, and trial briefs. When novel and complex issues arise in drafting *in limine* motions, and trial briefs, requiring more time and attention than anticipated, an hourly rate of \$115 per hour may apply upon written request and with approval of the Director. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session: \$300.00

This fee may be billed for every half-day session in the trial department.

This fee may also be billed for appearances on the Master Trial Calendar (MTC) when “substantial trial preparation” was completed and is described in sufficient detail on the ATTORNEY COMPENSATION FORM. “Substantial trial preparation” for purposes of this fee includes work such as preparing trial documents, meeting with the defense team, or coordinating witnesses with the expectation that the Court will assign the case to trial. “Substantial trial preparation” is work beyond preparation for the MTC appearance itself.

In Person Appearance/Post Sentence Review Hearings: \$125.00 each

Remote Appearance: \$50.00 each

### 3. ADULT CLASS 3 - SERIOUS FELONY

DESCRIPTION: Cases where the most serious crime charged is a “serious” felony as defined by Penal Code section 1192.7, except those falling into the specific definition of class 4 or Death Penalty.

#### FEES:

Initial Case Fee: \$1,100.00

Preliminary Hearing Fee per session (1/2 day = 1 session): \$250.00

Post-preliminary Hearing Case Fee: \$600.00

#### Standard Written Motions:

Drafting and filing \$100.00

Hearing on motion per ½ day session \$350.00

Standard written motions refer to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

**Substantial Written Motions:**

Drafting and filing:	\$400.00
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Hearing on motion per ½ day session:	\$350.00
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Substantial written motions involve more research and complex or novel arguments. This fee applies to all substantial written motions such as Penal Code section 1538.5 motions, motions for a speedy trial, demurrers, severance motions, motions to dismiss, non-standard *in limine* motions, and trial briefs. When novel and complex issues arise in drafting *in limine* motions, and trial briefs, requiring more time and attention than anticipated, an hourly rate of \$115 per hour in lieu of the \$300 flat rate fee may apply upon written request and with approval of the Director. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session:	\$375.00
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In Person Appearance Fee/Post Sentence Review Hearings:	\$125.00
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Remote Appearance:	\$50.00
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**4. ADULT CLASS 4****i. HOMICIDE/COMPLEX SERIOUS FELONIES WITH LIFE EXPOSURE/LIFE WITHOUT THE POSSIBILITY OF PAROLE**

DESCRIPTION: Cases where the most serious crime charged is murder and the death penalty will not be sought or determined not to be likely by current practices and status of the law. This rate also applies to three strikes life cases and cases that include a charge for which life imprisonment is highly likely to be imposed. ATTORNEY is obligated to monitor any and all spending, including ancillary costs, associated with the case to prevent waste and duplication of services. Failure to monitor spending will not justify approval of additional funds for attorney fees or ancillary costs.

FEES:	\$140.00 per hour
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**ii. NON-LIFE COMPLEX FELONY**

DESCRIPTION: Cases involving a high degree of complexity due to various factors and serious felony charges, including but not limited to, manslaughter, attempted murder, gang cases involving three or more co-defendants, novel legal issues, and high volume of discovery (i.e., thousands of pages of documents and extensive digital data). ATTORNEY is obligated to monitor any and all spending, including ancillary costs, associated with the case to prevent waste and duplication of services. Failure to monitor spending will not justify approval of additional funds for attorney fees or ancillary costs.

FEES: \$135.00 per hour

**CIVIL PROCEEDINGS / OSC - CONTEMPT CASE**

DESCRIPTION: Hourly rate applies to case preparation in civil/quasi-criminal proceedings where client has criminal liability including child support contempt, welfare fraud exposure, and/or contempt arising out of family court proceedings.

Case Fees: \$125.00 per hour

Attorney of the day/ contempt calendar per ½ day session: \$342.00

**LANTERMAN-PETRIS-SHORT (LPS)**

DESCRIPTION: Cases involving mental health (LPS) conservatorships in which IDO may be appointed to represent a conservatee who disputes the legal necessity for a temporary or permanent conservatorship as described in the Lanterman-Petris-Short Act and Welfare and Institutions Code sections 5000, et seq.

FEES:

Initial Case Fee \$1,750.00

Evidentiary Hearing \$750.00

Trial Fee per ½ day session \$300.00

**PC 2603 PETITIONS**

DESCRIPTION: Civil proceedings brought pursuant to Penal Code 2603 seeking administration of psychiatric medication without consent.

FEES: \$125.00 per hour

**OTHER CASE FEES**

**1. CONSOLIDATED CASES**

All cases assigned together in a single matter for the same client or additional cases assigned for an existing client while representing the client are considered consolidated. Only cases with separate appearance dates throughout the representation for the same client may be billed as unconsolidated upon attorney request and with the written approval by the Director.

The factors that will inform the Director’s decision include but are not limited to:

1. Whether the cases follow separate paths.
2. Whether the other case is merely trailing even if it is set in a different department.
3. Whether substantial work is required for the less serious case.

If approval is granted, the matter will be compensated separately consistent with the rates listed elsewhere in this Fee Schedule.

Consolidated cases are billed as follows:

1. A consolidated case is billed at the rate in the Fee Schedule. In the event one of the consolidated cases is higher in classification than the other(s) case(s), the higher case will be paid at the regular rate and the lower case(s) will be paid at the consolidated rate.
2. Flat Case Fee per each additional case:

Class 1:	\$200.00
Class 2:	\$300.00
Class 3:	\$400.00

## 2. ADULT VIOLATION OF PROBATION (VOP) CASES

IDO does not assign attorneys to represent adult defendants charged exclusively with a Violation of Probation unless:

- (a) the Public Defender's Office or Alternate Defender's Office declare a conflict in the VOP case; or
- (b) the Director, in consultation with the defendant's prior IDO attorney, decides to accept the VOP case for continuity of counsel

If a defendant has a new substantive criminal charge under class 1, 2, 3, or 4, and has a pending Violation of Probation case or is charged with a new Violation of Probation while being represented by IDO, the Violation of Probation matter may be charged at the appropriate consolidated case rate listed above.

## 3. ATTORNEY OF THE DAY

Juvenile Justice per ½ day session: \$425.00

This attorney is responsible for administrative tasks including processing new juvenile justice referrals, determining conflicts, making case assignments from the pre-approved list of panel juvenile justice attorneys, and forwarding all new referral information to IDO administration.

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**4. SPECIAL CALENDAR COVERAGE ASSIGNMENTS**

Master Trial Readiness Calendar	\$300 per session
Master Trial Calendar	\$300 per session
Arraignment Calendar	\$300 per session
After Arraignment Calendar	\$300 per session

**5. APPEARANCE FEE: (FOR COVERAGE ASSISTANCE)**

In Person Appearance	\$115.00
Remote Appearance:	\$50.00

**6. WITNESS ADVISEMENT**

Witness Advisement per ½ day session for class 1, 2, 3:	\$300.00
Witness Advisement per ½ day session for class 4:	\$350.00

**7. MISDEMEANOR APPEAL CASE**

Misdemeanor Appeal Case	\$115.00 per hour
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**8. WRITS**

Writs	\$115.00 per hour
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**9. SPECIAL RATE HOURLY FEE “CLASS 1, 2, 3” CASES**

Special Rate Hourly Fee “Class 1, 2, 3” Cases	\$125.00 per hour
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Regardless of the charges, certain cases in either adult or juvenile court present unique and significant challenges for appointed counsel. For cases that present unique challenges, including but not limited to, challenging clients with complicated mental health issues, competency issues, a significant number of counts in a complaint/petition and/or a significant number of cases for a single client pending at once, the Director may in the Director’s sole discretion classify this type of case to an hourly rate of \$125.00 per hour, upon request.

**10. POST CONVICTION RESENTENCING CASE FEES**

A. SB 1437 (PC 1172.6 [superseding PC 1170.95]):	\$140.00 per hour
B. SB 775 (PC 1172.6 [superseding PC 1170.95]):	\$140.00 per hour

C. YOUTHFUL OFFENDER PAROLE (PC 3051):	\$140.00 per hour
D. PC 1170(d) (PC 1172.1 [superseding PC 1170.03]):	\$125.00 per hour
E. SB 483 (PC 1172.7, PC 1172.75 [superseding PC 1171, PC 1171.1]):	\$125.00 per hour
F. PC 1473.7(a)-Vacating a Conviction:	\$125.00 per hour

#### **11. ADMINISTRATIVE SERVICES/SPECIAL ASSIGNMENTS FEES**

Administrative Services / Special Assignments Fees	\$115.00 per hour
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DESCRIPTION: line-ups, consultation, expungements, mentoring, training, and any special assignments at the request of the Director. Attorney must submit an Administrative Compensation Form with detailed explanation of date and service provided.

#### **12. OSC-CONTEMPT CASE FEES**

A. DCSS CASE PREPARATION HOURLY FEE:	\$125.00
B. COURT SESSION FEE:	\$342.00
C. WITNESS ADVISEMENT PER ½ DAY SESSION FOR CLASS 1, 2, 3:	\$300.00
D. WITNESS ADVISEMENT PER ½ DAY SESSION FOR CLASS 4:	\$350.00
E. PRIVATE CONTEMPT HOURLY FEE:	\$125.00

### **JUVENILE JUSTICE CASES**

#### **1. Welfare and Institutions Code 627(c) (AB 2644) EARLY REPRESENTATION**

DESCRIPTION: Representation of youth from booking notification through the day before the first set date for arraignment on the petition consistent with Welfare and Institutions Code 627(c), effective January 1, 2023. This category does not include work completed in the regular course of representation on a petition, such as detentions for electronic monitoring violations or returns from a commitment or placement unless ATTORNEY demonstrates new work completed beyond the scope of the regular course of the representation on the existing petition. Attach a detailed description of the work completed during the early representation period with date and time spent on the work.

Fees:	\$115.00 per hour
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## 2. CLASS 1 - JUVENILE MISDEMEANOR

DESCRIPTION: Cases where only misdemeanor crimes are charged or a Welfare and Institutions Code section 777 petition is filed and not consolidated with another petition.

### FEES:

Initial Case Fee: \$400.00

### Standard Written Motions:

Drafting and filing: \$100.00

Hearing on motion per ½ day session: \$250.00

Standard written motions refer to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

Substantial Written Motions: \$300.00

Drafting and filing: \$300.00

Hearing on motion per ½ day session: \$250.00

Substantial written motions involve more research and complex or novel arguments. This fee applies to all substantial written motions such as motions under Welfare and Institutions Code section 782, Penal Code section 1538.5, motions for a speedy trial, demurrers, severance motions, motions to dismiss, non-standard *in limine* motions, and trial briefs. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session: \$250.00

In Person Appearance/Post-Disposition Review Hearing \$125.00 each

Remote Appearance/Post-Disposition Review Hearing: \$50.00 each

## 3. CLASS 2 - JUVENILE NON-SERIOUS FELONY

DESCRIPTION: Cases where the most serious crime charged is a “non-serious” felony. “Serious” felonies are listed in Welfare and Institutions Code section 707(b).

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**FEES:**

Initial Case Fee	\$800.00
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Probable Cause/Dennis H. Hearing Per ½ day session	\$200.00
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This fee may be billed in contested detention hearings when a witness is called to testify.

Post-Probable Cause/Dennis H. Hearing Case Fee	\$450.00
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**Standard Written Motions:**

Drafting and filing:	\$100.00
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Hearing on motion per ½ day session:	\$275.00
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Standard written motions refer to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

**Substantial Written Motions:**

Drafting and filing	\$400.00
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Hearing on motion per ½ day session	\$275.00
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Substantial written motions involve more research and complex or novel arguments. This fee applies to all substantial written motions such as motions under Welfare and Institutions Code section 782, Penal Code section 1538.5, motions for a speedy trial, demurrers, severance motions, motions to dismiss, non-standard *in limine* motions, and trial briefs. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session:	\$300.00
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In Person Appearance/Post-Disposition Review Hearing	\$125.00 each
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Remote Appearance/Post-Disposition Review Hearing:	\$50.00 each
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**4. CLASS 3 - JUVENILE SERIOUS FELONY**

**DESCRIPTION:** Cases where the most serious crime charged is a “serious” felony as defined by Welfare and Institutions Code section 707b. Cases where IDO is appointed to represent indigent parents requesting a Financial Evaluation Hearing pursuant to Welfare and Institutions Code section 903.45 et seq.

**FEES:**

Initial Case Fee	\$1,100.00
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Probable Cause/Dennis H. Hearing Fee Per ½ day session	\$250.00
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This fee may be billed in contested detention hearings when a witness is called to testify.

Post-Probable Cause/Dennis H. Hearing Case Fee	\$600.00
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Standard Written Motion:	\$100.00
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Drafting and filing	\$100.00
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Hearing on motion per ½ day session	\$350.00
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Standard written motions refer to boiler plate written motions, which include bail motions, discovery motions, motions for a continuance, motions to reduce a felony to a misdemeanor, and standard *in limine* motions. All motions must be in writing. A copy of the written motion must be submitted with the invoice or payment will be denied.

**Substantial Written Motions:**

Drafting and filing	\$400.00
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Hearing on motion per ½ day session	\$350.00
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Substantial written motions involve more research and complex or novel arguments. This fee applies to all substantial written motions such as motions under Welfare and Institutions Code section 782, Penal Code section 1538.5, motions for a speedy trial, demurrers, severance motions, motions to dismiss, *in limine* motions, and trial briefs. A copy of the written briefing must be submitted with the invoice or payment will be denied.

Trial Fee per ½ day session:	\$375.00
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In Person Appearance/Post-Disposition Review Hearing	\$125.00 each
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Remote Post-Disposition Review Hearing:	\$50.00 each
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**5. JUVENILE CLASS 4****i. JUVENILE HOMICIDE/COMPLEX SERIOUS FELONIES WITH LIFE/LWOP EXPOSURE**

**DESCRIPTION:** Transfer Cases, or where the most serious crime charged is murder, or the case involves a serious and/or complex felony or multiple felonies with life/life without possibility of

parole exposure as determined by the Director in their sole discretion following a written request by ATTORNEY. ATTORNEY is obligated to monitor any and all spending, including ancillary costs, associated with the case to prevent waste and duplication of services. Failure to monitor spending or ancillary costs will not justify approval of additional funds for attorney fees or ancillary costs.

FEES: \$140.00 per hour

**ii. NON-LIFE JUVENILE COMPLEX FELONY**

DESCRIPTION: Cases involving a high degree of complexity due to various factors and serious felony charges, including but not limited to, manslaughter, attempted murder, gang cases involving three or more co-defendants, novel legal issues, and high volume of discovery (i.e., thousands of pages of documents and extensive digital data). ATTORNEY is obligated to monitor the case budget and ancillary costs and prevent waste and duplication of services. Failure to monitor the budget will not justify approval of additional funds for attorney fees or ancillary costs.

FEES: \$135.00 per hour

**MISCELLANEOUS CASE FEES**

The miscellaneous case fees described in this section do not count toward the maximum total compensation specified in section (3) of the Agreement, with the exception of mileage reimbursement described in section (9) below that is submitted by ATTORNEY and other special circumstances described in section (10).

**1. INVESTIGATORS:**

- i. Class 1, 2, and 3 cases: \$75.00 per hour
- ii. Class 3 Special hourly rate \$85.00 per hour
- iii. Class 4 cases: \$85.00 per hour

ATTORNEY is required to review and approve invoices prepared by Investigators pursuant to this section that is submitted for payment by the Investigator to verify the services rendered and accuracy of expenses incurred. An Investigator's mileage will be reimbursed in accordance with this Fee Schedule.

**2. INVESTIGATOR TRAINEE: \$35.00 per hour**

ATTORNEY is required to review and approve invoices prepared by Investigator Trainees pursuant to this section that is submitted for payment by the Investigator Trainee to verify the services rendered and accuracy of expenses incurred. An Investigator Trainee's mileage will

be reimbursed in accordance with this Fee Schedule.

3. INTERPRETERS:

\$85.00 for the first hour, and \$75 per hour for each additional hour unless a higher rate is approved by the Director based on factors such as interpreter availability and other market conditions.

ATTORNEY is required to review and approve invoices prepared by Interpreters pursuant to this section that is submitted for payment by the Interpreter to verify the services rendered and accuracy of expenses incurred.

4. PARALEGAL:

\$65.00-\$85.00 per hour at the sole discretion of the Director depending on the level of experience, competence, and/or the type of work being performed.

5. TRANSCRIBERS: \$30.00-\$35.00 per hour

Attorneys must obtain advance approval from the Director for transcription expenses and services that aggregate more than \$1,000 per vendor per case.

6. LEGAL ASSISTANTS: \$25.00-\$50.00 per hour

Attorneys may utilize services of Legal Assistants upon Director approval, to perform tasks such as: reviewing jail calls, reviewing Body Worn Camera (BWC) recordings, redacting, organizing files in preparation for trial, filing documents, and any other task authorized by the Director.

The rate is determined by the Director in their sole discretion based on the level of experience, competence, and type of work being performed.

Legal Assistants will not be eligible for compensation for performing secretarial or clerical services as set forth in the Independent Defense Counsel Office Policies and Procedures. Attorneys are required to review invoices prepared by Legal Assistants pursuant to this section and to sign each invoice submitted for payment by the Legal Assistant to verify the accuracy of the task and time claimed. Legal Assistants will not be entitled to mileage reimbursement.

7. LAW STUDENTS: \$35.00 per hour

Attorneys may utilize services of law students upon Director approval, to perform the following tasks: Legal research, drafting, redacting, and organizing files in preparation for trial, filing documents, and any other task authorized by the Director. Law students will not be eligible for compensation for performing secretarial or clerical services as set forth in the Independent Defense Counsel Office Policies and Procedures. Attorneys are required to

review invoices prepared by law students pursuant to this section and to sign each invoice submitted for payment by the law student to verify the accuracy of the task and time claimed. Law students will not be entitled to mileage reimbursement.

8. REQUEST FOR AN EXPERT WITNESS/ SOCIAL WORKER/CONSULTANT OR OTHER SPECIALIST:

The Director has the sole discretion to approve all ancillary services such as expert witnesses, social workers, consultants, or other specialists and will set the maximum fee allowed. An attorney must submit the request in writing utilizing the Independent Defense Counsel's Office Special Expense Form and must receive approval in writing from the Director prior to any work being performed by the ancillary service provider. Once approved, the attorney handling the case is responsible for maintaining all records of work requested and completed and monitoring the approved provider's budget in the case. IDO will not pay for special expenses or fees that were not approved by the Director in advance of services being performed.

9. MILEAGE REIMBURSEMENT:

Subject to the requirements of section 3(i) of the Agreement regarding travel expenses, all valid mileage reimbursement claims will be reimbursed in accordance with the rates in effect at the time of travel as published by the Internal Revenue Service for optional business standard mileage, which may be modified from time to time. (See <https://www.irs.gov/tax-professionals/standard-mileage-rates>). Failure to submit mileage reimbursement requests at the correct rate for the requested time period may result in a delay in payment.

10. OTHER SPECIAL CIRCUMSTANCES

Failure To Appear (FTA): INITIAL AND SUBSEQUENT CASE FEES

**FTA at Initial Hearing:** An initial case fee may be billed in cases where the client fails to appear at the first appearance if case preparation was completed by the attorney. When case preparation was not completed, the attorney may bill the appearance fee for the initial hearing when the client failed to appear.

**Re-Initiation After FTA:** A subsequent case fee may be billed upon re-initiation of proceedings if one year or more has passed since the failure to appear. If no new or additional work is needed beyond the work traditionally associated with the re-initiation appearance, the appearance fee should be billed, and a subsequent case fee is not permitted. Example: If the client returns in custody, accepts the previous offer in the case and proceeds to sentencing at that first hearing based on previous preparation, the appearance fee should be billed.

Please attach documentation with relevant justification when billing an initial case fee after an FTA at the initial hearing or when billing a subsequent case fee after one year has passed from the date of the FTA.

**EXHIBIT B-3 IDO**  
**INSURANCE REQUIREMENTS**  
**BETWEEN THE COUNTY OF SANTA CLARA'S**  
**INDEPENDENT DEFENSE COUNSEL OFFICE**  
**AND BRIAN C. MCCOMAS**  
**FISCAL YEAR 2023-2024**

Indemnity

Notwithstanding any other provision of this Agreement, ATTORNEY ("Contractor") shall indemnify, release, hold harmless, and defend, with counsel approved by the County of Santa Clara ("County"), the County, and its officers, agents, and employees from any claim, demand, suit, judgment, liability, loss, injury, damage, or expense of any kind (including attorney's fees and costs) arising out of, or in connection with:

- (a) performance of this Agreement by Contractor and/or its agents, employees, or sub-contractors; or
- (b) services performed by any members of the defense team (such as investigators, paralegals, substitute counsel, and experts) for an IDO case assigned to Contractor pursuant to this Agreement, regardless of whether such members are compensated by Contractor or directly by the County;

excepting only loss, injury, or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County as allowed by law. The Contractor shall reimburse the County for all costs, attorney's fees, expenses, and liabilities incurred with respect to any litigation or process in which the Contractor contests its obligation to indemnify, defend, and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$500,000
- b. General aggregate - \$500,000
- c. Personal Injury - \$500,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Workers' Compensation and Employer's Liability Insurance:

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than five hundred thousand dollars (\$500,000) per occurrence.

5. Professional Errors and Omissions Liability Insurance:

- a. Coverage shall be in an amount of not less than one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

6. Claims Made Coverage:

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

## **EXHIBIT C**

### **COUNTY OF SANTA CLARA INDEPENDENT DEFENSE COUNSEL OFFICE POLICIES AND PROCEDURES FISCAL YEAR 2023-2024**

#### **OVERVIEW**

The Independent Defense Counsel Office (IDO) nominates attorneys for appointment by the Superior Court to indigent criminal defendants and other clients, and administers the conflicts program for the County of Santa Clara. Through this program, qualified attorneys on the IDO panel represent indigent criminal defendants and others when either the Public Defender or Alternate Defender has declared a conflict.

#### **MISSION**

The IDO's mission is to provide quality legal representation without unnecessary delay, with professionalism and with efficient use of taxpayer resources.

#### **THE ROLE OF IDO DIRECTOR**

The Director of IDO ("Director") manages and oversees the IDO program. The Director is responsible for upholding the IDO's mission, overseeing the daily operations and management of the program, which includes nominating attorneys from a panel of qualified applicants for appointment to cases, maintaining accurate records, monitoring cases, reviewing bills and invoices, overseeing budgetary matters and reporting to the County Counsel for the County of Santa Clara who reports to the Santa Clara County Board of Supervisors.

The Director may delegate any of their duties and responsibilities to the Assistant Director of IDO. The Assistant Director assumes all duties and responsibilities of the Director in the Director's absence.

#### **PROGRAM**

##### **I. Application Process**

Attorneys who are interested in being placed on the panel must contact the Director and complete the application process. Membership on the panel will be determined solely by the Director after consideration of each applicant's relevant experience and the current needs for additional panel attorneys.

## II. Classification and Assignment of Cases

The Director will assign all cases referred to IDO to a particular class based on the complexity of the case and seriousness of the charge(s). The type of case and compensation for each class is set forth in EXHIBIT A, IDO FEE SCHEDULE, to the Legal Services Agreement.

The Director has exclusive authority to determine which panel attorney will be nominated for appointment to which case. The Director has the sole authority to determine the class of cases that a panel attorney is eligible to handle. The decision of the Director is final.

## III. Qualifications and Experience Requirements for Attorneys

The following represents general guidelines that the Director will consider when assigning all cases, adult and juvenile:

### A. Attorneys Eligible to Handle Class 1 Cases:

1. Membership in the State Bar of California;
2. Continuing Legal Education Requirement: twelve hours of training in criminal law in past year;
3. References, as required by IDO Director; and
4. If requested, a list of cases handled, including:
  - Case number
  - Name of defendant
  - Charge
  - Disposition
  - Name of opposing counsel
  - Name of Judge

### B. Attorneys Eligible to Handle Class 2 Cases:

1. All requirements for Class 1 cases;
2. Has practiced criminal law for one year or handled fifty misdemeanor cases; and
3. Has completed at least four trials to verdict.

C. Attorneys Eligible to Handle Class 3 Cases:

1. All requirements for Class 1 and Class 2 cases;
2. Has practiced criminal law for three years;
3. Has handled at least twenty felony matters, of which five went to jury verdict; and
4. Training in sexual and child abuse cases.

D. Attorneys Eligible to Handle Class 4 Cases:

Class 4 (complex felony, including Penal Code section 187, Penal Code section 288.7, and other serious felonies involving multiple co-defendants, serious charges, or voluminous discovery)

1. All requirements for Class 1, Class 2, and Class 3 cases;
2. Has practiced law for at least four years in the criminal defense field;
3. Has the following criminal law experience:
  - a. Significant experience with handling complex felonies of which at least five went to jury verdict; or
  - b. Handled a total of forty felony matters and twenty felony trials.

Class 4 (hourly rate case due to number of co-defendants, length of trial, or voluminous discovery case)

1. All requirements of Class 1, Class 2, and Class 3 cases; and
2. Has experience managing voluminous case files.

E. Further General Qualifications for Juvenile Delinquency Attorneys:

1. All requirements by Class as described in Section D. above; and
2. Has complied with the education requirements of Welfare and Institutions Code section 634.3 and California Rules of Court Rule 5.664.

F. Qualifications for Civil Matters (e.g., OSC, Mental Health):

1. All requirements for Class 1 cases plus:
2. Has practiced law for three years with demonstrated experience and/or expertise in family law, administrative law, guardianship and conservatorship law, which may be waived if:
  - a. Applicant has handled ten trials and at least four relevant matters through final disposition and/or judgment; or
  - b. Applicant has served one year as a county counsel or city attorney in the relevant area of practice, i.e., family, administrative law, guardianship and conservatorship law; and
3. Has twelve hours of CLE in the past year in relevant area.

IV. Responsibilities of Panel Attorneys

- A. Active State Bar Membership. Panel attorneys must be active members of the State Bar in good standing. A panel attorney will notify the Director in writing within ten days of any discipline imposed by the State Bar, including probation, suspension, or disbarment.
- B. Phone and Email Requirements. Panel attorneys are required to have a designated business telephone number where they can be reached by their clients between the hours of 8:00 a.m. and 5:00 p.m. They shall also have a working email address and mobile telephone to communicate with IDO.
- C. Contract Compliance. Panel attorneys will execute the Legal Services Agreement (the "Agreement") with the County of Santa Clara and will adhere to the terms and conditions of the Agreement, including the maintenance of all required insurance. Panel attorneys are independent contractors.
- D. Professional Conduct. Panel attorneys will adhere to the highest standard of professional conduct and will abide by all applicable rules of professional conduct.
- E. Substitute Counsel. Except as set forth in this paragraph, the appointed panel attorney is responsible for the case and will not delegate its handling to any other attorney without the prior approval of the Director. IDO will

only compensate the panel attorney who has been appointed on the case, unless the Director pre-approves alternative compensation. Any panel attorney appointed on a particular case who designates another attorney to make their appearances on a regular basis without pre-approval by the Director is subject to suspension from the list. In the event of an emergency, the appointed panel attorney who is not able to make an appearance is responsible to find a substitute and ensure a smooth transition.

Subject to review and approval by the Director, panel attorneys may cause or allow another attorney to make other substantive appearances or do other acts regarding their case, provided that the substitute attorney is a member of the panel and is eligible to handle that class of case. The assigned attorney remains responsible for the handling of the case.

These requirements are designed to prevent panel attorneys from accepting cases and then having substitute attorneys make their appearances.

When applicable, the substitute attorney is responsible for submitting a completed Administrative Compensation Form and following IDO billing requirements.

- F. Additional Counsel or Co-Counsel. The Director may appoint additional counsel on any case when deemed appropriate.\_
- G. Oversight of Defense Team. The requirements in this section apply regardless of whether other members of the defense team are compensated by the panel attorney or directly by the County. The assigned panel attorney is responsible to direct and supervise the investigation and defense of each case, including (a) communication with, (b) direction to, and (c) supervision of services performed by, investigators, investigator trainees, interpreters, paralegals, transcribers, and legal assistants, law students, expert witnesses, social workers, consultants, and other specialists. See Cal. Rules of Professional Conduct sections 5.1 and 5.3.\_

The assigned panel attorney must ensure that all members of the defense team performing services outlined in the “Miscellaneous Case Fees” section of Exhibit A (Fee Schedule) submit accurate invoices consistent with actual work performed in a timely manner as set forth in section 3 of the Agreement. The assigned panel attorney or their designee must review and approve the invoices submitted by these defense team members.

- H. Closing a Legal Practice. Panel attorneys with appointed IDO matters who close down a legal practice are expected to follow best practices and California Rules of Professional Conduct to protect their clients. Refer to California State Bar Guidelines for Closing or Selling a Law Practice, [www.calbar.ca.gov](http://www.calbar.ca.gov). The assigned attorney is responsible for finding another panel attorney whose appointment will be subject to the approval of the Director. The originally assigned attorney is responsible for ensuring a smooth transition to the new panel attorney consistent with the California Rules of Professional Conduct. IDO can assist and collaborate with the panel attorney with the case re-assignment process when it is in the best interest of the client, but IDO will not be exclusively responsible for the re-assignment of a panel attorney's entire caseload.
- I. Conflict. For each case assigned, the appointed panel attorney will determine at the outset whether a conflict of interest exists and will immediately notify the Director of any conflict.
- J. Client Contact. Panel attorneys will contact clients as soon as practicable but no later than five working days from notification of case assignment. Thereafter, panel attorneys are expected to maintain effective communication with their clients consistent with their professional and ethical obligations under the Business and Professions Code.
- K. Remote Appearances. Panel attorneys shall endeavor to make in person court appearances whenever possible to ensure effective attorney client communication and quality representation. Remote court Appearances are discouraged unless they are for ministerial appearances or needed in an exceptional or emergency situations. When a client is present in the courtroom and the attorney cannot appear in person, the attorney shall endeavor to arrange substitute counsel who can be present in court and in compliance with section IV. E. above.
- L. Experts, social workers, consultants, and other specialists. Panel attorneys must use the IDO Special Expense Form to request pre-authorization from the Director prior to utilizing the professional services of expert witnesses, social workers, consultants, or other specialists. Panel attorneys are also required to maintain effective communication with their expert witnesses, social workers, consultants, or other specialists to remain within the approved budget. IDO will not pay or reimburse for the services of an expert that were not preapproved by the Director.
- M. Other Expenses. Panel attorneys will obtain advance written approval from the Director for expenses and services, including interpreters, transcription, and other services, more than \$1,000.00 per vendor per case.

- N. Panel Attorney Records. Upon request, panel attorneys will furnish information regarding the status of each appointed case, the number of hours spent, the total fees charged for all services and case expenses, and such additional information as required by the Director or as set forth in the Agreement. Upon request, each panel attorney will complete and return all required reports to the Director within the time frame indicated by the Director.
- O. Audits. Upon request, panel attorneys will make available to the Director or a designee, relevant files, accounts, ledgers, and other records related to any case originating from IDO for the purpose of conducting an audit.
- P. Performance Evaluation. Panel attorneys will cooperate in any performance evaluation process developed by the Director.

V. Travel

Panel attorneys will not be reimbursed for mileage for any travel within the San Francisco Bay Area. Reimbursement for other travel expenses by panel attorneys is subject to section 3(i) of this Agreement.

Investigators receive mileage reimbursement at the County's authorized mileage reimbursement rate in effect when the mileage was driven, for investigative work.

Panel attorneys and investigators shall avoid out-of-county and out of state travel if possible. If out-of-county or out of state travel is needed for investigation into a case, the panel attorney must use the Special Expense Form to request pre-approval from the Director for the travel. In such cases, the Director reserves the right to obtain an investigator from that remote locality, if deemed to be appropriate.

All travel expenses must be reasonable and in accordance with the County's travel policy; travel reimbursement requests must be accompanied by detailed receipts.

VI. Fees, Billing, and Reporting

Panel attorneys will be reimbursed as set forth in the Fee Schedule, Exhibit A to the Legal Services Agreement between the panel attorney and the County of Santa Clara.

Panel attorneys must submit invoices no later than 30 days following the month in which services were rendered for each case, or as provided by County for the last month of the fiscal year in order to facilitate payment processing within the fiscal year. All panel attorneys and other members of the defense team must adhere to payment and

recordkeeping provisions set forth in this Agreement, including submitting accurate and complete invoices. Invoices shall specify:

- (a) the case name and number;
- (b) the month, day, and year services were performed; and
- (c) if applicable, the number of hours and the hourly rate and sufficient details about the tasks performed and billed.

Inaccurate, incomplete, or untimely invoices or support documentation may result in payments being delayed or withheld until corrected.

Approved invoices received after 5pm on a business day will be considered as received the next business day after submission. Payment by IDO shall be net thirty (30) days from the date of receipt of a correct and properly completed ATTORNEY COMPENSATION FORM and/or other invoice and supporting documentation that satisfies the requirements as specified in the Agreement.

Out-of-pocket expenses described in section 3(f) of the Agreement will be reimbursed following submission of sufficient supporting documentation as described in section 3(f). Out-of-pocket expenses submitted by the panel attorney for payment are counted toward the total compensation limits of the Agreement.

Panel attorneys must use the most current compensation form describing the case classification as approved by the Director. If changed circumstances warrant reclassification, the attorney must submit a written request to the Director proposing a re-classification and including detailed information. The Director shall have sole discretion to approve or deny a re-classification request.

Double billing is prohibited. For example, if a panel attorney has two matters on the readiness calendar and the panel attorney spends one hour total waiting for both matters to be called, they cannot bill one hour to each matter. To avoid double billing, the panel attorney can only bill a total of one hour. In this specific instance they must split the bill between the two matters – 30 minutes to each matter.

Panel attorneys shall report to the Director when a case is closed. A case is considered closed when all criminal proceedings have concluded, and the scope of the panel attorney's ethical and legal duties to their client have ended.

## VII. Suspension, Termination, and Reclassification

In addition to the reasons set forth in the Agreement, a panel attorney will be subject to suspension, termination, or reclassification for cause for failing to adhere to the Agreement, or for any good cause determined by the Director. Panel attorneys must

continue to comply with applicable provisions of the Agreement and the California Rules of Professional Conduct in the event they are suspended or terminated from the program.

#### VIII. Continuing Legal Education

To promote and ensure quality representation, IDO is committed to the professional development of panel attorneys. IDO will provide trainings and will notify panel attorneys of all available training opportunities. Panel attorneys are required to attend continuing education sessions offered by the IDO, as time and schedules allow. Panel attorneys are expected to attend continuing legal education training provided by the Office of the State Public Defender, The California Public Defenders Association, and the Santa Clara County Public Defender/Alternate Defender Offices.

#### IX. Investigators (including Investigator Trainees)

A. Scope of Services. Investigators are to work under the direction of the panel attorneys. The investigator is being retained to perform professional investigative services to assist in defending the client, such as locating and interviewing key witnesses to support the defendant's case, photographing crime scenes, and serving subpoenas. Investigators should not be utilized to perform clerical services such as copying transcripts, picking up police reports, acting as a delivery service, or any other work which could reasonably be accomplished by clerical staff. Conversely, investigators may not be requested to perform legal tasks which attorneys should perform.

B. Surveillance. Investigators who wish to do surveillance of over two hours of witness location must obtain prior written permission from the Director.

C. Investigation Budget. The panel attorney is responsible for the investigation budget and must maintain effective communication with their investigators to ensure efficiency, quality work product, and if applicable, to remain within the amount previously authorized by the Director.

D. Minimum Qualifications. The panel attorney must ensure that investigators hold a professional business license, a State private investigator license, and carry errors and omissions insurance with minimum coverage of \$100,000.00 per person.

E. Allowable Charges. Investigators may be compensated for only the following items: Investigator's time at the hourly rate as indicated in Exhibit A ("Fee Schedule") or as otherwise determined by the Director to be necessary to investigate the case; copies at the rate of no more than 10 cents per page; long distance telephone calls outside the local area code(s); film and

development costs; materials for exhibits; and mileage at the County's mileage reimbursement rate in effect when the mileage expense was incurred.

In order to receive reimbursement for these charges, the investigator must submit supporting documentation with their invoice to IDO.

F. Non-Allowable Charges. Investigators will not be compensated for any of the following items: Preparation of investigator's bill; preparation of documents necessary to process the bills (e.g., order for payment); travel charges associated with preparation, processing, or delivery of the investigator's bill to the panel attorney, court, or IDO; or for clerical duties performed by the investigator or their staff.

G. Billing. The investigator shall submit the invoice and supporting documentation that has been approved by the panel attorney to IDO no later than 30 days following the month in which the services were rendered and/or expenses were incurred, unless good cause is shown, as determined by the Director. The investigator's invoice will contain the following information: panel attorney's name; defendant's name; court case number; date of services; time work commenced; and total time involved.

Investigators shall submit accurate, complete, and timely invoices on all active cases every 30 days.

Approved invoices received after 5pm on a business day will be considered as received the next business day after submission. Payment by IDO shall be net thirty (30) days from the date of receipt of a correct and properly completed invoice and supporting documentation that is approved by the panel attorney.

Inaccurate, incomplete, or untimely invoices or supporting documentation may result in payments being delayed or withheld until corrected.

X. Interpreters

A. Out-of-Court Interpreters. The panel attorney is responsible for securing a competent and qualified interpreters to provide language services necessary outside of court to ensure effective representation.

Interpreters shall submit their invoices and supporting documentation to the panel attorney for review and approval to ensure that the charges are reasonable and necessary. The interpreter shall submit the invoice that has been approved by the panel attorney to IDO no later than 30 days following the month in which the services were rendered and/or expenses were incurred, unless good cause is shown, as determined by the Director. The interpreter's

invoice will contain the following information: panel attorney's name; defendant's name; court case number; date of services; description of what was being transcribed; time work commenced; and total time involved. The compensation paid interpreters shall be paid at the rate established by the Director.

Interpreters shall submit accurate, complete, and timely invoices.

Approved invoices received after 5pm on a business day will be considered as received the next business day after submission. Payment by IDO shall be net thirty (30) days from the date of receipt of a correct and properly completed invoice, and any supporting documentation, that is approved by the panel attorney.

Inaccurate, incomplete, or untimely invoices or supporting documentation may result in payments being delayed or withheld until corrected.

XI. Attorney Review

A. Authority to Review. IDO shall have the authority to review panel attorneys' performance, to investigate and address client complaints, to take corrective action to ensure service delivery consistent with best practices and the California Rules of Professional Conduct, and to review and adjust billings as set forth herein. In the event of any billing disagreements, unless otherwise authorized or corrected by the Director, the sole remedy of the panel attorney is to file suit in the appropriate legal forum. In the event the panel attorney fails to prevail in this suit, IDO will be entitled to seek reasonable attorneys' fees and costs.

B. Decision to Review. The following situations shall be reviewed by the Director:

1. Any case for which the hours billed exceeds the average billing for similar cases involving the same primary charge;
2. Any panel attorney whose out-of-court to in-court billing ratio for any month grossly exceeds the average ratio for other panel attorneys by more than fifty percent; and
3. Any panel attorney whose performance is not in accordance with the level expected of a reasonably competent attorney.

C. Scope of Review. The review shall focus on whether the hours spent and/or billed are appropriate and reasonable given current professional standards of practice, the complexity and nature of the case and the work product produced. The standard of review shall be that of a reasonable, competent criminal law practitioner who meets the appropriate panel experience requirements.

D. Procedure for Review:

1. The panel attorney reviewed shall be required to submit a detailed, written description of all work performed on the case or cases for the time period under review;
2. Failure to submit the requested information within fourteen calendar days may result in suspension from the panel of the panel attorney involved until such time as the information is submitted; and
3. Failure to cooperate with the Director following such a request may result in suspension from the panel of the attorney involved or rejection of the claim.

E. Permissible Action Following Review. The Director may take the following actions following review:

1. Find that the billings are appropriate;
2. Find that the billings are either inappropriate or insufficiently justified and reduce an invoice to an appropriate amount, and take one or more of the following actions:
  - a. Suspend the panel attorney from receiving new assignments;
  - b. Suspend the panel attorney from panel membership;
  - c. Demote the panel attorney to a lower class case eligibility; or
  - d. Reduce the allowable hourly rate for the panel attorney involved.

F. Finality of Decision. Any decision hereunder is reviewable upon request of the panel attorney involved within five business days from the day the decision is communicated to the panel attorney. Said request for review shall be in writing and submitted to IDO. This review shall be conducted by the Director whose decision shall be final.

## **XII. Construction**

No portion of these policies is intended to, nor shall be construed to be inconsistent with the panel attorney's constitutional obligations.

## **XIII. Amendment**

The Director has the authority and discretion to amend these policies and procedures from time to time, as appropriate and necessary to maintain the program's high standards for effective representation. Any amendment will be provided to all panel attorneys.

## **Definitions**

For purposes of these Policies and Procedures and Exhibit A ("Fee Schedule"), the following definitions apply:

A. **Criminal Case** – is representation of a defendant in a preliminary hearing, trial, or felony hearing, including all necessary motions and appearance to entry of judgment or other final disposition in the Santa Clara County Superior Court or courts of lower jurisdiction. An appointment to represent a previously sentenced defendant on a subsequent matter, such as an alleged violation of probation or failure in a diversionary program, constitutes a new and separate case. Infractions are not "cases" under this definition. In the event of a defendant who has failed to appear (bench warrant) for twelve months or longer, upon arrest of the defendant the case shall be considered a new assignment subject to the limitations in Exhibit A ("Fee Schedule").

## EXHIBIT D

### CONTRACTOR CERTIFICATION OF COMPLIANCE WITH COVID-19 VACCINE REQUIREMENTS (Version Effective September 27, 2022)

#### Contractor Information:

Contractor name:

Brian C. McComas

Name of Contractor representative:

Contractor phone number:

208-320-0383

Contractor email address:

mccomas.b.c@mccomasllp.com

**Contractor Certification.** On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor's personnel working at County facilities, including but not limited to the requirements in the County's memorandum regarding COVID-19 Vaccine Requirement for County Personnel ("County Vaccine Policy"), the County's memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.
2. As of the date signed below:
  - a. Contractor understands that it must confirm, and has confirmed, that all of contractor's personnel (including any subcontractor personnel) who routinely perform services for the County onsite and share airspace with or proximity to other people at an indoor County facility as part of their services for the County<sup>1</sup> are:
    - i. Fully vaccinated against COVID-19 as defined and required in the County Vaccine Policy;<sup>2</sup> or

<sup>1</sup> As established in the County's Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County's vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to any vaccination, testing, and masking requirements.

<sup>2</sup> County departments are required by law to implement any State-issued requirements, including ones that are more restrictive than the County's internal policies. As of the date of this policy, the California Department of Public Health (CDPH) requires that workers in health care facilities, as well as specified workers in custodial settings, obtain a COVID-19 booster dose. Thus, contractor personnel subject to this CDPH booster requirement are expected to comply with it, in addition to the County's policy. The exemption process in Section C of the County Vaccine Policy shall apply to any requests for exemption from the State booster requirement.

- ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.
- b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health's Vaccine Records Guidelines and Standards.
3. If contractor seeks to send any personnel who are not fully vaccinated to work indoors at any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such personnel to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such personnel arriving onsite so that the department has sufficient time to determine whether it will approve the contractor's requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where applicable, regular testing and the use of a fit-tested N95 mask.<sup>3</sup> Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite.
4. If any of contractor's personnel are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those personnel to go onsite at a County facility without express written permission from the County.
5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

Brian C. McComas

Attorney

Name of authorized representative of  
Contractor

Title

DocuSigned by:

Brian McComas

6/20/2023

68A05497D19E443...

Signature

Date

<sup>3</sup> If contractor sends personnel who are not fully vaccinated, it is contractor's obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

