

## AGREEMENT

 COPY

THIS AGREEMENT, made and entered into by and between the County of Sonoma, ("County") and Harry A. Allen ("Attorney").

WITNESSETH:

WHEREAS, the United States Constitution and other provisions of law require the appointment of qualified criminal trial counsel, other than the Public Defender, in cases involving multiple criminal defendants where public defender representation would result in a conflict of the interests of those defendants or in other situations where a conflict of interest may exist, or where the public defender is unavailable; and

WHEREAS, the expenses involved in assigning counsel in such conflict situations on a case by case basis are unpredictable and disruptive of orderly budget procedures; and

WHEREAS, the orderly administration of justice in the Court requires the timely availability of qualified counsel in these cases; and

WHEREAS, in accordance with Section 987.2 of the Penal Code, the Board of Supervisors of the County of Sonoma hereby enters into this agreement for the above-mentioned services; and

WHEREAS, the County has found and determined that Attorney and the Subcontracting Attorneys, as described below, are especially qualified as trial counsel in all varieties of criminal proceedings;

NOW, THEREFORE, IN CONSIDERATION OF the promises and of the covenants and agreements below, it is agreed:

### Effective Date and Assignments.

1. Effective as of July 1, 2007, and continuing as provided in paragraph 10, below, or until terminated as herein provided or by cessation of funding by the Board of Supervisors, Attorney shall accept all assignments from the Court, including the Juvenile Court, to act as counsel to defendants in those cases described in Section 987.2 of the Penal Code, including cases in which the public defender is unavailable, but excluding Keenan Counsel, sexually violent predator civil cases, and appeals save those to Superior Court's Appellate Department.

## Contract Amount

2. County shall authorize from budgeted funds the payment to Attorney of the sum of \$2,053,943.00 for the fiscal year 2007-2008 (July 1, 2007 through June 30, 2008), payable in equal monthly installments of \$171,161.92 in arrears upon the presentation by Attorney of appropriate claims on a claim form approved by the Auditor of the County of Sonoma. Any partial month's payment shall be determined by multiplying the total amount of one month's payment, by a fraction, the numerator of which is the number of days that this contract is in effect during the respective month and the denominator of which is the total number of days in said month. This consideration shall include all overhead and ordinary expenses associated with representing defendants as assigned counsel, including, without limitation, expenses for investigative services and expert witnesses.

## Attorney's Obligations.

3. It is expressly understood by the parties to this Agreement that the County is purchasing (1) the individual expert personal services of Attorney; (2) his expertise in the administration of this contract as it relates to the retention of attorneys with similar expert personal services for employment in the various cases assigned to conflict defense counsel ("Subcontracting Attorneys") and (3) Attorney's actual retention and payment for services, via separate independent agreements, of Subcontracting Attorneys with the necessary legal experience in the areas pertinent to this contract, for the representation of criminal defendants. It is understood that all Subcontracting Attorneys must be approved for representation under this contract by the Criminal Division of the Sonoma County Superior Court. Attorney's relationship (or retained counsel, via the independent contracts arising from this contract) under this contract to criminal defendants assigned to him/her shall be that of attorney and client. As to Subcontracting Attorneys, their initial assignment to the list of attorneys available for conflict counsel representation must be:

- authorized in advance by the Criminal Division of the Sonoma County Superior Court; and
- the Subcontracting Attorney must agree in writing to perform the terms and conditions of this Agreement applicable to Attorney's performance.

Upon the death of Attorney, or upon his disability or inability to accept assigned cases or to continue as assigned counsel in cases previously assigned; or Attorney's inability to assign to Subcontracting Attorneys, via the separate independent agreements, the acceptance of assigned cases, this Agreement shall terminate, regardless of any prior assignment to a Subcontracting Attorney; provided, in such event, the terms and

conditions of this Agreement shall apply directly to any Subcontracting Attorney performing services prior to the lawful substitution of counsel and in accordance with rules of professional conduct and applicable law related thereto. The terms "disability" and "inability" as used in this Agreement do not include Attorney's refusal to accept assigned cases or refusal to perform as assigned counsel in previously assigned cases on grounds of conflict of interest among criminal defendants assigned or proposed to be assigned.

#### Capital Cases.

4. The parties to this Agreement acknowledge that the defense of conflicts arising in special circumstances (capital) cases require time and services extraordinary to regularly assigned conflict cases, and that in addition to the compensation provided by this Agreement in Section 2, Attorney or Subcontracting Attorney shall be compensated for the reasonable value of services the cost of which are incurred by virtue of defending such cases under this Agreement, requiring Attorney or Subcontracting Attorney to delegate such duties and obligations as set forth in Section 3. Such additional cost shall consist of the reasonable sum for services provided by such delegation of duties and obligation as provided in Section 3, in addition to any funds authorized by the court under Penal Code Section 987.9.

#### Change of Venue.

5. In those cases in which a change of venue is required, additional compensation shall be sought by the Attorney for any time and services necessitated by reason of the change of venue over and above the compensation provided for in Section 2 of this Agreement. Such compensation shall consist of a reasonable sum for expenses related to the change of venue as well as costs for necessary delegation of the duties and responsibilities as set forth in this Agreement in accordance with Section 3.

#### Per Diem.

6. If Attorney or Subcontracting Attorney is required pursuant to this Agreement to conduct a felony trial, Attorney or Subcontracting Attorney shall receive a \$260.00 per diem, beginning on the 6<sup>th</sup> day of trial for fiscal year 2007-2008, \$270.00 for fiscal year 2008-2009, and \$280 for fiscal year 2009-2010.

#### Levels of Coverage.

7. Attorney agrees that for the purposes of fulfilling the terms of this

Agreement, the Attorney will retain the services, via independent contracts, to insure conflict coverage for felonies up to ten (10) levels, for misdemeanors up to nine (9) levels, civil contempts up to two (2) levels and for juvenile matters up to nine (9) levels. These levels will ensure that only in the most unusual circumstances will there be a conflict under this contract.

Attorney agrees to provide a complete list of retained counsel and a copy of each of their individual contracts to the County. Attorney agrees that he will retain the services of at least five (5) Subcontracting Attorneys that qualify to take capital cases to trial.

#### Language Required in Subcontracts.

8. Attorney agrees to add language to each subcontract that requires each Subcontracting Attorney to (I) use their best efforts to tell defendants to go to Court Collections and pay the registration fee and (ii) at the end of case, to remind the Court of its ability to award fees, under Penal Code §987.8. Attorney agrees to include language in his contracts with Subcontracting Attorneys that provide:

“Subcontract Attorney agrees that if at any time during the term of the subcontract, he/she has a privately retained criminal defendant who has a case pending in the courts of this County and who can no longer afford Attorney’s services, Attorney can: (1) Ask the court to relieve Attorney and appoint the public defender to represent the defendant; or (2) if the public defender is unavailable, ask the court to relieve Attorney and appoint the regularly assigned conflict attorney to represent the defendant; or (3) ask the court to appoint Attorney under the contract to represent the defendant; or (4) continue to represent the defendant without making any requests of the court; but in no event shall Attorney ask the court to appoint Attorney to represent the defendant independently outside the contract to be paid outside the contract. Attorney agrees that this clause does not prevent Attorney from being retained to represent clients at their expense, nor does it prevent Attorney from asking the court to appoint Attorney to represent the defendant if the public defender is not available. It only prevents Attorney from being paid at public expense outside the contract to represent an indigent client.”

“Attorney, agrees to disclose, upon signing this contract, the defendant’s name and case number of any case in which the attorney currently represents a defendant by court appointment, at public expense, outside the contract, regardless of when that appointment was made, whether by ‘Harris’ appointment or otherwise, and agrees that if such disclosure is not given when the contract is signed, no requests to the County for payment outside the contract for work done after the date the contract

is signed will be honored.”

“Nothing in this paragraph shall prevent the Court from appointing Attorney to represent an indigent defendant when required by law.”

Attorney Is Independent Contractor/Termination of Agreement.

9. Attorney is retained as independent contractor and nothing contained in this Agreement shall be construed as creating in Attorney, any of the rights, powers, privileges or immunities of an employee of the County of Sonoma, or of the Court, including any right of indemnification provided by Government Code Section 995 et seq., or other legal provisions. Attorney understands and agrees Attorney is not entitled to any substantive or procedural protections or rights created by the Civil Service Ordinance or Rules of the judicial branch or of Sonoma County.

Attorney expressly waives and disclaims any right to pre-termination or post-termination notice or hearing. The parties agree that the term of service is solely for the term of this contract and is not for continuous nor permanent employment. Attorney acknowledges, understands, agrees and warrants that no document, handbook, policy, resolution or oral or written representation, of any nature whatsoever, shall be effective or construed to be effective to extend the term hereof or otherwise grant Attorney any right or claim to employment with the County or the Court. This warranty has been relied upon as a material inducement to enter into this Agreement and, in the absence thereof, the parties would not have entered into this Agreement.

The parties intend that Attorney, in performing the services hereinafter specified, shall act as independent contractor and shall have control of the work and the manner in which it is performed, consistent with Rules of Professional Responsibility and applicable law related to attorney's representation of an assigned defendant. In the event the County exercises the right to terminate this Agreement as authorized hereunder, Attorney expressly agrees that Attorney shall have no recourse or right of appeal under rules, regulations, ordinances or laws applicable to employees.

This Agreement may be terminated by the County, with or without cause, upon the giving of 60-days' prior written notice to Attorney. Such termination shall be effective regardless of whether Attorney has or has not performed satisfactorily during the term of this Agreement.

Attorney agrees to insert similar language, as set forth within this section, in the independent contracts entered into with Subcontracting Attorneys.

### Expiration of Agreement.

10. It is expressly understood by and among the parties to this Agreement that this contract expires on June 30, 2010. The parties agree that it is their mutual obligation to initiate negotiations on a successor contract one year prior to the expiration of this contract (July 1, 2009) excluding the potential 60-day discretionary extension period. If the parties fail to negotiate a new contract for the 2010-2011 fiscal year, this contract, and all subcontracts, will – at the County's option - be automatically extended for an additional sixty (60) days, upon the same terms as set forth herein - on a pro rata basis (i.e. payment of an additional 2 months at the monthly contract rate in effect for the year 2009-2010, as provided in paragraphs 11 and 12.)

### Annual Increases.

11. For fiscal year 2008-2009 the fees provided in paragraphs 2 & 14 will be increased by 3-1/2% over the amounts provided in fiscal year 2007-2008. For fiscal year 2009-2010, the fees provided in paragraphs 2 & 14 will be increased by 3-1/2% over the amounts provided in fiscal year 2008-2009.

### Caseloads; Termination of Agreement; Termination of Subcontracting Attorney.

12. If assigned felony cases increase by 5% or more at the end of the year among the currently existing felony departments, the felony attorney services cost component will be additionally increased 1% (of \$1,251,000 as annually adjusted) in the next fiscal year. If assigned felony cases decrease by 5% or more, the felony attorney services cost component will be decreased by 1% (of \$1,251,000 as annually adjusted) in the next fiscal year. If assigned misdemeanor cases increase by 5% or more at the end of the year among the currently existing misdemeanor departments the misdemeanor attorney services cost component will be additionally increased 1% (of \$252,000 as annually adjusted) in the next fiscal year. If assigned misdemeanor cases decrease by 5% or more, the misdemeanor attorney services cost component will be decreased by 1% (of \$252,000 as annually adjusted) in the next fiscal year. If assigned juvenile cases increase by 5% or more at the end of the year among the currently existing two juvenile departments, the juvenile attorney services will be additionally increased 1% (of \$246,000 as annually adjusted) in the next fiscal year. If assigned juvenile cases decrease by 5% or more at the end of the year among the currently existing two juvenile departments, the juvenile attorney services will be decreased by 1% (of \$246,000 as annually adjusted) in the next fiscal year. To determine if there is a 5% increase for fiscal year 2008-2009, the parties will compare the number of felony, misdemeanor and juvenile cases from April 1, 2007, to March 31, 2008, to those from April 1, 2006 - March 31, 2007 (Attorney agrees

to provide this information by September 1, 2007). For fiscal year 2009-2010, the parties will compare the number of cases from April 1, 2008, to March 31, 2009, to those from April 1, 2006 to March 31, 2007. If the increase/decrease in pay is triggered, then that number of cases becomes the new base.

The County and Contractor recognize that the possibility for the conversion of existing departments or creation of additional departments (felony or misdemeanor) of the Sonoma Superior Court exists during the contract period, and the possibility for extraordinary caseload change. Any new courtroom's function may be the subject of change pending the implementation of recommendations from a study to be completed later in 2007. At such time as the Superior Court informs the county of its intent to add future departments or convert existing departments, the County and Contractor will engage in discussions as to the nature of support needed for these courtrooms, giving consideration to caseloads that may transfer from existing departments and the implementation of an early case resolution model. These discussions may result in a contract amendment to reflect an expanded scope of work or revised distribution of work.

In the event of extraordinary caseload change, meaning increase/decrease of 10% or greater in felony, misdemeanor or juvenile cases assigned by the court in any one year, this contract is subject to a re-opener for that portion of representation. For example, a 10% growth in felony cases assigned by the court would trigger a re-opener of the portion of the contract for felony attorney representation.

a. If, as a result of Court decision, modification of the California State Bar Rules of Professional Responsibility applicable to criminal defense, the agreement set forth in this Agreement creates potential liability for the County, this Agreement may be terminated by the County upon the giving of ten (10) days prior written notice to Attorney.

b. Upon termination or expiration of this Agreement, and no later than the expiration of the extended period as set forth in Paragraph 10, in accordance with its terms, unless renewed and subject to the Rules of Professional Responsibility and applicable law related to the substitution of counsel, neither Attorney nor Subcontracting Attorneys have an obligation after the effective date of termination or expiration to further represent defendants to whom they have been appointed. The County will use reasonable efforts to relieve Attorney and Subcontracting Attorneys of all such representation as of the effective date of expiration or termination of this Agreement; provided, to the extent Court requires Attorney or Subcontracting Attorney to continue to perform because there is no substitute counsel appointed, in accordance with the Rules of Professional Responsibility and applicable law, as of such date, Attorney or

Subcontracting Attorney will be entitled to compensation in accordance with the rate set by the courts, until such time as the County provides replacement attorneys.

c. Attorney shall insert into each and every Agreement with Subcontracting Attorney's the following language:

"Upon termination or expiration of a Subcontracting Attorney's contract with Attorney, unless said Agreement is renewed and subject to the Rules of Professional Responsibility and applicable law related to the substitution of counsel, Attorney has no obligation after the effective date of termination or expiration to further represent defendants to whom he/she has been appointed. The Attorney will use reasonable efforts to relieve Subcontracting Attorney of all such representation as of the effective date of expiration or termination of the Agreement; provided, to the extent Court requires Subcontracting Attorney to continue to perform because there is no substitute counsel appointed, in accordance with the Rules of Professional Responsibility and applicable law, as of such date, Subcontracting Attorney will be entitled to compensation in accordance with the terms and conditions of the Agreement, pro-rated for the time Subcontracting Attorney continues to represent defendants, and the terms and conditions of the Agreement shall remain in effect with respect only to Subcontracting Attorney's representation of existing defendants. For the purpose of this Agreement, the term "pro rata" is to be based upon the number of cases that the Subcontracting Attorney has in progress at the expiration date of the Agreement (example: Subcontracting Attorney's contract provides for a monthly payment of \$10,000; upon expiration of the Agreement, Subcontracting Attorney has 80 cases in progress which would entitle him/her to a first monthly payment of \$10,000; if Subcontracting Attorney subsequently has 40 cases at the beginning of the second month, he/she would be entitled to a next monthly payment of \$5,000; if Subcontracting Attorney has 20 cases at the beginning of the third month, he/she would be entitled to a monthly payment of \$2,500; and so on and so forth until no cases assigned under the Agreement remain in progress).

Data To Be Provided By Attorney.

13. Attorney agrees to provide, as one contract, information regarding the number and type of appointments made under the terms of this Agreement. Information shall be provided quarterly (within 30 days of the end of each calendar quarter) in accordance with the performance format attached hereto as Attachment A.

Attorney Retention Amounts.

14. Of the annual contract amount County agrees to provide \$123,000 for investigation services, \$42,000 for expert witness fees, and \$12,000 for utilization of a law clerk for appeals. The retentions will be held by Attorney and dispersed upon a proper showing by the Subcontracting Attorneys to Attorney of the need for its use. In the event that the full amounts of the retentions are not utilized during that year of the contract, said monies will be returned by the Attorney to the County of Sonoma. It is agreed that if total needed for investigations and expert witnesses exceeds the allowed retentions for each year during the term of this contract, that upon a proper showing Attorney may request reasonable reimbursement of investigation or expert witness services/fees in excess of the retention amounts.

Final Agreement.

15. This writing is intended both as the final expression of the agreement between the parties hereto with respect to the subject matter of this Agreement, and included terms are a complete and exclusive statement of the terms of the Agreement, pursuant to C.C.P. Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

16. a. Insurance Required. Attorney agrees to secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.

(1) Workers' Compensation—A program of Workers' Compensation Insurance in an amount and form to meet all applicable requirements of the California Labor Code, and Employer's Liability coverage with at least \$1,000,000 per accident limits covering all persons providing services on behalf of Attorney and all risks to such persons under this Agreement. This coverage shall not be required where Attorney has no employees.

(2) Professional Liability Insurance—Covering Attorney's performance under this Agreement. The policy shall provide limits of at least \$1,000,000 per claim or per occurrence and \$2,000,000 annual aggregate. If the policy is written on a "claims made" form, Attorney shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the termination and acceptance of all work provided under this Agreement. The retroactive date or "prior acts

inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

b. Required Policy Provisions. Each policy required in subsection (a) above must provide that:

(1) The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

(2) The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer’s liability.

(3) The County will receive thirty (30) days’ advance written notice of any change or cancellation, mailed to the following address:

County Counsel  
Office of the County Counsel, County of Sonoma  
575 Administration Drive, Room 105A  
Santa Rosa, CA 95403

(4) The insurer waives any and all rights of subrogation against the County and its officers, employees, agents, representatives, and volunteers.

c. Qualifying Insurers. All policies required in subsection (a) above shall be issued by insurance companies with an A.M. BEST rating of not less than A: VIII (A8).

d. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention shall not limit or apply to the Attorney’s liability to the County and shall be the sole responsibility of the Attorney.

e. No Reduction or Limit of Attorney’s Obligation. Insurance effected or procured by Attorney shall not reduce or limit Attorney’s contractual obligation to indemnify and defend the County. Acceptance of Attorney’s insurance by the County shall not relieve or decrease the liability of Attorney hereunder.

f. Joint Ventures. If Attorney is an association, partnership, or other joint business venture, the insurance required in subsection (a) above shall be provided by any one of the following methods:

(1) Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.

(2) Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

g. Evidence of Coverage. Before commencing any work under this Agreement, Attorney must furnish to the County certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the County, evidencing that all required insurance coverage is in effect. The County reserves the right to require the Attorney to provide complete, certified copies of all required insurance policies. The required certificates and endorsements must be sent to:

County Counsel  
Office of the County Counsel, County of Sonoma  
575 Administration Drive, Room 105A  
Santa Rosa, CA 95403

h. Consequences of Lapse. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the County receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the County may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

#### Representations of Attorney.

17. The County has relied upon the professional ability and training of Attorney, and his representation as to the professional ability and training of Subcontracting Attorneys, as a material inducement to enter into this Agreement. Attorney hereby warrants for himself and for Subcontracting Attorneys that all work will be performed in accordance with generally accepted and applicable professional practices and standards. Attorney agrees to indemnify, hold harmless, defend (with counsel satisfactory to the Office of the County Counsel) and release County, and the officers, agents and employees of the County, from and against any and all liability, claims, losses, costs (including reasonable attorneys' fees), damages and injuries that may be asserted by

any person or entity, including Attorney, its agents, employees, subcontractors and clients, arising out of, or in connection with the performance of this Agreement by Attorney, its agents, employees or subcontractors. Attorney's obligations in this paragraph shall be construed to prevail over any inconsistent provision of this Agreement that may otherwise limit or eliminate these obligations, except the County agrees these obligations of Attorney shall be limited to the extent any liability, claim, loss, cost, damage or injury directly arises from the active negligence or intentional misconduct of the County, its officers and employees.

Attorney Compliance with Laws.

18. Attorney and Subcontracting Attorneys shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition, handicap (including HIV/AIDS) or other prohibited bases. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

Taxes and Indemnification.

19. Attorney agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Attorney agrees to indemnify and hold the County and County harmless from any liability that Attorney may incur to the United States or the State of California as a consequence of Attorney's failure to pay, when due, all such taxes and obligations. In the event that County is audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish County with proof of payment of taxes on those earnings.