



**CITY OF MONROE
CONTRACT FOR INDIGENT DEFENSE SERVICES - BACKUP**

WHEREAS, the City of Monroe, Washington (hereinafter “City”) provides public defense services pursuant to contract with a primary Public Defender and Backup Public Defenders who serve in the event of conflict or when the primary Public Defender’s case load could exceed Supreme Court Standards; and

WHEREAS, the City wishes to engage the services of an experienced defense counsel to cover conflict cases and overflow cases as defined herein in the absence of the primary Public Defender (“Public Defender”); and

WHEREAS, a decision by the Federal Court for the Western District of Washington, the Honorable Robert Lasnik, in a case styled *Wilbur, et al v. Mt. Vernon, et al* (hereinafter the “Decision”) emphasizes the need for the City to provide indigent defense services to misdemeanor clients in municipal and district courts in a manner which fully complies with the City’s obligations under the Sixth and Fourteenth Amendments to the United States Constitution; and

WHEREAS, the Washington Supreme Court has adopted standards regarding the caseload of Public Defenders and the Washington State Office of Public Defense has provided guidance regarding case weighting system; and

WHEREAS, the City has conducted an evaluation of its public defense system, including the court system and appointment process. NOW, THEREFORE,

In consideration of the mutual benefits to be derived and the promises contained herein, the City of Monroe, Washington, a municipal corporation (“City”), and Vance P. Odell, Attorney at Law, the Backup Public Defender who will perform services under this contract have entered into this Agreement.

1. Scope of Services, Standards and Warranties. The Backup Public Defender will provide indigent defense services in assigned misdemeanor cases in accordance with the standards adopted by the City in Resolution No. 2012/024 as the same exists or is hereafter amended (hereinafter “Standards”). The Backup Public Defender individually warrants that he/she has read and is fully familiar with the provisions of the Standards adopted by the City. Compliance with these Standards goes to the essence of this Agreement.

1.1 The Backup Public Defender shall certify compliance with Supreme Court Rule and governing case load quarterly with the Monroe 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. The Backup Public Defender warrants that he/she shall conform to the case load limitations not only

with respect to services under this Agreement but also with respect to his/her practice as a whole, including other contracts for public defense and/or private practice.

1.2 Backup Public Defender will maintain contemporaneous records documenting all work performed on each assigned case. Backup Public Defender will maintain and provide to the City a report for each calendar quarter detailing:

1.2.1 the number of cases assigned during the period;

1.2.2 the disposition of cases assigned indicating the number of cases dismissed, the number of cases in which charges were reduced, the number of cases tried, and the number of cases disposed of by plea;

1.2.3 the number of cases in which a motion was brought with the Court as well as cases in which a motion was filed with the prosecutor and a reduced sentence or dismissal was negotiated;

1.2.4 the number of cases in which an investigator was utilized;

1.2.5 the number of cases which were set for trial including cases in which the defendant failed to appear;

1.2.6 the number and type of criminal cases handled outside of this contract (including cases assigned by another public entity); and

1.2.7 the percentage of the Public Defender's practice spent on civil or non-criminal matters.

1.3 The Backup Public Defender further warrants that the payment reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services, routine investigation, and systems necessary to comply with the Decision and Standards except as provided in Section 2.4 below.

1.4 The Backup Public Defender promises that he/she will promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with the Decision and/or the Standards.

2. Compensation. Effective July 11, 2017, the City shall pay to the Backup Public Defender for services rendered under this Contract the sum of three hundred dollars (\$300) per case for conflict and overflow assignments primarily in Monroe Municipal Court. The term "case" and "credit" shall be defined in accordance with the Washington State Supreme Court rule and Washington office of Public Defense guidelines. The City adopts an unweighted case count. The Backup Public Defender will bill the City monthly for services rendered. The City will pay the Backup Public Defender upon assignment for assigned cases whether by the Court or the City. The Backup Public Defender will receive assignments from the court in the event of conflict. The City may also assign cases in coordination with the primary Public Defender to assure compliance with case load standards. Assignments may also include probation and

other ongoing matters in Evergreen Municipal Court. These assignments shall be counted at 0.17 case per hour for calendar and preparation time and will be billed at the rate of seventy-five dollars (\$75) per hour.

The compensation amount represents the resources necessary to provide Public Defense services through the undersigned counsel as supplemented in Section 2.4 below, along with all infrastructure, support, and systems necessary to comply with the Standards and Decision including by way of illustration and not limitation, training, research, secretarial and office facilities. The parties believe that they have provided sufficient capacity through this contract as well as contracts with other counsel for conflict and overflow public defense cases, to ensure that, in all respects and at all times, public defense service will comply with the Standards and Decision. The parties understand and agree that the Backup Public Defender maintains a private practice and serves other communities.

2.1 Base Compensation. Except as expressly provided in Section 2.3, the cost of all infrastructure, administrative support and systems, as well as standard overhead services necessary to comply with the established standards, are included in the base payment provided in Section 2 above.

2.2 Payments in Addition to the Base Compensation. The City shall pay directly to the service provider or Backup Public Defender, as appropriate, for the following case expenses when reasonably incurred and approved by the Court or Contract Administrator:

2.2.1 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 any charging or court files pertaining to the underlying case.

2.2.2 Preauthorized Expenses. Case expenses may be requested by the Backup Public Defender and preauthorized by order of the Court. Unless the services are performed by Backup Public Defender's staff or subcontractors, such expenses include, but are not limited to:

- (i) investigation expenses;
- (ii) medical and psychiatric evaluations;
- (iii) expert witness fees and expenses;
- (iv) interpreters;
- (v) polygraph, forensic and other scientific tests;
- (vi) unusually extensive computerized legal research; and
- (vii) any other non-routine expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case. In the event any expense is found by the Court to be outside of its authority to approve, the Public Defender may apply to the Contract Administrator for approval, such approval not to be unreasonably withheld.

2.2.3 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;

2.2.4 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;

2.2.5 Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Public Defender is limited to no more than two copies;

2.2.6 Records. To the extent such materials are not provided through discovery, 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

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

3. Term. The term of this agreement shall be from the date of execution for the period July 11, 2017, through December 31, 2017, unless sooner terminated as provided herein. The agreement may be extended on a month to month basis with the mutual agreement of the parties until such time as a successor agreement for Backup Public Defense services is approved.

3.1 For Cause. This agreement may be terminated for good 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 court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards or the Decision, 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 Public Defender 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 Backup Public Defender who shall have thirty (30) business days to cure 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 Obligations survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

3.3.1 Representation. The compensation established in this agreement compensates Backup Public Defender for services relating to each and every assigned case. Therefore, in the event this agreement is terminated, the Backup Public Defender will continue to represent clients on assigned cases as follows:

3.3.3.1 If a matter is set for trial within sixty (60) days of the date of termination, the trial is concluded.

3.3.3.2 Otherwise, for a period of thirty (30) days or until the defendant fails to appear for a scheduled court appearance.

3.3.2 The provisions of sections 1 and 5, as well as this subsection 3.3 survive termination as to the Backup Public Defender. The City shall remain bound by the provisions of section 2.4 with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

4. Nondiscrimination. Neither the Backup Public Defender nor any person acting on behalf of the Backup Public Defender, 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 Backup Public Defender 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 Backup Public Defender's fees or awards, and including claims by Backup Public Defender's own employees to which Public Defender might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Backup Public Defender, his/her officers or agents.

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

The City agrees to hold harmless and indemnify the Backup Public Defender, his/her officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Backup Public Defender'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.

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 Backup Public Defender 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 Backup Public Defender, or the agents, representatives, employees, or subcontractors of the Backup Public Defender.

6.1 Liability Insurance. During the period of this Agreement and any extensions thereof, the Backup Public Defender shall secure and maintain a policy of professional liability insurance in the amount of one million dollars (\$1,000,000) or more against claims arising out of work provided for in this Agreement. All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The Backup Public Defender shall submit a certificate of insurance to the City evidencing the coverage as specified above, together with an additional insurance endorsement naming the City, within fifteen (15) days of the execution of this Agreement. The certificates of insurance shall cover the work specified in or performed under this Agreement. No cancellation, reduction or modification of the foregoing policy shall be effective without thirty (30) days prior written notice to the City. Each year at policy renewal, the Attorney will provide an updated certificate of insurance to the City.

6.2 Verification of Coverage. Backup Public Defender 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 Backup 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 Backup Public Defender. In addition to compliance with the Standards, in the performance of work under this Agreement, Backup Public Defender shall comply with all federal, State and municipal laws, ordinances, rules and regulations which are applicable to Backup Public Defender’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 Backup Public Defender’s Risk. Backup Public Defender 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 Backup Public Defender shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Backup Public Defender 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 Backup Public Defender's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Backup Public Defender 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 Backup Public Defender 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 Backup Public Defender. 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 (CONTRACT ADMINISTRATOR)

Elizabeth Adkisson, City Clerk
City of Monroe
806 West Main
Monroe WA 98272

BACKUP PUBLIC DEFENDER

Vance P. Odell
Attorney at Law
3306 Wetmore Avenue
Everett, WA 98201

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. 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 City's Municipal/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 Backup Public Defender and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Backup Public Defender'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 Snohomish County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2017.

CITY OF MONROE

BACK-UP PUBLIC DEFENDER

By: _____
Geoffrey Thomas, Mayor

Vance P. Odell

ATTEST/AUTHENTICATED:

By _____
Elizabeth M. Adkisson, MMC, City Clerk

APPROVED AS TO FORM:

OFFICE OF CITY ATTORNEY

By: _____
J. Zachary Lell