



City of Bothell™

**REQUEST FOR PROPOSALS  
FOR  
PRIMARY and SECONDARY PUBLIC DEFENDER SERVICES**

**I. PURPOSE OF REQUEST**

The City of Bothell requests proposals to provide public defense services for indigent criminal defendants for a term of two years commencing on January 1, 2023, with the option to extend the contract with the mutual agreement of all parties for an additional two-year period. This Request for Proposals (RFP) seeks responses from both private law firms and public agencies.

The City will pay the selected Public Defender for representational services, including lawyer services and appropriate staff services, infrastructure, investigation and appropriate sentencing advocacy. All proposals should take into account the adopted Administrative Order of the City (Attachment 1) and the Washington State Supreme Court Standards (“Standards”) when submitting proposals. Proposals should include all necessary infrastructure, training, and services necessary to comply with the Standards.

Legal services per client will be provided from arraignment through probation and 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 provide for attendance at five arraignment calendars per month, as well as any and all subsequent court appearances. Please see attached sample of the monthly Court calendar (Attachment 2).

Necessary and reasonable expert witness, investigative and other services as detailed in the attached form Contract (Contract”) 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:  
Catherine Jansen  
Executive Assistant to the City Manager  
City of Bothell  
18415 – 101<sup>st</sup> Avenue NE  
Bothell, WA 98011
- 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 5 p.m., June 30, 2022. An original and two copies of proposals must be presented. No faxed, emailed, or telephone proposals will be accepted.
- D. 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. Use of both sides of paper for any submittals to the City is desirable whenever practical.

- E. The City will attempt to schedule interviews, if desired, during the week of July 25, 2022.
- F. The firm or attorney selected shall be notified by August 15, 2022. The Bothell City Council must then ratify a contract with the selected firm or attorney.
- G. All proposals must include the following information:
  - 1. Indicate if you are submitting a proposal to be considered for the Primary Public Defender position, the Secondary (Conflict Attorney) position, or both.
  - 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 the Supreme Court Standards originally adopted pursuant to the Order at 174 Wn2d. 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.

In 2021, the City assigned an average of 35 cases per month. 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.
- 5. Insurance. The proposer should review the draft contract and indicate their 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. Provide information in your proposal addressing the following:
  - a. Your experience in providing public defense services and contract performance.
  - b. How long has your firm been in existence? How many years has it practiced criminal defense?
  - c. Has your firm handled indigent clients? Describe the type of cases in which you have represented such clients.
  - d. 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.
  - e. 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.
  - f. Does any attorney or employee of the firm have any conflict of interest with the City, or can reasonably anticipate any conflict of interest? How will any conflict be addressed?

7. Contract Performance:

- a. If your firm has previously provided or is providing contract services for a city of county, please provide any documented review of contract compliance under those contracts.
- b. 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.
- c. 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?
- d. Has any attorney employed by your firm been removed from a case because of a court finding of ineffective assistance of counsel?
- e. 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.
- f. 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 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 that 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 proven and potential ability of the proposer to comply with all Standards and ensure the client receives the best representation possible. The City will also 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 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 City reserves the right to reject any and all proposals and to waive minor regularities in any proposal.
- B. The City reserves the right to request clarification of information submitted and to request additional information from any proposer.

- C. The City 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 Contract by Bothell City Council.
- D. The Contract resulting from the acceptance of the proposal shall be in approximately the form shown in Attachment 3a and 3b to this RFP. Any proposed amendment to the Contract should be noted in the proposal submitted. The City reserves the right to reject any proposed Contract change that does not conform to the specifications contained in the RFP, or that 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.
- E. The City shall not be responsible for any costs incurred by a firm in preparing, submitting, or presenting its response to the RFP.
- F. Term. Public defense services will commence on January 1, 2023, for an initial term of two (2) years, terminating on December 31, 2024. The parties may mutually agree to extend the resulting Contract for an additional term of two (2) years, terminating on December 31, 2026.
- G. Screening. Termination of indigency for eligibility for appointed counsel for this Contract shall be determined by the Bothell 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.
- H. Reporting. The Public Defender shall file monthly reports with the City delineating each client who has been appointed to the Public Defender to 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 by the 10<sup>th</sup> day of the month following when cases are assigned.
- I. 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.
- J. Associate 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.
- K. Attorney Conflict. In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall work with the Court Administrator to 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.

- L. Discovery Provided. The City will provide to the Public Defender at no cost to the Public Defender or defendant one (1) 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 electronic copies of discovery or may request hard copies to be provided. The attached form Contract provides additional information regarding other routine and non-routine services and reimbursements.
- M. 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.
- N. 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.
- O. Case Loads. Proposers holding more than one public defense Contract shall list each Contract. All attorneys providing services shall maintain a case load that fully complies with the City and Washington State Supreme Court Standards, whichever is more restrictive. 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 of Supreme Court Standard that 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. Performance of services shall in all respects comply with the Standards adopted by the Washington State Supreme Court and the City, 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 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 City 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 their 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 Department 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 reference 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 City for the services will be made only after the services have been performed (through judgement and sentence or dismissal). An itemized billing statement shall be submitted in a form approved by the City. Payment shall be made on a monthly basis in accordance with the City's accounts payable procedures.
- C. By submitting its proposal, the proposer warrants that they and all attorneys performing services under the agreement have studied the Standards adopted by the City 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.

#1.4.1

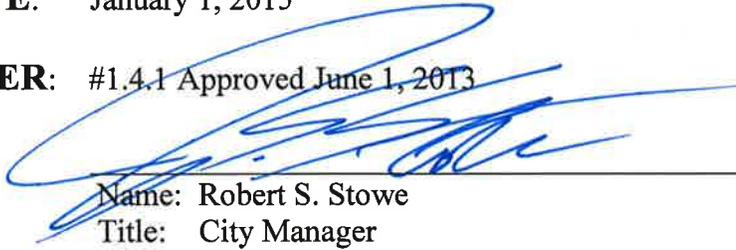
**CITY OF BOTHELL  
ADMINISTRATIVE ORDERS**

**TITLE:** Public Defender Delivery of Services Standards

**EFFECTIVE DATE:** January 1, 2015

**REPLACES ORDER:** #1.4.1 Approved June 1, 2013

**APPROVED BY:**



Name: Robert S. Stowe  
Title: City Manager

**1.0 PURPOSE:**

The objective of these Public Defense Guidelines is to alert the attorney to the course of action that may be necessary, advisable, or appropriate, and thereby serve to assist the attorney in deciding upon the particular actions that must be taken in a case to assure that the client receives the best representation possible. The provisions of these standards shall be broadly and liberally construed to achieve their stated purpose, which is to provide a Standard which affords “quality representation” in the provision of public defense to indigent criminal defendants.

**2.0 DEPARTMENTS/DIVISIONS AFFECTED:**

Municipal Court, Executive Office, and the Legal Department.

**3.0 REFERENCES:**

Washington Supreme Court Order No. 25700-A-1004, as amended, and Revised Code of Washington Chapter 10.101.030

**4.0 DEFINITIONS:**

“Quality representation” describes the minimum level of attention, care and skill that Washington citizens would expect of their State’s criminal justice system.

## **5.0 ORDER:**

Public Defense Services shall be provided to all clients in a professional skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law, and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interest of the client. These Standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or interpretations of the rules and standards by the Washington Courts.

## **6.0 PROCEDURE:**

### **1.0 Primary Responsibility:**

The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.1 Public Defense shall be provided to indigent clients whose eligibility has been determined by Bothell Municipal Court appointment.

1.2 All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a *Certification of Compliance* which is required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Bothell Municipal Court.

1.3 Non-Discrimination. The Public Defender shall comply with all federal, state, and local non-discrimination laws or ordinances. The duty of non-discrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor. 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.

### **2.0 Qualifications and Training:**

2.1 Every Public Defender performing services under contract with the City shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and

possess a license to practice law in the State. Rule 9 Interns may assist in the provision of services so long as such interns comply with APR 9 and are trained and supervised by contract Public Defenders.

- 2.2 Public Defenders and interns performing services under contract shall:
  - 2.2.1 Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area; and
  - 2.2.2 Be familiar with the Washington Rules of Professional Conduct (WRPC); and
  - 2.2.3 Be familiar with the Performance Guidelines from Criminal Defense Representation approved by the Washington State Bar Association; and
  - 2.2.4 Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and
  - 2.2.5 Be familiar with mental health issues and be able to identify the need to obtain expert services; and
  - 2.2.6 Complete seven (7) hours of continuing legal education within each calendar year and courses related to public defense practice.
  - 2.2.7 In addition to the qualifications listed above, each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.
- 2.3 The City Attorney, City Prosecutor, Chief of Police, and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services.
- 2.4 Training – Attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven (7) hours of continuing legal education annually in areas relating to their public defense practice. Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media.

3.0 Administration, Support Services and Infrastructure:

Contracts for services and proposals submitted in pursuit of such contracts shall provide for or include adequate administrative support, including but not limited to:

- 3.1 Travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space and supplies. Proposals for contracts shall be evaluated to address the training of attorneys and staff (see Section 2.4 above) and provide for adequate staffing and other costs associated with the day-to-day management of a law office.
- 3.2 Private office space and or conference room shall be available which allow the maintenance of confidentiality. A telephone system, internet access, and postal address shall be provided by the Public Defender.
- 3.3 Contracts or proposals to contract shall provide for adequate staffing. An adequate staff includes provision for legal assistance, accounting services, case management services and/or programs, and access, when needed, to the services of a social worker, mental health professional and translating services.

4.0 Evaluation and Monitoring:

Contracts and proposals to contract with the City for Public Defense Services shall include provision for case reporting systems and information management systems. Such systems shall have the capability to provide monthly reports to the City and to the Office of Court Administration regarding the caseloads generated under the contract for each attorney and intern providing services under the contract.

5.0 Complaints:

- 5.1 The City Manager shall designate a contact point for complaints regarding the provision of services by the Public Defender.
- 5.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.
- 5.3 Complaints regarding the provision of services under the contract or regarding a violation of any of these standards shall be investigated by the City Manager's designated point of contact provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Bothell Municipal Court. Nothing in this section or in these Standards should be interpreted to require the Public Defender

or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy.

6.0 Caseload Limits: The caseload for the Public Defender shall not exceed four hundred (400) unweighted cases per attorney in any calendar period, determined in accordance with the case count methodology established by the Washington State Supreme Court in Standard 3.

7.0 Compensation:

The City of Bothell is a public agency whose revenues and resources are limited by statute, the constitution and our local economy. The City has an obligation to provide quality representation to indigent defendants at a price commensurate with the price paid for criminal defense services in the King and Snohomish County legal community. Within those inherent limitations, the Public Defense Services afforded by contract shall ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. In each case, compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Due to the limited jurisdiction of the municipal/district court, gross misdemeanors, misdemeanors, and RALJ appeals pursuant to Superior Court constitute the assigned caseload under contract. Contracted and assigned counsel shall be compensated for reasonable out-of-pocket expenses.

7.1 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract. Such arrangements are prohibited by ethical considerations.

7.2 Among reasonable expenses to be covered by the contract are: expert witnesses, investigative costs, and the administrative overhead costs of paraprofessionals, including, as needed, mental health professionals, social workers, and translators.

7.3 The City's contract with assigned or Conflict Counsel may provide for payment by voucher. Assigned or Conflict Counsel shall be paid by the case upon assignment. The contract shall provide for additional compensation to the contractor if (1) case limits are exceeded and the contract does not provide for compensation on a straight case by case basis and (2) the City and contractor agree that the contractor shall supply services (additional attorneys) to cover the overage. Said compensation shall include, but not be limited to, the additional cases assigned as well as any impact which the

additional case assignments may have upon administrative and attorney overhead of the Public Defender. For example, if the assignment of the additional cases requires the Public Defender to add staff or increase training, administrative and other overhead charges, the City and Public Defender shall enter into negotiation to provide for reasonable compensation that assures the provision of quality representation to indigent defendants.

8.0 Experts, Investigation And Other Costs:

- 8.1 The Public Defense contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City Officials.
- 8.2 The services of expert witnesses will be provided under contract when approved by the Court through ex parte motion otherwise at the discretion of the Court. The expert will be paid directly by the City.
- 8.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Normally, a ratio of one investigator to four attorneys shall be provided. Contracts for Public Defense Services shall include investigative services as part of reimbursed overhead.

9.0 Termination and Removal:

- 9.1 Termination of the contract shall occur only for "good cause," but may also be terminated pursuant to the provisions of the contract. Good cause shall include the failure of the contract Public Defender to render adequate representation to clients, the willful disregard of the rights and best interest of the client, and the willful disregard of these standards. Termination may also occur for violation of the express terms of the contract, and these standards, provided, however, that the Public Defender shall be provided reasonable opportunity, following notice, to cure any technical contract violations that do not impair the provision of quality representation to the indigent client.
- 9.2 Removal by Court of counsel from representation normally should not occur over the objection of the attorney and the client.

10.0 Substitution Conflict Counsel:

- 10.1 The selection process for a Public Defender shall be by review of name and experience levels of the attorneys who will actually provide services, to ensure that they meet minimum qualifications. The contract shall prohibit sub-contracting without the express written consent of the City.
- 10.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be available, either through a joint contract with the Public Defender and Conflict Counsel, by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of alternative or sub-conflict counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.
- 10.3 Conflict counsel shall adhere to the standards established by this Executive Order including, but not limited to, an evaluation of the overall case count annually by Conflict Council under the procedures set forth in this agreement.
- 10.4 Conflict Council may be assigned:
  - 10.4.1 By the Bothell Municipal Court upon its own motion or at the request of the Public Defender;
  - 10.4.2 In accordance with the terms of a joint contract with the Public Defender and Conflict Counsel, or
  - 10.4.3 Pursuant to a separate contract.

11.0 Supervision, Monitoring and Evaluation of Attorneys:

Candidates for Public Defender services are encouraged, but not required, to comply with the provisions of Standard 10 and 11 as established by the Washington Bar Association, Standards for Indigent Defense Services approved June 3, 2011. The City recognizes that smaller firms providing Public Defense Services may provide quality service through experienced practitioners. Whenever possible, larger contracting agencies should make provision for supervision, monitoring, and evaluation in accordance with Bar Association standards or provide alternative methods for the supervision, monitoring and evaluation of attorneys which achieve substantially the same goals shall be given for effective supervision, monitoring and evaluation.

12.0 Update and Evaluate:

As the rules established by Washington State Supreme Court are applied and interpreted by the courts and, when appropriate, the Bar Association and other

administrative agencies, the City states its intent to review and modify these standards.

13.0 Effective Date:

These standards shall become effective on the initial date of approval of the Executive Order by the City Manager.

14.0 APPENDICES:

None

# June 2022

June 2022							July 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4						1	2
5	6	7	8	9	10	11	3	4	5	6	7	8	9
12	13	14	15	16	17	18	10	11	12	13	14	15	16
19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
May 30	31	Jun 1	2	3
		8:00am Day Reporting 1:30pm In-Person Pre-Trial 2:30pm In-Person Pre-Trial	9:30am Virtual In-Custody 1:30pm In-Person Motion/Disposition 2:30pm In-Person Interpreter	9:30am Virtual In-Custody 10:30am Virtual Arraignment
6	7	8	9	10
9:30am Virtual In-Custody 1:30pm Virtual Pre-Trial 2:30pm Virtual Pre-Trial	9:30am Virtual In-Custody 1:30pm In-Person Readiness	8:00am Day Reporting 1:30pm In-Person Community Court	9:30am Virtual In-Custody 1:30pm In-Person Motion/Disposition 2:30pm In-Person Interpreter	9:30am Virtual In-Custody 10:30am Virtual Arraignment
13	14	15	16	17
In-Person Jury Week				
9:30am Virtual In-Custody	9:30am Virtual In-Custody		9:30am Virtual In-Custody	9:30am Virtual In-Custody 10:30am Virtual Arraignment
20	21	22	23	24
HOLIDAY - COURT CLOSED	9:30am Virtual In-Custody 1:30pm In-Person Review 2:30pm In-Person Review	8:00am Day Reporting 1:30pm In-Person Pre-Trial 2:30pm In-Person Pre-Trial	9:30am Virtual In-Custody 1:30pm In-Person Motion/Disposition 2:30pm In-Person Interpreter	9:30am Virtual In-Custody 10:30am Virtual Arraignment
27	28	29	30	Jul 1
9:30am Virtual In-Custody 1:30pm Virtual Pre-Trial 2:30pm Virtual Pre-Trial	9:30am Virtual In-Custody 1:30pm In-Person Review 2:30pm In-Person Review	9:30am In-Person Add-On 1:30pm In-Person Community Court	9:30am Virtual In-Custody 1:30pm Virtual Contested Infraction 2:30pm Virtual Mitigated Infraction	

## AGREEMENT TO PROVIDE INDIGENT DEFENSE SERVICES

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

WHEREAS, {FIRM NAME}, (hereinafter "Attorney") are licensed attorneys in good standing in the State of Washington who have been selected to perform services to indigent defense clients under contract with the City;

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, by Administrative Order, the City has adopted standards for public defense pursuant to the requirements of RCW 10.101.030; 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 by Executive Order. The Attorney warrants that they, 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, the WSBA Standards for Indigent Defense, and the standards adopted by the City pursuant to Executive Order (hereafter referred to as "Standards") and Decision. Compliance with these Standards and Decision goes to the essence of this Agreement. The Attorney, and every attorney and/or intern performing services under this Agreement, has knowledge of the Standards, will comply with the Standards, and shall certify compliance quarterly with the 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. 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—which include, by way of illustration and not limitation.
  - 1.1. The Attorney shall provide to the Bothell Police Department the telephone number or numbers at which an attorney may be reached for "critical stage" advice to defendants during the course of police investigations and/or arrest twenty-four (24) hours each day.
  - 1.2. The Attorney, at the earliest possible time following appointment (within three days if the defendant is in custody) shall review with each assigned defendant the elements of the offense, the presumption of innocence, the prosecutor's burden to prove each element beyond a reasonable doubt, the right to a jury trial, the right to a speedy trial, the right to present a defense, the maximum penalties, any mandatory

minimum penalties, that it is solely the client's decision to enter a plea of guilty or proceed to trial, and any other witness or investigative issues.

- 1.3. The Attorney, at the initial meeting, shall also assess each client's ability to understand English and need for an interpreter, each client's competency; each client's literacy, and each client's citizenship and/or immigration issues. Additionally, the Attorney shall provide contact information for the Attorney and check for any conflicts.
- 1.4. The Attorney will assign counsel to cases four days in advance of motion and bench trial calendars and will arrive 15 minutes prior to the start of the scheduled calendar. Required public defender service includes appearance at the Bothell Municipal Court for all criminal case calendars, unless excused by the Court, which include standby representation to all in-custody defendants as well as general advice to defendants as out-of-custody arraignments.
- 1.5. The Attorney shall employ a system of proper review to avoid conflict cases, and shall review all cases prior to the scheduled court date and contact the City Prosecutor for possible resolution.
- 1.6. The Attorney will use two (2) attorneys if the calendar has more than 20 defendants assigned to the Public Defender's office.
- 1.7. The Attorney shall maintain contemporaneous records of work performed under the contract and shall file quarterly reports with the City which include the following information:
  - 1.7.1. the number of cases assigned to each attorney during the period with a year to date total:
  - 1.7.2. the number of resolved cases in which the following services were requested:
    - 1.7.2.1. Expert services
    - 1.7.2.2. Interpreter services;
    - 1.7.2.3. Investigator was utilized;
    - 1.7.2.4. In which motions were filed resulting in dismissal or significant reduction of charges;
    - 1.7.2.5. Tried to a jury or in which charges were dismissed or significantly reduced on the day of trial;
    - 1.7.2.6. Resolved by a dismissal of the charges, a significant reduction in charges, or dismissal of other cases and plea on the remaining case(s); and
    - 1.7.2.7. Number of cases in which the defendant failed to appear for a trial

setting.

- 1.7.3. The number of appeals and/or writs; and
- 1.7.4. The number and type of criminal cases handled outside of this contract by the service providers listed in Section 9 ("service providers") (including cases assigned by another public entity); and
- 1.7.5. The percentage of the service providers' practice spent on civil or other non-criminal matters.
- 1.8. The Attorney maintains confidential reporting forms and a copy of such form has been provided to the City. The forms will be maintained for review in the event the City initiates a review of Attorney's performance or for utilization in the event of complaint. The Attorney will promptly respond to complaints by indigent defendants and work diligently to resolution.
- 1.9. The Attorney will provide training in accordance with City and WSBA Standards. Each attorney performing services shall participate in continuing legal education (CLE) programs providing at least seven (7) hours applicable to criminal defense in a misdemeanor setting.
2. Compensation. The City shall pay to the Attorney for services rendered under this Contract the sum of \$XXX per month. This amount shall represent compensation for all matters assigned to Attorney involving representation at arraignment, pre-trial appearances, motions, bench trials, jury trials, sentencing, status conferences, and reviews. Additional compensation may be provided to Attorney as follows: Attorney shall be paid an additional fee of \$XXX for any scheduled jury trial where an attorney is required to appear on the day of trial regardless of whether a jury is selected, or the case proceeds to verdict. Additionally, Attorney shall be paid an additional fee of \$XXX for any appeal to the Superior Court in which a brief is filed.
  - 2.1. Case Counts. The above charge is based upon the historical case counts and anticipation that unweighted cases for the City will total 400 cases per year, averaging 100 cases per quarter. As provided in the Standards, the case counts also include the Attorney's appearance at all arraignment calendars. For the purposes of this Agreement, the City has adopted an unweighted case count. As provided in the Standards and required by CrR 4.1, Attorney shall appear at all arraignment calendars, status conferences and reviews, including probation hearings.
  - 2.2. 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 is included in the base payment provided in Section 2.1 above.
  - 2.3. Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the Municipal Court from funds available for that purpose:

2.3.1. Preauthorized Non-Routine Expenses. Non-routine case expenses requested by Attorney and preauthorized by order of the Bothell Municipal 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 utilizing the CTS Language Link unless otherwise approved;
- (iv) polygraph, forensic and other scientific tests;
- (v) computerized legal research;
- (vi) investigation expenses; and
- (vii) any other non-routine expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2.3.2. 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;

2.3.3. 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;

2.3.4. 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;

2.3.5. 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

2.3.6. Process Service. The cost for the service of a subpoena as authorized by the court.

2.4. Invoices. The Attorney shall submit monthly invoices as a condition of payment to the City Manager's Office for purposes of case reporting and management. Said invoices shall contain the number of appointed cases, the number of appointed defendants, the cause number for each case, the date of appointment, and the charges filed against the defendant. The City shall pay the Attorney within thirty (30) days of the receipt of a correct invoice, in accordance with the City's usual payment procedures. If the City objects to all or any portion of any invoice, it shall so notify the Attorney within twenty (20) days from the date of receipt but shall pay the undisputed portion of the invoice. The parties shall immediately make every effort to settle the disputed portions of any invoice. Acceptance of any payment by the Attorney shall constitute a release of all payment claims against the City arising under this Agreement as to such portion of the

Services. No payment to the Attorney, whether periodic or final, shall constitute a waiver or release by the City of any claim, right or remedy it may have against the Attorney regarding performance of the Services as required by this Agreement.

- 2.5. Quarterly Review. The Attorney shall each quarter review the numbers of cases assigned. For each case per quarter over XX cases, an additional fee of \$XXX per case shall be assessed. Thereafter the parties shall confer and confirm Attorney's capacity to remain in compliance with the Standards with existing infrastructure.
3. Term. The term of this agreement shall be from 12:01 a.m. January 1, 2023 through 11:59 p.m. December 31, 2024, 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 upon sixty (60) days written notice. 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 Attorney will continue to represent clients consistent with his or her ethical obligations 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 City shall compensate the Attorney as provided in this Agreement.

The Attorney will reasonably cooperate with newly appointed counsel on case reassignment in fulfillment of his or her ethical obligations.
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. Commercial General Liability coverage with a \$2,000,000 general aggregate policy limit; and
    - 6.1.2. Malpractice Coverage with a policy limit of at least \$1,000,000 per occurrence.
    - 6.1.3. Coverage shall be in a form approved by the City Attorney or Special Counsel as applicable.
  - 6.2. 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, and in the expectation that Attorney's work under this Agreement shall be performed by {Lead Attorney} (Bar #) and {Secondary Attorney} (Bar #), and a third attorney as needed to comply with caseloads and calendar sizes. If, due to vacation, illness, or other unavoidable conflict, the aforementioned attorneys are unavailable, Attorney may be represented by any other attorney from Attorney's firm who is licensed and in good standing with the Washington State Bar Association. Therefore, the Attorney, through its authorized representative, has signed this Agreement below to indicate that Attorney is bound by its terms. This Agreement shall not be performed by other individuals and may 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:**

City of Bothell  
 Attn: Executive Department  
 18415 – 101<sup>st</sup> Ave. NE  
 Bothell, WA 98011

**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 BOTHELL**

By: \_\_\_\_\_  
City Manager

**{ATTORNEY FIRM NAME}**

By: \_\_\_\_\_  
\_\_\_\_\_  
(Printed Name)

**CONTRACT FOR INDIGENT DEFENSE SERVICES –  
CONFLICT COUNSEL**

WHEREAS, the City of Bothell, Washington (hereinafter "City") provides public defense services pursuant to contract with a primary Public Defender and a primary Conflict Counsel, and

WHEREAS, the City wishes to engage the services of an additional, experienced defense counsel to cover conflict cases and overflow cases as defined herein in the event of conflict or the absence of the Public Defender.

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 Bothell, Washington, a municipal corporation ("City"), and **{Attorney or Law Firm}**, the individual Conflict Counsel who will perform services under this contract have entered into this Agreement.

1. Scope of Services, Standards and Warranties. The Conflict Counsel will provide indigent defense services in assigned misdemeanor cases and at arraignment and in-custody calendars in accordance with the standards adopted by the City by Executive Order as the same exists or is hereafter amended, Supreme Court Standard 3 regarding indigent defense, and WSBA Standards for Indigent Defense (hereinafter "Standards") and the Decision. The Conflict Counsel individually warrants that he/she 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.

1.1 The Conflict Counsel shall certify compliance with Supreme Court Rule and governing case load quarterly with the 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 Conflict Counsel 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 Conflict Counsel will maintain contemporaneous records documenting all work performed on each assigned case.

1.2.1 the number of cases assigned to the Conflict Counsel during the period with a year to date total:

1.2.2 the number of resolved cases in which the following services were requested:

- 1.2.2.1 Expert services;
- 1.2.2.2 Interpreter services;
- 1.2.2.3 Investigator was utilized;
- 1.2.2.4 In which motions were filed resulting in dismissal or significant reduction of charges;
- 1.2.2.5 Tried to a jury or in which charges were dismissed or significantly reduced on the day of trial;
- 1.2.2.6 Resolved by a dismissal of the charges, a significant reduction in charges, or dismissal of other cases and plea on the remaining case(s); and
- 1.2.2.7 Number of cases in which the defendant failed to appear for a trial setting.

1.2.3 The number of appeals and/or writs; and

1.2.4 The number and type of criminal cases handled outside of this contract by the Conflict Counsel ("service providers") (including all cases assigned by any another public entity); and

1.2.5 The percentage of the Conflict Counsel's practice spent on civil or other non-criminal matters.

1.3 The Conflict Counsel will undertake training in accordance with City and WSBA Standards. Conflict Counsel shall participate in continuing legal education (CLE) programs providing at least seven (7) hours applicable to criminal defense in a misdemeanor setting.

1.4 The Conflict Counsel 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.

1.5 The Conflict Counsel 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 January 1, 2023, the City shall pay to the Conflict Counsel for services rendered under this Contract the sum of \$XXX per case for conflict and overflow assignments. The Conflict Counsel will bill the City monthly for services rendered. The City will pay the Conflict Counsel upon assignment for assigned cases and hourly for calendars covered during the month. The Conflict Counsel will receive assignments from the court in the event of conflict. Additional compensation may be provided to Conflict Counsel as follows: Conflict Counsel shall be paid an additional fee of \$XXX for any scheduled jury trial where an attorney is required to appear on the day of trial regardless of whether a jury is selected, or the case proceeds to verdict. Additionally, Conflict Counsel shall be paid an additional fee of \$XXX for any appeal to the Superior Court in which a brief

is filed.

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 Conflict Counsel maintains a private practice and serves other communities.

2.1 Case Counts. Based upon case counts maintained by Public Defender and reviewed by the City, the average monthly case counts in 2021 for all Conflict Attorneys required by the City was ten (10). The City uses an unweighted case count.

2.2 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, are included in the base payment provided in Section 2.1 above.

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

2.3.1 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.

2.3.2 Preauthorized Expenses. Case expenses may be requested by the Conflict Counsel and preauthorized by order of the Court. Unless the services are performed by Conflict Counsel'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.

2.3.3 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;

2.3.4 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;

2.3.5 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;

2.3.6 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

2.3.7 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 January 1, 2023 through December 31, 2024. This is a nonexclusive contract and no minimum number of cases assignments is guaranteed. 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 Conflict Counsel 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 Conflict Counsel 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 Conflict Counsel for services relating to each and every assigned case. Therefore, in the

event this agreement is terminated, the Conflict Counsel will continue to represent clients on assigned cases until a case is concluded on the trial court level or the defendant fails to appear and a warrant issues.

3.3.2 The provisions of sections 1 and 5, as well as this subsection 3.3 survive termination as to the Conflict Counsel. 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 Conflict Counsel nor any person acting on behalf of the Conflict Counsel, 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 Conflict Counsel 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 Conflict Counsel's fees or awards, and including claims by Conflict Counsel'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 Conflict Counsel, his/her officers or agents.

It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Conflict Counsel'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 Conflict Counsel, his/her officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Conflict Counsel'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 Conflict Counsel 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 Conflict Counsel, or the agents, representatives, employees, or subcontractors of the Conflict Counsel.

6.1 Verification of Coverage. Conflict Counsel 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 Conflict Counsel 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 Conflict Counsel. In addition to compliance with the Standards, in the performance of work under this Agreement, Conflict Counsel shall comply with all federal, State and municipal laws, ordinances, rules and regulations which are applicable to Conflict Counsel'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 Conflict Counsel's Risk. Conflict Counsel 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 Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Conflict Counsel 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 Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Conflict Counsel 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 Conflict Counsel 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 Conflict Counsel. 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, to get her 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 Bothell  
Attn: Catherine Jansen

CONFLICT COUNSEL

18415 – 101<sup>st</sup> Ave. NE  
Bothell, WA 98011

13. Non-waiver 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 Conflict Counsel and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Conflict Counsel'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 \_\_\_\_\_, 2022.

CITY OF BOTHELL

By: \_\_\_\_\_  
Erin Leonhart, Interim City Manager

ATTORNEY

By: \_\_\_\_\_  
{Name}