

AGREEMENT
INDIGENT DEFENSE SERVICES
MISDEMEANOR

THIS AGREEMENT is made and entered into on _____, 2023, by and between JOHN UMSCHIED, hereinafter "Attorney", and the County of Kings, hereinafter "County".

WITNESSETH:

WHEREAS, the right of all persons to be represented by counsel in misdemeanor and felony criminal prosecutions is guaranteed by the Constitution of the United States and the Constitution of the State of California; and

WHEREAS, the cost and expenses of counsel in the representation of indigent defendants, hereinafter "Clients", is a proper and lawful charge upon the County; and

WHEREAS, it is in the public interest that County contract with private counsel to render the usual and customary legal services for the defense of the accused; and

WHEREAS, Attorney is ready, willing and able to provide indigent legal services to Clients as assigned.

NOW, THEREFORE, the Parties agree as follows:

1. TERM

This Agreement shall take effect on December 1, 2023, and shall remain in effect through June 30, 2024, unless extended by mutual written consent or terminated earlier as set forth in Section 8 below.

2. SCOPE OF ATTORNEY SERVICES

A. General. Attorney shall represent Clients whom the Court has deemed indigent, pursuant to assignment to one or more Court departments as determined by the County's Contract Administrator, hereinafter "Contract Administrator" and in accordance with the provisions of this Agreement. Attorney's duties include, but are not limited to, those set forth in Exhibit A.

B. Pending Cases; Transition. At the commencement of this Agreement, County shall cooperate fully with Attorney to cause the orderly transition of legal services from Attorney's predecessor to Attorney. Upon termination of this Agreement, Attorney shall cooperate fully with County, Contract Administrator, and with any other

persons as may be designated by County to succeed Attorney to cause the orderly transition of legal services from Attorney to his or her successor. The cooperation specified in this subsection includes, but is not limited to, the releasing of such files, papers and records as may be required to carry out the provisions of this Agreement and any subsequent agreement with a successor attorney and to ensure the continued adequate legal representation of Clients.

If Attorney has continuing obligations regarding any Clients assigned by the Court prior to the commencement of Attorney's duties pursuant to this Agreement, Attorney shall continue to represent such Clients under the terms of this Agreement.

C. Rotating Appointments. Attorney expressly acknowledges that County has contracted with other attorneys for the same or similar contractual responsibilities, hereinafter "Other Attorneys". Appointments shall be made on a rotating basis to Attorney and to Other Attorneys who may have the same or similar contractual responsibilities.

D. Cooperative Efforts. The Parties intend that through the cooperative efforts of Attorney with Other Attorneys and with the Contract Administrator that a comprehensive representation of the indigent system of Clients will be provided and that all necessary court appearances in connection therewith will be made in a timely and efficient manner. Attorney shall cooperate with Other Attorneys to provide conflict coverage for each other which may occur due to conflict of interest or other appropriate absence. No additional compensation shall be charged to County by Attorney for coverage for Other Attorneys. In order to facilitate court coverage, Attorney will obtain and carry a cell phone or other such device and provide the Court, County, and Contract Administrator with the number to devices.

E. Conflicts; Procedure and Duties. Attorney shall establish a system for screening new appointments upon intake to discover potential conflicts of interest. In the event Attorney has a conflict preventing representation of any Client pursuant to this Agreement, Attorney shall advise the Court and the Contract Administrator of the conflict and to assist in the transfer of the case to Other Attorney to provide indigent legal services of the same type. Non-contracting counsel shall not be appointed to provide indigent legal services unless and until all Other Attorneys who have contracted to provide services of the type in question have each individually declared a conflict, or have otherwise been disqualified from providing the legal services.

F. Continuation of Services After Termination. Unless otherwise notified by County or by mutual agreement, upon termination of this Agreement for any reason, Attorney shall nevertheless continue to represent existing Clients through finality of the trial court phase. Services shall be provided in such cases in the same manner as provided in this Agreement. Compensation for such services shall be at the prevailing

rate as established by the Court.

3. MINIMUM PROFESSIONAL QUALIFICATIONS

Attorney represents that he or she is an active member of the California State Bar in good standing and has the necessary professional qualifications and abilities to provide the indigent legal services as required by this Agreement. Attorney represents that he or she will comply with all federal, state and local statutes, regulations and ordinances regarding such professional qualifications.

4. STANDARDS OF REPRESENTATION

Attorney shall meet the legal standards required for providing competent representation in California pursuant to California and Federal law consistent with constitutional and professional standards including the California Rules of Professional Conduct and the Business and Professions Code.

5. COMPENSATION

A. Rate. Attorney shall be compensated in the amount of \$47,742.66 in full satisfaction for all services rendered by Attorney under this Agreement. In the event that Attorney commences his or her duties under this Agreement, or this Agreement is terminated for any reason, on other than a monthly or annual anniversary date, the compensation shall be prorated based upon a thirty (30) day month.

B. Payment. Compensation shall be paid in nine (7) equal monthly payments of \$6,820.38 on the tenth (10th) day of each month for services rendered in the preceding month.

Attorney shall record the time and activities reflecting legal services rendered in increments of at least one-quarter (1/4) of an hour, indicating the court's case number, brief activity narrative, date of work, hours spent, courtroom, and judge. The County shall pay the contractor in arrears, up to the maximum amount provided in the compensation mentioned above. The contractor shall invoice the county and include a description of services rendered, to whom, and the dates of services. All invoices must be submitted electronically at kcdoa@co.kings.ca.us. Invoices must be submitted by the first of the following month.

Attorney is under no obligation to submit any attorney/client privileged information. Attorney may use the time record form attached this Agreement as **Exhibit B** to satisfy this section.

In accordance with Sections 14 and 15, Attorney shall make such records available to County in any proceedings to recover such costs from whoever may be obligated to reimburse County pursuant but not limited to the provisions of Sections 987.4, 987.6, 987.8, 4750, and 4751 of the Penal Code and Government Code section 27712.

C. Non-Appropriation. Notwithstanding anything to the contrary herein, County shall not be liable to pay Attorney any amounts whatsoever under this Agreement, and Attorney shall have no obligation to provide service hereunder, unless and until the Board of Supervisors of Kings County budgets and appropriates funds for such purpose. Both Parties understand, acknowledge and agree that during the term of this Agreement due to State and County Budget issues it is possible that the Board of Supervisors may be required to amend the County Budget and reduce the amount budgeted and appropriated for the purpose of paying Attorney hereunder, and consequently the amount of compensation due Attorney hereunder may be reduced accordingly by County.

D. Closure of Courts. Both Parties understand, acknowledge, and agree that due to State budget issues it is possible that the Court may close its operations either for portions of days, or for an entire day or days. If at any time during the term of this Agreement, the Court does close for portions of days or for an entire day or days, then the compensation provided may be subject to appropriate reduction. Such percentage reduction shall be calculated by dividing the number of hours by which the Court's operation is reduced by the number of hours the Court was open prior to the partial closure.

E. Compensation is Sole Source of Income For Services. Attorney shall not accept directly or indirectly anything of value as consideration or as a gift for services rendered pursuant to this Agreement, except for compensation under this Agreement from County. Attorney shall neither charge nor receive any fee or payment directly or indirectly from any Client or Client's relative, employer, friend, employee, or agent for services rendered pursuant to this Agreement.

6. ADMINISTRATION OF AGREEMENT

County shall designate Contract Administrator who shall ensure the enforcement of the terms of this Agreement and coordinate the duties of Attorney with that of Other Attorneys. Attorney expressly agrees to comply with any and all courtroom assignments and coordination of duties as determined by the Contract Administrator.

Contract Administrator at the time of execution of this Agreement is Shani Jenkins, P.O. Box 1464 Visalia, CA 93279, California 93230, (559) 747-9540.

If County at any time during the term of this Agreement designates another person

as Contract Administrator, County shall immediately notify Attorney in writing of the replacement Contract Administrator's name and contact information.

7. INDEPENDENT CONTRACTOR

Attorney is an independent contractor and not an agent, officer, or employee of County, Contract Administrator, or of any Other Attorney with whom County has contracted to provide indigent legal services. The Parties mutually understand that this Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association. Attorney shall have no claim against County for employee rights or benefits.

Any persons employed by Attorney shall be under Attorney's exclusive direction, supervision, and control. Attorney has exclusive responsibility for the acts of Attorney's employees and agents as they relate to the services to be provided under this Agreement. Attorney's employees and agents shall not be entitled to any rights or privileges of employees of County and shall not be considered in any manner to be officers, agents, or employees of the County or the Contract Administrator.

8. TERMINATION

A. No Cause. Either Party may without cause terminate this Agreement by giving ninety (90) days prior written notice of termination to the other Party.

B. Cause. Either Party may terminate this Agreement as a result of a material breach. The Non-defaulting Party shall provide written notice to the other Party, declaring a default in the performance of this Agreement. Such notice shall specify with particularity the basis of such default. Provided the default is not a violation of Section 4 above and is remediable, the Defaulting Party may be allowed to undertake a cure or propose a cure to such default within ten (10) working days after notice and shall proceed diligently to correct the default to the Non-defaulting Party's satisfaction. Should 1) the default be a violation of Section 4; 2) the default not be remediable; or 3) the cure can not be accomplished or undertaken in good faith, the Non-defaulting Party may elect to terminate this Agreement, which termination shall be effective and final upon ten (10) days prior written notice.

C. Failure to Perform. County also reserves the right to terminate this Agreement in the event that Attorney is unable to perform services under this Agreement due to the failure or inability of the Court to regularly appoint Attorney to represent Clients. Such termination shall be effective upon ten (10) days prior written notice.

9. LIMITED PRIVATE PRACTICE PERMISSIBLE

Attorney shall be available for assignment of Clients at all times in which the Court is in session.

Attorney shall not be prohibited from engaging in private civil or criminal legal work providing that no private case shall be knowingly accepted or work done in connection therewith which would cause a conflict of interest to arise. Attorney shall not allow any legal work or work of any kind to interfere with the quality, timeliness, or efficient rendering of legal services under this Agreement.

10. TIME OFF AND SUBSTITUTE ATTORNEYS

Attorney may take up to ten (10) days off per fiscal year (July-June) without charge or set-off provided that Attorney makes timely arrangements with substitute counsel to perform the services for Attorney during the absence and has coordinated the substitution in a timely manner with Contract Administrator. Substitute counsel chosen by Attorney shall meet the same standards and comply with the provisions of this Agreement and shall be approved by the Court for appearances before the Court as temporary substitute counsel.

For the period from December 1, 2023, through June 30, 2024, County will pay substitute counsel \$245.30 for each actual day worked by substitute counsel, not to exceed a total \$2,453.00 for the ten (10) days. Both Attorney and the substitute counsel shall sign a statement verifying the substitution. The substitute counsel shall set forth the claimed days worked, signed under penalty of perjury, and turn in the claim to Contract Administrator at the end of the month worked or at the end of the following month. The days off shall be whole days but need not be consecutive.

11. COSTS AND EXPENSES; INVESTIGATION AND EXPERT ASSISTANCE

Attorney shall be solely responsible for all costs and expenses incurred in performing legal services pursuant to this Agreement except for court reporter fees, court interpreter fees, investigator fees, filing fees, transcript fees, and witness fees paid out of the Court's budget.

Attorney may obtain such expert assistance, interpreters, and investigators after obtaining approval and appointment by the Court. Attorney, in making the request for appointment, shall present to the Court a detailed statement outlining the reason such an appointment is necessary as well as a statement of the cost that will be incurred by County in approving such an appointment. If County establishes a contract for investigative services, court interpreter services, or other professional services, Attorney

will utilize the services of said contracted professionals in the performance of his or her legal services under this Agreement.

12. INDEMNIFICATION

Attorney shall indemnify, defend, and hold harmless County, its agents, officers, and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with Attorney's operations or services provided hereunder, including, but not limited to, any workers' compensation claims, suits, liability, or expense, arising from or connected with services performed on behalf of Attorney by any person pursuant to this Agreement.

Attorney shall also indemnify, defend, and hold harmless the County, its elected members of the Board of Supervisors, its agents, officers, and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any professional error, omission or negligent act of Attorney.

13. INSURANCE

Attorney shall obtain and maintain insurance at all times while performing services hereunder, and demonstrate proof of insurance to the County Risk Manager, with the following terms and limits:

A. General liability insurance to cover Attorney's office space to the extent that Attorney maintains an office in an amount of not less than one hundred thousand/three hundred thousand dollars (\$100,000/300,000) combined single limit, which policy shall name County as an additional insured;

B. Workers' compensation if and as required by law; and

C. Comprehensive Auto Liability insurance enforced for all owned and non-owned vehicles with a combined single limit of at least one hundred thousand/three hundred thousand dollars (\$100,000/300,000) per occurrence.

D. Professional liability insurance in an amount not less than one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) annual aggregate limit covering Attorney's wrongful acts, errors and omissions.

The cost of obtaining such insurance shall be borne by Attorney. All policies shall be endorsed to state that coverage shall not be canceled, reduced in coverage or limits,

except after thirty (30) days prior written notice being given to County.

14. FINANCIAL ELIGIBILITY DETERMINATION

Determination of financial eligibility or indigency evaluation is the sole responsibility of the Court. Non-privileged information subsequently obtained by Attorney which suggests that a Client is not eligible for appointment of counsel shall be provided to the Court. At the request of the Court, Attorney shall attend, as a witness, any hearing regarding Client's ability to reimburse County for the value of Attorney's services. Attorney's participation in such a hearing remains subject to appropriate claims of privilege. Upon commencement of representation, Attorney shall advise Client of the requirements of this section.

15. RETENTION OF FILES AND AUDITS

Attorney shall maintain all files and time records for each case in a safe and, if necessary, confidential storage consistent with applicable laws, regulations and ethical responsibilities. Attorney shall give County access to non-privileged portions of such files, whether in hard copy or electronic form, necessary for administration of this Agreement, such as time records, costs of litigation, court orders for appointment of counsel, subcontracts, books, ledgers, and payment of conflict counsel, or any other documents pertaining to administering this Agreement, for a period of at least five (5) years. Attorney may wish to obtain direction from Client in written form prior to commencement of representation regarding the ultimate disposition of the file. If such disposition includes authorization to destroy, Attorney must, at the very least, retain time records and documents that pertain to contract administration for a period of five (5) years.

16. NO ATTORNEY-CLIENT RELATIONSHIP

This Agreement does not create the relationship of attorney and client between Attorney and County.

17. ASSIGNMENT; SUBCONTRACTING

This Agreement is personal to Attorney and is not assignable in whole or in part by Attorney.

Services to be provided by Attorney may be subcontracted with notice to the County and the permission of the Contract Administrator.

18. ENTIRE AGREEMENT

This Agreement, including Exhibit A, shall constitute the entire and sole agreement between the Parties and shall supersede any prior agreements entered into by the Parties. The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

19. SEVERABILITY

If any of the provisions of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

20. WAIVER

No waiver of a breach of any provision of this Agreement shall constitute a waiver of a breach of any other provision, or another breach of the same provision. Failure of County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

21. MODIFICATION OF AGREEMENT

This Agreement may be modified only by a written amendment signed by the parties.

22. NOTICES

Any notices required under this agreement shall be made by first-class mail. Notice shall be deemed to have been given three (3) days after deposit in the mail. Notices shall be given to the parties at the following addresses:

To Attorney:

John Umscheid
221 W Lacey Blvd.
Hanford, CA 93230
559.816.6164

To the County:

Kyria Martinez, County Administrative Officer
Kings County Government Center
1400 W. Lacey Blvd.
Hanford, CA 93230
559.852.2375

With a Copy To:

Diane Freeman, County Counsel
Kings County Government Center
1400 W. Lacey Blvd.
Hanford, CA 93230
559.852.2445

Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the Party to which its signature represents.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first written above.

COUNTY OF KINGS

ATTORNEY

By: _____
RICHARD VALLE, CHAIRMAN
Kings County Board of Supervisors

By:  _____
JOHN UMSCHIED

RISK MANAGEMENT APPROVED AS TO
INSURANCE

By:  11/21/2023
Sarah Poots, Risk Manager

APPROVED AS TO FORM AND CONTENT:

By:  _____
Diane Freeman, County Counsel

EXHIBIT "A"

**DUTIES RELATING TO REPRESENTATION OF
INDIGENTS ACCUSED OF COMMISSION OF MISDEMEANORS**

1. Misdemeanor complaints and/or allegations of violation of probation arising out of alleged criminal offenses commencing from initial arraignment through final disposition.
2. Any contempt hearings.
3. Pretrial writs related to cases referred to in subsection 1 above.
4. Post-trial notices of extraordinary writs and appeals related to cases referred to in subsection 1 above.
5. Any other action related to subsections 1, 2, 3, or 4 in which the appointment of an attorney may be required by law.

