

AGREEMENT
BY AND BETWEEN
THE COUNTY OF ORANGE
AND
DISTRICT ATTORNEY FELLOWS
FOR
CERTIFIED LAW STUDENT AND LEGAL SERVICES

September 2013-August 2014

AGREEMENT FOR DISTRICT ATTORNEY FELLOWSHIP PROGRAM

This Agreement for Certified Law Student and legal services ("Agreement") is effective September 1, 2013 through August 31, 2014 by and between the County of Orange, a political subdivision of the State of California ("County") and participants ("Fellows") in the Orange County District Attorney's ("OCDA") Fellowship Program. The County and Fellows are sometimes individually referred to as "Party", or collectively referred to as "Parties."

RECITALS

WHEREAS, pursuant to California Government Code Section 26500.5, the District Attorney may sponsor, supervise, or participate in any project or program to improve the administration of justice; and

WHEREAS, the OCDA wishes to offer a Fellowship Program to provide opportunities to exceptional law school graduates to gain valuable and practical legal experience; and

WHEREAS, the OCDA wishes to offer the opportunity for recent law school graduates to provide public service, including the prosecution of criminal matters; and

WHEREAS, recent law school graduates desire to gain valuable legal experience, including but not limited to courtroom litigation;

WHEREAS, the OCDA has entered into a Memorandum of Understanding/Cooperative Agreement with _____ ("Law School") to facilitate the OCDA Fellowship Program.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** The Scope of Work for this Agreement is attached hereto and incorporated herein by this reference as Attachment A.
2. **Compensation:** The compensation to be paid to Fellows for performing services in accordance with this Agreement is specified in Attachment B, which is attached hereto and incorporated herein by this reference, and includes full compensation for providing all services performed under this Agreement. Payments set forth in this Agreement may not be amended or increased without approval of the County Board of Supervisors.
3. **Invoicing/Payment:** All invoicing and payment for services performed under this Agreement shall be as specified in Attachment B hereto.
4. **Agreement Term:** The Term of this Agreement shall commence on September 1, 2013 and shall continue until August 31, 2014, unless sooner terminated as provided herein.
6. **General Conflicts of Interest:** To avoid potential conflicts of interest, Fellows are prohibited from engaging in the private practice of law during the term of this Agreement. Fellows shall exercise reasonable care and diligence to prevent any actions or conditions that

could result in a conflict with the best interests of the County. Fellows' efforts at avoiding conflicts of interest shall include, but not be limited to, establishing precautions to avoid making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest.

7. **Confidentiality and Communication with the County:** Fellows shall maintain the confidentiality of all information which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility.

8. **Independent Contractors:** Fellows shall be considered independent contractors and shall not be considered an agent or an employee of the County.

9. **Workers' Compensation:** Neither the OCDA nor the County shall provide benefits or Workers' Compensation to Fellows for sustaining an injury, illness or disability arising out of and in the course of services provided in accordance with this Agreement. If a Fellow should become injured while performing duties, the Fellow shall be treated as a member of the public and appropriate accident forms shall be completed and submitted to Orange County's Risk Management Department. The County's Risk Management Department shall determine the outcome of any claim.

10. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by Fellows.

11. **Performance:** Fellows shall perform all work under this Agreement, taking necessary steps and precautions to perform the work to the County's satisfaction. Fellows shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Fellows under this Agreement. Fellows shall perform all work diligently, carefully, and in a good and workmanlike manner.

12. **Licenses and Laws:** While performing under this Agreement as Certified Law Students, Fellows are responsible for obtaining and maintaining Certified Law Student status with the California State Bar from September 1, 2013 until such time as the Fellow is fully licensed to practice law pursuant to this paragraph. It is the responsibility of the Fellow to complete all requirements to practice law in California by December 1, 2013. Failure to obtain or maintain Certified Law Student status or the license to practice law in California pursuant to this paragraph will be grounds to terminate this Agreement.

While performing under this Agreement as licensed attorneys, Fellows are responsible for obtaining and maintaining active status with the California State Bar. Fellows shall also remain in good standing with the State Bar of California throughout their tenure with the OCDA Fellowship Program. Fellows shall be responsible for paying Bar dues and any other applicable fees for maintaining an active license with the California Bar as well as maintaining all applicable MCLE compliance requirements. Fellows shall notify OCDA immediately, in writing, of their inability to obtain or maintain, irrespective of the pendency of any appeal, their status as actively licensed attorney status.

Fellows shall be subject to and comply with all applicable governmental laws, regulations and requirements and all internal policies and procedures of OCDA, as they exist now or may be hereafter amended or changed.

13. **Reports/Communications:** As needed, Fellows shall develop any relevant documents necessary to complete the services and requirements as set forth in this Agreement. The County and Fellows will meet on reasonable notice to discuss the Fellows' performance and progress under this Agreement. Fellows shall provide such information that is requested by the County for the purpose of monitoring progress under this Agreement.

14. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Agreement by Fellows. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Fellows without the express written consent of the County.

15. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Fellows in the performance of this Agreement will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Fellows after completion or termination of this Agreement without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Agreement.

16. **Termination:** Services performed under this Agreement may be terminated in whole or in part at any time the County deems termination of this Agreement to be in its best interests. OCDA shall terminate services by delivering to the Fellows a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by OCDA, Fellows shall:

- a) Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
- b) Complete services not terminated by the Termination Notice.
- c) At OCDA's request, complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Fellows (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Fellows were to attend and an assessment of the accomplishments of Fellows' engagement.
- e) Provide County with copies (electronic and hard copies) of all files and Fellow work product for any matters in which Fellows were involved in. This includes any computerized index, computer programs and document retrieval systems created or used for the matters.

18. **Entire Agreement:** This Agreement, including Attachments A and B, which are attached hereto and incorporated herein by this reference, contains the entire Agreement between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

19. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

20. **Governing Law and Venue:** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

21. **Appropriation/Contingency of Funds:** This Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the Term of this Agreement. If such appropriations are not approved, the Agreement will be immediately terminated without penalty to the County.

22. **Taxes:** Unless otherwise provided herein or by law, the compensation provided for herein includes California state sales or use tax applicable now or in the future.

23. **Headings:** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

24. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

25. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

26. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own Attorney's fees, costs and expenses.

27. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and /or any other claim of injury or damage.

28. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly,

any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

29. **Authority:** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

SIGNATURE PAGE

The Parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

Dated: _____, 2013

County: Orange

Tony Rackauckas
District Attorney

By: _____

Dated: _____, 2013

Fellow: _____
[INSERT Fellow's name]

By: _____

ATTACHMENT A SCOPE OF SERVICES

Eligibility to Participate in the OCDA Fellowship Program

Only eligible law school graduates may be considered for the Fellowship Program.

To be eligible for the OCDA's Fellowship Program, Fellows shall have recently graduated from, and be considered in good standing with, a fully accredited, ABA approved law school ("Law School"), which has entered into a Memorandum of Understanding/Cooperative Agreement with OCDA to facilitate the Fellowship Program.

Obligations of Fellows Once Selected to Participate in the OCDA Fellowship Program

Prospective Fellows must take the California Bar Exam at the first opportunity for which they are eligible pursuant to California State Bar rules and regulations.

Fellows must submit to and satisfactorily pass a background check.

Fellows that pass the California Bar Exam and satisfy all requirements for eligibility to practice law in the State of California no later than December 1, 2013 may submit applications for any available Deputy District Attorney recruitment during their tenure as Fellows. Fellows understand that participation in the Fellowship program does not guarantee that they will be hired in any capacity by the OCDA or the County.

Fellows shall comply with any requirements of the Law School and OCDA review of the Fellow's progress during the Fellow's participation in the Fellowship Program.

Depending on their status, Fellows shall perform under this Agreement as either: (a) Certified Law Students; or (b) Attorneys.

(a) Certified Law Student Status

Prior to receiving California Bar Exam results, Fellows must obtain and maintain Certified Law Student status with the California State Bar. After commencing the OCDA Fellowship Program, Fellows must maintain Certified Law Student status with the California State Bar.

During their time as Certified Law Students, Fellows will be supervised by OCDA attorneys according to all applicable California State Bar Rules and California Rules of Court.

Fellows shall notify OCDA immediately and in writing of their inability to obtain or maintain, irrespective of the pendency of any appeal Certified Law Student status.

Services as Certified Law Student:

Subject to all applicable rules, regulations, and statutes, Fellows may perform the following duties as needed by the OCDA as Certified Law Students:

(1) Negotiate for and on behalf of a client subject to final approval thereof by the supervising attorney and/or give legal advice to the client, provided that the Certified Law Student:

(i) obtains the approval of the supervising attorney to engage in the activities,
(ii) obtains the approval of the supervising attorney regarding the legal advice to be given or plan of negotiation to be undertaken by the Certified Law Student, and

(iii) performs the activities under the general supervision of the supervising attorney;

(2) Appear on behalf of the client in depositions, provided that the Certified Law Student:

(i) obtains the approval of the supervising attorney to engage in the activity,
(ii) performs the activity under the direct and immediate supervision and in the personal presence of the supervising attorney (or, exclusively in the case of government agencies, any deputy, assistant or other staff attorney authorized and designated by the supervising attorney), and

(iii) obtains a signed Consent Form from the client on whose behalf the Certified Law Student acts (or, exclusively in the case of government agencies, from the chief counsel or prosecuting attorney) approving the performance of such acts by such Certified Law Student or generally by any Certified Law Student;

(3) Appear on behalf of the client in any public trial, hearing arbitration or proceeding, or before any arbitrator, court, public agency, referee, magistrate, commissioner or hearing officer, to the extent approved by such arbitrator, court, public agency, referee, magistrate, commissioner or hearing officer, provided that the Certified Law Student:

(i) obtains the approval of the supervising attorney to engage in the activity,

(ii) performs the activity under the direct and immediate supervision and in the personal presence of the supervising attorney (or, exclusively in the case of government agencies, any deputy, assistant or other staff attorney authorized and designated by the supervising attorney),

(iii) obtains a signed Consent Form from the client on whose behalf the Certified Law Student acts (exclusively in the case of government agencies, from the chief counsel or prosecuting attorney) approving the performance of such acts by such Certified Law Student or generally by any Certified Law Student, and

(iv) as a condition to such appearance, either first presents, or have previously presented, a copy of the Consent Form to the arbitrator, court, public agency, referee, magistrate, commissioner or hearing officer, or files a copy of the Consent Form in the court case file;

(4) Appear on behalf of a government agency in the prosecution of criminal actions classified as infractions or other such minor criminal offenses with a maximum penalty or a fine equal to the maximum fine for infractions in California, including any public trial

- (i) subject to approval by the court, commissioner, referee, hearing officer or magistrate presiding at such public trial, and
- (ii) without the personal appearance of the supervising attorney or any deputy, assistant or other staff attorney authorized and designated by the supervising attorney, but only if the supervising attorney or the designated attorney has approved in writing the performance of such acts by the Certified Law Student and is immediately available to attend the proceeding.

(b) Attorney Status

Upon passing the California Bar Exam, Fellows' Certified Law Student status will lapse pursuant to State Bar regulations. Fellows must satisfy all requirements for eligibility to practice law in the State of California no later than December 1, 2013.

Upon satisfying the California State Bar requirements and achieving fully licensed status with the State Bar of California, Fellows shall receive attorney status and function as attorneys within the Fellowship Program.

Fellows shall notify OCDA immediately and in writing of their inability to obtain or maintain, irrespective of the pendency of any appeal, such licenses and eligibility for practicing law.

Services as Attorneys:

Fellows who have achieved attorney status will be sworn and deputized as Deputy District Attorneys pursuant to Government Code Sections 24101 and 24102.

Pursuant to Resolution No. 11-023, the County agrees to defend Fellows, who have achieved attorney status in the same manner as an employee of the County as described in Government Code Section 825 for liability arising from acts or omissions occurring within the scope of their services.

As licensed attorneys, Fellows shall perform as the functional equivalent of a Deputy District Attorney for the County of Orange.

**ATTACHMENT B
COMPENSATION AND PAYMENT**

A. FELLOWSHIP PROGRAM STIPEND

From the time period of September 1, 2013 to August 31, 2014, Fellows shall receive a stipend from _____[Law School] as arranged by the Orange County District Attorney's Office MOU/Cooperative Agreement with _____[Law School] in an amount not to exceed \$50,000.00 for their satisfactory participation in the Fellowship Program unless services are terminated by either Party during the Fellowship period. Payments shall be made monthly in arrears. In the case of termination prior to the end of the Fellowship, the Fellow shall be compensated for services rendered at a pro rata portion for the month that the termination takes place. This amount shall be considered full remuneration for the services provided and no other financial obligations whatsoever shall be owed including but not limited to health or retirement benefits. The County is not responsible for payments owed or made by _____ [Law School].