

CONTRACT FOR INDIGENT DEFENSE LEGAL SERVICES

THIS CONTRACT, made and entered into effective as of the 1st day of January, 2020 (“Effective Date”), by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington, acting by and through its Office of Management and Budget, (hereinafter referred to as the “CITY”), and **PIERCE COUNTY** acting by and through its Department of Assigned Counsel, (hereinafter referred to as “CONTRACTOR”);

WHEREAS pursuant to Section 5 of the Interlocal Agreement between CITY and Pierce County for Indigent Defense Legal Services dated November 23, 2003, CITY receives services from CONTRACTOR in order that CITY may meet its obligations to provide legal services to indigent defendants appearing in Municipal Court; and

WHEREAS the purpose of this Contract is to set out the terms, conditions and requirements of the provision of such services;

NOW THEREFORE in consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Services

- A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables related to the provision indigent legal defense services for Municipal Court in the manner of described and according to the standards and requirements contained in Exhibit A attached hereto and incorporated herein.
- B. Update and Evaluation. As the rules established by the Washington State Supreme Court are applied and interpreted by the courts, and when appropriate, the Washington State Bar Association and other administrative agencies, CITY states its intent to review and modify the standards contained in Exhibit A.

2. Term

- A. All services shall be satisfactorily completed on or before January 1, 2022 and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

- A. The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with Exhibit B.
- B. The total price to be paid by CITY for CONTRACTOR’S full and complete performance of the Scope of Work hereunder shall not exceed \$4,305,291 without the written consent of the CITY.

Except as otherwise provided herein, said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

- C. The CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Unless otherwise agreed upon by the City, the CONTRACTOR shall invoice 1/12 of \$ 2,137,418 for 2020, and 1/12 of 2,167,873 for 2021 for services completed and/or deliverables furnished. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D. Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G. In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

- A. The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Professional Services Warranty

- A. In the performance of services under this Agreement, the Contractor and its employees or contractors agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by attorneys rendering the same or similar type of service. All

obligations and services of the Contractor hereunder shall be performed diligently and completely according to such professional standards.

6. Contract Administration and Right to Audit

- A. The Office of Management and Budget for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B. CONTRACTOR shall provide quarterly reports to CITY in the form and tracking the data shown in Exhibit C, attached hereto and incorporated herein.
- C. The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- D. Upon CITY’s request, the Contractor shall make available to CITY, subject to Rules of Professional Conduct (RPC), all accounts, records, and documents related to the Contract for CITY’s inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract or in satisfaction of City’s public disclosure obligations as applicable.

7. Records Retention

CONTRACTOR shall establish and maintain records with respect to all matters related to the performance of this Contract. Except as otherwise authorized or required by CITY the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

8. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
Katie Johnston 747 Market Street, Suite 444 Tacoma, WA 98402	Michael Kawamura 949 Market Street, Suite 334 Tacoma, WA 98402
Phone: 253-591-5063	Phone: 253-798-6749
e-mail: kathryn.johnston@cityoftacoma.org	e-mail: mkawamu@co.pierce.wa.us

9. Termination

- A. Termination of the contract shall occur only for “good cause.” Good cause shall include the failure of the CONTRACTOR to render adequate representation to clients, the willful disregard of the rights and best interests of the client, and the willful disregard of the standards and requirements set forth in Exhibit A. Termination may also occur for violation of the express terms of the Contract, provided, however, that the CONTRACTOR 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.

- B. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

10. Indemnification

- A. Each party shall indemnify, defend, and hold harmless the other from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of that party's negligent performance of this Contract.
- B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

11. Insurance

- A. During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:
 - 1. Workers' Compensation and employer's liability --statutory limits.
 - 2. Commercial General Liability -- \$1,000,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
 - 3. Automobile public liability and property damage -- \$1,000,000 single limit combined for bodily injury and property damage.
 - 4. Professional liability or errors and omissions -- \$1,000,000 combined single limit for errors and omissions resulting in monetary loss normally covered by professional liability insurance.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

- B. This provision may be satisfied by proof of Pierce County's self-insured status.

12. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities as stated herein and as stated in Exhibit A. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the

event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

13. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

14. Public Disclosure

- A. This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorney fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

15. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

16. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. Except as otherwise provided herein, the CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract. The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the Effective Date first written above.

CITY OF TACOMA

PIERCE COUNTY – Department of Assigned Counsel

City Manager

Printed Name: Michael Kawamura

Title: Director

Katie Johnston, Budget Manager
Office of Management and Budget

Address:

949 Market Street, Ste. 334
Tacoma, WA 98402-3696
Tax ID:

Andrew Cherullo, Finance Director

Approved as to Form:

Deputy City Attorney

Attest:

Doris Sorum, City Clerk

EXHIBIT A

STANDARDS AND REQUIREMENTS FOR PROVISION OF SERVICES

1. Duties and Responsibilities.

- 1.1 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. Contractor's primary and most fundamental responsibility is to promote and protect the interests of the client.
- 1.2 Services shall be provided to indigent clients whose eligibility has been determined through an established screening process.
- 1.3 All Public Defenders providing services by contract shall quarterly certify their compliance with the standards for indigent defense by filing a Certification of Compliance as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be electronically filed with the Pierce County Superior Court Clerk and available to the City of Tacoma for inspection via the Contractor's case management system, Legal Information Network Exchange (LINX). Copies of each Public Defender's certification shall be available to the City on request.
- 1.4 Non-Discrimination. Contractor shall comply with all federal, state, and local non-discrimination laws or ordinance. The duty of non-discrimination relates not only to the provision of services by Contractor to the clients, but also with respect to the hiring and employment practices of Contractor.

2. Administration, Support Services, and Infrastructure.

- 2.1 Provide for or include adequate administrative support, including, but not limited to:
 - 2.1.1 Travel, telephones, law library and/or electronic research capabilities, financial accounting, case management systems, computers, word processing equipment and software, office space, and supplies. Proposal for contracts shall be evaluated to address the training of attorneys and staff and provide for adequate staffing and other costs associated with the day-to-day management of a law office.
 - 2.1.2 Private offices and/or conference rooms shall be available which allow the maintenance of confidentiality. A telephone system, internet access, and postal address shall be provided by Contractor.
- 2.2 Provide for adequate staffing under the contract. An adequate staff includes provisions for investigative services; 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. In the event referenced professional services exceed delineated contract amounts, Contractor shall bear no part of the costs associated with the provision of necessary non-attorney professional services.

3. **Evaluation and Monitoring.** Services shall include a case reporting system and information management system. Such systems shall have the capability to provide periodic reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract, case disposition, and history. Services shall also include a complaint process for indigent defendants.
4. **Caseload Limits.** Contractor shall comply with all caseload limitations imposed pursuant to the rules and adopted standards of the Washington State Supreme Court, and abide by the Department's Case Weighting Policy for purposes of certifying compliance with these Standards.
5. **Compensation.** Contractor warrants that the compensation provided for the services under the Contract is adequate to provide for the training, administrative and staff services, and infrastructure required by applicable standards, court rules, and the state and federal constitutions.
6. **Removal of Counsel.** Removal by the court of counsel from representation normally should not occur over the objection of the attorney and the client.
7. **Subcontractors, Substitution, and Conflict Counsel.**
 - 7.1 In the event of conflict or removal of the Contractor, Conflict Counsel shall be available, through a joint contract with the Contractor and Conflict Counsel, or by separate contract with Conflict Counsel. In the event that alternative or Conflict Counsel is required to be assigned, the Contractor shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.
 - 7.2 Conflict Counsel shall adhere to the standards established by this Contract including, but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this Contract.

EXHIBIT B**BUDGETED SERVICES AND DELIVERABLES**

Proposed 2020 (January 1, 2020- December 31, 2021)
Costs for Indigent Defense Services to City of Tacoma

STAFFING / SALARY	FTE	2020	2021	2020-2021
County Attorney 3, mid-upper range	0.90	119,890	122,400	
County Attorney 2, top step	1.00	113,150	115,470	
County Attorney 1, mid-upper range	1.00	83,740	85,460	
County Attorney 1, mid-upper range	1.00	83,740	85,460	
County Attorney 1, mid-upper range	1.00	83,740	85,460	
County Attorney 1, mid range	1.00	79,730	81,360	
County Attorney 1, mid range	1.00	79,730	81,360	
County Attorney 1, mid range	1.00	79,730	81,360	
County Attorney 1, mid range	1.00	79,730	81,360	
County Attorney 1, entry level	1.00	68,970	70,430	
County Attorney 1, entry level	1.00	68,970	70,430	
Legal Assistant 3, mid-upper range	0.50	28,660	29,150	
Legal Assistant 2, top step	1.50	82,010	83,370	
Office Assistant 1, top step	0.75	34,130	34,690	
SUBTOTAL	13.65	1,085,920	1,107,760	2,193,680
TAXES				
		2020	2021	2020-2021
FICA (7.65%)		83,073	84,744	
Industrial Insurance		6,436	6,432	
SUBTOTAL		89,509	91,176	180,685
BENEFITS				
		2020	2021	2020-2021
Retirement		139,649	128,722	
Medical		245,973	260,770	
Dental		21,977	21,977	
Life		410	410	
PFMLA		1,433	1,462	
SUBTOTAL		408,008	411,877	819,886
PROFESSIONAL SERVICES				
		2020	2021	2020-2021
Conflict Counsel		70,000	70,000	
Investigation		45,000	45,000	
Transcripts		500	500	

Appeals		2,000	2,000	
Experts		23,000	23,000	
Interpreter Services		2,000	2,000	
Service of Process		100	100	
SUBTOTAL		142,600	142,600	285,200
ADMIN COSTS				
		2020	2021	2020-2021
Director	10%	21,898	22,193	
Program Manager	10%	14,726	14,970	
IT Specialist	10%	11,666	12,536	
Investigation Specialist	10%	11,800	11,969	
Senior Supervising Attorney	10%	20,291	20,573	
SUBTOTAL		80,380	82,240	162,620
FIXED OVERHEAD				
		2020	2021	2020-2021
On Call Pay		9,100	9,100	18,200
Books		9,500	9,800	19,300
General Supplies		6,000	6,500	12,500
Subscription Services		5,840	6,020	11,860
IT Software		3,170	3,300	6,470
Minor Equipment		1,880	1,630	3,510
Pager		130	130	260
Cell phones		350	350	700
Telephones		6,100	6,100	12,200
Training & Development		2,000	2,000	4,000
Lease		77,680	77,680	155,360
Copy Machine		1,200	1,200	2,400
Insurance		22,770	22,770	45,540
Repairs & Maintenance		900	950	1,850
Dues & Memberships		8,690	9,000	17,690
Printing		500	500	1,000
Routing/Delivery		820	820	1,640
IT Costs (County)		148,370	148,370	296,740
County HR		20,020	20,020	40,040
County Security		4,050	4,050	8,100
Central Public Records		490	490	980
Government Relations		1,190	1,190	2,380
Choices		250	250	500
SUBTOTAL		331,000	332,220	663,220
TOTAL:		2,137,418	2,167,873	4,305,291

Support staff 8 hr day increase 0 0 0

PROPOSED CONTRACT TOTAL:	2,137,418	2,167,873	4,305,291
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EXHIBIT C

DEPARTMENT OF ASSIGNED COUNSEL QUARTERLY WORKLOAD MEASURES

Department of Assigned Counsel Quarterly Workload Measures
Due the 15th of the following month after each quarter closes
(Example: First Quarter data would be submitted no later than April 15th)

Staffing

Number of FTEs: Attorneys
 Number of FTEs: Legal Assistants
 Number of FTEs: Paralegals
 Number of FTEs: Rule 9 Interns
 Number of FTEs: Supervisors
 Percentage of Caseloads from Tacoma

Number

Number of Caseloads Per Attorney By Attorney	Case Types									
	Attorney	DV/DUI	Other Misdemeanor or Gross Misdemeanor	DUI/DV Trial	Non DUI/DV Trial	Revocation	Arraignment Calendars	Review Hearing Calendars	DUI/DV resolved in less than 3 appearances	DUI/DV resolved in more than 3 appearances
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Name or ID #										
Total										

Case Characteristics

	<u>Number</u>
Number of cases the following professional services were utilized:	
Mitigation/ Sentence Modification/ Social Work Consult	
Psychologist/ Mental Health Competency	
Psychologist/ Mental Health Defense	
Non Mental Health Expert	
Investigator	
Interpreter	
Percentage of clients who speak with counsel prior to post arraignment initial court appearance	
Average number of attempts defense counsel made to contact client prior to first post arraignment court appearance	

Case Disposition

	<u>Number</u>
Number of plea as charged at arraignment	
Number of plea to reduced charge at arraignment	
Number of pleas entered at first post arraignment proceeding	
Number of pleas entered beyond first post arraignment proceeding	
Number of pleas to lesser offenses as compared to original charging documentation	
Number of non-plea criminal case dispositions	
Number of cases removed from system prior to arraignment due to mental health issues	
Number of cases referred to Mental Health Court	
Number of RCW 10.77 orders	
Number of pre-trial dismissals	
Number of cases resolved at readiness hearings	
Number of trial day dismissals	
Number of trials - jury/bench	
Number of trials resulting in conviction as charged	
Number of trials resulting in disposition less than charged	
Number of appeals	