

Members

Per A. Ramfjord, Chair
Hon. Elizabeth Welch, Vice-Chair
Mark Hardin
Paul Solomon
Lisa Ludwig
Kristen Bell
Thomas M. Christ

**Ex-Officio Member**

Chief Justice Martha Walters

Executive Director

Lane Borg

PUBLIC DEFENSE SERVICES COMMISSION

Thursday April 16, 2020
10:00am – approx. 2:00pm
Via Microsoft Teams Live Event

MEETING AGENDA

1.	Action Item: Approval of Minutes* – PDSC meeting held on January 23, 2020. (<i>Attachment 1</i>)	Chair Ramfjord
2.	Introductions: Commissioner Paul Solomon, Commissioner Thomas Christ, OPDS Budget Manager Julie Fetsch, and OPDS Executive Assistant Kaysea Dahlstrom	L. Borg, P. Solomon, T. Christ, J. Fetsch, & K. Dahlstrom
3.	COVID-19 Agency Plan Report	L. Borg
4.	Legislative Update	K. McCullough
5.	Case Manager RFP & Update	K. Farkas & D. Brandon
6.	Contracts RFP Update	H. Pate
7.	Public Defense Contracting & Non-Compete Agreements (<i>Attachment 2</i>)	E. Deitrick
8.	ABA Study Report Update (<i>Attachment 3</i>)	E. Deitrick
9.	Staff Update	E. Lannet, E. Deitrick, W. Perez, & E. Herb
10.	Investigator Update	J. Comstock & S. Wilson
11.	Public Comment	All

In compliance with the Governor's Executive Order No. 20-12 issued on March 27, 2020, this meeting will occur via Microsoft Teams Live Event videoconference and will be available for both live-stream and archived viewing at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDY2MTkwODAtY2F1Ny00MWQ5LWJhMDQtOGRIYWRiNDgwZTMz%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%223d7cf095-922e-45b6-ba97-3e8edd1f03db%22%2c%22lsBroadcastMeeting%22%3attrue%7d

**The full transcript for the January 23, 2020 PDSC meeting can be found online at the link below.*

Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting to Kaysea Dahlstrom at (503) 378-3349.

Next meeting: Thursday, May 21, 2020 10am-2pm. Details to be announced at a later date.

Meeting dates, times, and locations are subject to change; future meetings dates are posted at:
<https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 23, 2020

10:00 a.m. – 2:00 p.m.

Capitol Building
Hearing Room 50
900 Court Street NE
Salem, OR 97301

MEMBERS PRESENT:

Lisa Ludwig (Acting Chair)
Elizabeth Welch (Vice Chair)
Mark Hardin
Professor Kristen Bell
Hon. Martha Walters (Ex Officio)

STAFF PRESENT:

Lane Borg
Eric Deitrick
Shelley Dillon
Keren Farkas
Nikita Gillis
Wendy Heckman
Erica Herb
Amy Jackson
Ernest Lannet
Kimberly McCullough
Caroline Meyer
Heather Pate
Whitney Perez
Shannon Storey
Billy Strehlow
Brooke Sturtevant

The meeting was called to order at 10:00 AM.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 19, 2019

Commission members unanimously approved minutes from December 19, 2019 meeting.

Agenda Item No. 2 Action Item: Approval of Compensation and Classification

Wendy Heckman presented a new compensation plan to the PDSC for approval. The new plan brought legal secretaries in the appellate division in line with the previously approved plan for all of OPDS. That plan included a 2.15% COLA increase in July 2019, a new top step in July 2020, and a 3% COLA in October 2020. Additionally, the classification series for IT was eliminated.

Agenda Item No. 3 Oregon Government Ethics Committee Training

Monica Walker, a statewide trainer for the Oregon Government Ethics Commission (“OGEC”) gave a presentation on that governmental agency, and Oregon government ethics law generally. She began by discussing the membership of OGEC and the agency structure.

Thereafter, Ms. Walker discussed the obligations and limitations placed upon public officials; conflicts of interest; gifts; nepotism; executive sessions; public meeting notice requirements; and constructive meetings resulting from serial communication. Additionally, she discussed the process OGEC uses in response to complaints about public officials. During the presentation, a fire drill occurred.

Agenda Item No. 4. Title IV-E Matching Funds

Keren Farkas, PCRP Program Manager, provided an update to the PDSC on Title IV-E matching funds. She noted that Title IV-E funding is a longstanding federal program, and a source of funding to reimburse state costs associated with foster care. Historically, this helped offset state legal expenses regarding the representation of DHS in judicial proceedings. A recent change in the interpretation of this program at the federal level has made these funds available to legal expenses associated with the representation of parents and kids.

Ms. Farkas discussed the communication and planning that has occurred between OPDS and DHS to move forward, as well as the development of a memorandum of understanding between these agencies. Commissioner Hardin, Ms. Farkas, and Director Lane Borg discussed options for how that funding could be reinvested in areas such as expanding the PCRP program, training, and technical assistance. Ms. Farkas discussed agency steps that needed to be taken to access the funding.

Agenda Item No. 5 Contract Policies

Heather Pate, Contracts Manager, gave a brief update on the upcoming Request for Proposals (“RFP”). She noted that the RFP would seek proposals based upon an FTE model, rather than a case credit model, and she noted that the PDSC had previously directed the agency to stop using the case credit model. She also discussed the options to expand the percentage of cases associated with hourly billing.

Eric Deitrick, General Counsel, discussed several policy implications arising from the new RFP. He noted that the agency was still awaiting a legislative decision regarding the \$20 million special purpose appropriation. Depending upon the availability of funding, the agency’s intention was to contract uniformly statewide and attempt to get public defense providers as close to caseload standards as possible.

He then discussed issues regarding contracting with consortia that contained both individual members and law firms, and the need to eliminate subcontracting so that OPDS can accurately identify which attorney is handling which cases.

Additionally, Mr. Deitrick discussed the agency's intention to only contract with attorneys who were devoting 80% of their time to public defense work. Other providers could still do public defense work, but on an hourly fee agreement schedule. Two exceptions to this general 80% rule were (1) attorneys who are genuinely working part time and (2) regions where the agency needed to maintain flexibility.

Director Borg then discussed the hourly model, and how the agency would monitor and audit the increased hourly billing volume.

Agenda Item No. 6 Legislative Concept 202

Kimberly McCullough introduced herself as the new, and first, Legislative Director for OPDS. She provided some of her background work and experience, which included her legislative work on behalf of the ACLU. That work included a significant amount of work in criminal justice reform.

Ms. McCullough discussed Legislative Concept 202, which was being developed by the House Speaker's office in conjunction with the House Judiciary Committee. Feedback was taken from AFSCME, OCDLA, ODCA, and OPDS. LC 202 would expand the PDSC from seven to nine members; it eliminated a requirement that public defense contracting be done "in the most cost-effective manner," directed the agency to establish certain policies regarding contracting; and adopt caseload policies consistent with regional and national best practices. Additionally, it set a date for OPDS to report back to the legislature on its progress regarding contracting.

Ms. McCullough emphasized that this was not an OPDS bill. Rather, it was developed by the advocates as a first step in a multi-year reform effort. She noted that parts of the bill were actually adopted from House Bill 3145 (2019).

Agenda Item No. 7 OPDS Monthly Report

Ernie Lannet, Chief Defender for the Criminal Appellate Section, discussed several recent opinions from the Oregon Supreme Court, regarding the interpretation of the burglary statutes, the use of out-of-state prior convictions to enhance new sentences, and the processes surrounding restitution in criminal cases. He noted that a new attorney – Peter Klym – had recently joined the office.

Shannon Storey, Chief Defender for the Juvenile Appellate Section, discussed two recent opinions regarding the analysis of what DHS steps toward reunification constitute "reasonable." She also noted that the newest member of the section had their first Supreme Court oral argument in the past month.

Mr. Deitrick provided an update on the American Bar Association caseload study. He also discussed steps the agency was taking to prepare for favorable opinion in *Ramos v. Louisiana*. There is likely to be a flood of post-conviction relief petitions filed with the circuit courts, and the agency is preparing to have an organized litigation strategy.

Agenda Item No. 8 Public Comment

David Hocraffer, an attorney with the Columbia County Indigent Defense Consortium, discussed a concern he had regarding the new proposed PCRP case weighting procedures. He discussed other concerns regarding criminal case weighting. Additionally, he disagreed with the agency's plan to limit attorneys to practicing under one contract only.

Shaun McCrea, Executive Director of OCDLA, discussed agency oversight of public defense contractors, and noted that peer and service delivery reviews were a tool used in the past. Commissioner Hardin and Ms. McCrea discussed the efficacy of those reviews, with Mr. Hardin supporting a more robust oversight process.

Rob Harris, Executive Director of the Oregon Defense Attorney Consortium in Washington County, also noted the peer and service delivery review system. He expressed concern with the new RFP and how that would fit with his business model. Mr. Harris and Commissioner Bell discussed the development of younger and new attorneys entering the field. Commissioner Hardin, Mr. Harris, and Director Borg then discussed the benefits of the .8 rule for contracting in the proposed RFP.

Brook Reinhart, Executive Director for Public Defense Services of Lane County, discussed some discrepancies he believed existed in the proposed case weighting. Additionally, he discussed the benefits and challenges of the time-tracking associated with the ABA caseload study.

Diana Taylor, Executive Director of Justice Alliance of Columbia County, discussed the challenges of recruiting attorneys to work in a small county. She believed the .8 rule and limitation on number of contracts would be harmful to small counties.

MOTION: A motion was made to adjourn the meeting; the motion was seconded; **VOTE: 4-0**

Meeting Adjourned.

Attachment 2

BEND ATTORNEY GROUP CONTRACT WITH ATTORNEY

This Agreement is between Bend Attorney Group, an Oregon non-profit corporation (hereinafter "B.A.G.") and BRENNEMAN LAW, LLC (hereinafter "Contractor".) This Agreement shall be in effect as of January 1, 2018.

RECITALS

A. From January 1, 2018, through December 31, 2019, B.A.G. is under contract with the State of Oregon Office of Public Defense Services (hereinafter "State Contract") to represent indigent clients, in Deschutes County Circuit Court, who are charged with crimes, juvenile offenses or are persons named in dependency petitions filed by the State of Oregon.

B. Contractor is licensed to practice law in the State of Oregon and has experience providing case specific representation in compliance with Public Defense Services Commission Qualification Standards for Court-Appointed Counsel.

C. The purpose of this Agreement is to assure that quality legal services and counsel are provided to indigent clients and to fairly administer the representation of indigent clients in matters before the Deschutes County Circuit Court as provided under the terms of the State Contract.

Now therefore, in consideration of the mutual covenants herein contained, B.A.G. agrees to assign cases to Contractor and Contractor agrees to accept such assignments subject to the following terms and conditions:

AGREEMENT

1. COMPENSATION

1.1 The State Contract pays B.A.G. at a case specific value. Each assigned case value shall be paid to Contractor at 90% of the case value assigned to each case type pursuant to the State Contract.

1.2 Contractor will receive a monthly stipend in an amount agreed to by the B.A.G. Administrator and Contractor. To avoid potential fluctuations in Contractor's stipend due to fluctuations in case assignments from the court, B.A.G. will pay to Contractor \$ monthly. All payments to Contractor are earned by acceptance and completion of the case assignment.

1.3 10% of the payments to B.A.G. from the State shall be held by B.A.G. in the B.A.G. Administration Account. and used by B.A.G. to pay administrative costs. Administrative funds not used in any contract period are solely the property of B.A.G.

1.4 If additional case credits for any assigned case(s) are due to

Contractor under the terms of the State Contract, eg. Assigned cases above Contractor stipend or Contractor wishes to ask for additional case credit, it is the responsibility of the Contractor to notify the B.A.G. Coordinator and to justify the appropriateness of any such credits. The time limit for requesting additional credits is no later than 10 days after judgment on each case.

2. ASSIGNMENT OF CASES B.A.G. will make best efforts to assign cases per case value sufficient to meet Contractor's monthly stipend in paragraph 1.2 of this contract provided B.A.G. receives case assignments adequate to fulfill the State Contract.

It is the goal of B.A.G. to distribute cases between Contractors in a fair and equitable manner. The B.A.G. Administrator shall periodically review the case distribution to determine if the assignment of cases complies with the stated goal. Ultimately, the assignment of cases is at the discretion of B.A.G.

3. CONTRACTOR COSTS All experts and investigators hired by Contractors must have prior State Court Administrator approval, and shall be paid directly by the State of Oregon. B.A.G. is not responsible for said costs.

4. PROVISION OF SERVICES

4.1 Contractor shall remain a member in good standing of the Oregon State Bar, shall maintain an office in Deschutes County, and shall maintain professional liability insurance coverage. Contractor shall maintain additional liability insurance as required by the State Contract naming B.A.G. and the State of Oregon as "also insureds". Contractor shall conform to the standards set forth in the *General Terms and Specific Terms, Section 7, Obligations of Contractor* provision of the State Contract, a copy of which has been provided to Contractor. Failure to comply with these provisions may result in sanctions and/or termination of this Agreement.

4.2 Contractor shall provide legal services for each appointed client in person, on time, with due diligence and professionalism. Associates, legal assistants, investigators, secretaries, or other agents of Contractor do not satisfy the "in person" requirement unless otherwise provided in this Agreement.

4.3 If Contractor is unable to appear personally at a scheduled court appearance, Contractor shall immediately make other arrangements to assure the client is adequately represented by another B.A.G. attorney at such appearance and notify B.A.G. Coordinator of the coverage.

Contractor may delegate such services to another B.A.G. Contractor if Contractor is on vacation, ill or otherwise unavailable and shall:

A. Notify the B.A.G. Coordinator as soon as Contractor becomes aware Contractor will be unavailable. Except in emergency situations, such notice shall be in writing and shall designate another B.A.G. Contractor to

carry out Contractor's duties required by this Agreement and submit acknowledgment in writing from the designated substitute. Another Contractor may not be designated to cover trials, substantive motions, or any contested hearings unless a formal Court Order of substitution or association of counsel is approved by the appropriate court.

B. Contractor shall, except in emergency situations, provide written notification of the name and supply the written acknowledgement of the covering attorney to the B.A.G. coordinator's office not less than five (5) days prior to the first day of any absence. In the event of an emergency, Contractor shall notify B.A.G. as soon as reasonably possible by the most expeditious means available.

C. If Contractor fails to notify B.A.G. and/or fails to provide written notice of the name of the covering attorney as provided herein, Contractor may be immediately suspended from case assignments. The period of the suspension will be determined by B.A.G. Two such violations during any twelve (12) months may be considered grounds for termination of this Agreement.

4.4 Contractor shall not allow retained clientele to cause deterioration in the quality of service rendered to each appointed client.

4.5 If Contractor has a direct conflict of interest with a particular case, Contractor shall notify the B.A.G. Coordinator immediately. The case will be reassigned to another Contractor and Contractor will receive another case assignment as soon as possible. Newly assigned Contractor will prepare and submit substitution of attorney pleading(s) to the court, if necessary.

4.6 During any 12-month period, Contractor will be allowed to remove him/herself from only one (1) case for personal reasons. B.A.G. Coordinator must be notified when Contractor elects to decline a case under this provision. Contractor will not receive a make-up case.

4.7 The B.A.G. Administrator and Contractor may agree to voluntarily suspend Contractor from case assignments for a period not to exceed 50% of each calendar quarter. Contractor may apply to B.A.G. for an exception due to extraordinary circumstances as long as B.A.G. determines the voluntary suspension is not defeating the purpose of this Agreement or the goals of B.A.G. Contractor may receive make-up cases at the sole discretion of B.A.G.

4.8 If Contractor withdraws or is forced to resign from a case before completion or closure and the case is reassigned to a new attorney, or referred to Family Drug Court, the case credit will be equitably divided between the attorneys per the time table in the policies and procedures manual. B.A.G. shall decide the fee split and notify the attorneys of the apportionment within 30 days of the reassignment of the case.

4.9 Contractor shall continue representation of appointed clients until final determination of the court or removal by court Order. Contractor may not suspend representation pending potential withdrawal of court appointment if defendant is later deemed ineligible. This includes setting office appointments, attending court appearances and/or other necessary services. If Contractor's client declared his/her intent to retain private counsel, Contractor shall continue representation until receipt of confirmation from retained counsel.

5. ARRAIGNMENTS In addition to the provision of services otherwise provided herein, Contractor also agrees to appear in court for the purpose of covering arraignments as shall be determined by B.A.G. Administrator and Coordinator and the court docket. The dates of coverage shall be assigned by B.A.G. Administrator on a rotating basis. The Administrator shall provide a calendar at least one month in advance to accommodate the scheduling of Contractor. Contractor may trade duties with other Contractor(s) to accommodate vacations, trials and other conflicts, provided the following:

5.1 Contractor initiating the trade shall confirm the rescheduling in writing with B.A.G. Coordinator not less than 48 hours prior to the arraignment time. Such confirmation shall include written acknowledgment by the substituting attorney. However, if the rescheduling occurs as a result of illness or other emergency, the name of the substitute Contractor shall be immediately communicated by telephone to the Administrator and the indigent defense coordinator and the Deschutes County Courthouse. At present, arraignments that require coverage are adult criminal court arraignments, juvenile delinquency arraignments, and juvenile dependency emergency shelter hearings. Notice will be provided if a change occurs.

5.2 If Contractor fails to appear for their scheduled arraignments as required in this section of the contract, Contractor may be skipped in one rotation from each assignment list. Two such violations during any twelve (12) months may be considered grounds for termination of this Agreement.

6. MEETINGS B.A.G. will schedule monthly meetings of all Contractors. Attendance is encouraged and Contractor shall make effort to attend. B.A.G. will make every effort to schedule such meetings with sufficient advance notice and at such times and place to minimize inconvenience.

7. BRIEF BANK A brief and memorandum bank will be kept at the office of the B.A.G. Coordinator. All Contractors shall have access to said bank during regular business hours. Contractor shall contribute copies of legal memorandum produced for cases assigned hereunder to said bank within five days of the filing of said memorandum.

8. TERM OF CONTRACT This contract shall be for a term ending on December 31, 2019, unless extended, modified or terminated as otherwise provided herein or in the State Contract.

9. ASSIGNMENT Due to the unique skills and ability of Contractor,

and the obligation of Contractor to give personal attention to each client appointed hereunder, this Agreement and the duties hereunder are not assignable by Contractor.

10. COMPLAINTS OR CLAIMS

10.1 If Contractor receives notification that a complaint or malpractice claim has been filed against him or her with any State or Federal Court or with the Oregon State Bar or Professional Liability Fund, Contractor shall immediately notify B.A.G. in writing of the existence and substance of that complaint or claim.

10.2 Contractors must report any and all bar complaints, including but not limited to:

- I. B.A.G. contract cases,
- II. Retained cases,
- III. Pro Bono matters,
- IV. And matters in which there has been participation in representation.

10.3 If B.A.G. receives a complaint concerning the services of Contractor under this Agreement, Contractor shall be notified and given an opportunity to respond to such complaint. Contractor shall, in good faith, cooperate with B.A.G.'s investigation of the complaint or claim.

10.4 Contractor shall notify B.A.G. if Contractor or a member of Contractors legal or investigative staff has been charged with a crime in which the alleged victim is or was a client or a witness to a case assigned to Contractor under this Agreement.

11. SUSPENSION, TERMINATION AND QUALITY CONTROL B.A.G. shall monitor case assignment and performance of legal services by Contractor pursuant to this Agreement. B.A.G. shall maintain a quality assessment file for each Contractor. All complaints and/or comments received by the B.A.G. Administrator or Coordinator shall be placed in said file. The quality assessment files are the sole property of B.A.G. and the contents, including identifying information of a complainant, are confidential and will not be disclosed without the written request of Contractor unless official action is taken by B.A.G. with regard to a specific complaint and then only upon notification to Contractor.

A. Contractor may terminate this Agreement by providing no less than 30 days advance written notice to the B.A.G. Administrator. Contractor's termination shall be effective upon receipt of said notice by the Administrator. If Contractor terminates this Agreement Contractor shall continue to represent previously appointed clients unless Contractor and the B.A.G. Administrator otherwise provide by separate agreement.

B. This Agreement is subject to the conditions of the State Contract. If the State Contract is terminated, this Agreement shall terminate.

C. B.A.G. may terminate this Agreement for any action by Contractor which constitutes a cause of termination under the terms of this Agreement and/or State Contract. B.A.G. Administrator may take into consideration actions by Contractor deemed harmful to the reputation of B.A.G. or disruptive to the collegial relationship between Contractors.

D. If Contractor is suspended or disbarred by the action of the Oregon State Bar, Contractor shall be deemed to have failed to provide services according to the requirements of this Agreement and B.A.G. shall suspend or terminate the Agreement immediately, concurrent with the Oregon State Bar's suspension or termination.

E. If Contractor is deemed to have failed to provide services according to the requirements herein or failed to otherwise comply with the terms of this Agreement, B.A.G. may, in its discretion, take any of the following actions upon written notice to Contractor:

- (1)** Give Contractor notice to comply within a reasonable time;
- (2)** Mandate Contractor's participation in a mentor program;
- (3)** Implement any other appropriate corrective course of action.

- (4)** Suspend Contractor from receiving case assignments until further notice; or
- (5)** Terminate this Agreement;

Except in situations which involve repeated violations or constitute an immediate threat to the administration of justice or outrageous conduct (eg. sex with a client), or loss of the State Contract, B.A.G. will provide Contractor with an opportunity to respond to any claims before suspending or terminating this Agreement. In determining whether the actions of Contractor warrant suspension or termination, B.A.G. may consult with other B.A.G. Contractors.

F. B.A.G. may terminate Contractor immediately upon receipt of any lawsuit or civil action filed against B.A.G. by Contractor.

G. Upon termination or suspension, B.A.G. will notify the Court that Contractor is no longer receiving case assignments from B.A.G. and B.A.G. will notify Contractor that he/she will no longer receive payment from B.A.G.

H. In the event Contractor is unable or unwilling to complete the

work required for appointed clients, B.A.G. shall reassign those cases to other attorneys. Contractor agrees to cooperate and in a timely and effective transfer of files and materials.

I. For purposes of this Agreement the requirement that notice be provided in writing may be satisfied by email transmission to the B.A.G. Coordinator.

12. CONTRACT WITH STATE OF OREGON Contractor shall be bound by the terms of the State Contract, a copy of which will be provided to the Contractor when available. In the event the terms of this Agreement are inconsistent with the State Contract, the terms of the State Contract are controlling. Contractor shall cooperate with and assist B.A.G. in complying with the terms, conditions and obligations of the State Contract. Further, Contractor shall not in any manner hinder, frustrate or interfere with the effective performance of the terms, conditions and obligations of the State Contract.

Conflicts of interest are to be resolved in accordance with and subject to the State Contract.

13. INSURANCE, INDEMNIFICATION Contractor shall carry the insurance required in the State Contract and shall provide proof of same to B.A.G. upon request. Contractor's insurance shall name B.A.G. as an additional insured.

13.1 Contractor shall indemnify, save and hold harmless B.A.G., its officers, agents, board of directors and employees from all claims, suits or actions of whatever nature resulting from or arising out of the activities of Contractor or its employees under this Agreement.

13.2 Contractor shall obtain and maintain workers compensation insurance for any of Contractor's employees.

14. REPORTING B.A.G.'s statistical and financial reports required by the State must be submitted to the State no later than the 20th day of each month. Therefore, Contractor must send completed reports to the B.A.G. Coordinator no later than the 5th day of the month. Any failure to comply with the following reporting requirements may result in denial of compensation.

14.1 Contractor is required to report initial B.A.G. appointments on all case types to the coordinator on the day of the appointment.

14.2 For statistical and case credit purposes, family court meetings, drug court reviews and mental health court appearances must be reported to the coordinator within 24 hours of the appearance.

14.3 Juvenile court contractors shall report case appointments and reviews as they occur, and additionally, submit a complete report of all such case credit no later than the 5th day of each month.

14.4 When requested, contractors may be required to maintain accurate time keeping record of time expended on each case, itemizing both in-court and out-of-court time.

14.5 B.A.G. will supply a list of cases assigned to Contractor at the monthly B.A.G. contractors meeting. Contractor must submit case credit corrections by the 15th day of each month to enable the Coordinator to meet the reporting deadline with O.P.D.S. Contractors may not receive credit for corrections made after the 15th of the month following the month the case credit was earned.

15. NON-COMPETITION Contractor shall not engage in any activity during the term of this Agreement to the detriment of or risk to and/or have a negative financial impact on B.A.G. Specifically, Contractor agrees not to engage in activity which shall be considered competition with B.A.G.'s interests, including but not limited to competitive bidding for services provided by B.A.G. under the State Contract. Any action in violation of this clause shall result in the immediate termination of Contractor's agreement with and services for B.A.G. This paragraph does not prohibit Contractor from accepting privately retained cases of any kind.

16. RESOLUTION OF DISPUTES; ATTORNEY FEES Any and all claims or disputes, including claims for equitable relief, arising out of or pertaining to this Agreement, including questions of interpretation or requests for equitable relief, shall be resolved by final binding arbitration before a single arbitrator in accordance with UTCR 13.100. The parties shall agree on the arbitrator from a list provided by both parties. Should the parties be unable to agree on a single arbitrator, the presiding judge of the Deschutes County Circuit Court shall appoint the arbitrator. The arbitrator so selected or appointed is directed to resolve any such disputes in an expeditious and efficient manner without production of any written statement of facts or memorandum of law except only as may be necessary to create an arbitration award capable of enforcement in the Courts of Oregon. A party substantially prevailing in the arbitration shall be entitled to recover an amount for costs and attorney fees incurred in connection with the arbitration as shall be determined by the arbitrator to be reasonable. Further, a party so prevailing, may file and enforce such award in the Circuit Court for Deschutes County, Oregon, and shall also be entitled to attorney fees incurred in the filing and enforcement of such award. The decision of the arbitrator shall be binding. Judgment upon the arbitration award may be entered into any court having jurisdiction. This arbitration procedure shall apply regardless of the type of remedy sought, be it equitable or legal in nature.

17. WINDING UP

17.1 In preparation for the expiration of this contract, the B.A.G. Administrator, Coordinator and Contractor will conduct a justification of total cases assigned and total payments made to Contractor. If the justification determines that case assignments have been insufficient to generate credit to

Contractor equal to the amount of money paid to Contractor by B.A.G., Contractor will be required to refund to B.A.G. all overpayments received unless otherwise agreed between the parties. B.A.G. may agree not to require Contractor to repay overpayments if B.A.G. has communicated an intent to recontract with Contractor for another contract cycle, in which case the Contractor's obligation may be worked off in the new contract period. B.A.G. will pay Contractor any overage due for cases assigned above the total value of the monthly payments made to Contractor.

17.2 If either party announces an intent to terminate this Agreement prior to the expiration of the contract period, the same justification process will be conducted as set forth above in paragraph 17.1. Assignment of cases to Contractor pending termination of the contract will be at the discretion of the B.A.G. Administrator in coordination with the B.A.G. Coordinator.

17.3 Following termination or expiration of the contract, Contractor shall complete to a final judgment all cases previously assigned by B.A.G. Should Contractor withdraw from representation in an assigned case following termination or expiration of the contract, and B.A.G. is subsequently reassigned the case by the Court, Contractor shall refund B.A.G. the entire case value unless otherwise agreed in advance of the withdrawal.

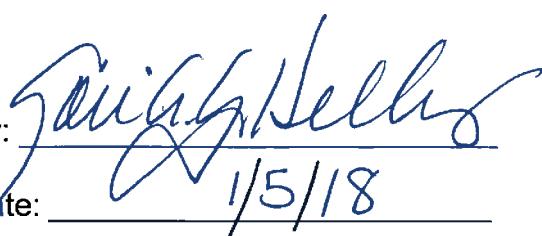
18. MERGER This Agreement contains the entire agreement between the parties and supersedes all prior Agreements written or oral. The granting of this contract in no way obligates B.A.G. to offer future contracts to Contractor.

Failure of B.A.G. to enforce any provision of this Agreement does not constitute a waiver of said provision.

B.A.G.:

By:

Date:



Jamie Nellis

1/5/18

CONTRACTOR:



A.C.B.

Date: 1/5/18

ATTORNEY AGREEMENT

DATE:

1-31-18

PARTIES: Klamath Defender Services, Inc.
An Oregon Not for Profit Corporation
525 Main Street
Klamath Falls, OR 97601

("KDS")

Diana Bettles
422 Main Street
Klamath Falls, OR 97601

("Attorney")

Public Defense Services Commission
1320 Capitol Street, NE, Suite 190
Salem, OR 97303

("PDSC")

PREAMBLE:

Attorney represents that he/she has complied with the following:

KDS Attorneys have reviewed and are familiar with the contract between KDS and PDSC and all requirements and conditions therein, general terms available on-line at OPDS, and KDS Attorneys intend to engage in their practice in a manner that is professionally consistent with the contract.

KDS Attorneys have reviewed and are familiar with the "Best Practices" recommendations of PDSC, available on-line at OPDS, and intend to engage in their practice in a manner that is professionally consistent with the recommendations therein.

KDS Attorneys have reviewed and are familiar with the requirements of the Oregon State Bar and represent that they will carry out their functions consistent therewith.

KDS Attorneys understand the responsibilities of the Board of Directors and their duty to ensure that KDS delivers a service consistent with the professional standards that are applicable to indigent defense. KDS Attorneys acknowledge the power of the Board to inquire regarding their delivery of the services retained by KDS for indigent defense and agree to cooperate fully and completely with any such inquiries.

RECITAL:

KDS is engaged in the business of providing legal counsel to indigent persons in Klamath County and Lake County, Oregon. KDS currently contracts with PDSC and receives government funds for such services. KDS desires to contract with and retain the

DB

Initials

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unique and personal experience, abilities, and services of Attorney to provide counsel to the indigent persons of Klamath County and Lake County, Oregon. The Attorney currently operates his/her own independent business and practice of law together with his/her own staff and office space. The unique relationship between KDS and Attorney is one of an independent contractor with review pursuant to Guidelines of Attorney by KDS in connection with providing these services.

AGREEMENT:

The parties agree as follows:

SECTION 1. CONTRACT TERM

- 1.1 **Fixed Term.** KDS agrees to contract with Attorney for a term commencing on January 1, 2018 and terminating on December 31, 2019, or until sooner terminated in accordance with Section 6 below.
- 1.2 **Duties.** Attorney accepts work with KDS on the terms and conditions set forth in this Agreement, and agrees to devote the requisite time and attention (reasonable periods of illness excepted) to the performance of duties under this Agreement. In general, such duties shall consist of Attorney providing legal services to clients who are assigned to Attorney by KDS and the representation of the clients in court with professional ethics, standards and customs applicable to attorneys of the State of Oregon. Attorney shall perform such specific duties and shall exercise such specific authority as may be assigned to Attorney from time to time by KDS.
- 1.2.1 **Case Management.** KDS and Attorney understand and recognize the personal nature to which every attorney handles files and the unique nature of the legal profession. Attorney shall be free to define and execute how he/she will perform responsibilities so long as all cases assigned to Attorney result with Attorney devoting best efforts to the representation of clients.
- 1.2.1.1 **Mandatory Interviews.** Attorney shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients within 24 hours of appointment, or, if the court appoints Attorney on a Friday, weekend or holiday, Attorney shall conduct the initial interview in person by the next working day. This initial interview may be conducted by the pre-release investigator for KDS or dependency case manager.

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1.2.1.2 Report of Closed Cases. Attorney agrees to certify to KDS, in writing, quarterly, their closed cases. Required information is date assigned, date closed, client name, case number and how case was closed. See attached list of codes.

1.2.1.3 Investigation. See Appendix #1.

1.2.2 Case Files. All information Attorney receives with regards to each individual case assigned to Attorney shall be confidential and not be made available to KDS unless the information is of public record or if the information is required pursuant to State law, the Oregon State Bar, the Board of Directors, or PDSC. Time records for each case assigned to Attorney may be required by KDS as requested by PDSC for statistical purposes.

1.2.3 Ethical Standards. Attorney recognizes and acknowledges he/she is bound by the Professional Rules of Ethics to which all attorneys in the State of Oregon must conform. In addition to these standards, Attorney agrees to abide by all rules and regulations of the State of Oregon for indigent defense and the Public Defense Services Commission. **Attorney shall report immediately to KDS any formal complaint received from the Oregon State Bar.**

1.2.4 Professional Liability Insurance, OSB fees, OCDLA dues. If sufficient funding is available from PDSC to KDS, KDS will reimburse Attorney when Attorney procures and continuously maintains a policy of professional liability insurance with limits equal to the required minimum amounts required by the Oregon State Bar. Attorney shall provide proof of coverage to KDS annually by January 31st of each year if sufficient funding is available. KDS shall reimburse Attorney for any dues paid to the Oregon State Bar and the Oregon Criminal Defense Lawyers Association. Attorney shall comply with the annual continuing legal education credit requirements for all Oregon lawyers.

1.2.5 CLE Requirements. In addition, any attorney responsible for juvenile dependency assignments will be required to obtain at least 16 hours of continuing legal education credit related to the practice of juvenile law during the term of this Agreement. Any attorney responsible for juvenile delinquency assignments will be required to attend at least one CLE related to the practice of juvenile law during the term of this Agreement.

1.2.6 General Liability Insurance, Casualty Insurance, Additional Insured. Attorney shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage. Attorney shall also procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood or other casualty. The liability and casualty insurance coverages required shall include the State of Oregon, PDSC, and their divisions, officers, and employees, and Klamath Defender Services, Inc. as additional insureds but only with respect to the Attorney's activities to be performed under this contract. Attorney will provide KDS with a copy of this coverage.

1.2.7 Case Resolution. Attorney will be assigned cases throughout each month during the term of this contract. Once an attorney has been paid for the period representing the month during which the particular case has been assigned, the attorney agrees to complete the representation of that client until the case is resolved and the assignment ceases.

SECTION 2. NONCOMPETITION; CONFIDENTIALITY

2.1 Covenants of Noncompetition and Nonsolicitation

2.1.1 Covenants. Attorney covenants and agrees that for the Restriction Period (defined in Section 2.1.4), Attorney shall not, directly or indirectly;

- (1) Engage, within Klamath or Lake County, in providing indigent services or in any other business that competes with a business conducted by KDS, including but not limited to contracting with the State of Oregon or the County of Klamath or Lake to provide indigent defense counsel or participate, cooperate or organize any entity, group, corporation or individual to compete with KDS in any fashion whatsoever.
- (2) For the benefit of Attorney or any other person or enterprise,
 - (a) solicit any business whatsoever from any entity or supplier of KDS, (b) induce or cause any entity to cease purchasing any service or product from KDS or to terminate or change such entity's business relationship with KDS in any manner, or (c)

induce or cause any supplier to cease providing or selling any service or product to KDS or to terminate or change such supplier's business relationship with KDS in any manner.

(3) For the benefit of Attorney or any other person or enterprise, induce or solicit any person who is then employed by KDS, or has been employed by KDS at any time during the one-year period preceding such inducement or solicitation, to leave his employment or other position with KDS.

2.1.2 Indirect Activities. Attorney shall be deemed to be indirectly engaged in a business covered by Section 2.1.1.(1) if Attorney (1) owns an interest in or participates in the management, operation, or control of any enterprise that is engaged in a business covered by Section 2.1.1(1) or (2) performs any indigent defense work for any enterprise that is engaged in a business covered by section 2.1.1(1). For purposes of this Agreement, the term enterprise includes a sole proprietorship, partnership, limited liability company, corporation, trust, association, or other form of entity or association.

2.1.3 Reasonableness of Restrictions. Attorney acknowledges that the covenants set forth in this Section 2.1 do not impose unreasonable restrictions or work a hardship of Attorney, are essential to the willingness of KDS to reach an agreement with Attorney, are necessary and fundamental to the protection of the business conducted by KDS, and are reasonable as to scope, duration, and territory.

2.1.4 Restriction Period. The covenants set forth in this Section 2.1 shall be binding on Attorney for the period (the "Restricting Period") commencing on the date of this Agreement and ending four years after the date that Attorney's association with KDS terminates for any reason.

2.2 Confidentiality. As used in this Agreement, the "Confidential Information" shall mean (1) any information that relates to the business, products, technology, customers, finances, plans, proposals, or practices of KDS, including, but not limited to, plans and specifications for new products or services, research and development, inventions, marketing strategies, lists of KDS's customers and suppliers, nonpublic financial information, budgets, and projections; (2) any other information that KDS designates as "confidential"; and (3) any information given to KDS by a customer or supplier or otherwise designated as being confidential by a customer or supplier. The Confidential information shall include information in any form in which such information exists, whether oral, written, film, tape computer disk, or other form of media. The

Confidential Information shall exclude any information that is or becomes part of the public domain. The Confidential Information shall be the sole and exclusive property of KDS, and shall be entitled to all protections provided by applicable law to trade secrets. Except with the prior written consent of KDS, Attorney agrees during the term of this Agreement and at all times after the termination of this Agreement (1) to hold the Confidential Information in the strictest confidence; (2) to not disclose the Confidential Information to any person or enterprise (except to employees of KDS on a "need-to-know" basis to the extent necessary for them to perform the duties of their employment with KDS); and (3) to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure. During the term of this Agreement and at all times after the termination of this Agreement, Attorney agrees not to use the Confidential Information in any manner except in connection with the performance of duties under this Agreement or except with the prior written consent of KDS.

- 2.3 **Return of Documents.** Attorney agrees that all originals and copies of records, data, reports, documents, lists, plans, drawings, correspondence, memoranda, notes, and other materials related to or containing any Confidential Information, in whatever form they exist, whether written, film, tape, computer disk, or other form of media, shall become the sole and exclusive property of KDS and shall be returned promptly to KDS on the termination of this Agreement or on the written request of KDS.
- 2.4 **Injunction.** Attorney agrees that it may be difficult to measure damage to KDS from any breach by Attorney of Section 2.1, 2.2 or 2.3 and that monetary damages may be an inadequate remedy for any such breach. Accordingly, Attorney agrees that if Attorney shall breach or take steps preliminary to breaching Section 2.1, 2.2 or 2.3, KDS shall be entitled, in addition to all other remedies it may have at law, or in equity, to a restraining order, temporary and permanent injunctive relief, without showing or proving that any actual damage has been sustained by KDS.
- 2.5 **No Release.** Attorney agrees that the termination of this Agreement for any reason, or the expiration of the term of this Agreement shall not release Attorney from any obligations under Section 2.1, 2.2, 2.3 or 2.4.

SECTION 3. COMPENSATION

- 3.1 **Compensation.** In consideration of all services to be rendered by Attorney to KDS, KDS shall pay to Attorney compensation of \$11,000.00 per month with minor adjustments for dues, etc., payable in equal monthly installments on the last day of each month. In consideration of retaining attorney's services, Attorney agrees to keep confidential any and all

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information regarding the amount of compensation or manner of payment. Acceptance of the compensation paid to the Attorney by KDS represents a covenant by the Attorney that he/she will, within the bounds of legal ethics, complete all cases assigned to Attorney.

- 3.2 **Sole Source of Compensation.** Attorney shall make no claim for additional compensation for cases assigned to Attorney by KDS. Attorney shall not request or accept compensation from any other source other than KDS in relation to representing appointed clients as to the appointed case.
- 3.3 **Taxes.** KDS shall not withhold any taxes from compensation paid to Attorney. Attorney shall pay all income, social security and other taxes, including estimated taxes that Attorney owes based on fees paid to Attorney under this Agreement and will be required to provide written assurance annually that all taxes have been paid in full or appropriate arrangements have been made.

SECTION 4. DELEGATION

Attorney shall not delegate to another attorney any responsibilities assigned to said Attorney by this Agreement without the express written consent of the board of directors.

SECTION 5. OFFICE SPACE/STAFF; OFFICE EXPENSES

- 5.1 Attorney agrees to provide a professional office which is consistent with the standards of the community, including but not limited to returning telephone calls to the court within one hour, and returning telephone calls to clients within one business day.
- 5.2 Attorney shall not be entitled to reimbursement from KDS for any expenses incurred by Attorney in the performance of Attorney's duties under this Agreement except mileage as appropriate and requested in advance. Attorney shall provide his/her office staff, office space, office supplies and be responsible for his/her own travel expenses, postage, utilities, overhead, copy costs and any other cost directly related to or incidental to Attorney's duties under this Agreement.

SECTION 6. TERMINATION OF AGREEMENT

- 6.1 **Probationary Period.** Attorney's Agreement may be terminated at any time and without cause during the first six (6) months of this Agreement. Such termination shall be at the sole discretion and pleasure of the board



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of directors of KDS.

6.2 Causes or Grounds for Termination of Agreement. This Agreement with KDS may only be terminated as follows:

6.2.1 Either KDS or Attorney may terminate the Agreement for any reason and without cause by giving 90 days' prior written notice to the other party.

6.2.2 KDS shall have the right to terminate the Agreement at any time, without notice and without payment of compensation in lieu of notice, under the following conditions:

- (1) For cause, including, but not limited to, (a) any form of dishonesty, criminal conduct, or conduct involving moral turpitude or which otherwise reflects adversely on KDS's reputation or operations in the community including violation of the Professional Rules of Ethics and the rules imposed by the State of Oregon and the PDSC for indigent defense work; (b) the refusal of Attorney to comply with KDS's policies, customs, or rules; (c) continuing or repeated problems with Attorney's performance, appearance at court or conduct or Attorney's inattention to duties; (d) Attorney's refusal to accept cases assigned by KDS; (e) Attorney's inability or refusal to adequately represent clients at a level to be expected in the profession in the State of Oregon, Klamath and Lake County; (f) Attorney becoming disbarred or suspended by the Oregon State Bar for any reason including non-payment of insurance or dues and non-compliance with mandatory Continuing Legal Education requirements; (g) the abandonment by Attorney of this Agreement; (h) the violation by Attorney of any state or federal criminal laws or the laws and regulations of the Oregon Department of Revenue or the Internal Revenue Service; (i) any activity which brings disgrace to KDS or places KDS in disfavor with the Courts, the Oregon State Bar, or PDSC; (j) any activity by Attorney which would or could jeopardize the KDS contract with the State of Oregon; (k) any material breach of Attorney's obligations under this Agreement; or
- (2) Attorney has suffered a disability as a result of illness, accident, or other cause and is unable to perform a substantial portion of Attorney's usual duties for a total of 65 days consecutively or 90 days cumulatively in any 12-month period after the date the disability commenced. See Appendix #2.

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6.3 Death. This Agreement and Attorney's association with KDS shall terminate automatically on Attorney's death.

6.4 Effect of Termination. On the termination of this Agreement, Attorney (or Attorney's estate in the event of Attorney's death) shall receive Attorney's base compensation prorated through the effective date of termination of this Agreement. Any termination of this Agreement shall automatically terminate Attorney's right to any additional compensation or other benefits paid by KDS.

SECTION 7. INDEPENDENT CONTRACTOR STATUS

7.1 Independent Contractor. Attorney warrants to KDS that he/she has an appropriate office and staff for performance of duties under this Agreement. KDS shall not provide attorney a private office, secretarial services, or any other such facilities, supplies, and services as shall be required for the performance of Attorney's duties under this Agreement. Attorney shall operate independently of KDS and shall be responsible for his/her own workers compensation and insurance, if any. Attorney agrees to indemnify and hold KDS, its directors, officers, and managers harmless from any liability, claim or loss, including reasonable attorney fees, as a result of any act or omission on the part of Attorney carrying out his/her duties under this Agreement or in the further operation of his/her business.

7.2 Means and Methods. As an independent contractor, Attorney shall make all decisions as to the means and methods in handling client files and disposition of cases assigned to Attorney. Such means and methods shall allow Attorney to sub-contract with other attorneys to complete such work, so long as Attorney remains primarily responsible for all work under this Agreement and the Board has approved of such "sub-contract."

SECTION 8. REPRESENTATIONS AND WARRANTIES OF ATTORNEY

8.1 Attorney represents and warrants to KDS that there is no employment contract or any other contractual obligation to which Attorney is subject that prevents Attorney from entering into this Agreement or from performing fully Attorney's duties under this Agreement.

8.2 Best Practices. The "Best Practices for Oregon Public Defense Providers" is available on-line at the OPDS website. Attorney agrees to use his/her best efforts to practice law in conformity with the contents of such best practices.



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SECTION 9.**ASSIGNMENT; RIGHT OF FIRST REFUSAL**

Attorney may not sell, assign or transfer any interest he/she has in this Agreement without the prior written consent of the board of directors. Factors to be determined in giving consent shall include but shall not be limited to the qualifications, competence, certification to handle the required caseload anticipated and other business considerations of the proposed assignee. If consent is given, however, KDS will have the right of first refusal to purchase such interest as defined below.

9.1 Procedure. Upon written approval from the board of directors to an assignment, Attorney shall present a bona fide offer to the board of directors, in writing, setting forth in all specificity the terms and provisions of the offer. KDS shall have forty-five (45) days from the date of the presentation of the bona fide offer to purchase Attorney's interest at the price, terms and conditions as set forth in the offer. If KDS declines to purchase the assigned rights, Attorney shall be entitled to consummate the assignment and the assignee shall be bound by and have all the rights as Attorney under this Agreement, provided, however, that should the assignment to a third person be at a price or on terms that are more favorable to the assignee than stated in the offer, then Attorney must re-offer the sale of the interest to KDS at that other price or other terms; provided, further, that if the assignment to a third person is not closed within six months after the expiration of the 45-day period described above, then Attorney must re-offer the bona fide offer to KDS under the provisions of this Section 8.1 and this Section shall apply to any further transfer or assignment by Attorney.

SECTION 10.**FUNDING RESTRICTIONS**

This Agreement shall be subject to funding being received from the State of Oregon and KDS continually being under contract with the State of Oregon to provide counsel for indigent persons. Should funding become unavailable, then this Agreement, at KDS's option, shall be terminated immediately. This provision may apply should KDS have a revenue shortfall imposed by PDSC or otherwise, which would result in a prorated reduction in attorney compensation. All reductions in compensation and termination of this Agreement shall be at the sole option and pleasure of the board of directors of KDS.

SECTION 11.**MISCELLANEOUS**

11.1 Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in

accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The cost of arbitration shall be borne equally between the parties.

- 11.2 **Attorney's Fees.** Should arbitration, suit or action be filed to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and costs as set by the arbitrator, trial court and on any appeal thereof.
- 11.3 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.
- 11.4 **Severability.** If any term or provision of this Agreement is deemed invalid or prohibited under applicable state law or regulation, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.
- 11.5 **Notices.** All notices and communications regarding this Agreement should be sent to Attorney and KDS at the addresses listed above. Any written notice hereunder shall become effective three (3) days as of the date it is deposited in the United States Postal Service mailing system, postage paid, or upon actual receipt of any parcel as evidenced by certified mail. Notice shall be deemed sufficient if given to the address set forth above or any subsequent address given by either party in writing to the other.
- 11.6 **Modification.** This Agreement may not be modified in any fashion other than in writing signed by both parties.

Klamath Defender Services, Inc.
An Oregon Not for Profit Corporation

By: Phil Studenberg
President

Diana Bettles
Attorney

**OPERATING AGREEMENT
OF
LOS ABOGADOS, LLC**

An Oregon Limited Liability Company

This OPERATING AGREEMENT (THIS “Agreement”) is made and entered into effective January 1, 2018 (the “Effective Date”), by and among LOS ABOGADOS, LLC (the “Company”) and DONALD SCALES, LAURANCE W. PARKER, MICHAEL KELLINGTON, and JASON CAPLAN (the “Members”).

SECTION 1. THE LIMITED LIABILITY COMPANY

1.1 Formation. As of the Effective Date, the Members formed an Oregon limited liability company under the name LOS ABOGADOS, LLC, on the terms and conditions set forth in this Agreement and pursuant to the Oregon Limited Liability Company Act (the “LLC Act”). On the Effective Date, the Members filed Articles of Organization for the Company with the Corporation Division of the Oregon Secretary of State’s office. The rights and obligations of the parties are as provided in the LLC Act except as otherwise expressly provided in this Agreement.

1.2 Name. The business of the Company will be conducted under the name LOS ABOGADOS, LLC.

1.3 Purpose. The purpose of the Company is to administer the provision of court-appointed legal services by attorneys under a contract the Public Defense Services Commission, an agency of the State of Oregon, (the “Business”) and to engage in all activities incidental to that Business.

1.4 Office. The Company maintains its principal business office in Oregon at 217 Laurel Street, Medford, OR 97501.

1.5 Registered Agent. DONALD L. SCALES will be the Company’s initial registered agent in Oregon and registered office will be at 217 Laurel Street, Medford, OR 97501.

1.6 Term. The term of the Company commenced on the Effective Date, and will continue until terminated as provided in this Agreement.

1.7 Names and Addresses of Members. The Members’ names and addresses are:

**Laurance W. Parker
116 Mistletoe St.
Medford, OR 97501**

**Donald Scales
217 Laurel St.
Medford, OR 97501**

Michael Kellington
116 Mistletoe St.
Medford, OR 97501

Jason Caplan
110 W. 11th St.
Medford, OR 97501

1.8 Admission of Additional Members. Except as otherwise expressly provided in this Agreement, no additional members may be admitted to the Company without the prior written consent of all Members.

SECTION 2. CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contributions. The Members have contributed to the Company the assets (subject to the liabilities) described in Appendix A to this Agreement.

2.2 Additional Capital Contributions. Additional capital contributions may be made only on the prior consent of all Members and in such amounts and proportions as the Members mutually agree.

2.3 Membership percentages. Each Member's percentage interest in the Company (the "Membership Percentage") is 25%.

2.4 No Interest on Capital Contributions. The Members are not entitled to interest or other compensation for their capital contributions except as expressly provided in this Agreement.

SECTION 3. ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS

3.1 Allocations of Income and Loss. All items of income, gain, loss, deduction, and credit will be allocated among the Members pro rata in proportion to their respective court appointments which shall be aligned as close as reasonably possible to membership percentages.

3.2 Distributions. No distribution may be made to any Member if, after giving effect to the distribution, in the judgment of the Members either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business or (b) the fair value of the total assets of the Company would not at least equal its total liabilities. Subject to the foregoing limitation, the Company will make distributions, including draws, to Members at such times and in such amounts as the Members mutually agree. All distributions will be allocated among the Members pro rata in proportion to their respective Membership Percentages.

SECTION 4. POWERS AND DUTIES OF MEMBERS

4.1 Management of Company Business. The Company is a member-managed limited liability company. The management and control of the Company and its business and affairs are vested exclusively in the Members. The Company does not have "managers," as that term is used in the LLC Act. The Members, or any of them individually, have all the rights and powers that may be possessed by a member in a member-managed limited liability company pursuant to the LLC Act and those rights and powers that are otherwise conferred by law or are

necessary, advisable, or convenient to the discharge of the Members' duties under this Agreement and to the management of the Business and affairs of the Company. Without limiting the generality of the foregoing, and subject to the limitations set forth in Section 4.2 of the Agreement, the Members, or any of them individually, have the following rights and powers (which they may exercise at the cost, expense, and risk of the Company):

- (a) To expend the funds of the Company in furtherance of the Company's business.
- (b) To perform all acts necessary to manage and operate the Business, including engaging such persons as the Members deem advisable to manage the Business.
- (c) To execute, deliver, and perform on behalf of and in the name of the Company any and all agreements and documents deemed necessary or desirable by the Members to carry out the Business, including any contracts with the State of Oregon.
- (d) To issue checks, and other negotiable instruments.

4.2 Limitation on Authority of Member. Notwithstanding any other provision of this Agreement or the LLC Act, no Member is authorized to take any of the following actions without the prior express approval or consent of all the Members:

- (a) Amend the Company's Articles of Organization or this Agreement;
- (b) Sell or otherwise dispose of any assets owned by the Company other than in the ordinary course of business;
- (c) Dissolve the Company;
- (d) Merge the Company with another entity or convert the Company into a different type of entity;
- (e) Admit a new Member; or
- (f) Borrow money or otherwise incur indebtedness in the name of the Company in any amount in a single transaction or in a series of related transactions.

4.3 Duties of the Members. Each Member shall at all times:

- a) Maintain his or her own office in Jackson County, Oregon for the practice of law;
- b) Maintain active membership in the Oregon State Bar;
- c) Comply with the mandatory continuing legal education requirements of the Oregon State Bar;
- d) Maintain in force professional liability insurance coverage through the

Professional Liability Fund;

- e) Either complete and file IRS Schedule C with the Member's annual federal and state income tax returns or be duly formed and organized as a professional corporation in good standing with the Oregon Corporation Division;
- f) Shall provide legal services under the state contract as an independent contractor; and
- g) If withdrawing as a Member, either complete the legal cases assigned to the Member, reassign those cases to the Company and immediately repay the Company all money previously paid the Member for such cases, or contract with one or more other attorneys approved by the Remaining Members to complete such cases, at the withdrawing Member's expense.

4.4 Limitation on Liability of Members. Subject to the restrictions in Section 4.6, no Member will have any liability to the Company or to any other Member for any loss suffered by the Company or any other Member that arises out of any action or inaction of the Member as long as the Member's conduct was in good faith and the Member reasonably believed that the conduct was in the best interests of the Company.

4.5 Indemnification of Members. Each Member will be indemnified by the Company against any losses, judgments, liabilities, expenses, and amounts paid in settlement of any claims sustained against the Company or against the Member in connection with the Company, as long as the Member's conduct was in good faith and the Member reasonably believed that the conduct was in the best interests of the Company. The satisfaction of any indemnification and any saving harmless will be out of, and limited to, Company assets, and no Member will have any personal liability on account of such indemnification.

4.6 Restrictions. No Member will be relieved of liability pursuant to Section 4.4 or be entitled to indemnification pursuant to Section 4.5 for:

- (a) Any breach of the Member's duty of loyalty to the Company;
- (b) Any acts or omissions not in good faith that involve intentional misconduct or a knowing violation of law;
- (c) Any unlawful distribution to the Members in violation of ORS 63.235; or
- (d) Any transaction from which the Member derives an improper personal benefit.

4.7 Other Business. During the term of this Agreement, no Member may carry on any other business in direct competition with this Company. Subject to this restriction, nothing in this Agreement will be deemed to restrict in any way the freedom of any Member to conduct a law practice and any other business or activity whatsoever without any accountability to the Company or the other Members.

4.8 Dealing with the Company. Any Member may deal with the Company by providing or receiving property and services to or from the Company, and may receive from others or the Company normal profits, compensation, commissions, or other income incident to those dealings, but the Member must first obtain written consent from the other Members for those dealings.

4.9 Liability of the Members for Company Obligation. Except to the limited extent provided in the LLC Act, no Member will have any personal liability for any Company obligation, expense, or liability. The Members will not, without their consent, be required to make any capital contribution beyond their mutually agreed on capital contributions as expressly described in Section 2.1.

SECTION 5 POWERS AND DUTIES OF MANAGERS

5.1 Management of Company. The management and control of the Company and its business and affairs are exclusively in the Members. The Members, or any of them, have all the powers that may be possessed by a member in a limited liability company without managers pursuant to the Act.

5.1.1 Notwithstanding Section 4.1, the Members agree among themselves that, except as otherwise provided in Section 4.2, in connection with Major Decisions (defined in Section 4.2), the right to manage the day-to-day operations of the Company rests exclusively in DONALD SCALES (the “Operating Manager”). Consistent with and subject to the foregoing, the Operating Manager has all the rights and powers that may be possessed by a manager in a limited liability company with managers pursuant to the Act, and such rights and powers as are otherwise conferred by law, or are necessary, advisable, or convenient to the discharge of the Operating Manager’s duties under this Agreement and to the management of the business and affairs of the Company. Without limiting the generality of the foregoing, subject to the restrictions set forth in Section 4.2, the Operating Manager has the following rights and powers (which he or she may exercise at the cost, expense, and risk of the Company):

- (1) To expend the funds of the Company in furtherance of the Company’s business;
- (2) To perform all acts necessary to fulfill the purposes of the Company, including engaging persons the Operating Manager deems advisable to fulfill those purposes;

5.2 Restriction on Authority of Operating Manager. Notwithstanding any other provision of this Agreement, without the prior written approval or consent of a Majority of the Members, the Operating Manager does not have any authority to do any of the following (the “Major Decision”):

- (1) Amend the Company’s Articles of Organization or this Agreement;
- (2) Finance or refinance any assets of the Company;

(3) Sell, transfer, or exchange all or substantially all of the property owned by the Company;

5.3 Tax Matters Member. DONALD SCALES is hereby designated and approved as Tax Matters Member for the Company; in such capacity, DONALD SCALES is authorized to participate in any audit of the Company's federal income tax return, and in connection therewith, to negotiate, settle, and make agreements and adjustments with respect to the Company's federal income tax return that will be binding on all the Members. DONALD SCALES, as Tax Matters Member, must notify all Members of any final Company audit adjustments.

5.4 Duties of the Operating Manager. The Operating Manager must take all actions that may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the laws of Oregon and of each jurisdiction in which such existence is necessary for the Company's purposes, including the preservation and operation of Company assets in accordance with the provision of this Agreement and applicable laws and regulation. Notwithstanding the foregoing, the Operating Manager is not required to devote his full time to the business and affairs of the Company, but must devote such time as reasonable is necessary to perform his duties under this Agreement and prudently to manage or operate the Company's assets and conduct its business.

5.5 Limitation on Liability of Operating Manager. The Operating Manager has no liability to the Company or to any other Member for any loss suffered by the Company or any Member that arises out of any action or inaction of the Operating Manager if the Operating Manager, in good faith, determined that such course of conduct was in the best interest of the Company and such course of conduct did not constitute gross negligence or intentionally wrongful misconduct.

5.6 Indemnification of Operating Manager. The Operating Manager is not personally liable for any debt, obligation, or liability of the Company merely by reason of being the Operating Manager or a Member. To the fullest extent provided or allowed by the laws of Oregon, the Company will indemnify the Operating Manager, in his or her capacity as Operating Manager, from and against all costs, losses. Liabilities, damages, claims, and expenses (including attorney fees as incurred at trial and on appeal) (collectively, "Claims") arising from actions or inactions taken or omitted in his or her capacity as Operating Manager, including, without limitation, action taken or omitted by the Operating Manager consistent with this Agreement and in furtherance of the business or affairs of the Company. The satisfaction of any indemnification of the Operating Manager under this Agreement will be from, and limited to, Company assets, and the Members will not have any personal liability on account thereof.

5.7 Other Business. Each Member is entitled to enter into transaction that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly understood that the Members may enter into transactions that are similar to the transactions into which the Company may enter, and the Company and each Member hereby waive any right or claim to participate in them.

5.8 Decisions by Members. Whenever in this Agreement reference is made to the

decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean the unanimous vote of the Members.

SECTION 6. COMPENSATION AND REIMBURSEMENT OF EXPENSES

6.1 Organization Expenses. The Company will pay all expenses incurred in connection with organization of the Company.

6.2 Other Company Expenses. The Members may charge the Company for their actual out-of-pocket expenses incurred in connection with the Company's Business.

6.3 Compensation. The Company may pay the Members reasonable compensation (as the Members mutually determine in good faith) for services actually performed in operating the business.

SECTION 7. BOOKS OF ACCOUNT; ACCOUNTING REPORTS; TAX RETURNS; FISCAL YEAR; BANKING

7.1 Books of Account. The Company's books and records, a register showing the names of the Members and the respective interests held by each of them, and this Agreement will be maintained at the principal office of the Company. The Members will have access to those books and records at all reasonable times. The Members will keep and maintain books and records of the operations of the Company that are appropriate and adequate for the Company's Business and for carrying out this Agreement.

7.2 Accounting Reports. The Members will be furnished with copies of internally prepared financial statements of the Company on a quarterly basis.

7.3 Tax Returns. The Members will cause all federal and state income tax returns for the Company to be prepared and timely filed with the appropriate authorities as necessary. As soon as practicable after the end of each taxable year, each Member will be furnished with a statement that may be used by the Member in preparing the Member's incoming tax returns, showing the amounts of any distributions, gains, profits, losses, or credits allocated to or against the Member during the fiscal year.

7.4 Fiscal Year; Taxable Year. The fiscal year and the taxable year of the Company is the calendar year.

7.5 Banking. All funds of the Company must be deposited in a separate bank account or in an account or accounts of a savings and loan association in the Company's name as the Members determine. Those funds may be withdrawn from the account or accounts on the signature of the person or persons who are designated by the Members.

SECTION 8. TRANSFER OF MEMBERSHIP INTEREST; VOLUNTARY AND INVOLUNTARY WITHDRAWAL

8.1 Transfer Prohibited. No Member may assign, pledge, mortgage, sell, or otherwise transfer (“Transfer”) any part of his or her interest in the Company, and no Member has any right to substitute an assignee or any other person in the Member’s place, and no assignee or any other person may be admitted to the rights of any Member without the prior written consent of all Members. This consent may not be unreasonably withheld. The Members are entering into this Agreement to carry on the Business in mutual reliance on the close personal relationship among the Members and mutually agree that the foregoing restriction on the Members’ ability to transfer their interest in the Company is reasonable under the circumstances.

8.2 Voluntary Withdrawal. Any Member may withdraw from the Company at any time for any reason or for no reason but only on three months’ prior written notice to the other Members. For purposes of this Agreement, the death of a Member will be treated as a withdrawal by the deceased Member and the six-month notice requirement will not apply. On withdrawal by a Member, the other Members will have the right, in their sole discretion, to elect to:

- (a) Dissolve the Company as provided in Section 9;
- (b) Continue the Company and treat the withdrawing Member or his or her representative as an assignee of the economic rights and benefits of the membership interest of the withdrawing Member, in which case the withdrawing Member will cease to have any voting or other management rights under this Agreement with respect to such membership interest and neither the other Members nor the Company will have any obligation to purchase or redeem the membership interest of or otherwise make any liquidating distribution to the withdrawing Member before the dissolution of the Company; or
- (c) Continue the Company (with or without the admission of another member) and cause the Company to purchase the membership interest of the withdrawing Member or his or her representative for the price and subject to the payment terms described in Section 8.

8.3 Mandatory Withdrawal. It is essential to the purposes of the Company that each Member be at all times an attorney duly licensed by and in good standing with the Oregon State Bar and actively engaged in the private practice of law in Jackson County, Oregon. Upon occurrence of any of the following events or conditions, a Member will be deemed to have withdrawn as a Member and the Company or the remaining Members shall purchase the withdrawn Member’s interest in the Company for the price and upon the terms set forth in Section 8 below:

- (a) The Member’s resignation from, or disbarment or suspension for more than thirty days, by the Oregon State Bar;
- (b) The Member’s failure to maintain in force professional liability insurance coverage through the Professional Liability Fund;

- (c) The Member's cessation of the active practice of law in Jackson County, Oregon;
- (d) The Member's death;
- (e) In the event the Member becomes disabled or incompetent as defined in Section 8.4.
- (f) In the event the Member is expelled pursuant to ORS 63.209.
- (g) Or for any reason deemed appropriate or necessary upon the unanimous vote of the remaining Members.

8.4 For purposes of this Agreement a Member shall be deemed to be disabled (1) if the Shareholder suffers from any physical or mental disease, condition, disorder, injury (including self-inflicted injuries), or abuse of substances hazardous to health (including alcohol and drugs), or mental illness and (2) if one of the following conditions is satisfied:

- (a) Under the terms of a bona fide disability income insurance policy that insures the Member, the insurance company that underwrites the insurance policy determines that the Member is totally disabled for purposes of such insurance policy; or
- (b) A physician licensed to practice medicine in the state of Oregon, who has been selected by the Member (or the conservator of the Member's estate) and the other Members of the Company, certifies that the Member is partially or totally disabled so that the Member cannot perform the essential functions of [his/her] position on a full-time basis, with or without reasonable accommodation, for a six-month period in the position that the Member occupied before the disability. The costs and expenses of that physician shall be borne by the Company; or
- (c) The Member and the other Members of the Company agree in writing that the Member is partially or totally disabled so that the Member cannot perform the essential functions of [his/her] position on a full-time basis, with or without reasonable accommodation, for a six-month period in the position that the Member occupied before the disability.

SECTION 9. PURCHASE PRICE AND PAYMENT TERMS

9.1 Purchase Price. On election by the other Members to purchase the membership interest of a withdrawing Member pursuant to Section 7.2(c) or 7.3, the purchase price will be the amount the withdrawing Member would have received in a liquidation of the Company if all the Company's assets were sold, as of the effective date of the withdrawal, for their respective fair market values as determined by the Members (or the other Members and the representative of a deceased Member) and all Company liabilities were satisfied out of those proceeds. For this purpose, no discounts for lack of marketability or for a minority interest will be used. If the

Members cannot agree on the fair market value of the Company's assets, the value will be determined by an appraiser selected by the withdrawing Members from a list of five qualified independent appraisers proposed by the other Members.

9.2 Payment. The purchase price determined as provided in Section 8.1 will be payable, in full no later than 30 days after the effective date of the withdrawal.

SECTION 10. DISSOLUTION AND WINDING UP OF THE COMPANY

10.1 Dissolution. The Company will be dissolved on the occurrence of any of the following events:

- (a) The agreement of all Members;
- (b) The election of the non-withdrawing Members as described in Section 7.2(a); or
- (c) Otherwise by operation of law.

10.2 Winding Up. On dissolution of the Company, the Members will take full account of the Company's assets and liabilities, and the assets will be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds, to the extent sufficient to pay the Company's obligations with respect to the liquidation, will be applied and distributed in the following order:

- (a) To payment and discharge of the expenses of liquidation and of all the Company's debts, including debts and liabilities owed to the Members;
- (b) To the Members to the extent of, and allocated among them pro rata in proportion to, their respective previously unreturned capital contributions; and
- (c) To the Members and allocated among them pro rata in proportion to their respective Members Percentages.

SECTION 11. MISCELLANEOUS PROVISIONS

11.1 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

11.2 Assignment. Neither this Agreement nor any of the rights, interest, or obligations under this Agreement may be assigned by any party without the prior written consent of the other parties and the State of Oregon acting through the Public Defense Services Commission.

11.3 No Third-Party Beneficiaries. Nothing in the Agreement, express or implied, is intended or will be construed to confer on any person, other than the parties to this Agreement,

any right, remedy, or claim under or with respect to this Agreement.

11.4 Notices. All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

Laurance W. Parker
116 Mistletoe
Medford, OR 97501

Donald L. Scales
217 Laurel Street
Medford, OR 97501

Michael E. Kellington
116 Mistletoe
Medford, OR 97501

Jason Caplan
110 W. 11th
Medford, OR 97501

Any notice or other communication will be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the 2nd day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

11.5 Amendments. This Agreement may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Agreement.

11.6 Construction. The captions used in this Agreement are provided for convenience only and will not affect the meaning or interpretation of any provision of this Agreement. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Whenever the words *include* or *including* are used in this Agreement, they will be deemed to be followed by the words *without limitation*.

11.7 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

11.8 Facsimile Signatures. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original document.

11.9 Further Assurances. Each party agrees (a) to execute and deliver such other documents and (b) to do and perform such other acts and things, as any other party may reasonably request, to carry out the intent and accomplish the purposes of this Agreement.

11.10 Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.

11.11 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear the party's own expenses in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement.

11.12 Waiver. Any provision or condition of this Agreement may be waived at any time, in writing, by the party entitled to the benefit of such provision or condition. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

11.13 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

11.14 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

11.15 Arbitration. Any dispute, controversy, or claim arising out of or relating to this Agreement will be settled by arbitration. Unless the parties otherwise agree, the arbitration will be administered by ARBITRATION SERVICE OF PORTLAND. Judgment on the award rendered by the arbitrator may be entered in the Jackson County Circuit Court, and the resolution of the disputed matter as determined by the arbitrator will be binding on the parties. There will be one arbitrator who will be a retired federal or state judge or a business lawyer, or will have such alternate qualifications that are mutually agreeable to the parties. Any arbitration will be conducted in Medford, Oregon, in accordance with the following provisions:

- (a) Except as otherwise provided in this Section 15, the arbitration will be conducted in accordance with the arbitration rules of the Arbitration Service of Portland.
- (b) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator in any of the pending cases or, if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.
- (c) A party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitration (or pending the arbitrator's determination of the merits of the dispute, controversy, or claim).
- (d) The arbitrator will have authority to issue preliminary and other equitable relief.

- (e) Discovery proceedings of the type provided by the Oregon Rules of Civil Procedure will be permitted all in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery will be resolved by the arbitrator.
- (f) The arbitrator will have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.
- (g) The arbitrator will have the authority to award any remedy or relief that an Oregon court could order or grant, including specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator will not have authority to award punitive damages or any other amount for the purpose of imposing a penalty as opposed to compensating for actual damage suffered for loss incurred.
- (h) The award will be in writing, will be signed by the arbitrator, and will include a statement regarding the disposition of any claim. The award will be kept confidential to the fullest extent permitted by law.

11.16 Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that the other parties will be entitled, in addition to damages, to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

11.17 Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in Jackson County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

11.18 Exhibits. The exhibits referenced in this Agreement are part of this Agreement as if fully set forth in this Agreement.

11.19 Severability. If any provision of this Agreement is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired.

11.20 Entire Agreement. This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

The parties enter into this Agreement as of the date first written above.

LOS ABOGADOS, LLC

By: _____

Donald L. Scales
Managing Member

Donald L. Scales, Member

Laurance W. Parker, Member

Jason Caplan, Member

Michael E. Kellington, Member

APPENDIX A

ASSETS AND LIABILITIES

- 1) Oregon State Public Defense Legal Services Contract between Public Defense Services Commission and Los Abogados, January 1, 2019 to December 31, 2019.
- 2) Bank account #_____ , _____ Bank.

Attachment 3

Oregon Workload Study

Roles and Contacts

Name	Title	Contact	Role
Steve Hanlon	ABA Project Director	Stephen.hanlon@publicdefenders.us (202) 243-8098	Oversees project
Malia Brink	ABA Project Asst Director	malia.brink@americanbar.org (202) 662-1584	Serves as ABA staff contact/consultant; assists with day-to-day issues and communication
Scott Simpson Jenna McRae	Moss Adams	Scott.Simpson@mossadams.com (503) 478-2315 Jenna.McRae@mossadams.com (503) 478-2189	Responsible for data gathering and econometric analytics for each phase of the project, as well as organization and direction of the project
Eric Deitrick Erica Herb	Office of Public Defense Services	Eric.J.Deitrick@opds.state.or.us Erica.Herb@opds.state.or.us	Consulted on day-to-day issues, including software, training, and case type and task adjustments

Communication

Meeting Type	Participants	Frequency
Project Team Calls	Hanlon, Brink, Simpson; Deitrick Brink to arrange calls and provide call-in number	Once a week during critical phases; Once every two weeks otherwise
Site Visits	Hanlon, Brink	As indicated below; additional visits as necessary and agreed

Timeline and Schedule of Responsibilities

Action	Task	Responsibility	ABA Staff Mode	Date of Completion
1.	OPDS to begin to identify potential groups to adopt timekeeping and discuss timekeeping benefits	OPDS		Completed
2.	ABA and OPDS contract execution	Drafting: Brink Review: Hanlon, Deitrick, ABA GC Execution: OPDS, ABA	Remote	Completed
3.	Moss Adams and ABA contract execution	Drafting: Brink Review: Simpson, ABA GC Execution ABA; Moss Adams	Remote	Completed

4.	Selection of Consulting Panels by ABA and OPDS (at least 2 private bar/2 public defenders in each Delphi panel area, i.e. adult criminal, juvenile, appeals to help identify case types/case tasks)	Recommendations: Deitrick, Selections: Deitrick, Hanlon, Brink		Completed
5.	Meet with Consulting Panels to identify case types and case tasks (Initial Site Visit)	Deitrick, Hanlon, Brink	On site	Completed
6.	OPDS to finalize plan on implementation timekeeping	Recommendations: OPDS and Econometric Firm Final Decision: Deitrick, Hanlon, Brink and Simpson	Remote	Completed
7.	Complete any revisions to Case Type/Case Task based on data review, etc.	Consult with Case Type/Case Task Panels	Remote	Completed
8.	Complete list of potential Adult Criminal Delphi panel attorneys in each Delphi panel area. List should include as many qualified attorneys in each area as possible.	Deitrick		Completed
9.	Identification of Adult Criminal Selection Panel: 3-5 three to five distinguished lawyers, judges, and others with knowledge of the conditions of practice in this jurisdiction. The Selection Panel will review the proposed Oregon attorneys, both public defenders and private practitioners, with experience in Adult criminal defense practice,	Recommendations: Deitrick, Selections: Deitrick, Hanlon, Brink		Completed

	who will participate in a “Delphi” process used to determine attorney workload standards. The Selection Panel can remove and add names from these lists.			
10.	Review of Adult Criminal Survey Instrument for changes to law and standards (Brink/Hanlon) and changes to demographic questions (Deitrick)	Deitrick, Hanlon & Brink		03/27/20
11.	Finalize attorneys to be invited to participate in each Delphi panel	Deitrick, Hanlon & Brink	Remote	03/31/20
12.	First draft of survey to be distributed for comment – Review/Revision of Survey (3/16/20-4/13/20)	Moss Adams		First Draft Completed; Comment Period in Progress
13.	Comments on First Round Survey to Emily	Deitrick, Hanlon & Brink		03/27/20
14.	OPDS to forward contact information for Oregon attorneys to be invited to participate in each Delphi panel to Moss Adams	Deitrick		03/31/20
15.	Moss Adams and OPDS to propose plan for determining caseloads and FTE's for alternative comparative analysis (see Louisiana Report pp 7-10)	Moss Adams and OPDS to propose plan for where to implement timekeeping	Recommendations: OPDS and Moss Adams Final Decision: Deitrick, Hanlon, Brink and Econometric	03/31/20
16.	Invite attorneys to participate in Delphi panel	Econometric		04/15/20
17.	Finalize survey instruments and instructions for Delphi panels; Begin Testing Survey	Hanlon, Brink, Deitrick	Remote	04/13/20
18.	Complete list of potential Delphi panel attorneys in Appeals and Juvenile. List should include as	Deitrick		04/20/20

	many qualified attorneys in each area as possible.			
19.	Identify Selection Panel members for both Appeals and Juvenile	Deitrick		04/20/20
20.	Distribute Round One survey instrument and instructions to each Delphi panel	Econometric		05/4//20
21.	Electronic follow-up on Responses to Round One survey instruments	Econometric		05/06/20
22.	Telephonic follow-up on Responses to Round One survey instruments	Deitrick		05/11/20
23.	Summarize data from Round One Delphi Panel surveys	Econometric		June 2020
24.	Distribute Round Two survey instrument to Delphi Panels	Econometric		July 2020
25.	Electronic follow-up on Responses to Round Two Delphi Panel surveys	Econometric		July 2020
26.	Telephonic follow-up on responses to Round Two Delphi Panel surveys	Deitrick		August 2020
27.	Summarize data from Round Two Oregon Delphi Panel survey	Econometric		Sept 2020
28.	Conduct in-person final iteration of Oregon Delphi Process	Econometric, Hanlon, Brink	On-site	Oct 2020
29.	Compile results of Oregon Time Study and Delphi Process	Econometric		Nov 2020
30.	Draft Oregon report and distribute to parties	Drafting: Econometric; Brink	Remote	Dec 2020

		Editing: Hanlon, Deitrick, Brink		
31.	Publish final Oregon Project report	Deitrick, Hanlon, Brink	Remote	After January 2021