

**REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENDER SERVICES
Des Moines and Normandy Park**

I. PURPOSE OF REQUEST

The City of Des Moines requests proposals to provide public defense services for indigent criminal defendants for a term of two (2) years commencing on March 1, 2021, with the option to extend the contract with the mutual agreement for parties for an additional two-year period. Additionally, the City of Des Moines is seeking on behalf of Normandy Park a proposal to provide public defense services for the City of Normandy Park for the same timeframe. Proposals will be considered separately however preference will be given to proposals that provide the best comprehensive services for both Des Moines and Normandy Park. Normandy Park currently contracts with the City of Des Moines to provide court and prosecution services.

The selected Public Defender will be paid for representational services, including lawyer services and appropriate staff services, infrastructure, investigation and appropriate sentencing advocacy. All proposals should take into account the adopted Standards of the City of Des Moines and Normandy Park and the Washington State Supreme Court (“Standards”) when submitting proposals. Proposals should include all necessary infrastructure, training, and services necessary to comply with the Standards. Legal services provided will include, but not be limited to, interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at court proceedings. The proposal should also provide for attendance at all hearings as detailed in the attached template contracts. Necessary and reasonable expert witness, investigative and other services as detailed in the attached template Contracts will be paid directly to the expert or investigator, or reimbursed to the contract provider when authorized by the Court.

II. INSTRUCTIONS TO PROPOSERS

A. All proposals should be sent to:
Des Moines City Manager
City of Des Moines
21630 11th Ave So., Suite A
Des Moines, WA 98198

B. All proposals must be in a sealed envelope and clearly marked in the upper left hand corner “RFP - Public Defender.”

C. All proposals must be received by 4:30 PM, January 29, 2021. An original and two (2) copies of proposals must be presented. No faxed, e-mailed, or telephone proposals will be accepted. Although City Hall is currently closed to the public, arrangements can be made to drop off a proposal by contacting the City Clerk at BWilkins@desmoineswa.gov.

D. The proposal for the City of Des Moines shall be separated from the proposal provided for the City of Normandy Park so that the Cities can clearly determine the actual costs for each City. It shall be optional to submit a proposal for both Cities, however, a preference will be given to proposals that provide services for both Cities.

E. Proposals should be prepared simply and economically, providing a straight forward, concise description of the provider's capability to satisfy the requirements of the request. Special bindings, colored displays and promotional materials are not desired. Emphasis should be on completeness and clarity of content.

F. The Cities will attempt to schedule interviews via Zoom, if desired, during the weeks of February 8-12, 2021. Proposers should take note that a selection may be made by the Cities based upon the written proposal submitted and should plan accordingly.

F. The firm or attorney selected shall be notified by February 22, 2021 or shortly thereafter. The Des Moines City Council and the Normandy Park City Council must ratify a contract with the selected firm or attorney as appropriate. The anticipated start date is March 1, 2021.

G. All proposals must include the following information:

1. The name of each and every individual attorney who is proposed to provide public defense services and his or her area of responsibility.

2. A resume for each and every attorney who will provide legal services, or supervise the provision of legal services by others, illustrating the attorney's specific experience in criminal defense.

3. A statement warranting that each and every attorney proposed to provide legal services has read and is familiar with Des Moines **Executive Order 14-005 and Normandy Park Resolution No. 875** establishing standards, and the Supreme Court Standards originally adopted pursuant to the Order at 174 Wn.2d. 1177 and 1192, as amended ("Standards"). Each proposer will be required to warrant that the proposal submitted takes into account all required training, infrastructure, and service provision required under the Standards.

The City of Des Moines has assigned an average of 400 cases per year, using an **unweighted** standard. The number of assigned indigent defendants and the resulting trials are dependent on the unique facts and circumstances of any particular case and time period.

The City of Normandy Park has assigned an average of 100 cases per year, using an **unweighted** standard. The number of assigned indigent defendants and the resulting trials are dependent on the unique facts and circumstances of any particular case and time period.

4. **References.** The proposer should provide written references including one judicial reference.

5. **Insurance.** The proposer should review the draft contract and indicate his or her willingness and capability to provide insurance coverage of the same or similar nature. Proposers shall assure the City that their malpractice coverage contains no exclusion for ineffective assistance of counsel.

6. **Additional information:**

6.1 Your experience in providing public defense services and contract performance;

6.2 How long has your firm been in existence? How many years has it practiced criminal defense?

6.3 Has your firm handled indigent clients? Describe the type of cases in which you have represented such clients.

6.4 How many attorneys currently employed by your firm would be involved in public defense under the proposal? Resumes and references must be provided for each attorney.

6.5 How many staff employees does your firm employ? How many staff will be assigned to the public defense services contract? If contract or other services are necessary to comply with Supreme Court Standards such as access to a mental health professional or interpreters, indicate how your firm will comply with the Standards in this regard. See proposed Contract, note any duration from provisions for non-routine services.

6.6 Does any attorney or employee of the firm or could reasonably be anticipated to have any conflict of interest with the City? If so, how will that conflict be addressed?

6.7 Does your firm use a paperless case management program? If so, which one(s)?

6.8 The proposed contract requires that public defenders be proficient in the use of the Court's software system[s] O-Court and DocRecord; the Judicial Information System (JIS); and Zoom. Do your attorneys have experience working with these programs? If so please tell us how long you have used them.

6.9 Do your attorneys have experience in conducting in-custody hearings by video? Out of custody hearings by video? Please describe.

6.10 Do your attorneys have experience working in a therapeutic court? Please identify the court and describe the experience.

6.11 Do any of your attorneys have specialized training in the therapeutic court model? If so, describe the program and when the training took place.

6.12 The proposed contract requires that public defenders visit clients in jail and conduct hearings from SCORE jail. Are your attorneys familiar with SCORE policies and procedures regarding attorney visits, mental health screenings, video arraignments, etc.?

6.13 Do your attorneys have experience using Scores video conference call system to talk to their clients prior to court hearings? Please describe.

7. Contract Performance.

7.1 If your firm has previously provided or is providing contract services for a city or county, please provide any documented review of contract compliance under those contracts.

7.2 Please note specifically any termination for cause of any public contract in whole or in part within the last ten years. Please note any corrective action required under any such public contract.

7.3 Has any attorney proposed to provide services under your proposal been disciplined by the Washington State Bar Association, or any other mandatory bar association of any other state?

7.4 Has any attorney employed by your firm been removed from a case because of a court finding of ineffective assistance of counsel?

7.5 Has any attorney in your firm been monetarily sanctioned by a court for any reason? Please provide a summary of the sanction, including the court and date sanction was imposed.

7.6 Has any attorney in your firm had an action for malpractice filed against the attorney in any courts? If so, what is the status or disposition of the filing?

III. PROPOSED DELIVERY OF SERVICES (Scope of Services is described in Section VI.)

Taking into account the Standards for Services adopted by the City as well as by the Washington State Supreme Court, please provide the following information or proposals:

A. Please describe your firm's general policy guidelines when addressing the needs of indigent misdemeanor clients.

B. How will you monitor the case load of attorneys providing Indigent Defense Services?

C. What type of training do the attorneys in your firm receive which would be relevant to the practice in criminal law and public defense?

D. What is your firm's capacity for working with non-English speaking clients?

E. Does your firm have any experience working with ex-offenders, the mentally ill, or other clients in need of social service referrals?

F. Please provide information regarding your firm's ability to report both monthly and annually regarding the assigned case load, the disposition of cases and the types of cases assigned.

IV. SELECTION CRITERIA

The selection of a Public Defender will be based upon the ability of the proposer to best meet the guidelines established by the 2011 Washington State Bar Association which state:

The object of these guidelines is to alert the attorney to the course of action that may be necessary, advisable, or appropriate and thereby assist the attorney in deciding the particular actions that must be taken in a case to begin **ensure the client receives the best representation possible**, [emphasis added].

Additionally, all responses to questions in the proposal will be considered to ensure a high quality of services are provided. In its evaluation process, the Cities will consider the completeness of the written proposal, the qualifications of the specific individuals proposed for assignment to act as a Public Defender, the proposer's history of successfully fulfilling contracts of this type, experience in similar work, the proven or potential ability of the proposer to fully comply with all Standards as well as the competitiveness of the fee structure proposed. Each proposal will be independently evaluated on these factors.

V. TERMS AND CONDITIONS

A. The Cities reserve the right to reject any and all proposals and to waive minor regularities in any proposal.

B. The Cities reserves the right to request clarification of information submitted and to request additional information from any proposer.

C. The Cities reserves the right to award any Contract to the next most qualified proposer, if the successful proposer does not execute a Contract within thirty (30) days after the award of the proposal.

D. Any proposal may be withdrawn up until the date and time set for opening of the proposals. Any proposal not timely withdrawn shall constitute an irrevocable offer for a period

of sixty (60) days to provide to the Cities the services described herein or until or more of the proposals have been approved by City Councils, whichever first occurs.

E. The Contract resulting from the acceptance of the proposal shall be in approximately the form shown in this RFP. A copy of the Contracts are attached for review. Any proposed amendment to the Contract should be noted in the proposal submitted. The Cities reserves the right to reject any proposed Contract change which does not conform to the specifications contained in the RFP, or which is not warranted to provide a level of service sufficient to meet the adopted Standards. Any proposed amendment to the Contract should be noted in the proposal submitted. If any part of this RFP should conflict with the Contract, the Contract shall control.

F. The Cities shall not be responsible for any costs incurred by a firm in preparing, submitting, or presenting its response to the RFP.

G. Term. Public defense services will commence on March 1, 2021 for an initial term of two (2) years, terminating on February 28, 2023. The parties may mutually agree to extend the resulting Contract for an additional term of two (2) years terminating on February 28, 2025.

H. **Screening.** Determination of indigency for eligibility for appointed counsel for this Contract shall be determined by the Des Moines Municipal Court. The Public Defender will not be responsible for screening potential clients. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will so inform the court and move to withdraw from the case.

I. **Reporting.** The Public Defender shall file a monthly reports with the following information: then number of cases appointed, number of closed cases for that month, the number of dismissals, reductions/amendments, pleas entered, other dispositions, motions set, trials set, trials held. The public defender will also complete (7) hours of CLE training annually. Cities delineating each client who has been appointed to the Public Defender for representation, in a format mutually agreed to by the parties. The format shall not include attorney/client privileged information. The report shall designate whether the client was “conflicted” to another attorney for representation or the client hired another private attorney. The court will indicate the charges filed and the disposition of any case as appropriate. The report shall be due on or before the tenth (10th) day of the month in which services were provided.

J. **Case Count.** A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. Multiple citations from the same incident will be counted as one case. Each case is counted only once, irrespective of any subsequent reappointments pursuant to a failure to appear (hereinafter FTA). Cases will be counted at the time of first appointment. Cases subsequently conflicted, where a private attorney is hired, will be noted on the next report and will not be counted as a Public Defender case.

K. **Associated Counsel.** Any counsel associated with or employed by the Public Defender shall have the authority to perform the services called for herein, and the Public Defender may employ associated counsel to assist at the Public Defender's expense. The Public Defender and all associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during a vacation and illnesses, in settings in more than one courtroom.

L. **Attorney Conflict.** In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall refer the defendant to another attorney competent and able to provide legal services to the indigent. The cost of conflict counsel shall be paid by the City and not by the Public Defender.

M. **Discovery Provided.** The City will provide to the Public Defender at no cost to the Public Defender or defendant one (1) electronic copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with the rules of discovery. The Public Defender will receive discovery electronically. The attached form Contract provides additional information regarding other routine and non-routine services and reimbursements.

N. **Code Provided.** The City shall provide the Public Defender with a copy of the City's criminal code and any amendments thereto adopted during the term of this Contract.

O. **Assignment Prohibited.** No assignment or transfer of the Contract or any interest in the Contract shall be made by the Public Defender without the prior written consent of the City.

P. **Case Loads.** Proposers holding one or more public defense Contracts with entities other than the Cities of Des Moines and Normandy Park shall disclose each Contract. All attorneys providing services shall maintain a case load which fully complies with the City and Washington State Supreme Court Standards, whichever is more restrictive, and shall include cases resulting from all public defense contracts. Copies of quarterly certifications to the court shall be provided to the City. In the event that these Standards significantly change during the term of the agreement, the parties will meet and renegotiate the terms of the Contract. A "significant change" is a change beyond the adopted City or Supreme Court Standard which materially alters a term or condition of the Contract.

VI. SCOPE OF SERVICES

A. **General Description.** Pursuant to Chapter 10.101 RCW, all indigent criminal defendants who are determined to be eligible and are charged under the ordinances of the City will be referred to the Public Defender. The Public Defender will provide legal representation for each of these defendants and court appointment or screening through trial, sentencing, post-conviction review and any appeal to Superior Court or the Washington appellate courts. Such cases may include domestic violence cases. Performance of services shall in all respects comply

with the Standards adopted by the Washington State Supreme Court and the Cities, whichever is more restrictive.

B. Standards for Public Defense. In addition to the Standards, the Public Defender shall at all times comply with the Rules of Professional Conduct (RPC) and all other applicable court rules as the same exist or are hereafter amended. The Public Defender shall maintain the highest standards of conduct and behavior towards the court, the prosecutors, and all parties. The Public Defender shall comply with the Standards for Public Defense Services adopted by the Cities as the same exist or are hereafter amended.

C. The Public Defender will attempt to initiate contact with assigned clients within twenty-four (24) hours of assignment. The Public Defender will provide his or her clients with contact information for availability during office hours. The Public Defender will return client phone calls or other attempts to contact the Public Defender within forty-eight (48) hours excluding weekends. The Public Defender shall provide the prosecutor and City police departments with contact information assuring twenty-four (24) hour a day access.

D. The Public Defender shall maintain an office and all other infrastructure including an adequate number of secretaries, word processing, paralegals and any and all other support services, including adequate and competent interpreter services necessary to comply with the “Standards.” Expert witness, investigator services, mental health assessments and all other services may be provided at additional cost pursuant to court authorization. See the attached Contract for details regarding non-routine services.

VII. COMPENSATION

A. Please present detailed information on the firm’s proposed fee schedule either on a price per case basis or on a total yearly/monthly fee, noting any variations for non-routine services. Services not referenced in this RFP or the attached draft Contract that are not explicitly identified as non-routine will be assumed to be included in the basic fee.

B. If the proposal includes by-case compensation, payment by the Cities for the services will be made only after the services have been performed (through judgment and sentence or dismissal). An itemized billing statement shall be submitted in a form approved by the Cities. Payment shall be made on a monthly basis in accordance with the Cities’ accounts payable procedures.

C. By submitting its proposal, the Proposer warrants that he or she and all attorneys performing services under the agreement have studied the Standards adopted by the Cities and the State Supreme Court, and have obtained, as necessary, applicable accounting review of the overhead costs necessary to provide all required infrastructure and services required by such Standards. Proposer further warrants that the proposal submitted is adequate to provide reasonable compensation for the provision of public defense services in accordance with such Standards.

(DRAFT) AGREEMENT FOR PUBLIC DEFENDER SERVICES
FOR DES MOINES MUNICIPAL COURT

WHEREAS, the City of Des Moines, Washington (hereinafter "City") provides public defense services pursuant to contract, and

WHEREAS, a decision by the Federal Court for the Western District of Washington, the Honorable Robert Lasnik, in a case styled *Wilbur v. Mt. Vernon* (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 Amendment 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 systems, and

WHEREAS, the City requires this contract to be in compliance with the guidance of the Decision, Supreme Court Standards and the standards for the provision of indigent defense services adopted by the City in Executive Order No. 14-005; now therefore,

In consideration of the mutual benefits to be derived and the promises contained herein, the **CITY OF DES MOINES**, Washington, a municipal corporation ("City") and _____ (the "Public Defender(s)") have entered into this Agreement.

1. Scope of Services, Standards and Warranties. The Public Defender will provide indigent defense services in misdemeanor cases in accordance with the standards adopted by the City in Executive Order No. 14-005 as the same exists or is hereafter amended (hereinafter "Standards") and the Decision. The Public Defender individually warrants that he/she, and every Attorney/Public Defender and/or intern employed by the Public Defender to perform services under this contract, has read and is fully familiar with the provisions of the Standards adopted by the City and the Decision. Compliance with these Standards and the Decision goes to the essence of this Agreement. The Public Defender, and every Public Defender and/or Attorney or intern performing services under this Agreement shall certify compliance with Supreme Court Rule and governing case load quarterly with the Des Moines 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 Public Defender and every Public Defender and/or Attorney or intern 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.

1.1 Screening. Determination of indigency for eligibility for appointed counsel under this agreement shall be determined by an independent screening process established by the City. Should the Public Defender performing the screening determine a defendant is not eligible for assigned counsel, the Public Defender shall so advise the Des Moines Municipal Court.

1.2 Twenty-Four Hour Telephone Access. The Public Defenders shall provide to the Des Moines Police Department a telephone number or numbers at which a Public Defender can be reached twenty-four (24) hours each day for advice to defendants during the course of police investigations or arrests for violations of law.

1.3 Client Contact. Public Defender agrees to attempt to contact the client within five (5) days of receiving the notice of appointment by the Des Moines Municipal Court if the defendant is out of custody and within seventy two (72) hours if the defendant is in custody. Public Defender shall make reasonable efforts to confer with defendants about cases prior to court hearings and the Public Defender shall be available for office consult and shall respond to defendant inquiries within a reasonable time to ensure the effective assistance of counsel whether such inquiries are received by letter, telephone, email, or otherwise. Public Defender shall be available for attorney-client consultations at the jail prior court hearings.

1.4 Recordkeeping: Public Defender will maintain records documenting all work performed on each assigned case.

a. **Monthly Reports:** Public Defender will maintain and provide to the City a monthly report detailing the number of cases to which the Public Defender was appointed, the names of the defendants to which the Public Defender was appointed, the case number, the date of appointment, and the charge(s) filed against the defendant.

b. Quarterly Reports: Public defender shall submit quarterly reports which include the number of appellate cases filed during the preceding quarter, if any, the total number of cases assigned to each Public Defender during the preceding quarter, year-to-date appointments and CLE/training hours completed for each Public Defender during the preceding quarter.

1.5 Each Public Defender agrees to attend a minimum of seven (7) hours of criminal defense training/continued legal education classes each year. Each Public Defender may submit proof of payment of such training to the City and the City agrees to reimburse the Public Defender up to a maximum of \$500 each, per year for the costs of such training/education. The training must be approved by the Washington State Office of Public Defense (OPD) in compliance with the OPD Improvement Program Training requirements. This requirement also applies to associate counsel. Each Public Defender shall submit a copy of their CLE credit transcript from the WSBA annually.

1.6 The Public Defender further warrants that his/her proposal, 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.

1.7 The 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.

1.8 Therapeutic Courts: The Des Moines Court operates a DUI court. As a representative, the Public Defender may be required to attend out of state training for therapeutic court to help ensure the program's success. The Des Moines DUI court is a post-conviction program that combines drug and alcohol treatment with intensive court supervision to reduce DUI recidivism. DUI courts use evidence-based practices, employing the ten guiding principles established by the National Center for DWI Courts. DUI Courts target offenders who are identified as high-risk and high-need. Judges, defense attorneys, prosecutors, law enforcement officers, probation officers and treatment providers are trained in the DUI court model and work cooperatively to oversee and manage participants' progress. DUI Court emphasizes accountability and long-term treatment.

1.9 Technology: The Public Defenders must be knowledgeable in different aspects of court technology, such as JABS, OCourt, SCORE, other county or statewide systems, Zoom.

2. Compensation. As used below, payment to "Public Defenders" means a single payment and not a payment to each Public Defender.

2.1 TBD based on submittals

Court Schedule:

Every Tuesday and Wednesday mornings and afternoons;
Friday mornings

Two (2) days per month for scheduled jury trials.

Video court at Score Monday through Friday (see below);

Courtesy counsel is required at arraignment calendars once per week.

- a. Video Court: The Public Defenders shall appear Monday through Friday for video court public defender services to defendants charged under ordinances of the City or state misdemeanor or gross misdemeanor statutes who are detained at the South Correctional Entity ("SCORE"). Public defense services will be provided in a manner consistent with the accepted practices for similar services, performed to the City's satisfaction and in conformance with WSBA's standards for the provision of public defense services as codified in the Rules for Professional Conduct, the Decision and the Des Moines Municipal Code as now existing or hereafter adopted or amended.
- b. The City shall pay an additional ____ to Public Defenders for a "special set" jury trial and _____ for a "special set" bench trial that is scheduled and held on a court day other than the regularly scheduled 2 trial days per month as per Section 2.1
- c. The City shall pay an additional _____ per RALJ appeal to the Superior Court in which a brief has been filed by the Public Defenders,

which sum is over and above all compensation paid for legal services before the Court.

- d. The City may schedule additional Court days with 30 days written notice to the Public Defender, or such shorter time upon agreement by the Public Defender. Public Defenders shall be compensated an additional _____ per half day calendar and _____ per full day calendar for such additional court days.
- e. DUI Court: The City shall pay the Public Defender _____ per calendared day for serving as Public Defender in the City of Normandy Park and the City of Des Moines' bi-monthly DUI calendar. This fee represents the City's one-half share of the Public Defender's billed fees, the other half to be paid by the City of Normandy Park.

2.2 The compensation amount represents the salary and benefits necessary to provide the services for the City and as supplemented in Section 2.4 below all infrastructure, support, and systems necessary to comply with the Standards and Decision including by way of illustration and not limitation, training, investigation, translation, and mental and physical evaluation services. As provided in Section 2.5 and its sub paragraphs below, the parties will periodically review staffing in light of changes in court rule and case load in order to adjust staffing based on experience. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense services will comply with the Standards and Decision with an adequate reserve capacity for each Public Defender.

2.3 Case Counts. Based upon case counts maintained by Public Defender and reviewed by the City, current estimates for annual case counts for all indigent cases filed by the City is approximately 400 cases per year. As provided in the Standards, the case counts also include the Public Defender's appearance at all arraignment calendars. The terms "case" and "credit" shall be defined in accordance with the Washington State Supreme Court rule and Washington Office of Public Defense guidelines. The City has adopted an unweighted case count. Monthly stats are due the following month.

2.4 Adjustment; Internal Allocation. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Public Defender's request, the City shall review any particular case with the Public Defender to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused. The annual caseload shall be reviewed annually on or about June 30th each year.

2.5 Base Compensation. Except as expressly provided in Section 2.6, 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 2.1 above.

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

a. 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 Public Defenders making any charge or court files pertaining to the underlying case.

b. Preauthorized Non-Routine Expenses. Non-routine case expenses requested by the Public Defender and preauthorized by order of the Court. Unless the services are performed by Public Defender's staff or Public Defenders, non-routine 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; or

(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.

c. **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;

d. **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 Public Defender's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

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

f. **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

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

2.7 Review and Renegotiation.

a. Due to Increases or Decreases in Case Load.

The City and the Public Defender 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" shall mean a change of more than ten percent (10%) in the number of cases assigned. If cases are estimated to approach or exceed 400 cases per year or 100 cases per quarter, the parties may renegotiate this contract to increase case coverage and compensation to Public Defender. At the request of either party, the City and Public Defender will periodically review case assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications. Public Defender shall promptly notify the City when quarterly case loads can reasonably be anticipated to require use of overflow or conflict counsel to assure that cases assigned to Public Defender remain within the limits adopted in this contract and comply with state and local standards.

b. 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, the Washington State Bar or the City significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule or City Ordinance/Resolution.

3. Term of Agreement. The term of this agreement shall be from March 1, 2021 for a two (2) year initial term through February 28, 2023, unless sooner terminated as provided herein. The Agreement may be extended for one (1) additional two (2) year term at the mutual agreement of the parties, not to exceed four (4) years in total.

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 Public Defender 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 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:

a. Representation. The compensation established in this agreement compensates Public Defender for services relating to each and every assigned case. Therefore, in the event this agreement is terminated, the Public Defender will continue to represent clients on assigned cases until a case is concluded on the trial court level through dismissal, plea or sentencing, provided however, that the public defender may withdraw after thirty (30) calendar days with respect to any matter which has not been set for trial within sixty (60) days of termination. Probation will be assigned to successor counsel.

b. The provisions of sections 1 through 5 shall survive termination as to the 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 Public Defender nor any person acting on behalf of the 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 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 Public Defender's fees or awards, and including claims by 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 Public Defender, his/her officers or agents.

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

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

5.3 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 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 Public Defender, or the agents, representatives, employees, or sub-Public Defenders of the Public Defender.

6.1 Public Defenders shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to person or damage to property which may arise from or in connection with the performance of the work hereunder by Public Defender. Public Defenders shall obtain and maintain Professional Liability insurance appropriate to Public Defenders' profession. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. Public Defenders' insurance shall be primary insurance as respects the City. Public Defenders' insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City by certified mail, return receipt requested. Public Defenders shall furnish the City with written certificates evidencing

compliance with insurance requirements within 30 days of commencement of work.

6.2 Verification of Coverage. 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 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 Public Defender. In addition to compliance with the Standards, in the performance of work under this Agreement, Public Defender shall comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to 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 Public Defender's Risk. Public Defender shall be responsible for the safety of its employees, agents, and sub-Public Defenders in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Public Defender's own risk, and the Public Defender shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. 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 Public Defender's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the 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 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 Public Defender. An additional Public Defender 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:

City of Des Moines
21630 11th Ave. South
Des Moines, WA 98198

PUBLIC DEFENDER:

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 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 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 King County Superior Court.

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

APPROVED AS TO FORM:

CITY OF DES MOINES:

City Attorney

Michael Matthias
City Manager

PUBLIC DEFENDER

:
