

AGREEMENT FOR SERVICES

This Agreement ("Agreement") is made and entered into by and between El Dorado Law, A Professional Law Corporation, ("Attorney") and the County of El Dorado ("County").

WHEREAS, persons charged with commission of a crime have a constitutional right to be represented by competent defense counsel; and

WHEREAS, California Penal Code Section 987 provides that if a defendant is unable to employ counsel, the court shall assign counsel to defend him or her; and

WHEREAS, Section 987.2(a)(3) of the Penal Code provides that in a case where the court finds that because of a conflict of interest or other reasons, the Public Defender has properly refused to represent a defendant in a criminal trial, proceeding or appeal, the court shall assign other counsel to represent the defendant; and

WHEREAS, Section 987.2(b) of the Penal Code provides that counsel assigned pursuant to Penal Code Section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the County; and the sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases; and

WHEREAS, the County has authority to enter into a contract for legal services pursuant to Government Code §31000; and

WHEREAS, the County has determined to provide defense counsel to indigent defendants for whom the Public Defender has properly refused to represent by contracting for a set fee with a professional law corporation that will administer a panel of qualified attorneys, each of whom has agreed to accept their proportionate share of assigned conflict indigent defense cases (the "Conflict Indigent Defense Panel"); and

WHEREAS, Attorney is willing, competent and available to provide the legal and administrative services required of Attorney by this Agreement; and

WHEREAS, the appellate court in Phillips v. Seeley (1974) 43 Cal. App. 3d 104 held that the judicial act of assigning an attorney to represent an indigent defendant with knowledge of the compensation contract between the board of supervisors and that attorney constitutes judicial approval and ratification of the contract and recognition that the contract provides reasonable compensation to the attorney;

NOW, THEREFORE, in recognition of the above facts, the County and Attorney agree as follows:

1. SCOPE OF SERVICES

Attorney shall employ or contract with qualified attorneys who are properly licensed and qualified to handle cases which are appropriately assigned, commensurate with the attorneys' experience and background in order to provide the following services:

- A. Attorney shall administer, maintain and provide legal representation in criminal, juvenile delinquency, and conservatorship proceedings to individuals identified as indigent, when such representation cannot be provided by the Public Defender due to a legal conflict of interest as defined by the Rules of Professional Conduct 3.310 and Business and Professions Code § 6000 et seq. Attorney will be required to provide legal representation for indigent clients who:
- are defendants in a criminal case, including but not limited to the following types of cases:
 - Felony (including homicide)
 - Misdemeanor
 - Probation violation
 - Parole violation
 - Mandatory supervision and Post Release Community Supervision violations
 - are juveniles in delinquency court proceedings;
 - are conservatees in probate conservatorship cases and in mental health commitment/conservatorship cases;
 - have been called to testify in Court proceedings and need to be advised regarding self-incrimination issues;
 - have, in any other case in which a Public Defender would be appointed, had legal counsel appointed by the Court, where a conflict of interest arises that would preclude representation of the client by the Public Defender.
- B. Attorney shall provide for eight attorneys on the West Slope of the County and two attorneys on the East Slope.
- C. Attorney shall represent clients at all stages of the client's case. Each attorney assigned to a case must devote all the time and resources reasonably necessary for the diligent fulfillment of the duties of legal counsel as prescribed by law and the contract.
- D. Attorney shall ensure provision of adequate coverage for all courtrooms, including establishing policies and procedures to avoid calendaring conflicts;
- E. Attorney shall respond promptly to issues and concerns from the County and the Court related to the services provided by Attorney and all employed or subcontracted attorneys including but not limited to attendance at meetings with the Court and/or County to discuss those issues;
- F. Attorney shall provide services to clients who use English as their second language and shall, upon presentation of an appropriate invoice, be allocated additional funds for interpreter services in accordance with section II.(B) hereof;

- G. Attorney shall provide administrative oversight, including claims processing, billing verification, accounting and statistical reports.
- H. Attorney shall ensure that subcontract attorneys will be available for all applicable court calendars. Attorney, when appointed to represent a particular client, must continue to represent that client unless relieved of the appointment by the Court.
- I. Attorney and any subcontract attorneys may be permitted to engage in the private practice of law during the term of the contract provided that such private practice of law does not interfere with the performance of the duties and responsibilities imposed by the contract. Neither Attorney nor any attorney assigned under the contract will be permitted to represent, advise, or maintain an attorney-client relationship with any organization of peace officers, the membership of which consists in whole or in part of peace officers who are employed by a public entity within El Dorado County, or who are employed by the State of California and work within El Dorado County.
- J. Attorney shall make every reasonable effort to assign cases in such a way as to avoid any legal conflict of interest between itself, its subcontract attorneys, or between any of these. Attorney will not be permitted to decline a Court appointment in any case, except for a legal conflict of interest or other lawful grounds. If there is a determination by the Court that, as a matter of law, Attorney and its subcontract attorneys may not represent an otherwise eligible individual because of a legal conflict of interest or, in the case of multiple parties, that only one of the subcontract attorneys may participate in the case, the Attorney will be required to hire and pay qualified outside independent attorney(s) to represent the individual(s). Such costs will be paid by County in accordance with Article II hereof.
- K. If the death penalty is sought in a case assigned to Attorney, Attorney shall ensure that the attorney assigned to the case is qualified and competent to provide representation in a capital trial. (California Rules of Court, Rule 4.117)
- L. County will provide reimbursement for food and lodging, mileage, and airfare expenses when Attorney is required to appear in a case outside of El Dorado County because of a change of venue. These expenses will be reimbursed at rates consistent with current County policy for travel, Board of Supervisors Policy D-1, found at:
http://www.edcgov.us/Government/BOS/Policies/Policy_Manual.aspx#SectionD
- M. An attorney who was formerly assigned to a case will be required to provide legal representation in any subsequent proceedings for a client previously represented by that attorney and for whom the case was remanded by the appellate department of the Court or a higher court, unless such representation is precluded by law as determined by the Court.
- N. Attorney and subcontract attorneys shall provide, at its own expense, all office space, furniture, equipment, supplies, libraries, telephone and facsimile service, investigative services, clerical assistance, stenographic services, utilities, maintenance, and all other services, supplies, materials, and personnel required for the provision of competent and effective services.

For homicide cases, rare or complex cases, or cases with voluminous discovery, the County, at its sole discretion, may provide additional funds for miscellaneous items

such as, but not limited to, hardware for data storage, or specialized computer software if such items are required to effectively perform the services and provided that such purchases are approved by the County's Contract Administrator.

- O. Attorney shall not be required to administer requests by subcontract attorneys for ancillary services. Any and all requests for payments to ancillary service providers shall be remitted directly to the County by the subcontract attorneys. County will provide direct payment to the ancillary services providers within 60 days of receipt of an appropriate court order directing County to pay the service provider. Ancillary services include but are not limited to expert witnesses, transcription, interpreter and other similar services. Attorney shall ensure that subcontract attorneys meet and confer with clients on a reasonable basis. This shall include meeting with clients in custodial facilities, in locked psychiatric placements, and in group homes whether in or out of County. Attorney and subcontract attorneys will be required to maintain a telephone answering machine or service when their offices are closed.
- P. Attorney shall submit a written caseload report for each quarter, within 30 days following the last day of the quarter. The report must include:
 - 1. Number of newly assigned cases, by attorney, date, and case type (including case numbers);
 - 2. Number of open cases, by attorney and case type (including case numbers);
 - 3. Disposition of cases closed in that quarter, including trial statistics such as bench and jury trials, and number of pled cases (including case numbers);
 - 4. Any other information requested by County.
- Q. Attorney is expected to appear with clients on any scheduled specialty court calendar when assigned unless its appearance has been excused by the judge handling that calendar. Continuances will not be granted absent good cause.
- R. This agreement shall specifically exclude representation of individuals charged in civil or quasi contempt action brought pursuant to Family Code § 290 and Code of Civil Procedure § § 1209-1222

A list of Attorney's subcontract attorneys is attached hereto as Exhibit "A" and is made by reference a part hereof. Attorney may substitute an attorney on the list with written approval by County's Contract Administrator. Attorney shall enter into a lawful subcontract agreement with each attorney. The agreement shall be substantially the same as that attached hereto as Exhibit "B".

The parties recognize that the assignment of conflict indigent defense cases to attorneys is a matter entirely within the discretion of the Court. This Agreement is based on the understanding that Attorney will endeavor to assign cases to the panel attorneys with whom Attorney has subcontracted to provide conflict indigent defense services (the "Conflict Indigent Defense Panel") on a proportionate basis, so that the amount of legal work per Panel attorney is roughly equal over the time period covered by this Agreement.

Attorney agrees that the nature and amount of work devoted to the defense of any individual defendant is a matter within the sole discretion of each panel attorney, and that the amount of work in any one case or group of cases will inevitably fluctuate over time.

Each panel attorney shall agree to accept his or her proportionate share of conflict indigent defense assignments in the courts located in El Dorado County in return for the monthly flat rate compensation provided herein, and agrees that this Agreement provides reasonable compensation in each such case.

If at any time any panel attorney feels that the cases assigned by Attorney do not result in an overall roughly proportionate share of legal work among the panel attorneys handling similar cases, panel attorney's only recourse is to approach Attorney for an adjustment of assignments that will achieve rough proportionality of workload among the panel attorneys handling similar cases over the term of this Agreement.

All legal services required of the panel attorneys by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of competent legal defense and with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.

2. COMPENSATION AND PAYMENT OF ADDITIONAL FUNDS

A. Compensation for Services: Compensation for services described herein shall be a flat amount of \$863,568, which includes all administrative, operational, and investigative costs and compensation to subcontract attorneys providing legal services hereunder. Payment shall be made in four equal installments. Each installment shall be due quarterly in advance. Payment shall be remitted to Attorney no later than the tenth day of the first month of the quarter.

Subcontract Attorney Services: Attorney is an independent contractor and is solely responsible for compensation of all staff and subcontractors; however, the parties agree that subcontract attorneys shall receive the following minimum compensation:

Tier 1 (Felony and Conservatorship) West Slope:	\$7,000per month
Tier 1 (Felony and Conservatorship) East Slope:	\$7,527 per month
Tier 2 (Misdemeanor and less demanding felonies) :	\$4,710 per month

Attorney shall have the option to reduce the number of Tier 2 subcontract Attorneys on the West Slope, upon determination and written notification to Contract Administrator that such reduction will not result in unreasonable caseloads for individual subcontract attorneys. In the event of such a reduction, Attorney may utilize savings to increase compensation to the remaining subcontract attorneys; however, the total compensation shall not exceed \$863,568 annually, unless additional funds for investigative services are requested and authorized as provided herein.

Investigative Services: The flat annual fee for services includes \$12,480 to be used by Attorney for investigative services. Once this amount has been exhausted,

Attorney may request additional funds for investigative services that are necessary to provide a constitutionally competent legal defense. Such funds will be disbursed to Attorney within forty-five (45) days following receipt of an accumulated invoice and a court order authorizing payment.

- B. Trials Exceeding Three Weeks: It is anticipated that the trial in an average case will not exceed three calendar weeks. The flat monthly rate established above is intended to compensate panel attorneys for legal services in all assigned cases up to and including three calendar weeks per case. For the purpose of this section, a trial week will consist of a minimum of three days of trial. If the trial in any individual assigned case exceeds three calendar weeks, a panel attorney will be entitled to additional compensation of \$1,000 per additional calendar week after three trial weeks, payable at the conclusion of each additional calendar week upon receipt of an acceptable invoice. Extended trial payments cease when verdict is given, jury is discharged, or trial is concluded, whichever is earlier in time.
- C. Extraordinary and Excluded Cases: In those rare instances of an assigned indigent defense case involving unusual circumstances which demand a truly extraordinary amount of legal work, including but not limited to bringing a writ for interlocutory relief, Attorney may seek a court order declaring the case to be extraordinary, in which instance Attorney's services in that case over the amount usually devoted to a normal case will be paid at a rate to be negotiated but not to exceed \$70 per hour subject to court approval and upon receipt of an acceptable invoice. Death penalty cases are not included in the base compensation of this contract, so if Attorney is assigned and accepts a death penalty case then compensation for that case shall be separately negotiated.
- D. Conflicts: If Attorney must decline a Court appointment in any case due to a legal conflict of interest or other lawful grounds, or if there is a determination by the Court that, as a matter of law, Attorney and its subcontract attorneys may not represent an otherwise eligible individual because of: (1) a legal conflict of interest; (2) there are an insufficient number of subcontract attorneys to provide representation to all charged co-defendants; (3) the court determines there are no subcontract attorney's available to appear at a given hearing. In such a case Attorney shall hire or subcontract additional attorneys or pay panel attorneys from outside the area to represent all charged co-defendants and additional funds will dispersed by County to Attorney monthly upon receipt and approval of an acceptable invoice. The rate for such services shall not exceed \$70 per hour.

3. ASSIGNMENT AND DELEGATION

Attorney is engaged by County for its unique qualifications and skills. With the exception of subcontract attorneys, Attorney shall not delegate or assign services to be provided to any other person or entity prior to written consent of County.

4. INDEPENDENT CONSULTANT/LIABILITY

Attorney is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Attorney exclusively

assumes responsibility for acts of its employees, subcontractors and associates, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Attorney shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees and subcontractors. County shall have not right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Attorney or its employees or subcontractors.

5. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Counsel who shall put his decision in writing and mail a copy thereof to the address provided herein for notices to Attorney. The decision of the County Counsel shall be final for purposes of administrative review. Attorney shall diligently perform the duties required by this Agreement in accordance with the decision of the County Counsel.

6. TERM AND TERMINATION

Unless otherwise terminated in accordance with this Section, the term of this Agreement shall be from July 1, 2017, through June 30, 2019.

Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice and specifying the date of such termination, at least five (5) business days before the effective date of such termination. Either party may terminate this Agreement for any reason by giving at least thirty (30) calendar days advance written notice to the other party of the effective date such termination. County has the unilateral right to terminate this Agreement on five days' notice if in the County's judgment the Court does not assign a proportionate share of cases to Attorney. Attorney shall be entitled to payment for acceptable services rendered to and inclusive of the specified date of termination.

The termination of this Agreement does not affect the assignment of Attorney by the Court in any case, or the continuing obligation of Attorney to represent his or her clients. The County has no ability to relieve Attorney from his or her assignment to represent any individual defendant. As such, if and when a Panel Attorney is terminated from his or her position he or she shall be obligated to resolve any and all outstanding cases at a rate of \$70 per hour. The terminated Panel Attorney shall submit monthly billing to Attorney on a monthly basis and be paid by County as per paragraphs I.(J) and II.(F), above. Attorney shall maintain in his/her possession for at least five (5) years following completion of the cases all files and records related the case.

7. APPLICABLE LAWS

In the performance of the services required by this Agreement, Attorney shall comply with all applicable Federal, State, or County statutes, ordinances, regulations, directives, and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in El Dorado County, California.

8. COUNTY ADMINISTRATOR AND NOTICES

The administrator of this Agreement for the County is the Chief Administrative Officer. All notices shall be deemed to have been given when made in writing and delivered or mailed to County and Attorney at their respective addresses as follows:

ATTORNEY

Adam C. Clark, Esq. Attorney at Law
3062 Cedar Ravine Road
Placerville, CA 95667

COUNTY:

Chief Administrative Officer
El Dorado County
330 Fair Lane
Placerville, CA 95667

9. ATTORNEY QUALIFICATIONS

Attorney agrees that neither it, nor its employed or subcontract attorneys will not accept appointments to matters for which it is not qualified. Attorney and all persons who perform services for or through Attorney shall exercise the care and judgment consistent with all applicable professional standards in the performance of the services required by this Agreement. In some cases, Attorney may not be available to represent a defendant in an assigned case because such representation would violate the Canons of Professional Ethics, and in such event, Attorney will notify the Court of the conflict and will request that the Court alter the assignment of Attorney.

10. INDEMNITY

Attorney shall defend, indemnify, and hold the County harmless against and from any and all claims for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or an account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Attorney's, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Attorney and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Attorney to indemnify and save County harmless includes the duties set forth in California Civil Code Section 2778.

11. INSURANCE

During the term of this Agreement, Attorney and all subcontract attorneys shall at all times maintain, at his or her expense, professional malpractice insurance in a minimum amount of \$100,000 per claim and \$300,000 per occurrence, or in whatever type and limit as may be established in the future by the Court for assigned counsel. Attorney shall submit proof of insurance acceptable to County at the commencement of this contract and annually thereafter.

12. STATUS OF ATTORNEY

Attorney, and those who perform services for or through Attorney are independent contractors, and no relationship of agency or employer-employee exists between County and Attorney or those who perform services for or through Attorney. Neither Attorney nor those who perform services for or through Attorney shall be entitled to any benefits payable to employees of County. Attorney has no right to act on behalf of County in any capacity whatsoever as an agent, or to bind County to any obligation whatsoever. County has no right to determine case assignments, nor to supervise or control the services provided by Attorney or those who perform services for or through Attorney under this Agreement. Attorney shall file a State of California Form 590 or County shall be required by law to withhold seven percent (7%) of each payment to attorney.

13. AMENDMENT AND WAIVER

This Agreement may be amended only by written agreement executed by County and Attorney. The waiver by County or any of its officers, agents, or employees or the failure of County or its officers, agents, or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants, or conditions of this Agreement.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between County and Attorney and supersedes all prior negotiations, representations, of agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- ATTORNEY --

EL DORADO LAW,
A PROFESSIONAL LAW CORPORATION

By: _____
Adam Clark
President
"Attorney"

Dated: _____

EXHIBIT "A"

EL DORADO COUNTY INDIGENT DEFENSE PANEL

ROSTER AS OF JULY 1, 2017

West Slope Panel

Tier 1

James S. Clark
3062 Cedar Ravine
Placerville, CA 95667
(530) 626-1855

David Cramer
To be determined
(916) 300-9648

Erik Davenport
3350 Country Club Dr Ste 202
Cameron Park, CA 95682
(530) 313-0910

Melissa van der Vijver
508 North Alley
Diamond Springs, CA 95619
(530) 302-5393

David Brooks
5176 Hillside Cir
Ste 100
El Dorado Hills, CA 95762
(916) 300-9877

Adam Weiner
5176 Hillside Cir
Ste 100
El Dorado Hills, CA 95762
(916) 933-2174

Tier 2

Steve Tapson
309 Placerville Dr
Placerville, CA 95667
(530) 626-9371

Adam C. Clark
520 Main St.
Placerville, CA 95667
(530) 626-1855

South Lake Tahoe Panel

Tier 1

Kimberly Hunt
PO Box 7783
South Lake Tahoe, CA 96158
(530) 314-7554

Lori London
1169 Ski Run Blvd #3
South Lake Tahoe, CA 96150
(530) 544-2509

EXHIBIT "B"
AGREEMENT NO. _____
AGREEMENT BETWEEN EL DORADO LAW, APLC AND
_____, ESQ., FOR
CONFLICT INDIGENT DEFENSE SERVICES
(TIER 1)

This Agreement ("Agreement") is made and entered into this ___ day of June, 2016, by and between _____, ESQ., a California licensed attorney ("Attorney") and El Dorado Law, A Professional Law Corporation ("Administrator") (collectively "parties").

WHEREAS, persons charged with commission of a crime have a constitutional right to be represented by competent defense counsel; and

WHEREAS, California Penal Code Section 987 provides that if a defendant is unable to employ counsel, the court shall assign counsel to defend him or her; and

WHEREAS, Section 987.2(a)(3) of the Penal Code provides that in a case where the court finds that because of a conflict of interest or other reasons, the Public Defender has properly refused to represent a defendant in a criminal trial, proceeding or appeal, the court shall assign other counsel to represent the defendant; and

WHEREAS, Section 987.2(b) of the Penal Code provides that counsel assigned pursuant to Penal Code Section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the County; and the sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases; and

WHEREAS the County has authority to enter into a contract to provide legal services to indigent persons in El Dorado County pursuant to Government Code §31000; and

WHEREAS the County has determined to provide defense counsel to indigent defendants for whom the Public Defender has properly refused to represent by contracting for a set fee with a professional law corporation that will administer a panel of qualified attorneys, each of whom has agreed to accept their proportionate share of assigned conflict indigent defense cases (the "Conflict Indigent Defense Panel"); and

WHEREAS, Attorney is willing, competent and available to provide the legal services required of Attorney by this Agreement, and has competently provided similar services to indigent criminal defendants for at least the past three years; and

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WHEREAS the appellate court in *Phillips v. Seeley* (1974) 43 Cal. App. 3d 104 held that the judicial act of assigning an attorney to represent an indigent defendant with knowledge of the compensation contract between the board of supervisors and that attorney constitutes judicial approval and ratification of the contract and recognition that the contract provides reasonable compensation to the attorney;

NOW, THEREFORE, in recognition of the above facts, Administrator and Attorney agree as follows:

I. SERVICES TO BE PROVIDED BY ATTORNEY

A. Scope of Services: Attorney shall provide competent legal services on behalf of indigent persons engaged in the following types of cases in the courts located on the West Slope area of El Dorado County: non-capital felonies (including homicides); misdemeanors; violations of probation; violation of parole; violations of mandatory supervision and post release community supervision; juvenile delinquency proceedings; conservatees in probate conservatorship cases and in mental health commitment/conservatorship cases; individuals called to testify in court proceedings who need to be advised regarding self-incrimination issues; misdemeanor appeals.

The parties recognize that the assignment of conflict indigent defense cases to Attorneys is a matter entirely within the discretion of the Administrator. This Agreement is based on the understanding that the Administrator will endeavor to assign cases to the Attorneys who have contracted with Administrator to provide conflict indigent defense services as part of the Conflict Indigent Defense Panel on a proportionate basis, so that the amount of legal work per Attorney is roughly equal over the time period covered by this Agreement.

Attorney agrees that the nature and amount of work devoted to the defense of any individual client is a matter within the sole discretion of Attorney, and that the amount of work in anyone case or group of cases will inevitably fluctuate over time. Attorney agrees to accept his or her proportionate share of conflict assignments in the courts located in the west slope area of El Dorado County in return for the monthly flat rate compensation provided herein, and agrees that this Agreement provides reasonable compensation in each such case.

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If at any time Attorney feels that the cases assigned to Attorney do not result in an overall roughly proportionate share of legal work as compared to other Conflict Indigent Defense Panel Attorneys handling similar cases, Attorney agrees that Attorney's only recourse is to approach Administrator for an adjustment of assignments that will achieve rough proportionality of workload among the Conflict Indigent Defense Panel Attorneys handling similar cases over the term of this Agreement.

All legal services required of Attorney by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of competent legal defense and with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.

Attorney may continue to engage in the private practice of law during the term of the contract provided that such private practice of law does not interfere with the performance of the duties and responsibilities imposed by the Agreement. Attorney shall not represent, advise, or maintain an attorney-client relationship with any organization of peace officers, the membership of which consists in whole or in part of peace officers who are employed by a public entity within El Dorado County, or who are employed by the State of California and work within El Dorado County.

B. Office and Staff Costs: In providing the legal services required by this Agreement, Attorney will provide, at his or her own expense, all appropriate office and legal staff as necessary to provide competent legal services in the cases covered by this Agreement. This staff may consist of such attorneys, paralegals, clerks, and any and all secretarial services, as are necessary to fully discharge in a professional manner all obligations herein assumed by Attorney. Attorney represents and warrants that at all time his personnel shall be competent and that all services rendered will be sufficient to meet all constitutional requirements relating to legal services. Administrator expects that Attorney will provide the legal services required under this Agreement personally, and Attorney must appear personally at all mandatory appearances, but Attorney may from time to time use other equally-competent attorneys as temporary substitutes at non-mandatory appearances if acceptable to the court and the Administrator.

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C. Operating Costs: In providing the legal services required by this Agreement, Attorney will bear at his or her sole expense all normal office costs, such as and including telephone, copy expenses, computerized legal research, in-state travel, malpractice and other insurance, etc. Attorney will be entitled to disbursement of additional funds from Administrator to pay for reasonable ancillary services such as the costs of experts, investigators, testing services, transcripts, etc., as provided in this Agreement.

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. Compensation: For the services described in Section I Attorney shall be paid \$7,527 monthly at the beginning of each month from July 1, 2016 through June 1, 2017.

B. Costs Related to Representation -- Ancillary Services: Attorney will be entitled to request from Administrator additional funds to pay for the reasonable cost of ancillary services, such as psychiatrists and other expert consultants or witnesses, interpreters, investigators, testing services, transcripts, out-of-state travel, etc., as necessary to provide a constitutionally competent legal defense. Attorney agrees that the costs for ancillary services shall be paid at a rate that does not exceed what the Public Defender's Office pays for similar services. Prior to utilizing any ancillary services in any individual case, Attorney will obtain an order from the Court authorizing the requested ancillary services and approving the cost of the services to be rendered and/or a fee schedule for the individual that will be providing the service. Administrator will be obligated to disburse additional funds to ancillary service providers upon receipt of an accumulated invoice from the service provider and a court order for reimbursement that complies with this Agreement. Attorney understands that the County does not have unlimited funds to reimburse for such ancillary services, and that no ancillary services contracted for by Attorney in the performance of this Agreement shall be reimbursed except under the terms of the agreement contained herein.

C. Costs Related to Representation -- Investigatory Services: Attorney may request from Administrator additional funds for the reasonable cost of investigatory services. Attorney understands that the Administrator does not have unlimited funds to pay for investigatory services. Administrator shall allocate \$14,366 per year for payment of investigatory services. Once the \$14,366 allocated by Administrator is expended, Administrator will be required to request disbursement of additional funds from the County to fund any subsequent investigatory services.

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Administrator will be obligated to disburse additional funds to investigatory service providers upon receipt of an accumulated invoice from the service provider and an order from the Court authorizing the employment of an investigator and approving the cost of the services to be rendered and/or a fee schedule for the individual that will be providing the service. Attorney understands that neither the Administrator nor the County has unlimited funds to pay for investigatory services, and that no investigatory services contracted for by Attorney in the performance of this Agreement shall be paid except under the terms contained herein.

D. Trials Exceeding Three Weeks: It is anticipated that the trial in an average case will not exceed three calendar weeks. The flat monthly rate established above is intended to compensate Attorney for legal services in all assigned cases up to and including three calendar weeks per case. For the purpose of this section, a trial week will consist of a minimum of three days of trial. If the trial in any individual assigned case exceeds three calendar weeks, Attorney will be entitled to additional compensation of \$1,000 per additional calendar week after three trial weeks, payable by the County at the conclusion of each additional calendar week upon receipt of an acceptable invoice. Extended trial payments cease when verdict is given, jury is discharged, or trial is concluded, whichever is earlier in time.

E. Extraordinary and Excluded Cases: In those rare instances of an assigned indigent defense case involving unusual circumstances which demand a truly extraordinary amount of legal work, Attorney may seek a court order declaring the case to be extraordinary, in which instance Attorney's services in that case will be paid by the County at a rate not to exceed \$70 per hour subject to court approval and upon receipt of an acceptable invoice. Death penalty cases are not included in this contract, so if Attorney is assigned and accepts a death penalty case then compensation for that case shall be separately negotiated with the County.

F. Change in Venue: County will provide reimbursement for food and lodging, mileage, and airfare expenses when Attorney is required to appear in a case outside of El Dorado County because of a change of venue. These expenses will be reimbursed at rates consistent with current County policy for travel, Board of Supervisors Policy D-1, found at:

http://www.edcgov.us/Government/BOS/Policies/Policy_Manual.aspx#SectionD

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G. Return on Appeal: If Attorney was previously assigned a case which is subsequently remanded by the appellate department of the Court or a higher court, Attorney will be required to provide legal representation in any subsequent proceedings unless such representation is precluded by law as determined by the Court.

H. Case Load Statistics and Metrics: Attorney is advised and aware that Administrator is required to provide quarterly statistical reports to the County regarding services provided by the Indigent Defense Panel. Attorney agrees to fully cooperate with any requests made by Attorney for information regarding his or her case load including but not limited to: number of newly assigned cases, by date and case type; number of open cases, by case type; disposition of cases closed in that quarter, including trial statistics such as bench and jury trials, and number of pled cases; any other information requested by County

III. DISPUTES

Any dispute arising under this Agreement shall be decided by Administrator who shall put his decision in writing and mail a copy thereof to the address provided herein for notices to Attorney. The Administrator's decision shall be final for purposes of administrative review. Attorney shall diligently perform the duties required by this Agreement in accordance with the decision of the Administrator.

IV. TERM AND TERMINATION

Unless otherwise terminated in accordance with this Section, the term of this Agreement shall be from July 1, 2016 through June 30, 2017. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice and specifying the date of such termination, at least five (5) business days before the effective date of such termination.

Either party may terminate this Agreement for any reason by giving at least thirty (30) calendar days advance written notice to the other party of the effective date such termination. Attorney shall be entitled to payment for acceptable services rendered to and inclusive of the specified date of termination. As such, if and when Attorney is terminated from his or her position he or she shall be obligated to resolve any and all outstanding cases at a rate of \$70 per hour payable by the County.

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The terminated Attorney shall submit monthly billing to Administrator on a monthly basis for each individual case which to which he or she is assigned until all assigned cases are resolved. The termination of this Agreement does not affect the assignment of Attorney by Administrator in any case, or the continuing obligation of Attorney to represent his or her clients. Neither Administrator nor the County has no ability to relieve Attorney from his or her assignment to represent any individual defendant. Attorney shall maintain in his possession for at least five (5) years following completion of the cases all files and records related to the case.

V. APPLICABLE LAWS

In the performance of the services required by this Agreement, Attorney shall comply with all applicable Federal, State, or County statutes, ordinances, regulations, directives, and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in El Dorado County, California.

VI. ADMINISTRATOR AND NOTICES

The Administrator of this agreement for El Dorado Law, APLC is Adam C. Clark. All notices shall be deemed to have been given when made in writing and delivered or mailed to Administrator and Attorney at their respective addresses as follows:

ATTORNEY

ADMINISTRATOR:
Adam C. Clark, Owner
El Dorado Law, A Professional Law Corporation
520 Main St.
Placerville, CA 95667

VII. ATTORNEY QUALIFICATIONS

Attorney agrees that he or she shall not accept appointments to matters for which he or she is not qualified. Attorney and all persons who perform services for or through Attorney shall exercise the care and judgment consistent with all applicable professional standards in the performance of the services required by this Agreement.

In some cases, Attorney may not be available to represent a defendant in an assigned case because such representation would violate the Canons of Professional Ethics, and in such event, Attorney will notify the Administrator of the conflict and will request that the Administrator alter the assignment of Attorney, and also adjust assignments among the members of the Conflict Indigent Defense Panel in order to maintain an approximately equal workload for similar cases.

VIII. INDEMNITY

Attorney shall indemnify, defend, and hold harmless Administrator, its shareholders, officers, agents, and employees from and against any and all claims, demands, losses, defense costs, expenses (including attorney fees) or liability of any kind or nature, for personal injury or property damage arising out of or, as a result of litigation or administrative proceeding(s), alleged to arise wholly or in part out of any negligent or intentional act, error, or omission of Attorney, its offers, agents or employees, in performing the services responsibilities, or duties required of Attorney by this Agreement, or any breach of any statutory, regulatory, contractual, or legal duty of any kind related, directly or indirectly, to the services, responsibilities, or duties required of Attorney by this Agreement, or any claim of negligent retention or similar claim against Administrator arising out of this Agreement.

IX. INSURANCE

During the term of this Agreement, Attorney shall at all times maintain, at his or her expense, professional malpractice insurance in a minimum amount of \$100,000 per claim and \$300,000 per occurrence, or in whatever type and limit as may be established in the future by the Court for assigned counsel. Attorney shall submit proof of insurance acceptable to Administrator at the commencement of this contract and annually thereafter.

X. STATUS OF ATTORNEY

Attorney and those who perform services for or through Attorney, are independent contractors, and no relationship of agency or employer-employee exists between Administrator and Attorney or those who perform services for or through Attorney. Neither Attorney nor those who perform services for or through Attorney shall be entitled to any benefits other than those specifically listed in this agreement. Attorney has no right to act on behalf of Administrator in any capacity whatsoever as an agent, or to bind Administrator to any obligation whatsoever. Administrator will be solely responsible to determine case assignments.

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Administrator is not obliged by this agreement to supervise or control the services provided by Attorney or those who perform services for or through Attorney under this Agreement Attorney shall file any and all state local and federal tax forms necessary to effectuate this agreement. Attorney shall be considered an independent contractor for all purposes and is advised that Administrator is not required to withhold any part of any payment made to Attorney.

XI. AMENDMENT AND WAIVER

This Agreement may be amended only by written agreement executed by Administrator and Attorney. The waiver by Administrator or any of its officers, agents, or employees or the failure of Administrator or its officers, agents, or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants, or conditions of this Agreement.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between Administrator and Attorney and supersedes any prior negotiations, representations, of agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

Dated: _____ EL DORADO LAW, A PROFESSIONAL LAW CORPORATION

Adam C. Clark Owner, El Dorado Law, APLC

Dated: _____ ATTORNEY:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

EXHIBIT "B"
AGREEMENT NO. _____
AGREEMENT BETWEEN EL DORADO LAW, APLC AND
_____, ESQ., FOR
CONFLICT INDIGENT DEFENSE SERVICES
(TIER 2)

This Agreement ("Agreement") is made and entered into this ___ day of June, 2016, by and between _____, ESQ., a California licensed attorney ("Attorney") and El Dorado Law, A Professional Law Corporation ("Administrator") (collectively "parties").

WHEREAS, persons charged with commission of a crime have a constitutional right to be represented by competent defense counsel; and

WHEREAS, California Penal Code Section 987 provides that if a defendant is unable to employ counsel, the court shall assign counsel to defend him or her; and

WHEREAS, Section 987.2(a)(3) of the Penal Code provides that in a case where the court finds that because of a conflict of interest or other reasons, the Public Defender has properly refused to represent a defendant in a criminal trial, proceeding or appeal, the court shall assign other counsel to represent the defendant; and

WHEREAS, Section 987.2(b) of the Penal Code provides that counsel assigned pursuant to Penal Code Section 987.2(a) shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the County; and the sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases; and

WHEREAS the County has authority to enter into a contract to provide legal services to indigent persons in El Dorado County pursuant to Government Code §31000; and

WHEREAS the County has determined to provide defense counsel to indigent defendants for whom the Public Defender has properly refused to represent by contracting for a set fee with a professional law corporation that will administer a panel of qualified attorneys, each of whom has agreed to accept their proportionate share of assigned conflict indigent defense cases (the "Conflict Indigent Defense Panel"); and

WHEREAS, Attorney is willing, competent and available to provide the legal services required of Attorney by this Agreement, and has competently provided similar services to indigent criminal defendants for at least the past three years; and

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WHEREAS the appellate court in *Phillips v. Seeley* (1974) 43 Cal. App. 3d 104 held that the judicial act of assigning an attorney to represent an indigent defendant with knowledge of the compensation contract between the board of supervisors and that attorney constitutes judicial approval and ratification of the contract and recognition that the contract provides reasonable compensation to the attorney;

NOW, THEREFORE, in recognition of the above facts, Administrator and Attorney agree as follows:

I. SERVICES TO BE PROVIDED BY ATTORNEY

A. Scope of Services: Attorney shall provide competent legal services on behalf of indigent persons engaged in the following types of cases in the courts located on the West Slope area of El Dorado County: less-demanding felonies (in the discretion of the Administrator); misdemeanors; violations of probation; violation of parole; violations of mandatory supervision and post release community supervision; juvenile delinquency proceedings; conservatees in probate conservatorship cases and in mental health commitment/conservatorship cases; individuals called to testify in court proceedings who need to be advised regarding self-incrimination issues; misdemeanor appeals.

The parties recognize that the assignment of conflict indigent defense cases to Attorneys is a matter entirely within the discretion of the Administrator. This Agreement is based on the understanding that the Administrator will endeavor to assign cases to the Attorneys who have contracted with Administrator to provide conflict indigent defense services as part of the Conflict Indigent Defense Panel on a proportionate basis, so that the amount of legal work per Attorney is roughly equal over the time period covered by this Agreement.

Attorney agrees that the nature and amount of work devoted to the defense of any individual client is a matter within the sole discretion of Attorney, and that the amount of work in anyone case or group of cases will inevitably fluctuate over time. Attorney agrees to accept his or her proportionate share of conflict assignments in the courts located in the west slope area of El Dorado County in return for the monthly flat rate compensation provided herein, and agrees that this Agreement provides reasonable compensation in each such case.

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If at any time Attorney feels that the cases assigned to Attorney do not result in an overall roughly proportionate share of legal work as compared to other Conflict Indigent Defense Panel Attorneys handling similar cases, Attorney agrees that Attorney's only recourse is to approach Administrator for an adjustment of assignments that will achieve rough proportionality of workload among the Conflict Indigent Defense Panel Attorneys handling similar cases over the term of this Agreement.

All legal services required of Attorney by this Agreement shall be provided in a manner fully consistent with all applicable laws regarding the provision of competent legal defense and with the Rules of Professional Conduct and other statutes, regulations, and rules of practice applicable to members of the State Bar of California.

Attorney may continue to engage in the private practice of law during the term of the contract provided that such private practice of law does not interfere with the performance of the duties and responsibilities imposed by the Agreement. Attorney shall not represent, advise, or maintain an attorney-client relationship with any organization of peace officers, the membership of which consists in whole or in part of peace officers who are employed by a public entity within El Dorado County, or who are employed by the State of California and work within El Dorado County.

B. Office and Staff Costs: In providing the legal services required by this Agreement, Attorney will provide, at his or her own expense, all appropriate office and legal staff as necessary to provide competent legal services in the cases covered by this Agreement. This staff may consist of such attorneys, paralegals, clerks, and any and all secretarial services, as are necessary to fully discharge in a professional manner all obligations herein assumed by Attorney. Attorney represents and warrants that at all time his personnel shall be competent and that all services rendered will be sufficient to meet all constitutional requirements relating to legal services. Administrator expects that Attorney will provide the legal services required under this Agreement personally, and Attorney must appear personally at all mandatory appearances, but Attorney may from time to time use other equally-competent attorneys as temporary substitutes at non-mandatory appearances if acceptable to the court and the Administrator.

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C. Operating Costs: In providing the legal services required by this Agreement, Attorney will bear at his or her sole expense all normal office costs, such as and including telephone, copy expenses, computerized legal research, in-state travel, malpractice and other insurance, etc. Attorney will be entitled to disbursement of additional funds from Administrator to pay for reasonable ancillary services such as the costs of experts, investigators, testing services, transcripts, etc., as provided in this Agreement.

II. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. Compensation: For the services described in Section I Attorney shall be paid \$5,060 monthly at the beginning of each month from July 1, 2016 through June 1, 2017.

B. Costs Related to Representation -- Ancillary Services: Attorney will be entitled to request from Administrator additional funds to pay for the reasonable cost of ancillary services, such as psychiatrists and other expert consultants or witnesses, interpreters, investigators, testing services, transcripts, out-of-state travel, etc., as necessary to provide a constitutionally competent legal defense. Attorney agrees that the costs for ancillary services shall be paid at a rate that does not exceed what the Public Defender's Office pays for similar services. Prior to utilizing any ancillary services in any individual case, Attorney will obtain an order from the Court authorizing the requested ancillary services and approving the cost of the services to be rendered and/or a fee schedule for the individual that will be providing the service. Administrator will be obligated to disburse additional funds to ancillary service providers upon receipt of an accumulated invoice from the service provider and a court order for reimbursement that complies with this Agreement. Attorney understands that the County does not have unlimited funds to reimburse for such ancillary services, and that no ancillary services contracted for by Attorney in the performance of this Agreement shall be reimbursed except under the terms of the agreement contained herein.

C. Costs Related to Representation -- Investigatory Services: Attorney may request from Administrator additional funds for the reasonable cost of investigatory services. Attorney understands that the Administrator does not have unlimited funds to pay for investigatory services. Administrator shall allocate \$14,366 per year for payment of investigatory services. Once the \$14,366 allocated by Administrator is expended, Administrator will be required to request disbursement of additional funds from the County to fund any subsequent investigatory services.

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Administrator will be obligated to disburse additional funds to investigatory service providers upon receipt of an accumulated invoice from the service provider and an order from the Court authorizing the employment of an investigator and approving the cost of the services to be rendered and/or a fee schedule for the individual that will be providing the service. Attorney understands that neither the Administrator nor the County has unlimited funds to pay for investigatory services, and that no investigatory services contracted for by Attorney in the performance of this Agreement shall be paid except under the terms contained herein.

D. Trials Exceeding Three Weeks: It is anticipated that the trial in an average case will not exceed three calendar weeks. The flat monthly rate established above is intended to compensate Attorney for legal services in all assigned cases up to and including three calendar weeks per case. For the purpose of this section, a trial week will consist of a minimum of three days of trial. If the trial in any individual assigned case exceeds three calendar weeks, Attorney will be entitled to additional compensation of \$1,000 per additional calendar week after three trial weeks, payable by the County at the conclusion of each additional calendar week upon receipt of an acceptable invoice. Extended trial payments cease when verdict is given, jury is discharged, or trial is concluded, whichever is earlier in time.

E. Extraordinary and Excluded Cases: In those rare instances of an assigned indigent defense case involving unusual circumstances which demand a truly extraordinary amount of legal work, Attorney may seek a court order declaring the case to be extraordinary, in which instance Attorney's services in that case will be paid by the County at a rate not to exceed \$70 per hour subject to court approval and upon receipt of an acceptable invoice. Death penalty cases are not included in this contract, so if Attorney is assigned and accepts a death penalty case then compensation for that case shall be separately negotiated with the County.

F. Change in Venue: County will provide reimbursement for food and lodging, mileage, and airfare expenses when Attorney is required to appear in a case outside of El Dorado County because of a change of venue. These expenses will be reimbursed at rates consistent with current County policy for travel, Board of Supervisors Policy D-1, found at:

http://www.edcgov.us/Government/BOS/Policies/Policy_Manual.aspx#SectionD

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

Dated: _____ EL DORADO LAW, A PROFESSIONAL LAW CORPORATION

Adam C. Clark Owner, El Dorado Law, APLC

Dated: _____ ATTORNEY:

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