BEFORE THE BOARD OF THE COUNTY COMMISSIONERS
OF PEND OREILLE COUNTY, WASHINGTON

RE: RESOLUTION TO APPROVE A CONTRACT FOR PUBLIC DEFENDER INDIGENT DEFENSE SERVICES BETWEEN PEND OREILLE COUNTY AND F. DANA KELLEY; PRELIMINARY APPEARANCE	)))))	RESOLUTION NO. 2020-11

WHEREAS, Pend Oreille County is committed to meeting the requirements as set down by the State of Washington for Indigent Defense; and

WHEREAS, Pend Oreille County recognizes that to meet such expectations a specific contract will be necessary; and

WHEREAS, it appears to be in the best interest of Pend Oreille County to approve the Pend Oreille County Public Defender Indigent Defense Contract (Preliminary Appearances).

NOW, THEREFORE BE IT RESOLVED, that the Board of County Commissioners approve the Pend Oreille County Public Defender Contract attached hereto and incorporated herein.

DONE IN OPEN SESSION this 10 day of March, 2020.

BOARD OF COUNTY COMMISSIONERS
PEND OREILLE COUNTY, WASHINGTON

Mike Manus, Chairman

Steve Kiss, Vice Chair

Karen Skoog, Commissioner

APPROVED AS TO FORM:

Dolly N. Hunt, Prosecuting Attorney

ATTEST:

Crystal Zieske

Clerk of the Board, Crystal Zieske

CONTRACT FOR INDIGENT DEFENSE SERVICES
Preliminary Appearance Representation
Felony and Misdemeanor

1. PARTIES

1.1 This Agreement is entered effective the 10th day of March, 2020 between Pend Oreille County, Washington, a political subdivision of the State of Washington acting by and through the Board of County Commissioners, hereinafter referred to as "the County," and **F. Dana Kelley**, hereinafter referred to as "the Attorney." The Attorney certifies that he is a duly qualified and licensed member in good standing of the Washington State Bar Association authorized to practice law in the State of Washington, having paid all dues and fees required. The Washington State Bar Association identification number of the Attorney is affixed next to his signature below.

1.2 The purpose of this Agreement is to provide legal counsel to person charged with crimes in the Superior and District Courts of Pend Oreille County at the time of and solely for the purpose of their first or preliminary appearance in either court. This Agreement is personal to the Attorney named herein. The Attorney named herein may not subcontract, assign or transfer his duties under this Agreement except that he may contract with qualified attorneys to stand in for him on a limited basis, e.g. when he is sick, on vacation, or caring for a family member, on such basis as approved by the applicable court.

1.3 By entering into this Agreement, the Attorney agrees to abide by the terms and conditions stated in this Agreement.

2. SCOPE OF SERVICES

2.1 The Attorney agrees to provide the Attorney services commencing **January 1, 2020 and continue through December 31, 2020,** unless the Agreement is terminated earlier pursuant to the provisions in Section 6. The Attorney shall provide services to all offenders referred in accordance with the terms of this Agreement until representation of such offender is completed.

2.2 The Attorney agrees to provide the Attorney services for felony and misdemeanor adult and juvenile incarcerated individuals who request a the Attorney to represent them at their first or preliminary appearance in District or Superior Court. The services shall entail: meeting with incarcerated individuals(s) in the Pend Oreille County jail prior to their preliminary appearances on four of five days, if necessary two of which, if at all possible, would include Sunday and Monday, exclusive of holidays; advising the individual of his/her constitutional rights, and his/her rights under CrR or CrRLJ 3.2.1; inquiring of the prosecuting authority as to and advising the individual of the nature of the charge(s) against him/her; reviewing the individuals financial application for the Attorney for completeness, and advising the individual that the court may assess a fee for the service if the individual does not qualify for public defense services; gathering relevant pretrial release information from the individual; as feasible prior to the preliminary appearance, verifying key facts with respect to pretrial release; and representing the

individual at his/her preliminary appearance only. Said Attorney will make clear that his representation of said persons is limited to that first appearance and that if the individual wishes to have an attorney to represent them from that hearing forward that they will need to retain private counsel or request the court to appoint a The Attorney (PD) to represent them. The Attorney will additionally advise said incarcerated defendants that they do not have to accept his representation but may choose to retain their own private attorney or may represent themselves at such preliminary or first appearance.

2.3 The Attorney shall appear daily at every scheduled preliminary or first appearance in both the Superior and District Courts of Pend Oreille County and will, with the consent of each defendant who desires his assistance, speak for that defendant during such preliminary or first appearance, and for any persons arrested on warrants who do not have legal counsel even though it may not be a preliminary appearance. The intent of the parties is that the Attorney will provide legal advice and assistance to any person appearing in court who does not have legal counsel available until legal counsel, either privately or publicly funded, can appear to assist them, provided the person desires the assistance and consents to the same.

2.4 In view of the limited nature of the representation, determination of indigence for purposes of eligibility for appointed counsel under this Agreement shall be on the basis of the applicant's self-selection. However, after review of the financial application for public defense services, the court may require reimbursement by the individual receiving the service of some or all of the county's expense in providing this service through the preliminary hearing.

2.5 The Attorney may make arrangements with a covering attorney or attorneys who will provide the services specified in this Agreement for temporary periods when the Attorney is unavailable. The Attorney shall ensure that such other attorneys are acceptable and preapproved by the Presiding Judges of both the District and Superior Courts before the covering attorneys provide services. Additionally, covering attorneys shall be admitted to the practice of law in the State of Washington and be in good standing as such, pursuant to the Rules of Admission to Practice (APR) as now or hereafter adopted by the Supreme Court of the State of Washington. The Attorney shall be solely responsible to provide remuneration to any covering attorney.

3. COMPENSATION

3.1 The Attorney will be compensated for services performed from **January 1, 2020 to December 31, 2020,** at a flat rate of $13,200.00 to be paid in 12 equal payments for each month.

3.2 The Auditor's Office, on behalf of the COUNTY, shall remit payment to the Attorney on a monthly basis following approval by the Board of County Commissioners. Payment will be made on the last full week of the month for which services have been rendered.

3.3 The Attorney services shall be furnished as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Attorney as an independent contractor. The Attorney acknowledges that the entire compensation for this Agreement is specified in Section 3.1 and that the Attorney is not entitled to any County benefits including, but not limited to: retirement pay,

vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits or any other rights or privileges afforded to Pend Oreille County employees.

3.4 The Attorney shall at all times maintain in full force and affect his own malpractice insurance.

3.5 The performance of all or part of this Agreement by the Attorney shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Attorney or of any employee of the Attorney at the present time or in the future.

3.6 The Attorney understands and acknowledges that the County will not withhold federal or state income taxes. Where required by State and Federal law, the Attorney authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Attorney will be reported to the Internal Revenue Service (IRS) at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Attorney to make the necessary estimated tax payments throughout the year, if any, and the Attorney is solely liable for any tax obligation arising from the Attorney's performance of this Agreement. The Attorney hereby agrees to indemnify the County against any demands to pay taxes arising from the Attorneys' failure to pay taxes on compensation earned under this Agreement.

3.7 Neither the Attorney nor anyone employed by or associated with him shall accept additional compensation from an assigned client or anyone on behalf of the client for representation in connection with the assigned case. Nothing in this Agreement prohibits the Attorney from representing, for compensation, any individual, including an assigned client, in any other criminal or civil matter.

3.8 Interpreter fees and other costs associated with representation will be provided upon request of the Superior or District Court Administrators.

4. INSURANCE

4.1 The Attorney is liable for his actions and those of his employees and subcontractors or covering attorneys in performing services related to this Agreement. The Attorney shall obtain and keep in force and provide proof to the County Risk Manager throughout the term of this Agreement that he has purchased and is maintaining adequate professional liability insurance with a company approved by the Washington State Insurance Commissioner. The Attorney shall provide a standard certificate of insurance reflecting such current coverage to the County Risk Manager at the time this Agreement is executed, and thereafter on an annual basis during the term of the Agreement. Further, the policy will be a claims made occurrence-based policy. Failure to provide evidence of current insurance shall be grounds for termination of this Agreement.

4.2 The Attorney shall obtain and maintain in force at all times Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4.3 Insurance coverage acceptable to the County is a condition precedent to the Attorney's performance under this contract. The Attorney shall provide the County with a Certificate of Liability Insurance. The Insurance coverage should be made on a claims-made policy form. The Attorney agrees to maintain legal malpractice insurance at the minimum amount of $100,000.00 per occurrence, $300,000.00 aggregate. The policy shall provide that it cannot be cancelled or the limits reduced without 30 days advance notice to the County.

If this contract is terminated for any reason, or at its expiration if not renewed, and if the Attorney's insurance is on a claim-made form, the Attorney agree to purchase at their sole cost, a 3-year tail policy or extended reporting period. The Attorney as appropriate, agrees to provide a copy of the 3-year tail coverage or extended reporting period to the Board or Commissioners of Pend Oreille County prior to receiving final payment from Pend Oreille County. The Attorney specifically understands and agrees that any remuneration due or claimed to be due under this contract will be withheld until receipt by the Board of Commissioners of Pend Oreille County of acceptable tail coverage or an extended reporting period as detailed above.

Further, in the event the Attorney fails to purchase and provide the necessary tail coverage or an extended reporting period, the Attorney, as applicable, agrees to indemnify and hold harmless the County, its agents, employees, officials and officers from any and all liability and/or losses and damages.

5. ATTORNEY STANDARDS OF PERFORMANCE

5.1 The Attorney shall provide services of indigent clients in a manner consistent with the Rules of Professional Conduct.

5.2 The Attorney shall pay diligent and prompt attention to the duties of representation.

5.3 The Attorney shall provide an explanation and report of all public defense work for other courts during the contract period as well as report hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.

5.4 The Attorney shall obtain a minimum of seven (7) hours of criminal defense related CLE training approved by the office of public defense per calendar year. The Attorney is responsible for scheduling and paying for this CLE training on his own. Verification of compliance with this requirement shall be provided with attorney's December report.

5.5 The Attorney (hereinafter referred to in this section as "indemnitor") will indemnify Pend Oreille County, its elected officials, agents, employees, and attorneys (all hereinafter collectively referred to in this section as "indemnitees") and hold indemnitees harmless against all liability for damages arising out of or relating to the services provided by indemnitor under this Agreement.

(a) Such indemnification shall not extend to nor include any liability due to the sole negligence of indemnitees or any of them.

(b) In instances in which any liability is due to the concurrent negligence of

(i) The indemnitee or the indemnitee's agents or employees, and

(ii) The indemnitor or the indemnitor's agents or employees, such indemnification only shall extend to the extent of the indemnitor's negligence, and in such regard indemnitor waives its liability immunity under industrial insurance (Title 51 of the Revised Code of Washington). **Indemnitor acknowledges that this waiver has been mutually negotiated by the parties.**

6. TERMINATION

6.1 This Agreement shall be effective from the date stated below and shall continue until December 31, 2020 unless terminated in writing by either party. Either party may terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to the other party. For purposes of giving or receiving notice of termination, the Chairman of the Board of County Commissioner shall be the representative of the County. This Agreement shall terminate immediately and automatically upon the disbarment or suspension of the practice of law of the Attorney. The Attorney shall immediately notify the Presiding Judges of both the Superior and District Courts of his suspension or disbarment to practice law.

6.2 This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and Pend Oreille County.

6.3 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such litigation shall be the courts of the State of Washington in and for the County of Pend Oreille or the County of Spokane.

6.4 If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect the other terms and conditions of this Agreement, or any application of the Agreement which can be given effect without the invalid term, condition or application. To this extent, the terms and conditions of this Agreement are declared severable.

6.5 This Agreement represents the entire agreement of the parties and supersedes any and all prior oral and written statements, discussions, or understandings between the parties.

6.6 In the event that this Agreement is terminated other than at the close of a calendar month, the Attorney's final payment under this Agreement shall be based on services performed prior to the effective date of termination.

7. MISCELLANEOUS PROVISIONS

7.1 COUNTY-NON-DISCRIMINATION. The Attorney shall not discriminate against any defendant or employee who is employed in connection with the work, or against any applicant for such employment, because of race, creed, color, sex, sexual orientation, national origin, marital status, or the presence of any sensory, mental or physical handicap.

7.2 FEDERAL NON-DISCRIMINATION. Pend Oreille County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Pend Oreille County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

7.3 No modification or amendment of the provisions of this Agreement shall be effective unless in writing and signed by the authorized representative of the parties hereto.

7.4 This instrument contains the entire Agreement between the parties and may not be enlarged, modified or altered except in writing signed by the parties thereto; provided, this Agreement is in addition to another written agreement concerning representation of indigents in Pend Oreille County District and Superior Courts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 10th day of March, 2020.

The Attorney, WSBA# 17460

PEND OREILLE COUNTY
BOARD OF COMMISSIONERS

MIKE MANUS, CHAIR

STEVE KISS, VICE CHAIR

KAREN SKOOG, MEMBER

Attest:
CRYSTAL ZIESKE
Clerk of the Board