

FORM

CONTRACT FOR INDIGENT DEFENSE SERVICES

WHEREAS, the City of _____, Washington (hereinafter "City") provides indigent defense services to individuals who have been certified for representation in criminal charges before the _____ Municipal Court (hereinafter "Municipal Court"); and

WHEREAS, _____, (hereinafter "Attorney") is a licensed attorney in good standing in the state of Washington who has been selected to perform services to indigent defense clients under contract with the City; and

WHEREAS, the City has adopted standards for public defense pursuant to the requirements of RCW 10.101.030, under Ordinance No ____/Resolution No. ____; now, therefore,

The City and Attorney have entered into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. Scope of Services, Standards and Warranty. The Attorney will provide indigent defense services in accordance with the standards adopted by the City in Ordinance No.____/Resolution No. _____, as the same exists or is hereafter amended. The Attorney warrants that he/she, and every attorney and/or intern employed by the Attorney to perform services under this contract, has read and is fully familiar with the provisions of the Washington Supreme Court rule and the standards adopted by the City pursuant to Ordinance No. _____/Resolution No. _____, (hereinafter "Standards"). Compliance with these Standards goes to the essence of this Agreement. The Attorney, and every attorney and/or intern performing services under this Agreement, shall certify compliance quarterly with the District 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 District Court. The Attorney further warrants that his/her proposal, reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services and systems necessary to comply with the Standards.

2. Compensation. The City shall pay to the Attorney for services rendered under this Contract the sum of _____ Dollars (\$_____) per month.

2.1 Case Counts. The above charge is based upon the historical case count for the City of _____ cases per year, averaging _____ cases per quarter. As provided in the Standards, the case counts also include the Attorney's appearance at all arraignment calendars. The terms "case" and credit" shall be defined as provided in the Standards. The City has adopted a **weighted/unweighted** case count.

2.2 Adjustment. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Attorney's request, the City shall review any particular case with the Attorney to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused.

2.3 Base Compensation. Except as expressly provided in Section 2.4, 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.

2.4 Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the District Court from funds available for that purpose:

2.4.1 Discovery. Discovery shall be provided in accordance with law and court rule by the City Prosecutor. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, prosecuting attorney making this charge or court files pertaining to the underlying case.

2.4.2 Preauthorized Non-Routine Expenses. Non-routine case expenses requested by Attorney and preauthorized by order of the District Court. Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters for languages not commonly spoken in the City or interpreters for services other than attorney/client communication;
- (iv) polygraph, forensic and other scientific tests;
- (v) computerized legal research;
- (vi) investigation expenses; and
- (vii) any other non-routine expenses the District Court finds necessary and proper for the investigation, preparation, and presentation of a case.

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

2.4.4 Copying Clients' Files. The cost, if it exceeds \$25, 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;

2.4.5 Copying Direct Appeal Transcripts for RALJ Appeals. The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

2.4.6 Records. Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

2.4.7 Process Service. The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

2.5 Renegotiation Due to Increases or Decreases in Case Load. The City and 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 decrease” and “significant increase” shall mean a decrease or increase, respectively, of more than ten percent (10%) in the number of cases assigned or, in the alternative, a decrease or increase in the number of cases assigned which results in more than _____ cases being assigned in an “average” calendar year or an average of _____ cases per quarter. **[Use multiples of 400 cases or 300 weighted cases and quarterly equivalent as applicable.]** At the request of either party, the City and Attorney will periodically review cases assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications.

3. Term. The term of this agreement shall be from the date of execution through December 31, 20___, unless sooner terminated as provided in this 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 of 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 Contract shall be subject to cure. Written notice of contract violation shall be provided to the Attorney who shall have ten (10) 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.

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, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability 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. 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 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 officers or agents.

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.

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. Attorney shall obtain insurance of the types described below:

6.1.1 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

6.1.2 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 10 01 and CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

6.1.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

6.1.4 Professional Liability insurance appropriate to the Attorney's profession.

6.2 Minimum Amounts of Insurance. Attorney shall maintain the following insurance limits:

6.2.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

6.2.2 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

6.2.3 Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall contain no exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

6.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance.

6.3.1 The Attorney's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.

6.3.2 The Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

6.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

6.5 Verification of Coverage. 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.

7. Work Performed by Attorney. In addition to compliance with the Standards, in the performance of work under this Agreement, Attorney shall comply with all federal, state and District 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 Attorney's Risk. 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. Attorney shall also pay its 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.

11. Entire Agreement. 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.

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:

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 City Manager, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the District Court or to the Washington State Bar Association as appropriate. 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 attorneys' 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 King County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 20____.

CITY OF _____

By: _____

ATTEST/AUTHENTICATE:

By _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____

ATTORNEY

Printed Name

[As applicable]

PLLC

This Agreement has been executed personally by the Attorney providing services hereunder to indicate his commitment to providing the services in accordance with the standards herein provided. In addition, the corporate entity under which the Attorney practices has executed this Agreement indicating the corporate entities' Agreement to comply with the terms of this Agreement.