

CITY OF BLAINE
CONTRACT FOR PROFESSIONAL SERVICES - INDIGENT DEFENSE

THIS CONTRACT FOR PROFESSIONAL SERVICES – INDIGENT DEFENSE (“Contract”) is being made this _____ day of _____, 2019, by and between the **CITY OF BLAINE**, a municipal corporation, hereinafter referred to as the “City,” and _____, hereinafter referred to as the “Contractor,” for the purpose of providing indigent defense services as outlined herein, commencing _____, 2019, and terminating on December 31, 2022. The parties hereby agree as follows:

SECTION 1
SCOPE OF SERVICES

1.1 **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, unless charged with Animal Cruelty, will be referred to the Contractor. The Contractor will provide legal representation for each of these defendants and court appointment or screening through trial, sentencing, post-conviction review and any appeal to Superior Court or the Washington appellate courts. Such cases may include domestic violence cases. The types of cases the Contractor shall be responsible for include gross misdemeanor, misdemeanor, and probation cases. The maximum number of cases each attorney is expected to handle is provided in Section 3.4 of the Washington State Supreme Court Standards for Indigent Defense currently in place or as hereafter amended. Performance of services shall, in all respects, comply with the Standards for Public Defense as described herein.

1.2 **Public Defense Standards.** The Contractor’s primary and most fundamental responsibility is to promote and protect the interest of the client. The Contractor shall provide services to all clients in a professional, skilled manner and at all times comply with the Washington State Supreme Court Standards for Indigent Defense currently in place or as hereafter amended, including Section 3.4 thereof, the Rules of Professional Conduct, the Washington State Bar Association *Standards for Indigent Defense Services* approved by the Board of Governors on June 3, 2011 or thereafter amended, and case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases, in particular the decision in *Wilber v. Mt. Vernon*, 989 F.Supp.2d 1122 (W.D. 2013) (collectively defined herein as the “Public Defense Standards”). All attorneys providing services shall maintain a case load which fully complies with the Public Defense Standards. In addition, the Contractor shall maintain the highest standards of conduct and behavior towards the court, the prosecutors, and all parties.

1.3 **General Duties.** The Contractor agrees to provide all professional legal services necessary for indigent defendants charged with gross misdemeanors or misdemeanors in the Municipal Court consistent with the Public Defense Standards. Referrals to the Contractor will be made at the discretion of the Municipal Court Judge. Services include, but are not limited to, the following:

- a. Attending both regular and special settings for the Municipal Court for all assigned defendants, pursuant to the Municipal Court calendar;
- b. Contacting defendants via appropriate methods necessary to meet the Public Defense Standards and applicable Rules of Professional Conduct within 24-hours of being informed of appointment as counsel or receipt of police reports,

whichever occurs first, or as soon as is practically possible if the defendant is incarcerated;

- c. The Contractor will provide his or her clients with contact information for availability during office hours. The Contractor will return client phone calls or other attempts to contact the Contractor within forty-eight (48) hours excluding weekends. The Contractor shall provide the prosecutor and City police department with contact information assuring twenty-four (24) hour a day access;
- d. Appear at Whatcom County Jail for hearings when necessary and as determined by the Municipal Court;
- e. To have available an all-hours pager or telephone to respond to calls, which may include calls from arrested persons, public defender clients, police officers, and/or court personnel;
- f. To provide legal representation for indigent defendants and court appointment or screening through trial, sentencing, post-conviction review and any appeals to the Whatcom County Superior Court or the Washington appellate courts; and
- g. To perform services consistent with the standard of practice within the community, and at all times comply with the Public Defense Standards.

1.4 **Facilities.** The Contractor shall maintain an office in Whatcom County, Washington with sufficient facilities to provide adequate legal representation and all other infrastructure, including an adequate number of secretaries, word processing, paralegals, and any and all other support services, including adequate and competent investigative services, and interpreter services necessary to comply with the Public Defense Standards as described herein. The City is aware that the Contractor does not have funds for an investigator or interpreter so does not use either unless a case calls for such service. The City, not the Contractor, will pay for these indigent services as detailed in Section 3.4 herein. The Contractor will provide office space for the investigator and interpreter to perform their duties in conjunction with the Contractor under this Contract.

1.5 **Relationship of Parties.** The parties intend that this Contract shall create an independent contractor relationship between the Contractor and the City. The Contractor shall not be considered to be an agent, employee, servant, or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor shall be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and/or sub-contractors during the term of this Contract. In the performance of the services provided for by this Contract, the Contractor shall have the authority to control and direct the performance and details of the work, subject, however, to the direction of the City Municipal Court and the City's right to monitor and review the Contractor's compliance with this Contract.

1.6 **Associated Counsel.** Any counsel associated with or employed by the Contractor shall have the authority to perform the services described herein, and the Contractor may employ associated counsel to assist at the Contractor's expense. The Contractor and all associated counsel hired pursuant to this Section shall be admitted to practice law pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacations and illnesses.

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

1.8 **Screening.** Termination of eligibility of an indigent client for appointed counsel under the Contract shall be determined by the Municipal Court. The Contractor will not be responsible for screening potential clients.

1.9 **Discovery Provided.** The City will provide to the Contractor, at no cost to the Contractor 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 Contractor will receive electronic copies of discovery or may request hard copies to be provided.

1.10 **Extended Bench Warrant Withdrawal.** If a defendant represented by Contractor is on bench warrant status for at least forty-five (45) days from the time of Contractor's appointment, Contractor shall be permitted at that time to withdraw from representation of that defendant where such withdrawal is consistent with the requirements of the Public Defense Standards and all applicable Rules of Professional Conduct, and upon approval by the Municipal Court Judge.

SECTION 2

CASE LOAD CERTIFICATIONS, REPORTING, AND CONTRACT MONITORING

2.1 **Case Load Certifications.** The Contractor shall certify its compliance with the Public Defense Standards by filing a quarterly Certification of Compliance, as required by CrR 3.1 and CrCLJ 3.1. Such forms shall be contemporaneously filed with the City and the City's Municipal Court. The Contractor shall include a certification of each of its associated counsel. In the event that the Public Defense Standards materially change during the term of this Contract, the parties will meet and renegotiate the terms of this Contract. A "material change" is a substantive change to the adopted Supreme Court standards which materially alters a term or condition of the Public Defense Standards or this Contract.

2.2 **Case Count.** The definitions of a "case" for the purposes of this contract including without limitation compensation and case count purposes, and "case count" are set forth in the Public Defense Standards. Multiple citations from the same incident will be counted as one case. Cases will be counted at the time of first appointment. Each case is counted only once, irrespective of any subsequent reappointments pursuant to a failure to appear ("FTA"). Cases subsequently conflicted, where a private attorney is hired, will be noted on the next report and will not be counted as a case.

2.3 **Reporting on Contract Requirements.** The Contractor shall at all times comply with all applicable requirements of the Public Defense Standards and shall demonstrate such compliance by filing regular reports with the City according to the provisions of this Section. On no less than a quarterly basis, and no less than may be required by the Public Defense Standards, whichever is more frequent, the Contractor shall file reports with the City delineating each client who has been appointed to the Contractor for representation generally in the form attached hereto as **Exhibit A**. This report shall include the number and type of cases, the date of the appointment, and the disposition of the case. The report shall designate whether the

client was “conflicted” to another attorney for representation or the client hired a private attorney. The report shall be due on or before the tenth (10th) day following the end of each quarter (by April 10th, July 10th, October 10th, and January 10th) in which services were provided, or if the tenth day falls on a weekend or City holiday, the report shall be due on the next day following the weekend or holiday. This report and the format shall not require the disclosure of any attorney/client privileged information. In the event of disclosure to the City of confidential information, inadvertent or otherwise, the City shall be under no duty or obligation with regard to such disclosure, except as may be required by law. To the extent that the Contractor is required to file reports in compliance with the requirements of this Section for all cases handled by the Contractor, and such filing may occur after the termination or expiration of the Contract, the requirements of this Section shall survive expiration or termination of this Contract for that limited purpose.

2.4 Contract Monitoring and Review. The City reserves the right to assure that indigent clients that are referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this Section shall be construed or applied in any manner such that it may violate the confidentiality of any attorney-client privileged information. In the event of disclosure to the City of confidential or privileged information, inadvertent or otherwise, the City shall be under no duty or obligation with regard to such disclosure, except as may be required by law.

SECTION 3 CONSIDERATION

3.1 In consideration for the services described above, the City agrees to pay to the order of the individual Contractor performing such services as follows (note the definition of “case” is defined above in section 2.2 above:

- a. For all cases except probation violations and appeals, the City will pay Contractor a flat rate of _____ dollars (\$____.00) per case at the time Contractor files a Notice of Appearance. For each case, Contractor’s representation shall terminate at sentencing or notice of appeal, and Contractor’s representation of the defendant at a post-sentencing probation or appeal shall constitute a new case.
- b. In addition to the flat rate, if a case goes to trial or contested hearing and such trial or hearing includes witnesses, the City shall pay Contractor _____ dollars (\$____.00) per hour of courtroom time for that trial or hearing. This additional rate shall not be applicable in trials or contested hearings that do not include witnesses.
- c. The City shall pay Contractor a flat rate of _____ dollars (\$____) for probation violations at the time Contractor files a Notice of Appearance.
- d. The Contractor’s representation of a defendant who enters into a deferred prosecution with active probation shall terminate upon the defendant’s acceptance of the deferred prosecution, at which point the Contractor shall file an order of withdrawal from the case. A later violation of probation by the same defendant shall constitute a new case.

- e. For appeals of right from Municipal Court to Whatcom County Superior Court, the City shall pay Contractor a flat rate of _____ (\$_____), of which twenty-five percent (25%) shall be paid upon Contractor's acceptance of the appeal and the remainder paid upon final ruling.
- f. The amount to be paid to Contractor for appeals other than first-level appeals of right shall be negotiated by the City and the Contractor on a case-by-case basis.
- g. If the Contractor is already appearing in jail court on a given day pursuant to the Contractor's duties under Section 1.3(a) of the Contract, then the City will pay the Contractor _____ dollars (\$_____.00) for each defendant whom she represents "cold" upon the request of the Court. For each and every one of these "cold" representations, if the Contractor is appointed on the matter, then the City shall be credited back the _____ dollars (\$_____.00) towards the applicable flat rate fee for that matter.
- h. Unless the Contractor is already required to appear in jail court on a given day pursuant to Section 1.3(a) of the Contract, the City will pay the Contractor _____ dollars (\$_____.00) for each day that the Contractor appears at the Whatcom County Jail for an in-custody hearing. If the Contractor is appointed to represent any of the defendants appearing at such hearing, then the City shall be credited _____ dollars (\$_____.00) towards the usual flat rate fee for up to two (2) newly appointed defendants. This will result in the Contractor receiving either _____ dollars (\$_____.00) (if no new clients are appointed), _____ dollars (\$_____.00) (if one is), or _____ dollars (\$_____.00) (if two are) for appearing at this hearing when she otherwise would not be scheduled.

3.2 The City agrees to pay extraordinary costs (as set forth in Section 3.4 of this Contract) which are supported by documentation satisfactory to and approved by the Municipal Court.

3.3 The Contractor expressly reserves, and the City acknowledges, the Contractor's right to petition the Court for extraordinary relief in extraordinary circumstances with regard to a particular case, with notice to the City Clerk and the City Civil Attorney of such request.

3.4 The Contractor shall be responsible for its own mileage and travel costs. The fees and rates above cover all aspects of legal representation, including paralegal and secretarial assistance. Expert witness, interpreter services, investigator services, unique trial exhibits, mental health assessments, and all other services or equipment may be provided at an additional cost to the City pursuant to prior authorization from the Municipal Court.

3.5 Payment shall be made on a monthly basis in accordance with the City's accounts payable procedures.

SECTION 4 LICENSING AND TRAINING

4.1 The Contractor agrees that she, and all attorneys working for the Contractor's firm, shall remain during the term of this Contract licensed to practice law in the State of Washington and to abide by the Code of Professional Responsibility.

4.2 Each and every attorney providing services under this Contract shall comply with the Washington Admission and Practice Rules (APR) with regard to mandatory continued legal education (MCLE) requirements. Upon request by the City, the Contractor shall provide a list of all trainings attended by the attorneys and staff during each year of this Contract.

SECTION 5 **CITY ATTORNEY'S OFFICE**

5.1 Neither the City Civil Attorney nor the attorney providing contract municipal prosecuting attorney services to the City shall be a party to this Contract, nor shall the City's contracted municipal prosecuting attorney have any powers in regard to this Contract. The City Civil Attorney may provide legal services to the City in regard to the City's rights and obligations under this Contract, including enforcement, and in monitoring the Contractor's compliance with its obligations under this Contract and the Public Defense Standards.

SECTION 6 **SURVIVAL AND INCOMPLETE CASES**

6.1 In the event that the Contractor is assigned clients under this Contract whose cases are incomplete at the termination of this Contract, the Contractor agrees to continue representation of any such client beyond the termination of this Contract, and the City agrees to pay the Contractor for such services under the terms and conditions stated herein, except, however, that the Contractor expressly reserves the right to renegotiate the hourly rate of reimbursement for any services rendered after the termination of this Contract involving any cases referred to the Contractor during the term of this Contract. It is agreed and understood that this reservation of the right to negotiate the rate of reimbursement for services rendered after the termination of this Contract shall in no manner be constructed to lessen or diminish the quality of representation or diligence with which the Contractor performs services for those clients or in those cases which may be the subject of such renegotiation while any such renegotiation may be in progress. If the Contractor and the City are unable to agree to a new rate of payment, the rate of payment shall be set by the Municipal Court Judge consistent with the normal rate for a similar public defense case in the City.

SECTION 7 **TERM AND TERMINATION**

7.1 **Term.** The Contractor's services will commence on the date first written above for an initial term of two (2) plus years, terminating on December 31, 2022 ("Termination Date"). The parties may mutually agree to extend this Contract for an additional term of two (2) years terminating on December 31, 2024.

7.2 **Holdover.** In the event that the Termination Date of this Contract passes without the parties' execution of a similar contract that renews the agreement herein, and if in that event the parties continue to perform according to this Contract's terms, then the terms of this Contract shall control the parties' duties and obligations until the parties execute a new written contract.

7.3 **Termination by City.** The City may terminate this Contract for any reason or without reason or cause at any time by delivering written notice at least thirty (30) days prior to the effective termination date. The City may terminate this Contract for cause at any time without notice for violation of any material term of this Contract. A "material term" shall include:

- a. Any violation indicating a failure to provide representation in accordance with the Public Defense Standards, as defined in Section 1.2 of this Contract;
- b. A violation of the provisions of Section 10 relating to insurance requirements; and/or
- c. A finding that the license of an attorney providing services under this Contract has been suspended or revoked.

7.3.1 Violation of any other provision of this Contract shall be subject to cure. The City shall provide written notice of the violation of this Contract to the Contractor who will have thirty (30) days to correct the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion without further notice to the Contractor. In lieu of terminating this Contract, the City and the Contractor may agree in writing to alternative corrective measures.

7.4 **Termination by Contractor.** The Contractor may terminate this Contract for any reason and without reason or cause at any time by delivering written notice at least one-hundred and twenty (120) days prior to the effective termination date.

7.5 **Termination or Cessation of the Municipal Court.** In the event that the City, in its sole discretion, chooses to terminate its Municipal Court, this Contract shall expire effective upon the termination of the Municipal Court or as may otherwise be provided in this Contract or by law.

SECTION 8 NON-DISCRIMINATION

8.1 During the term of this Contract, the Contractor agrees that no person shall, on the grounds of any protected class under State or Federal law, including, but not limited to, race, creed, color, national origin, sex, marital status, age, religion or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. Contractor shall not discriminate against any employee or applicant for employment for the above reasons.

SECTION 9 ASSIGNMENT OR SUBCONTRACTING

9.1 The Contractor shall not assign or subcontract any portion of the services provided under the terms of this Contract without obtaining prior written approval from the City, except that other attorneys may fill in for the assigned attorney on a case-by-case basis. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to this Contract. The Contractor shall not ask a particular attorney to fill in if the City has informed the Contractor that such attorney is unacceptable to the City. The Contractor shall, upon request, provide a list of possible fill-in attorneys to the City so that the City can veto anyone deemed unacceptable.

9.2 The City shall not assign any defense of indigent defendants to any other contractor or attorney at law other than to the Contractor herein; except, the City shall assign an indigent defendant, with whom the Contractor has a conflict of interest, to an attorney of the City's choice. Notwithstanding assignment of conflict of interest cases, assignment of indigent defendants' cases to an attorney other than the Contractor shall constitute a material breach of

this Contract by the City, and the City shall be liable to the Contractor for the fee that the Contractor would have received from the City had the case been properly assigned to the Contractor.

SECTION 10 **INSURANCE**

10.1 Coverage Requirements. For the duration of this Contract, Contractor agrees to carry Professional Liability Insurance (errors and omissions insurance) in the minimum amount of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) per claim and TWO MILLION DOLLARS (\$2,000,000.00) aggregate. A policy naming the individual Contractor and any other attorney performing work under this Contract, among others named in the policy, shall be considered to be in compliance with this provision. Occasional fill-in attorneys as in Section 9 of this Contract are not required to be covered under the Contractor's insurance policy. The Contractor's liability insurance policy shall contain a thirty (30) days' notice of cancellation provision. Contractor shall provide notice to the City thirty (30) days in advance of any termination or material modification of coverage under such policy.

10.2 Tail Coverage. The Contractor shall provide proof of insurance for "tail coverage" no later than December 31st of the year of termination of this Contract. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise for occurrences during the term of this Contract or extensions thereof, but not filed during the term of the Contract.

10.3 Verification of Coverage. A certificate of insurance containing the aforementioned minimum limits shall be provided to the City within thirty (30) days of the effective date of this Contract and again on an annual basis on the anniversary date of the execution of this Contract or at such other date as agreed to by the parties. The Contractor shall identify the City as a "certificate holder" whereby its insurer will notify the City if the Contractor's policy changes or lapses.

SECTION 11 **INDEMNIFICATION OF THE CITY**

11.1 The Contractor agrees to defend, indemnify, and hold harmless the City, its officers, employees, and agents from and against any and all demands, claims, suits, actions, and costs arising from negligent acts or omissions of the Contractor, or of his/her agents and employees, in the performance of this Contract and to pay any and all judgments that may be incurred by or obtained against the City in relation to any such acts or omissions.

11.2 The Contractor expressly agrees that this indemnification provision includes all demands, claims, suits, and actions by the Contractor's own employees to which the Contractor might otherwise be immune under Title 51 RCW. It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Contractor'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 Contract and shall continue to be in effect for any claims or causes of action arising hereunder.

SECTION 12
COMMUNICATION BETWEEN PARTIES

12.1 Any communication between the parties or notice called for in this Contract shall be addressed and sent to the regular place of business of each party.

12.2 In the case of communication with the Contractor, all communications and notices shall be sent to:

12.3 In the case of communication with the City, all communications and notices related to the administration and/or performance of this Contract, which do not include court filings, indigent defense referrals, and discussions/negotiation of cases, shall be sent to:

City of Blaine
Attn: City Clerk
435 Martin Street, Suite 3000
Blaine, WA 98230

SECTION 13
REMEDIES FOR BREACH AND ATTORNEYS' FEES AND COSTS

13.1 All remedies available in law and equity shall be available in the event of breach of this Contract. In the event legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled to by this Contract, to its reasonable attorneys' fees and costs, including those incurred on appeal.

SECTION 14
GOVERNING LAW AND VENUE STIPULATION

14.1 This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Contract shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Contract shall be instituted and maintained only in Whatcom County Superior Court, Bellingham, Washington.

SECTION 15
ARBITRATION

15.1 In the event of any dispute arising between the parties to this Contract, any such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either party within ten (10) days after any party demands arbitration. If the parties fail to select, or cannot agree upon, an arbitrator within this time, then either party may apply to the Superior Court of Whatcom County, pursuant to Chapter 7.04A RCW for an order appointing an arbitrator. Such

application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator, who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. Chapter 7.04A RCW and Rules 5.2 through 5.4 of the Washington State Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Arbitration clause, Chapter 7.04A RCW, and MAR 5.2 through 5.4, the terms of this arbitration clause shall take precedence over Chapter 7.04A RCW and MAR 5.2 through 5.4; and Chapter 7.04A RCW shall take precedence over MAR 5.2 through 5.4.

SECTION 16 **MODIFICATION AND NON-WAIVER**

16.1 No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by the duly authorized representatives of the City and the Contractor. Except as otherwise expressly provided herein, no waiver of any covenant, condition, or provision of this Contract shall be deemed to have been made unless expressly in writing and signed by the party against whom such waiver is charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Contract or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of any such provisions, covenants, or conditions. The acceptance of performance of anything required by this Contract to be performed with knowledge of the breach or failure of a covenant, condition, or provision hereof shall not be deemed a waiver of such breach or failure.

SECTION 17 **INTERPRETATION**

17.1 This Contract has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Contract shall, in all cases, be construed as a whole according to its fair meaning and not for or against either party. If any provision is found to be ambiguous, the language shall not be construed against either party solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Contract.

SECTION 18 **ENTIRE AGREEMENT**

18.1 This Contract contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Contract which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Contract executed with all necessary legal formalities.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

| **CITY OF BLAINE**

LAW FIRM

Michael Jones,
City Manager

Name: _____

EXHIBIT A
[REPORTING FORM]

