

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, (hereinafter "County") and the SAN MATEO COUNTY BAR ASSOCIATION, a corporation, (hereinafter, "Association");

WHEREAS, it is the desire of both the County and the Association to continue to provide appropriate and competent legal services to financially eligible persons accused of crime in San Mateo County, to those who are subject to the laws of the Juvenile Court, and to all those entitled to the services of court-appointed counsel in other proceedings;

WHEREAS, the Association is qualified to provide such legal services and representation through its Private Defender Program, subject to the authority of the courts to appoint counsel in certain cases;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, Association agrees to furnish such legal services through its Private Defender Program, and County agrees to pay to Association certain sums therefore upon the following terms and conditions:

## 1. SERVICES

Association will provide qualified attorneys for acceptance of appointment as counsel for all financially eligible persons entitled to court-appointed counsel as a matter of law in the Superior Court of San Mateo County<sup>1</sup>. Association will provide such representation in criminal cases, juvenile cases, mental health cases, and civil and miscellaneous cases as more fully described in Paragraph 2 of this Agreement. As part of such representation, Association shall provide attorneys to appear at all arraignment calendars, drug court calendars, treatment court calendars (formed to implement the provisions of Penal Code section 1210 *et seq.*), *Bridges Program* calendars, *Pathways* and *Veterans Court* calendars, mental health calendars, juvenile court detention calendars, 'Glenwood' and 'Girls Program' review calendars, '300' and '602' placement calendars, and as requested by the Superior Court of San Mateo County. As to the cases described in Paragraph 2 of this Agreement, Association will provide necessary and appropriate ancillary services such as investigators, experts and other forensic services, the expense of which is not otherwise provided for by

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<sup>1</sup> The San Mateo County Superior Court became unified in 1998. Prior to that time, it was divided into a court of limited jurisdiction, the "Municipal Court", and a court of general jurisdiction, the "Superior Court". To promote an ease of description and a continuity with previous agreements between the Association and the County, the "case types" defined and described in paragraph 2 of this Agreement will continue to refer to a "Municipal" and a "Superior" Court as they existed in San Mateo County prior to 1998.

law. Association shall also employ appropriate staff as may be required to fulfill its obligations under this Agreement.

Association agrees and understands that the services performed under this Agreement, whether by the Association or the attorneys providing the representation described herein, are performed as an independent Contractor and not as an employee of the County and that neither the Association nor any members or attorneys performing hereunder acquires any of the rights, privileges, powers, or advantages of County employees.

## 2. CASE TYPES

For the purposes of this Agreement, a “case” shall be defined as follows: The representation of one person on one accusatory pleading. Multiple charges against a defendant in one accusatory pleading shall not prevent designation of a matter as a single case. If a single defendant is accused in more than one accusatory pleading, each separate pleading shall constitute a separate case. If multiple defendants are charged in a single accusatory pleading, it shall be considered that there are as many cases as there are defendants. Matters involving trial competency pursuant to Penal Code section 1367 *et seq.*, certified from the Municipal Court to the Superior Court, shall be deemed a separate case in each court. Any other proceeding instituted after sentence, or after the Private Defender Program has been relieved by the Court, and requiring appointment of counsel, shall be treated as one additional case.

- a. **“TYPE A” CASE** is generally described as a single Superior Court matter involving one accusatory pleading including an indictment, information, or certification under Penal Code section 859(a). It also includes the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- b. **“TYPE B” CASE** is generally described as a single Municipal Court matter involving one complaint or accusatory pleading, alleging a misdemeanor or a felony, and shall further be defined as a single court matter involving a petition, certification, or other Municipal or Superior Court proceeding, including but not limited to the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- c. **“TYPE C” CASE** is generally described as any case initiated pursuant to the Lanterman-Petris-Short Act or the Developmental Disability laws set forth in the California Welfare and Institutions Code.
- d. **“TYPE D” CASE** is defined as a juvenile dependency case initiated on behalf of a minor as defined by California Welfare and Institutions Code section 300, in which attorneys are appointed for one or both parents and/or for the child or children pursuant to

Welfare and Institutions Code section 317. Each such appointment shall be counted as a case. When an attorney, previously appointed pursuant to Section 317 of the Welfare and Institutions Code, represents a party at a proceeding pursuant to Section 366.26 of the Welfare and Institutions Code for the purpose of: (1) the termination of parental rights, or, (2) the establishment of legal guardianship of a dependent minor, such proceeding shall be deemed a separate case. A petition for extraordinary writ review from an order of the court pursuant to Welfare and Institutions Code section 366.25 shall also be counted as a separate case.

- e. **“TYPE E” CASE** is defined as any matter in the Juvenile Court brought pursuant to the juvenile delinquency statutes of the State of California, including but not limited to those set forth in Welfare and Institutions Code section 602 *et seq.*.

If, during the term of this Agreement, the Legislature enacts any law, or a court decision is rendered which has the effect of changing the definition of a “Type” as defined in Paragraphs 2.a., 2.b., 2.c., 2.d. and 2.e. above, County and Association agree to continue to define the case as set forth in this Agreement.

In the event of a termination of the contract, and/or a determination not to contract further, Association’s responsibility for the representation of persons it has been appointed to represent in juvenile dependency cases (“Type D” cases as described in paragraph 2.d above) will not extend beyond the term of this Agreement.

### 3. **COMPENSATION**

This Agreement covers a period of two years, and provides for fixed amounts of compensation during the term of the Agreement. Both the County and the Association acknowledge uncertainty about the effect that significant increases or decreases in case appointments, the number and nature of murder and other Special Litigation (defined below in paragraph 3e) case appointments, legislation, court decisions, or actions of other agencies could have on the ability of the parties to perform under the terms of the Agreement. The County and the Association agree to meet, at the request of either party, to discuss any such concern at the earliest possible time so as to determine whether changes in the terms of the Agreement are necessary.

In consideration for Association’s performance of the obligations set forth herein, County agrees to pay Association a fixed sum each fiscal year in the amounts set forth in paragraphs 3.a. and 3.b. below.

- a. For the period commencing July 1, 2015 and ending June 30, 2016, the total amount of compensation to be paid by the County to the Association shall be \$18,502,766. This sum is due and payable as follows: \$9,251,383 will be paid on July 1, 2015; and \$9,251,383 will be paid on January 4, 2016.

- b. For the period commencing July 1, 2016 and ending June 30, 2017, the total amount of compensation to be paid by the County to the Association shall be \$18,872,822. This sum is due and payable as follows: \$9,436,411 will be paid on July 1, 2016; and \$9,436,411 will be paid on January 2, 2017.
- c. Except as specified in Paragraphs 3e, 3g, 3h and 3i below, such annual amounts of compensation shall include all services for court appointments defined under Paragraph 2, **CASE TYPES**, and for **SPECIAL LITIGATION CASES**, defined in Paragraph 3e below, made during the period of the Agreement. In addition, all cases appointed to the Private Defender Program prior to June 30, 2013, but unfinished as of July 1, 2015, are included within the terms of this Agreement. An appointment shall be deemed made within the meaning of this Agreement on the date on which the Private Defender Program is first appointed.
- d. Association shall be responsible for the complete representation of all persons for whom appointment was made under Paragraph 2 during the period of this Agreement. Complete representation shall include provision of all services under the terms of this Agreement until a new appointment is authorized by the terms of Paragraph 2. Association shall make a good faith effort to maintain a reserve fund, which, in Association's estimate, shall be adequate to provide compensation for representation, and all associated expenses, consistent with this Paragraph, in the event of a termination of the contract, and/or a determination not to contract further. The parties acknowledge that a minimum reserve level of 10 percent should be maintained by a program of this size and complexity. The parties acknowledge that the reserve that exists at the commencement of this Agreement is substantially below that level.
- e. A **SPECIAL LITIGATION CASE** is a case involving multiple charges, unusually complex issues of law or facts, novel issues of law requiring complex motions or writs, or which requires extraordinary demands upon an attorney's time and efforts and skill. Special Litigation cases are primarily cases involving a homicide, attempted homicide, or cases providing for a sentence of life imprisonment. They also include proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*), proceedings to extend the commitments of Mentally Disordered Offenders (California Penal Code section 2962 *et seq.*), and proceedings to extend the commitments of persons found Not Guilty by reason of Insanity (California Penal Code section 1026.5). Private Defender Program lawyers are

compensated on an hourly basis for such cases, at the rates set forth in the Fee Schedule established by the Association. In the event that no agreement exists between County and Association after June 30, 2015, County agrees to pay for all Special Litigation case services as are provided after June 30, 2015 by Association for Special Litigation cases appointed during the term of this Agreement or previous agreements at the rates the Association pays, and under procedures prevailing during the last year of this Agreement.

- f. The payments set forth in Paragraphs 3.a. and 3.b. above, are based on a calculation of the anticipated caseload for each type of case. The rates for each type of case, for the term of this Agreement, are set forth in detail in APPENDIX B, attached hereto and incorporated by reference as though fully set forth herein.
- g. **Exclusion for Certain Cases.** Any case that is prosecuted by the Office of the Attorney General of California, or any case in which an attorney is appointed pursuant to the provisions of *Harris v. Superior Court* (1977) 19 Cal.3d 706, 140 Cal.Rptr. 318, shall not be included within the terms of this Agreement, but may at County option, be the subject of a separate agreement for representation. Notice of any known Motion pursuant to *Harris* above, shall be immediately forwarded to the County by the Private Defender Program. Any case in which a privately retained attorney seeks court appointment through the Private Defender Program, shall not be included within the terms of this Agreement unless the Chief Defender of the Private Defender Program shall approve. In the event that the Chief Defender intends not to approve, he or she shall notify the County immediately. Without the Chief Defender's approval, the County has no obligation to compensate the Association for such cases, nor does the Association have an obligation to compensate such attorneys. Such attorneys must apply directly to the appointing court for compensation pursuant to Sections 987.2(a) and 987.3 of the California Penal Code.
- h. **Exclusion for Penal Code 987.9.** In the event that Section 987.9 of the California Penal Code (concerning funds for investigators, experts, and other ancillary services in death penalty cases) is modified, repealed or superseded during the term of this Agreement, any case expense currently reimbursable by the State of California which is transferred to the County due to such Section 987.9 being modified, repealed or superseded is not included in the terms of this Agreement, and shall be reimbursed separately and in addition thereto.



#### **4. CONSULTATION WITH COURT ABOUT ELIGIBILITY**

The Association agrees to consult with the judiciary and representatives of the County in implementing this Agreement to assure competent representation of financially eligible persons at reasonable costs. The Association agrees to cooperate with the County and with the judiciary in the determination of financial eligibility of applicants for such services, and agrees to use best efforts in implementing any adopted financial eligibility determination system. The Association will make recommendations to the judiciary with regard to court appointment of counsel in individual cases. The term “financially eligible”, as used in this Agreement, refers to persons without sufficient means to retain counsel, as defined in California Penal Code section 987 *et seq.*.

#### **5. NON-DISCRIMINATION**

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (including cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination, including the receipt of non-discriminatory services, under this Agreement. Association shall ensure full compliance with federal, state or local laws, directives and executive orders regarding non-discrimination for all service providers, employees and subcontractors under this Agreement.

Association shall comply with section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

Association shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Association’s equal employment policies shall be made available to County of San Mateo upon request.

With respect to the provision of employee benefits, Association shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

Association shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Association shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Association, on an annual basis, no less than five

days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Association or that the Association deduct from the employees regular pay the fees received for jury service.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Association to penalties, to be determined by the County Manager, including but not limited to

- i) termination of this Agreement;
- ii) disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to

- i) examine Association's employment records with respect to compliance with this Section 5;
- ii) set off all or any portion of the amount described in this Section 5 against amounts due to Association under the Agreement or any other contractor between Association and County.

With regard to performance and services provided pursuant to this agreement, Association shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Association that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Association shall provide County with a copy of the response to the Complaint when filed.

## **6. INDEMNIFICATION**

The Association shall hold harmless, defend and indemnify County, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the Association, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.



The County shall hold harmless, defend and indemnify the Association, its agents, officers and employees, from any and all liability, claims, actions, costs, damages or losses of any kind (including but not limited to injuries, or damage to person and/or property or any loss or cost) which arise out of the performance by the County, its agents, officers, and employees under this Agreement. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

7. **INSURANCE**

- a. **Liability insurance.** The Association shall take out and maintain during the life of this Agreement such Comprehensive General Liability, Motor Vehicle Liability and Professional Liability Insurance as shall protect Association while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Association operations under this Agreement, whether such operations be by Association or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Professional Liability..... \$1,000,000

After one year from the date this Agreement is first executed, the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days notice to Association. County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or the event any notice is received which indicates any required insurance

coverage will be diminished or cancelled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- b. Worker's Compensation Insurance.** The Association shall have in effect, during the entire life of the Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Association certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provision of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

## **8. MEDIATION**

Any dispute between the parties arising out of this Agreement, or any of the APPENDICES attached hereto, that the parties have been unable to resolve shall be referred to mediation. The parties will agree upon a mediator from a list of available mediators within five (5) days of being provided with a list of mediators by a Service Provider. If the parties cannot agree on a mediator within such period, then a list of three available mediators will be sent by the Service Provider to the parties. Each party may strike one name by delivering written notice to the Service Provider within five (5) days after delivery of the list of mediators. The remaining name will be the Mediator; provided that if two names are left, the Service Provider shall select which of the two shall serve as Mediator. The parties shall use their reasonable efforts to resolve this dispute during the Mediation. Mediation shall continue until the dispute is resolved or the parties decide to abandon mediation. In the event that the dispute has not been resolved within sixty (60) days after the dispute has been referred to mediation, either party shall have the right to proceed to litigation with respect to such dispute.

It is agreed by the parties that the cost of the Mediator and any associated costs resulting from mediation shall be shared equally between the parties.

It is agreed by the parties that unless otherwise expressly waived by them, any action brought to enforce any of the provisions of the Agreement for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of San Mateo, State of California.

**9. RECORDS AND AUDITS**

- a. Association shall maintain records and accounts during the course of this Agreement and for four years thereafter, and shall observe accepted accounting practices. Association shall make all statistical and financial records and data relevant to the provisions of this Agreement that are not confidential and are not protected by the attorney-client or work-product privileges, available for inspection and audit by authorized representatives of the County at any reasonable time.

Except as otherwise authorized by California Government Code sections 27707 *et seq.*, nothing herein shall be construed to permit County to examine the files of assigned counsel pertaining to actual representation of accused persons, and the laws defining the attorney-client privilege and attorney work-product will be strictly construed and observed to protect client confidentiality.

- b. Association shall furnish to the County, within 60 days of the end of each quarter of this Agreement, the names of all attorneys who represented Private Defender Program clients during that quarter.
- c. Association shall furnish to the County, within 20 days of the end of each month of each year of this Agreement, a statistical breakdown of the number of cases in each of the categories defined and described in Paragraph 2 herein, to enable the County to evaluate the performance of services under this Agreement. The Association shall also provide to the County, periodically or as appropriate, reports of fees and costs which are, or may be, subject to reimbursement by the State or Federal governments, or which may be eligible for other than County funding. Such reports may include recommended procedures for obtaining reimbursement or funding.
- d. The County shall maintain complete records of all reimbursement to the County, from whatever source, for services provided by the Association pursuant to the terms of this Agreement. County shall furnish to the Association, upon request, information regarding the amount and source of reimbursement received by the County.
- e. The Association shall have the sole responsibility for determining the fees and rates paid to Private Defender Program attorneys for work performed under the terms of this Agreement. The Association shall provide a copy of the current Fee Schedule, setting forth such fees and rates, to the County, and agrees to

provide a copy of any modifications to the Fee Schedule within 30 days of adoption by the Association.

**10. PERFORMANCE BENCHMARKS**

**a. Attorney Training.**

The Association recognizes that ongoing professional training is a necessity to keep attorneys abreast of changes and developments in the law. The Association shall provide sufficient training, whether in-house or through a qualified provider of Continuing Legal Education certified by the California State Bar Association, to keep all of its attorneys who perform work under this Agreement abreast of developments in relevant law and procedure. This subject shall be included in the annual report of the Private Defender Program to the County as described in Paragraph 10.h. below.

**b. Attorney Evaluation.**

The Chief Defender of the Private Defender Program, and/or his/her designee, shall evaluate the professional performance of Private Defender Program attorneys annually. The Association shall make available to the County the standards by which performance was measured, and evidence that such evaluations were conducted, although all evaluations are to be confidential between the Private Defender Program and the attorneys. The number of evaluations conducted and the results thereof shall be included in summary form in the annual report of the Private Defender Program to the County as described in Paragraph 10.h. below.

**c. Client Feedback.**

The Private Defender Program will have a lawyer with felony experience on duty each business day at the Private Defender Program offices during regular business hours to receive complaints about the performance of Private Defender Program lawyers directly from Private Defender Program clients. Such attorneys, known as “Officers of the Day”, will follow the written procedure for the handling of client complaints, which is attached hereto as APPENDIX C and incorporated herein by reference. Any client who indicates dissatisfaction with the decision of the Officer of the Day, will be informed of his/her right to bring the complaint to the attention of the Court in the form of a *Marsden*<sup>2</sup> hearing, since the adequacy of the performance of counsel in court-appointed cases is ultimately for the Court to determine<sup>3</sup>. The number and nature of such complaints as well as their disposition

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

<sup>3</sup> *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115.

shall be included in summary form, in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.

**d. Attorney Caseloads.**

The Association and County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.<sup>4</sup>

**e. Initial Client Meetings.**

The Association and the County agree that attorneys should conduct a client interview as soon as practicable after being appointed by the Court, in order to obtain information necessary to provide quality representation in the early stages of the case and to provide the client with information concerning the lawyer's representation and the course criminal cases take in the San Mateo County Superior Court. Such meetings may also serve to foster a relationship of trust and understanding that will ultimately inure to the client's benefit. Consequently, the Private Defender Program will devise a system to monitor the occurrence of early interviews of incarcerated clients, taking into account the factors that affect the ability of Private Defender Program lawyers to make early jail visits, including but not limited to the number of days between arraignment and the next court appearance and the speed of assignment of cases to individual lawyers. The results shall be included in the annual report of the Private Defender Program to the County, as described below in Paragraph 10.h.

**f. Community Outreach.**

The Association and the County recognize and acknowledge the significant impact that the criminal justice system has on our community, particularly in portions of our community that have been affected by crime to an extent disproportionate to population.

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<sup>4</sup> The parties acknowledge that caseload averages are not appropriate for measuring the quality of representation provided by any individual attorney; rather they are tools for evaluating staffing needs for the Private Defender Program as a whole. The Spangenberg Group, "Weighted Caseload Study for the Colorado State Public Defender", November 1996, pg.67.

The Association recognizes that the privilege of practicing law in this community also provides the lawyers of the Private Defender Program an opportunity to share their knowledge and experience with those whose lives are most likely to be disrupted by entanglement in the criminal justice system.

The Association, independently and/or in conjunction with community outreach programs of the San Mateo County Superior Court and other community agencies, will undertake to communicate to the public the mission of the Private Defender Program and its role in the criminal and juvenile justice systems. Community outreach efforts will be included in the annual report of the Private Defender Program to the County, as described in Paragraph 10.h. below.

**g. Client Survey.**

The Association will create a survey instrument and process to seek client views on the representation they received from the Private Defender Program. The results of such survey will be included in the Annual Report of the Chief Defender beginning with the Report for the FY 2013-2014.

**h. Annual Report of the Chief Defender.**

Subject to the exception articulated in Paragraph 11 hereafter, within ninety (90) days of the end of each fiscal year during the term of this Agreement, the Chief Defender of the Private Defender Program shall submit a written report to the Board of Supervisors detailing the Program's performance with respect to the items described in Paragraphs 10.a., 10.b., 10.c., 10.d., 10.e., 10.f. and 10.g. The annual report will also include the annual budget of the program, setting forth the costs of the operation of the program for the year, including fees for attorney's services, investigation and other ancillary defense services as well as the cost of administration.

The Chief Defender may request an additional 30 days within which to submit said report, and upon receipt of said written request, the County may consent to said 30 day extension, which consent shall not be unreasonably withheld.

**11. EVALUATION**

The County and the Association recognize and acknowledge that evaluation of the performance under the terms of this Agreement is a function that necessarily includes the participation of the San Mateo County Superior Court. As noted in *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115:

“The availability of a reasonable sum of money to reasonably compensate assigned counsel where required by law is the responsibility of the board of supervisors; whether indigent persons entitled to counsel at public expense are being adequately represented by reasonably compensated counsel is for the court to determine.”

The County may form a committee to evaluate ongoing performance under the terms of this Agreement, at any time during the period of this Agreement and no less than every 10 years, that shall include members of the judiciary, members of the Bar Association who are not actively participating as Private Defender Program attorneys, and may include other interested persons as determined by the County, to make such reports and recommendations as may be appropriate and of assistance to the parties hereto.

In any year in which such a performance review is conducted it will be in lieu of the requirement of the Annual Report described in Paragraph 10.h.

The County and the Association agree that, upon the submission of any report and/or recommendation by the Committee, either party may require the other party to meet and confer regarding any changes to the Private Defender Program or amendments to this Agreement that may be warranted based on such report or recommendations.

**12. WITNESS, INTERPRETER AND TRANSLATOR FEES.**

Payment of witness fees shall be governed by the provisions of Sections 1329 and 1334.3 of the Penal Code, by Sections 68093 and 68098 of the Government Code, and such other statutory provisions as may be applicable; and the payment of interpreter and translator fees shall be governed by Section 68092 of the Government Code and Sections 731 and 752 of the Evidence Code.

**13. COURT-REQUESTED INVESTIGATIVE SERVICES.**

Upon request of the Court and Association acceptance, investigative and ancillary defense services shall be provided on behalf of a party before the court in a proceeding where such party has not received appointed counsel. Any expense incurred for services rendered under the provisions of this paragraph during the period of this Agreement may be accounted for as a Special Litigation case, and is included within the total compensation paid by County to Association.

**14. TERM OF AGREEMENT.**

The term of this Agreement shall be from July 1, 2015 through June 30, 2017.

**15. USE OF CONTRACT REVENUES.**

Association agrees that all funds provided to it hereunder will be used only to enable Association to meet its responsibilities as herein defined.

**16. SUCCESSION PLANNING.**

The Association shall appoint a Chief Defender of the Private Defender Program. The position of Chief Defender is currently filled by John Digiacinto. Should John Digiacinto retire, resign or otherwise leave his current post as the Chief Defender, the Association agrees to notify the County of such change immediately. The Association shall further meet and confer with the County regarding the selection process for the position of Chief Defender.

**17. TIME** is of the essence of this Agreement.

**18. ENTIRE CONTRACT.**

This is the entire contract between the parties, and no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Association and the County. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

**19. AUTHORIZED AGENT; NOTICES.**

The County Manager's Office shall be County's agent for the purpose of this Agreement. All notices provided for hereunder shall be addressed and delivered to the County Manager's Office of the County of San Mateo.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement for the provision of services in connection with the Private Defender Program, effective as of July 1, 2015.

COUNTY OF SAN MATEO

BY \_\_\_\_\_  
President, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of said Board

SAN MATEO COUNTY BAR ASSOCIATION

By \_\_\_\_\_  
President

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

***FY 2015-2017***

## ***APPENDIX A***

**“TYPE A” CASES** also include appeals to the Appellate Department of the Superior Court of San Mateo County; writs filed on behalf of defendants (specifically excluding writs of *habeas corpus* filed on behalf of prisoners of the State of California pursuant to the provisions of California Penal Code section 4750); and all quasi-criminal and civil proceedings in either the Municipal or Superior Court which are not specifically mentioned in subsections 2b, 2c, 2d, or 2e herein, but which are proceedings in which the law requires that counsel be provided at public expense, including but not limited to contempt proceedings (California Code of Civil Procedure sections 1209 *et seq.*); proceedings to terminate parental rights (California Family Code sections 7802, 7860-7864 *et seq.*); probate conservatorship proceedings pursuant to California Probate Code sections 1471 and 1852; paternity, support, and adoption proceedings, proceedings pursuant to the provisions of the Servicemembers Civil Relief Act, and proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*).

For the first time, this Agreement includes the cost of representation of those felony offenders sentenced to life imprisonment pursuant to the provisions of California’s Three Strikes law who may be affected by the provisions of “Proposition 36” approved by the voters in the November 2012 California ballot. Since this Initiative statute has just been enacted, neither party is able to provide a reliable estimate of the cost of representation in such cases. Accordingly, the costs of these Special Litigation cases will be monitored to determine what if any effect they may have on the ability of the Association to perform under the terms of the Agreement pursuant to Paragraph 3 (Compensation) of this contract.

**“TYPE B” CASES** also include proceedings to revoke or modify probation; matters involving competency and insanity pleas certified from the Municipal Court to the Superior Court; matters arising after the suspension of criminal proceedings pursuant to the provisions of the Welfare and Institutions Code, or after commitment to the California Rehabilitation Center; representation at lineups; representation of witnesses; and any other appearances or representations by assigned attorneys specifically requested or ratified by a Judge of the Superior Court of San Mateo County, and not included in any other provisions of this AGREEMENT, where the law requires that counsel be provided at public expense, whether or not such matter is filed in court.

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

**FY 2015-2017**

## ***APPENDIX A-1***

This *Appendix* amends the *AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION*, made and entered into on the 4<sup>th</sup> day of June, 2013, for the provision of services by the Association's Private Defender Program (Agreement).

Pursuant to Paragraph 3 of the Original Agreement and at the request of the Association, the parties met and discussed the inability of the Association to complete its obligations under the contract for the FYE June 30, 2015 at the compensation amount set forth in the Original Agreement. This inability is the direct result of the appointment of the Private Defender Program in the criminal cases *People v. Marvin Ware, et al, San Mateo County Superior Court Nos. SC080432, SC080433, and SC080434*.

As a result of the most massive criminal investigation in the history of San Mateo County, charges were filed pursuant to three separate but interrelated indictments against 16 individuals, nine of whom are accused of a series of Special Circumstance murders. Also alleged are a variety of other serious and violent felonies, including attempted murder, attempted robbery and dissuasion of a witness, all alleged to be in furtherance of the interests of three alleged local street gangs. The amount of evidence that has been collected is enormous. The number of hours that Private Defender Program lawyers, investigators and expert witnesses will necessarily spend in fulfilling their duties to their clients is, at this point in time, incalculable.

In order to enable the Association to fulfill its obligations under the terms of the Original Agreement in light of the appointment of the Private Defender Program in the above-referenced Superior Court cases, the Original Agreement is hereby amended to reflect that the County will pay, in addition to the compensation set forth in the Original Agreement, the attorney and investigator fees and related costs of these specific cases a sum not to exceed \$5,000,000 during the term of the current Agreement. This sum is subject to change in future agreements. Subsequent agreements will include the following terms and conditions:

1. All funds paid to the Association pursuant to this amendment will be spent exclusively on the fees and costs as defined in the Original Agreement incurred by the Association for the defense of these specific cases;
2. Should the Private Defender Program's obligations concluded for any reason while there is an unexpended balance of these funds, that balance will be refunded to the County;

3. Payments by the County to reimburse the Association for the fees and costs incurred in the defense of these cases will be made in increments of approximately \$500,000. Each incremental payment will be made as the fees and costs incurred by the Association have reached that approximate amount. The Association will send an electronically transmitted detailed invoice in that amount to the County on a monthly basis, submitted between the 26<sup>th</sup> and the 29<sup>th</sup> of each month. The detailed invoice shall reflect a breakdown of the following information: amount billed for attorney's fees; amount billed for expert costs; amount billed for investigation costs; and amount billed for miscellaneous costs. The County will make payment thereof within 30 calendar days of receipt of detailed invoice.
4. In addition to Paragraph 9.a. of the Original Agreement, the County will on a quarterly basis compare the actual bills to the categories of expenses submitted on a monthly basis to ensure accuracy in expense reported. The Association will fully cooperate with providing any and all information requested for review by the County pursuant to Paragraph 9.a. of the Original Agreement.
5. Because the initial fees and costs of these cases, incurred from April 2014 through October 2014, have already exceeded the sum of \$500,000, the first incremental payment will be credited toward those already expended funds upon the submission of a detailed invoice. The unpaid balance will be reimbursed as part of the next incremental payment. This first incremental payment of \$500,000 shall be due within 10 calendar days of the approval of this amended Agreement.
6. The provisions of Paragraph 3.b. of the Original Agreement, setting forth the dates payments are due on the original contract price, will not apply to the sums to be paid under the terms of this Appendix;
7. Notice of sums due to be paid under the terms of this Appendix may be transmitted by electronic mail;
8. All of the remaining provisions of the Original Agreement shall remain in full force and effect.

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE  
SAN MATEO COUNTY BAR ASSOCIATION**

***FY 2015-2017***

***APPENDIX B***

**CALCULATION OF CASE COSTS BY TYPE AND YEAR**

a. For the period commencing July 1, 2015 and ending June 30, 2016

|                            |          |
|----------------------------|----------|
| Type A Case (Paragraph 2a) | \$ 1,474 |
| Type B Case (Paragraph 2b) | \$ 646   |
| Type C Case (Paragraph 2c) | \$ 726   |
| Type D Case (Paragraph 2d) | \$ 1,079 |
| Type E Case (Paragraph 2e) | \$ 317   |

b. For the period commencing July 1, 2016 and ending June 30, 2017:

|                            |          |
|----------------------------|----------|
| Type A Case (Paragraph 2a) | \$ 1,518 |
| Type B Case (Paragraph 2b) | \$ 665   |
| Type C Case (Paragraph 2c) | \$ 748   |
| Type D Case (Paragraph 2d) | \$ 1,111 |
| Type E Case (Paragraph 2e) | \$ 327   |

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

***FY 2015-2017***

## ***APPENDIX C***

### **COMPLAINT PROCEDURE**

1/ The Private Defender Program (hereinafter “PDP”) will have a felony-qualified lawyer on duty each day during regular business hours to field complaints about PDP lawyers’ performance directly from PDP clients.

2/ This “Officer of the Day” (OD) will log receipt of the complaint call, a brief description of the complaint, and what if any resolution was reached. Where appropriate, the OD will review Court records and will contact the attorney involved to investigate the merit of a client’s complaint.

3/ The OD is empowered to change an attorney at the request of a client if, in his or her judgment, the assigned attorney’s performance to date has been deficient, and that deficiency has eroded the client’s confidence in his or her attorney’s representation.

The OD will bring any instance of such a performance-based attorney reassignment to the attention of the Chief Defender or Assistant Chief Defender. The Chief Defender or Assistant Chief Defender will then contact the lawyer from whom the case was reassigned to ascertain their perspective of the facts surrounding his or her representation of the client.

4/ The OD is also authorized to replace an attorney at the client’s request, notwithstanding the adequacy of his or her representation, where the OD is of the view that the interests of justice would best be served by such a substitution of assigned counsel.

5/ Where the OD decides not to honor the client’s request for a change of lawyers, he or she will inform the client of the right to present his or her argument to the trial court pursuant to the California Supreme Court’s 1970 decision *People v. Marsden*.<sup>5</sup>

6/ When a spouse or other member of the client’s immediate family calls to complain about the performance of a PDP attorney, the caller should be encouraged to notify the client that he or she should contact the PDP office directly.

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<sup>5</sup> *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

7/ When a complaint is called to the PDP by a person who purports to be a representative of a religious, civil rights or other client advocacy organization, the OD should invite the caller to reduce his or her understanding of the substance of the client's complaint to writing, and to direct it to the Chief Defender or Assistant Chief Defender of the PDP. Written acknowledgment of receipt of such a letter will be made by the PDP administration. Such a caller should be encouraged to notify the client that he or she should contact the PDP office directly.

8/ Officers of the Day are also obliged to discuss with PDP administrators instances where multiple complaints have been lodged against an individual attorney.

[Note: In no instance will any part of a client's case that is protected by the attorney-client or other recognized legal privilege be discussed with anyone other than the client.]