

DRAFT

CONTRACT FOR INDIGENT DEFENSE SERVICES

WHEREAS, the City of Mukilteo, Washington (hereinafter “City”) provides public defense services pursuant to contract with the _____ hereinafter (“Attorney”), and

WHEREAS, the City has adopted standards for the provision of public defense services, and

WHEREAS, the City deems it in the public interest to renew the contract with the Attorney to provide services to indigent defendants, NOW THEREFORE

In consideration of the mutual benefits to be derived and the promises contained herein, the City of Mukilteo, a Washington municipal corporation (“City”) and the _____ (the “Attorney”) have entered into this Agreement.

1. Scope of Services, Standards and Warranty. The Attorney will provide indigent defense services in accordance with the standards adopted by the City of Mukilteo by Resolution 2014-20 (hereinafter “Standards”). These Standards are incorporated by this reference as if herein set forth. In the event the Standards adopted by the City are amended in order to incorporate changes required to conform to changes in Washington Supreme Court Rules or Standards or in the Washington State Bar Association Standards, the parties agree to reopen this Agreement in order to incorporate those changes and adjust the provisions of this Agreement, including compensation as needed to conform this Agreement to the Standards. The decision of the Honorable Robert S. Lasik in *Wilbur v. Mt. Vernon, et al*, details affirmative duties and obligations of the Attorney and ultimately the City. (“Decision”) The Attorney individually warrants that he/she, and every attorney and/or intern employed by the Attorney to perform services under this contract, have read and are fully familiar with the provisions of the Washington Supreme Court rule, the Washington State Bar Association Standards, and the Standards adopted by the City. Compliance with these Standards and guidance provided by the Decision goes to the essence of this Agreement.

1.1 The Attorney and every attorney and/or intern performing services under this Agreement shall certify compliance with the Supreme Court Caseload Standards quarterly with the Mukilteo Municipal Court on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing with the Municipal Court.

1.2 By way of illustration and not limitation, the Attorney has proposed compensation levels, staffing and infrastructure that provide the capacity and resources to meet the Standards including affirmative efforts to contact a client who fails to appear for an appointment and document those efforts.

1.3 The Attorney will maintain contemporaneous records on a daily basis in a format approved by the City. The Attorney will provide confirmation of continuing education courses in the area of criminal law and defense annually by December 31st. The Attorney will

maintain and provide to the City all data, information and case files referenced in the Standards and this contract and any and all other information reasonably requested by the City or a successor, so long as consistent with the attorney-client privilege and any protective order entered by a court of competent jurisdiction. The Attorney shall promptly report a sustained disciplinary action by the Washington State Bar Association or a finding by a court of competent jurisdiction that an Attorney has been found to have provided ineffective assistance of counsel.

1.4 The Attorney will use a free “do not record” phone line to contact incarcerated indigent defendants and take reasonable measures consistent with local practice to ensure confidentiality of contacts with incarcerated defendants.

1.5 The Attorney shall, with respect to any jail or other incarceration facility in which an assigned defendant is incarcerated:

1.5.1 Review forms from the jail or other incarceration facility to assure that they accurately advise clients whether written communications are confidential; and

1.5.2 With reference to any indigent defendant client being held in an out-of-county jail or other incarceration facility, determine what arrangements have been made to allow clients to maintain confidential communications with their attorney and timely notify the City if no such arrangements are in place.

1.6 The Attorney shall maintain client complaints regarding his services received in a log as well as in the client’s file and shall follow up on complaints within three (3) court days. Copies of the complaint log shall be provided to the City upon its request on a form mutually agreed to by the parties which fully preserves the attorney-client privilege. The Attorney shall cooperate to the full extent consistent with preservation of the attorney-client privilege and any protective order, with review of Complaints by the City or other outside resource contracted with by the City to review the Attorney’s performance under this contract.

1.7 The Attorney warrants that his/her compensation, reflected in Section 2 Compensation, reflects all infrastructure, support, administrative services, and systems necessary to comply with the Standards.

1.8 Each and every Attorney providing services under this Agreement shall earn at least seven (7) CLE credits per year in areas relevant to the criminal law, as well as misdemeanor or public defense practice. The Attorney shall document training annually by providing the City with a list of all trainings attended by Attorney and staff during each year of the contract. Any training which results in a CLE credit shall be so designated showing the CLE credit given for such training.

1.9 The Attorney shall implement a system to collect the following information, (“Data Points”). The information gathered shall include:

1.9.1 the number of cases assigned to each Attorney authorized as a service provider each month, with the year-to-date total;

- 1.9.2 the number of closed cases in which expert services were requested;
- 1.9.3 the number of closed cases in which interpreter services requested, either in court or for utilization by the Attorneys;
- 1.9.4 the number of closed cases in which an investigator was used;
- 1.9.5 the number of closed cases in which substantive motions were filed;
- 1.9.6 the number of closed cases which were tried by a jury, by a judge, or in which charges were dismissed or significantly reduced on the day of trial;
- 1.9.7 the number of cases which were resolved by the dismissal of the charges, a significant reduction in charges or dismissal of other cases with a plea on the remaining case(s);
- 1.9.8 the number of appeals and/or writs;
- 1.9.9 the number of attorneys and investigator hours per closed case; and
- 1.9.10 the number of other criminal and civil cases handled in the calendar year. Information relating to the complexity of any civil matter and time billed will be provided.

1.10 The parties will communicate regularly regarding the information collected both under this Agreement and pursuant to the other Data Points. The parties will calendar meetings at least annually as may be necessary to review the data collected and its significance. Attorney agrees to cooperate and communicate with the City to the full extent consistent with preservation of the attorney/client privilege.

1.11 The Attorney shall provide counsel to defendants at arraignment and preliminary appearances regardless of whether they have been screened.

1.12 The Attorney shall prepare and appear at arraignment and status calendars regardless of whether the Attorney appears without a case assignment.

1.13 The Attorney shall represent previously appointed defendants at post-conviction hearings. If a defendant is appointed solely for a probation review hearing, the case shall be counted as 0.5 case in determining case counts. Such post-conviction appointments and case count shall apply for the remainder of the post-conviction review period regardless of the number of hearings.

2. Compensation. Effective January 1, 2023, the City shall pay the Attorney for services rendered under this contract the sum of _____ per month to reflect an annualized case count of up to _____ cases. For the initial term, Attorney will be prepared to handle up to _____ cases.

The compensation amount represents the salary and benefits necessary to the Attorney performing anticipated work on _____ assigned cases and all infrastructure, support, and systems necessary to comply with the Standards. As provided in Section 2.6 and its sub-paragraphs below, the parties will periodically review staffing in light of changes in court rule and case load, if any. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense service will comply with the Standards with an adequate reserve capacity for each attorney. The Attorney additionally agrees and promises that he/she will devote his/her full effort to the performance of this Agreement and will undertake no private practice of law or other public defense contract that would impede his/her ability to perform under this Agreement.

2.1 Cost Increases During the Initial Term. To reflect the increased costs of providing services from year to year, the City agrees to the following cost increases during the term of this Agreement:

2.1.1 Effective January 1, 2024, the City shall pay the Attorney for services rendered under this contract the sum of _____ per month to reflect an annualized case count of up to _____ cases.

2.2 Case Counts. Based upon case counts maintained by Attorney and reviewed by the City, current estimates for annual case counts for all indigent cases filed by the City is approximately _____ cases or about _____ cases per quarter. As provided in the Standards, the case counts also include the Attorney's appearance at all arraignment calendars and designated post-conviction proceedings. (See Section 1.11, 1.12 and 1.13 above). The terms "case" and "credit" shall be defined as provided in the Standards. One RALJ appeal shall count as six (6) cases. The City has adopted an unweighted case count.

2.3 Adjustment; Internal Allocation. As provided in the Standards, compensation may be revised upwards. Upon the Attorney's request, the City shall review any particular case with the Attorney to determine whether greater compensation should be assigned, and upward revisions shall not be unreasonably refused.

2.4 Base Compensation. Except as expressly provided in Section 2.4 and 2.5, the cost of all infrastructure, administrative support and systems, as well as standard overhead services necessary to comply with the established standards is included in the base payment provided in Section 2.1 above.

2.5 Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when approved by the Court from funds available for that purpose. Unless the services are performed by the Attorney's staff or paraprofessional subcontractors, such as translator(s) or investigator(s), non-routine expenses include, but are not limited to:

- 2.5.1 medical and psychiatric evaluations;
- 2.5.2 expert witness fees and expenses;
- 2.5.3 interpreters;
- 2.5.4 polygraph, forensic and other scientific tests;

- 2.5.5 a computerized or other legal research which is not typically maintained as a part of defense counsel legal libraries or research capabilities;
- 2.5.6 investigation expenses; and
- 2.5.7 any other expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2.6 The City shall pay or reimburse the following:

2.6.1 Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to court, including but not limited to, salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.6.2 Copying Client's Files. The actual cost of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus Attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.6.3 Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The actual cost of preparing and making copies of direct appeal transcripts for representation in post-conviction relief cases;

2.6.4 Records. To the extent such materials are not provided through discovery, the cost of acquiring medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs; and

2.6.5 Process Service. The normal, reasonable cost for the service of a subpoena.

2.7 Review and Renegotiation.

2.7.1 Due to Increases or Decreases in Caseload. The City and the Attorney shall, at the option of either party, renegotiate this contract if there is a significant increase or decrease in the number of cases assigned. "Significant" shall mean a change of more than ten percent (10%) in the number of cases assigned. If cases are estimated to approach or exceed _____ per year or _____ cases per quarter, the parties may renegotiate this contract to increase case coverage and compensation to the Attorney. At the request of either party, the City and the Attorney will periodically review case assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications. The Attorney shall promptly notify the City when quarterly caseloads require use of overflow or conflict counsel to assure that cases assigned to the Attorney remain within the limits adopted in this contract and comply with state and local standards.

2.7.2 Renegotiation Due to Change in Rule or Standard. This contract may be renegotiated at the option of either party if the Washington State Supreme Court significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule.

2.7.3 Review of Contract Extension. On or before August 1, 2024, unless this Agreement has been terminated as provided herein, the Attorney will give the City a proposal for a two (2) year extension provided for in Section 3. The City shall respond by November 31, 2024. With the mutual agreement of the parties, compensation and other contract terms may be adjusted for future years.

3. Term. The term of this Agreement shall be from January 1, 2023 through December 31, 2024, unless sooner terminated as provided herein, as the one (1) additional two (2) year term extension of the original agreement.

3.1 For Cause. This Agreement may be terminated for cause for violation of any material term of this Agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of the court and the ethical obligations established by the Washington State Bar Association, a violation of the Standards or the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney, or any attorney providing service under this Agreement, has been suspended or revoked. Any violation of the other provisions of this Agreement shall be subject to cure. Written notice of contract violation shall be provided to the Attorney who shall have thirty (30) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.

3.2 Termination on Mutual Agreement. The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

3.3 Termination on Cessation of the Municipal Court. In the event that the City in its sole discretion chooses to terminate its Municipal Court, this Agreement shall expire following one (1) year written notice by the City to the Attorney.

3.4 Obligations survive Termination. In the event of termination of this Agreement, the following obligations shall survive and continue:

3.4.1 Representation. The compensation established in this Agreement compensates the Attorney for services relating to each and every assigned case. Therefore, in the event this Agreement is terminated pursuant to Sections 3.2 and 3.3 above, the Attorney will continue to represent clients on assigned cases set for trial to be held within sixty (60) days of the date of termination until a case is concluded on the trial court level or the client fails to appear for a scheduled court appearance. The Attorney will continue to represent clients in post-conviction proceedings and will be compensated at the rate of Sixty Dollars (\$60.00) per hour for preparation and attendance at any hearing or other post-conviction proceeding for a minimum of one (1) year or such other term as the parties shall agree. The Attorney will reasonably cooperate with newly appointed counsel on case reassignment in fulfillment of his/her ethical obligations.

3.4.2 The provisions of Sections 1 and 5, as well as this subsection 3.4 survive termination as to the Attorney. The City shall remain bound by the provisions of Section 2.5 and its subsections with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

4. Nondiscrimination. Neither the Attorney nor any person acting on behalf of the Attorney shall, by reason of race, creed, color, national origin, sex, sexual orientation, including gender identity, honorably discharged veterans or military status, or the presence of any sensory, mental, or physical disability, HIV/AIDS and Hepatitis C status, or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this Agreement.

5. Indemnification.

5.1 The Attorney agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorney's fees or awards, and including claims by Attorney's own employees to which the Attorney might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorney, his/her officers or agents.

5.2 It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Attorney's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

5.3 The City agrees to hold harmless and indemnify the Attorney, his/her officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including the Attorney's fees or awards, arising out of or in connection with any willful misconduct or negligent error or omission of the City, its officers or agents.

5.4 This clause shall survive the termination or expiration of this Agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

6. Insurance. The Attorney shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the Attorney, or the agents, representatives, employees, or subcontractors of the Attorney.

6.1 Minimum Scope of Insurance. The Attorney shall obtain insurance of the types described below, naming the City as additional named insureds:

6.1.1 General Liability with a minimum limit of liability of \$2,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.2 Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.3 Professional Liability (Errors and Omissions) for Attorney with a minimum limit of liability of \$1,000,000 per claim and \$2,000,000 aggregate.

6.1.4 Workers' Compensation per statutory requirements of Washington industrial insurance RCW Title 51.

6.2 Verification of Coverage. The Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the City. The Public Defender shall provide the City with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Contract. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract.

7. Work Performed by the Attorney. In addition to compliance with the Standards, in the performance of work under this Agreement, the Attorney shall comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to Attorney's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at the Attorney's Risk. The Attorney shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorney's own risk, and the Attorney shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. The Attorney shall also pay his/her employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of the Attorney's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Attorney has personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by the Attorney without the express written consent of the City shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Attorney. With the approval of the City, an additional attorney may be added to this Agreement by adding his or her signature to these agreements.

11. Entire Agreement; Prior Agreement Superseded. The written provisions in terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. Upon execution, this Agreement shall supersede any and all prior agreements between the parties.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITY:
Kara Johnson, City Clerk
CITY OF MUKILTEO
11930 Cyrus Way
Mukilteo WA98275
425-263-8005

ATTORNEY:

13. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Contract Administrator, whose decision shall be final. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between the Attorney and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Attorney's fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Whatcom County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2024.

CITY OF MUKILTEO

By: _____
Mayor Joe Marine

ATTEST/AUTHENTICATED:

By _____
Kara Johnson, City Clerk

APPROVED AS TO FORM:
OFFICE OF CITY ATTORNEY

By: _____
Daniel Kenny

ATTORNEY

By: _____

EXHIBIT A

The undersigned Attorney hereby personally warrant and certify that as a condition of their performance of this Agreement, they will commit to providing the services under this Agreement in accordance with the Standards set forth in sections 1, 4, and 7, and that the Attorney's personal warranty of that performance shall survive the Agreement in accordance with subsection 3.4 of this Agreement.

ATTORNEY: _____
Print Name