



CITY OF VANCOUVER
PRIMARY PUBLIC DEFENSE SERVICES AGREEMENT
No. C-101514

This Services Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington, (hereinafter referred to as the "City") and Vancouver Defenders, P.S., (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the “parties” or individually as a “party”.

WHEREAS, the City desires to engage the Contractor to perform services as described in this Agreement; and

WHEREAS, the City advertised and issued a Request for Proposal, numbered 68-23 (hereinafter referred to as the “solicitation”) and after evaluation of the Contractor’s responsive proposal, found the Contractor be capable of performing the required services; and

WHEREAS, the Contractor represents by entering into this Agreement that it is fully qualified to perform the services described herein in a competent and professional manner, and to the full satisfaction of the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. SCOPE OF WORK:** The Contractor agrees to provide the City with public defense legal services as set forth below and as further described in the City’s solicitation, and the Contractor’s responsive proposal to the City’s solicitation, (collectively referred to herein as the “work”) which are each incorporated herein by this reference and made a part of this Agreement as if fully set forth herein.

As more fully described in Section 3 of this Agreement, all services provided must meet the City’s adopted Standards for Indigent Defenses Services (see **Attachment A**).

The Scope of Work for this contract includes:

Section 1. Definitions

The following definitions control the interpretation of this Agreement:

- a. The term “Eligible Client” shall mean a defendant or a juvenile deemed to be handled as an adult, who is facing civil commitment or any other person who has been determined by a finding by the Court to be entitled to a court-appointed attorney, pursuant to RCW 10.101.020.
- b. The term “Representational Services” shall mean the services for which the City is to pay the Contractor. Representational services include lawyer services and appropriate support staff services, appropriate sentencing advocacy and services including, but not 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 all court proceedings. The services for which the City is to pay the Contractor do not include extraordinary expenses incurred in the representation of eligible clients. Where the lawyer determines that conducting an independent investigation is necessary to the proper defense of the Client, the City agrees that the Contractor will not be responsible for payment of extraordinary expenses incurred in the representation of eligible clients, subject to Section 4(n) below.
- c. The term “Case” shall mean representation of one person on one or more charging documents that arise out of a single criminal incident. Multiple citations or case numbers filed from the same incident are one case. Citations or case numbers that include charges that occurred on the same day are presumed to be one incident or one “case.” A charging document that includes charges from more than one date (separate incidents) is deemed one “case,” unless the court grants Contractor’s motion to sever the charges.

The term “Case” also shall mean representation of one person on one or more original case numbers where a probation violation(s) or show cause order has been filed and Contractor is appointed. However, a probation violation case is not counted as a separate, new “case” if the only alleged probation violation is commission of a new offense and Contractor is appointed on the new criminal case.

Reappointment of an attorney or law firm to a case, following a defendant’s arrest on a bench warrant for failure to appear, does not result in additional case credit under this Agreement.

- d. The term “Case Weighting” shall mean a numerical system, adopted by a jurisdiction, which recognizes the greater or lesser workload required for cases when compared to an average case based on complexity, seriousness of charges and time necessary to prepare for an adequate defense.
- e. The term “Disposition” shall mean 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) imposition of sentence, or 5) deferral of any of the above coupled with any other hearing on that case number, including but not limited to misdemeanor probation review that occurs within thirty (30) days of sentence, deferral of sentence or the entry of an order of deferred prosecution
- f. The terms "District Court" or "Court" shall mean Clark County District Court.
- g. All other terms are intended to have a plain and ordinary meaning with a definition that can be derived from any modern English dictionary.

Section 2. Professional Conduct:

The Contractor shall provide the services of attorneys and staff members in compliance with all of the applicable laws and administrative regulations of the State of Washington, the United States, the Vancouver Municipal Code, the Washington State Rules for Professional Conduct (RPC), the Washington State Supreme Court Standards effective October 1, 2012 and the Washington State Supreme Court Caseload Standards effective January 1, 2015. Nothing in this Agreement shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Contractor with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Agreement.

Nothing in this Agreement shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Contractor or any such confidential communications made to agents or employees of the Contractor for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.

Per Washington State’s Supreme Court Standards, the caseload of a full-time public defense attorney or assigned counsel should not exceed four hundred (400) cases per year for misdemeanors. The Standards require each public defense attorney to “certify to the court that he or she complies with applicable Standards for Indigent Defense Services to

be approved by the Supreme Court”. Certifications of compliance (**Attachment B**) must be completed quarterly by each attorney and filed with District Court.

Attorneys and staff employed by the Contractor shall not solicit or accept any compensation, gifts, gratuities or services, of any kind, from any client served under this Agreement.

Section 3. Duties of Contractor:

- a. Contractor shall advise and provide legal defense services and assistance to eligible clients who have been arrested or charged under any City of Vancouver ordinance or RCW statute which has a possible jail sentence and whom the Contractor has been appointed to represent by the District Court. All legal services rendered by Contractor shall be of the highest quality and shall be provided at all stages of each assigned case.
- b. The Contractor shall accept all cases assigned by the District Court.
- c. The Contractor will notify the District Court and the City Attorney’s Office immediately upon any change in status of a client’s representation.
- d. Contractor shall represent eligible clients in all arraignments, pre-trials, trials, sentencing, probation violations, revocation proceedings, protest hearings, show cause hearings, hearings for review of sentence in all District Courts, and all necessary hearings, motions, and writs which may arise in Clark County District Court. No service shall be rendered with respect to any crime or proceeding which does not include the possibility of incarceration. Client representation under this Agreement shall not include any appeals or writs to a higher court.
- e. The Contractor shall receive and respond to all telephone calls on a twenty-four-hour basis prior to the first opportunity for court-appointed counsel, per Washington State Courts Rule CrRLJ 3.1 (b), (c)). The Contractor shall receive and respond in a timely manner to, at all times, all telephone calls from indigent persons whom Contractor has been appointed to represent. The Contractor shall not subcontract this requirement.
- f. The Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Agreement. Nothing in this section shall prohibit the Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.

- g. The Contractor agrees that an attorney will make contact with all clients within three working days from notification of case assignment.
- h. Contractor shall provide representational services at Domestic Violence Court. For all other Clark County Specialty Courts including Mental Health Court, Substance Abuse Court (SAC), Domestic Violence Therapeutic Court (DVTC) and Veteran's Court the City contracts with Clark County to provide indigent defense counsel.
- i. To the extent it is practicable, Contractor shall have the capacity to communicate with clients directly in their primary language with the assistance of court-appointed certified interpreters. The Contractor shall convey all plea offers to clients in writing, in the client's preferred language.
- j. In the event that the Agreement is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Agreement is in effect for the compensation received or receivable under the terms of the Agreement, provided that completed representation is not made impossible by a client's failure to appear.
- k. The Contractor will hire, supervise and maintain quality staff. Contractor will be responsible for suspending, removing, or terminating personnel not adequately performing the duties and responsibilities assigned.
- l. Contractor shall comply with Washington State Supreme Court Standards, effective January 1, 2015, regarding allowable caseloads per attorney per year.
- m. Adequate support staff is critical to an attorney's ability to render competent assistance. Use of qualified paralegal staff to assist in management of caseloads is highly recommended. The parties agree and expect that at a minimum the Contractor will employ support staff services for its attorneys proportionate to the following:
 - 1. One full-time Legal Assistant for every four staff attorneys
 - 2. One full-time Legal Secretary for every four staff attorneys
- n. The Contractor shall coordinate investigation services on those cases requiring investigation. The Contractor shall also coordinate expert witnesses for those cases requiring expert witness testimony. The Contractor shall contact the City Contract Administrator for the expenditure of public funds prior to requesting copies of records or expert witness. Invoices for such services shall be sent directly to the City by the subcontractors; the Contractor will not be held liable for those expenses.

- o. The Contractor agrees to utilize Notice of Appearance Forms provided by the Clark County District Court which includes a notice statement that Defendants are obligated to pay the Indigent Defense Recovery Fee. The Contractor shall not impede the District Court from collecting such fees. The Contractor's duty of representation shall not be affected in any way by the payment or non-payment of such fees.
- p. Contractor shall engage in pre-trial negotiations with the City Attorney's office for the purpose of negotiating matters for the following week's mandatory pre-trial hearings.
- q. Contractor shall comply with all appearances and duties as may be required by District Court and/or the City for the term of this Agreement at no additional expense to the City.

Section 4. Client Communication:

Contractor agrees to use all good faith efforts to secure both continuous contact with defendants whom Contractor is appointed to represent and also regular attendance by clients at critical stages in the defendant's case. Such good faith efforts shall expressly include, but not be limited to, the following measures:

- a. Advising clients that regular contact is necessary to the preparation of their defense and employing all reasonable means to secure and maintain such contact.
- b. Clients shall be notified in advance of the date, time and location of all critical stages in the process of the client's particular case including, but not limited to, pretrial conferences, omnibus or other pretrial motions, readiness hearings, and trial. Offers shall be extended in writing to clients within five business days of receipt from the City Attorney's office. In any case, notification shall be provided early enough that the client has time to prepare for each stage.
- c. Advising clients that appearance at all regularly scheduled pre-trial hearings (both pre-trial and mandatory) with City prosecutors and the Contractor is required for effective assistance in the client's defense and encouraging such attendance. A mutually agreeable time will be scheduled with the Court's approval.
- d. Timely notification to the District Court when clients fail to make regular contact.

Section 5. Records, Reports & Audits

- a. All records shall be maintained by the Contractor. The Contractor shall maintain systems of internal control which conform to proper law office management and generally accepted accounting principles.

The Contractor must ensure that the City has full access to materials necessary to verify compliance with all terms of this Agreement. At any time, upon reasonable notice during business hours and as often as the City may deem necessary, the Contractor shall provide to the City right of access to its facilities, including those of any subcontractor, to auditing records, data, invoices, materials, payrolls and other data relating to all matters covered by this Agreement. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Contractor must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege.

The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than seven (7) years following the receipt of final payment under this Agreement, unless the City agrees in writing to an earlier disposition.

The Contractor agrees to cooperate with the City or its agent in the evaluation of the Contractor's performance under this Contract and to make available information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

- b. The Contractor shall report by the 15th day of April, July, October and January to the City's Contract Manager, the activity of the preceding quarter. In addition to other statistics the City may require, Contractor shall provide the following information:
 1. Name of the Defendant, case number(s) and charges
 2. Name of assigned attorney for each client.
 3. The outcome of each case, including defendants that plead guilty at arraignment.
 4. Verification that clients received a Client Rights brochure and a notification of the indigent recovery fee.
 5. Number of bench and jury trials.
 6. Number of suppression and *Knapstad* motions filed along with the number of cases where such motions led to the reduction of charges.
- c. The Contractor shall report annual activity by January 15th of each following year:
 1. Proof of Continuing Legal Education Credits. Such proof shall include name of attorney, identification of training and dates of training.

2. A profile of all personnel who perform work under this Agreement, including name and percentage of time devoted to work under this Agreement.
 3. An accounting of all City cases conflicted out to other attorneys.
- d. The Contractor shall maintain a case-reporting and management information system which shall include the number, type, and disposition of indigent cases.
 - e. The case reporting and management information system shall be maintained independently from client files in order to not disclose any privileged information. The Contractor shall not be required to provide any information when the revelation of which would violate any state or federal privacy laws, the attorney-client privilege, or which would otherwise harm the Contractor's attorney-client relationships.
 - f. The City's Public Defense Contract Manager may make periodic surveys of clients for the purpose of monitoring the quality of services provided and client satisfaction.
 - g. The Contractor shall meet with the City's Public Defense Contract Manager as requested to discuss issues and problems related to the fulfillment of this Agreement.

Section 6. Reservation Regarding Representation:

The Contractor agrees to screen all cases for conflicts of interest upon assignment and throughout the discovery process. Discovery shall be reviewed within five (5) days of receipt of case for purposes of determining any conflicts of interest. In the event the Contractor cannot represent a client because of an actual or potential conflict of interest under the Washington Code of Professional Responsibility, then the Contractor shall arrange for a City Conflict Attorney to represent the client. Contact information for said attorneys to be provided by the City's Contract Administrator. The Contractor will refer to the Washington State Rules of Professional Responsibility, opinions of the state judiciary, and to the American Bar Association Standards for Criminal Justice to determine the existence and appropriate resolution of conflicts.

The Contractor, and each attorney employed or retained by the Contractor, reserve the right to decline to advise, represent, appear for, or act for any particular person, whether or not indigent or otherwise eligible, but only for good cause shown. Good cause includes, but is not limited to, conflicts of interest which preclude the Contractor or an attorney from acting pursuant to the Washington Rules of Professional Conduct. The Contractor and each attorney employed or retained by the Contractor, reserve the right to withdraw from representing any person or entity, whether or not indigent or otherwise eligible, providing the consent of the court, if required, is first obtained. The Contractor warrants that declinations will not be made except as required by law or legal ethics, and in the event of

a declination, will immediately notify the appropriate court as well as the City Attorney's Office.

Section 7. Complaints about Legal Services:

The Contractor shall have a method to respond promptly to client complaints which will include informing clients of the complaint process. In the case a complaint is made to the City by a client with respect to the quality of legal services rendered under this Agreement, the complaint shall be first directed to the Contractor. If the client believes that he or she has not received an adequate response, the Vancouver City Manager or his/her designee shall evaluate the legitimacy of the complaint. The complaining client shall be informed of the disposition of his /her complaint as soon as is reasonably possible.

The Contractor shall fully cooperate with the City and/or District Court in any reasonable investigation which the City and/or District Court may wish to make.

The Contractor shall ensure that a preliminary written response to any written complaints concerning services provided by the employees of the Contractor shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Contractor Director or the Director's designee. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Contractor.

Section 8. Client Access

The Contractor shall comply with federal and state laws regarding access to its facilities and will eliminate barriers which limit access for the disabled.

Section 9. Non-Waiver of Rights and Remedies:

In no event shall payment or performance by either party hereto constitute or be construed to be a waiver by either party of any breach of covenant or default which may then exist on the part of the other party, and the making of any such payment or the carrying out of any such performance while breach or default then existed, shall in no way impair or prejudice any right or remedy available to the paying or performing party with respect to such breach or default.

Section 10. Relation of Parties:

The Contractor, its sub-consultants, agents and employees are independent Contractors performing professional services for City and are not employees of City. The Contractor, its subconsultants, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees. The

Contractor, subconsultants, agents and employees shall not have the authority to bind City any way except as may be specifically provided herein.

Section 11. City Not Obligated to Third Parties:

The City shall not be liable to any person or entity other than the Contractor because of this Agreement, except that the City will pay investigative, substance abuse evaluation and expert witness fees and additional associated services necessary in any case after a voucher has been submitted and approved by the Court in accordance with Washington State Courts Rules (CrRLJ 3.1 (f)).

Section 12. Limited Private Practice of Law:

The Contractor shall devote all time necessary to properly perform this Agreement. The Contractor is not limited from maintaining a private law practice. However, the Contractor shall not allow its private practice of law during the term of this Agreement to conflict with the Contractor's responsibilities and duties under this Agreement. As required in Section (5) the Contractor shall annually report to the City the number of hours billed for nonpublic defense legal services, including number and types of private cases.

Section 13: Minimum Requirements for Contractor Attorneys

- a. The Contractor shall utilize attorneys who satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court. Each attorney shall be familiar with the statutes, court rules, constitutional provisions, relevant case law, Rules of Professional Conduct, and the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association.
- b. Each attorney must also be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction and be familiar with mental health issues and be able to identify the need to obtain expert services.
- c. Each attorney shall attend at least seven (7) hours per year of continuing legal education credits in courses relating to criminal law practice or other areas of law in which the Contractor provides legal services to eligible clients under the terms of this Agreement. Further, each attorney shall attend training approved by the Washington State Office of Public Defense at least once per calendar year. Such training may be counted in fulfilling the above 7-hour requirement. The Contractor will provide an annual report to the City demonstrating compliance with this provision.
- d. Each attorney representing any client assigned as a part of this Agreement shall meet the requirements above or work directly under the supervision of a senior, supervising

attorney employed by the Contractor, who meets the requirements above. Such supervising attorney shall have a minimum of five (5) years' experience practicing criminal law in Washington State. Such direct supervision shall continue until the attorney meets the requirements above.

Failure on the part of the Contractor to use staff with the appropriate amount of experience or to supervise appropriately its attorneys shall be considered a material breach of this Agreement.

2. **COMPENSATION:** Payment to the Contractor for the work described in this Agreement shall not exceed \$9,100,000.00 USD over the full duration of the 5-year Agreement.

In consideration for the Contractor's performance of the duties listed herein, the City will pay the Contractor \$154,500 per attorney for the 2024 calendar year, two full-time investigators at \$63,469 each, along with one part-time social worker at \$30,000. Based on an estimated annual caseload of 3,000- 4,200, ten (10) attorneys will be needed for the City's cases for 2024. Rates may increase for each subsequent year this Agreement runs according to the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers (U.S. CPI-U), using the data as published by the United States Department of Labor's Bureau of Labor Statistics, or its successor. This payment is intended to cover salary, benefits, insurance, support staff and all other administrative and overhead expenses associated with the provision of public defense services under this Agreement.

Total compensation for this Agreement in 2024 is \$1,701,938, to be paid in equal monthly installments of \$141,828 according to the cost table below:

Expense	Annual Payment per Position	Number of Positions	Total Annual Payment	Total Monthly Payment
Attorney	\$154,500	10	\$1,545,000	\$128,750
Investigator	\$63,469	2	\$126,938	\$10,578
Social Worker*	\$30,000	1	\$30,000	\$2,500
Total			\$1,701,938	\$141,828

Contractor will send monthly invoices for services and a list of attorneys who provided those services.

City and Contractor will evaluate the caseload on a quarterly basis and may choose to increase or decrease the number of attorneys necessary to meet the caseload standards. In the event an increase in attorneys is needed, the City will execute an amendment and agrees to pay a pro-rated portion of the annual amount per attorney based on the number of months remaining in the year. In the event that a decrease is needed in the number of attorneys, the monthly payment will be adjusted accordingly and Contractor will be responsible for refunding to the City any overpayment.

- a. In the event of Contractor's failure to substantially comply with any items and conditions of this Agreement or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Section 13 of this Agreement.

3. INCORPORATION OF INDIGENT DEFENSE STANDARDS:

The City of Vancouver "District Court Indigent Defense Standards" adopted by City Council September 14, 2009 in compliance with R.C.W. 10.101.030, and a copy of which the Contractor acknowledges receipt, are attached as **Attachment A** and incorporated herein by reference as if fully set forth in this Agreement. The terms of such standards as they may be updated from time to time shall be binding upon both the City and the Contractor.

- 4. PAYMENT FOR CONTRACTOR SERVICES:** The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net thirty (30) days.

The City reserves the right to correct any invoices paid in error. The Contractor shall be paid according to the rates set forth in Section 2.

City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed **must** be referenced on any invoice submitted for payment.

- 5. TERM OF AGREEMENT:** The term of this Agreement shall commence on January 1, 2024 and continue until December 31, 2028. Unless directed otherwise by the City, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

- 6. ORDER OF PRECEDENCE:** Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Contract Purchase Orders; the Contractor's responsive proposal to the City's solicitation, and the City's solicitation.

- 7. RELATION OF PARTIES:** The Contractor, and its subcontractors, agents, employees, or other vendors contracted by the Contractor to provide services or other work for the purpose of meeting the Contractor's obligations under this agreement (collectively referred to as "subcontractors"), are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its subcontractors shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other rights, privileges, or benefits afforded to City

employees. The Contractor and its subcontractors shall not have the authority to bind City in any way except as may be specifically provided herein.

- 8. SUBCONTRACTING:** The Contractor shall not subcontract for the performance of any work under this Agreement without prior written permission of the City.
- 9. E-VERIFY:** The Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. The Contractor shall ensure all Contractor employees and any subcontractors assigned to perform work under this Agreement are eligible to work in the United States. The Contractor shall provide verification of compliance upon the request of the City. Failure by the Contractor to comply with this subsection shall be considered a material breach.
- 10. DELAYS AND EXTENSIONS OF TIME:** If the Contractor is delayed at any time in the progress of the work covered by this Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by the Contractor and the City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the City.
- 11. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work products prepared by the Contractor in the course of performing this Agreement shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by the Contractor to provide the services or project deliverables under this Agreement shall remain property of the Contractor.
- 12. TERMINATION FOR PUBLIC CONVENIENCE:** The City, at its sole discretion, may terminate this Agreement for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, the Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

- 13. TERMINATION FOR DEFAULT:** If the Contractor defaults by failing to perform any of the obligations of the Agreement, including violating any law, regulation, rule or ordinance applicable to this Agreement, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing

written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere.

If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for public convenience paragraph herein.

This Agreement may be terminated for either of the following reasons:

- 1) For good cause which may include any of the following:
 - (a) Failure of the attorney to render adequate representation to clients;
 - (b) Willful disregard of the rights and best interests of the client;
 - (c) Willful disregard of the WSBA Standards for Indigent Defense Services.
- 2) The professional liability insurance is cancelled. The Contractor shall be responsible for and maintain Professional liability insurance until the completion of all cases previously assigned to the Contractor, as set forth in Section 18, below.
- 3) The City may modify, suspend or terminate this Agreement due to amendments to or court interpretations of state or federal statutes that make some or all contract services ineligible for City funding.
- 4) If during the term of this Agreement, changes occur in Washington State law which mandate the City to provide indigent defense services by a method other than contracting, the City may terminate this Agreement by 15 (fifteen) days' written notice to any address specified by the Contractor, or as otherwise mandated by law.

14. OPPORTUNITY TO CURE: The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the time stated time, the City shall have the right to terminate the Agreement without any further obligation to the Contractor. Any such

termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Agreement for convenience.

15. COMPLIANCE WITH THE LAW: The Contractor agrees to comply with all relevant, Federal, State, and Municipal laws, rules, policies, regulations or ordinances in the performance of work under this Agreement.

16. CITY BUSINESS AND OCCUPATION LICENSE: The Contractor, at no expense to the City, shall be responsible to obtain all necessary licenses, permits, and similar legal authorizations required to perform the work associated with this Agreement. The Contractor will be required to hold a city business license if working within Vancouver city limits. The Contractor shall apply for city license via the State of Washington Department of Revenue (DOR), Business Licensing Service (BLS), at: <https://secure.dor.wa.gov/>. For application assistance, contact DOR BLS at 360-705-6741. For more information about city business license regulations and fees, see: www.cityofvancouver.us/businesslicense or call 360-487-8410 option 3.

17. LIABILITY AND HOLD HARMLESS: The Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 Revised Code of Washington (RCW), except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such costs, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. The Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. The Contractor is an independent contractor and responsible for the safety of its employees.

18. INSURANCE: The Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

All liability insurance required herein shall be under a Comprehensive or Commercial General Liability and business policies.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Washington)	
Per Occurrence	
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000
IV. Umbrella Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$5,000,000
V. Professional Liability	
Policy shall include coverage against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor	\$1,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.

- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City inspect all policies and copies shall be provided to the City upon request.

19. NOTICES: All notices which are given or required to be given pursuant to this Agreement shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the City:
 Anna Vogel
 City of Vancouver
 415 W 6th Street
 P O Box 1995
 Vancouver WA 98668-1995
 Email: anna.vogel@cityofvancouver.us

For the Contractor:
 Christie Emrich
 Vancouver Defenders, P.S.
 2300 Main Street
 Vancouver, WA 98660
 Email: cemrich@barrarlaw.com

Either party may change the designated contact or any information listed above by giving advance notice in writing to the other party.

20. AMENDMENTS: All changes to this Agreement, including changes to the scope of work and compensation sections, must be made by written amendment and signed by all parties to this Agreement.

- 21. SCOPE OF AGREEMENT:** This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.
- 22. RATIFICATION:** Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.
- 23. GOVERNING LAW/VENUE:** This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.
- 24. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, chapter 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 25. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment pursuant to chapter 42.56 RCW for withholding or delaying public disclosure of such information.
- 26. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

27. NONDISCRIMINATION: The City of Vancouver, WA is an equal opportunity employer. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

The undersigned, as the authorized representatives of the City and Contractor respectively, agree to all of the terms and conditions contained in this Agreement, as of the dates set forth below.

CITY OF VANCOUVER
A municipal corporation

CONTRACTOR:
Vancouver Defenders, P.S.

Eric Holmes, City Manager

Signature

Date

Printed Name /Title

Attest:

Date

Natasha Ramras, City Clerk

Approved as to form:

Jonathan Young, City Attorney

8/24/09
9/14/09

Attachment "A"
City of Vancouver's adopted Standards
for Indigent Defenses Services

ORDINANCE NO. M-3927

AN ORDINANCE adopting new standards for the delivery of indigent defense services as required under RCW 10.101.030; providing for savings, severability and an effective date.

WHEREAS, the City has a constitutionally mandated responsibility to provide public defender services for eligible persons who are entitled to representation; and

WHEREAS, under RCW 10.101.30, the State of Washington requires cities and counties to have adopted via ordinance, standards for the delivery of public defense services; and

WHEREAS, within available resources, the City desires to provide the best practical defense services to the City's indigent population; and

WHEREAS, Vancouver's current indigent defense standards were adopted November 8, 1990 and do not reflect current standards for contracts, compensation and caseloads.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Contract: All indigent defense services shall be paid pursuant to a written contract between the indigent defense attorney(s) and the City.

Section 2. Compensation: All indigent defense attorneys shall be reasonably compensated taking into consideration the experience and training of the attorney. Attorneys who have a conflict of interest shall not be required to select or compensate conflict counsel.

Section 3. Duties and Responsibilities of Council: All indigent defense contracts shall require that services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable Washington State Bar Association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Section 4. Malpractice Insurance: Indigent defense attorneys shall maintain malpractice insurance with agreed-upon policy limits.

Section 5. Caseload Limits and Types of Cases:

A. Caseloads should allow each attorney to give each client the time and effort necessary to ensure effective representation. No attorney or firm rendering indigent defense services shall accept workloads that interfere with the rendering of reasonable and quality representation. An attorney should not allow their private law practice to interfere with the competent representation of indigent defendants.

B. The caseload standards adopted by the Washington State Bar Association, Washington Defenders Association and/or American Bar Association shall be considered as guidelines. A case is defined as the filing of a document wherein a person is designated a defendant or respondent and an attorney is appointed by the court. Adjustments may be made wherein a full case is not attributed in the following non-exclusive circumstances:

1. A bench warrant is issued before a case is resolved

2. Probation violation, extradition, restitution hearings, etc. that do not require a full evidentiary hearing in which witnesses are called to testify.
3. Diversions, continuances for dismissal, misdemeanor compromises or similar dispositions
4. Drug court, dispositions to re-licensing programs, deferred prosecution or other similar procedures.
5. Early dismissal by a prosecutor based on lack of evidence or standard plea offers, based on the prosecutor's charging and plea bargaining practices or other reasons that dispose of a case without extensive litigation.
6. Withdrawal of counsel at an early stage of the case, due to conflict of interest or other reasons.

Section 6. Services other than Counsel: Reasonable compensation for expert witness, investigators and other services necessary for an adequate preparation and presentation of the defense case shall be provided pursuant to Criminal Rule for Courts of Limited Jurisdiction (CrRLJ) 3.1(f). Investigators when used should have criminal investigation training and experience.

Section 7. Administrative Expenses: Attorneys shall be responsible for paying all administrative expenses of their office or firm not otherwise provided for in these standards or in a contract. Such costs may include law libraries, financial accounting, case management systems and other costs incurred in the day-to-day management of the contract. The contracting attorney shall demonstrate that their office is staffed by an appropriate number of administrative staff, legal assistants and other support services. Attorneys shall maintain an office for confidential meetings with clients.

Section 8. Reports of Attorney Activity:

A. Attorneys on contract shall maintain a case reporting and management information system which includes the number and type of cases, and disposition of each case. Any such system shall be maintained independently from client files so as to disclose no privileged information. Reports shall be submitted to the City as provided for in the contract. All of the above described information shall also be made available to the Clark County District Court Administrator or designee.

B. All records pertaining to expenses and billing shall conform to generally accepted accounting principals.

Section 9. Qualifications of Attorneys:

A. In order to assure that indigent accused received effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services must meet the following minimum professional qualifications:

B. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court.

C. Complete the hours of continuing education within each calendar year as set forth in Section 11.

D. Lead contracting attorneys shall have a minimum of three (3) year prior legal experience of which at least two (2) years shall have been devoted to practice in the area of criminal law.

E. Attorneys handling misdemeanor cases should meet requirements 9 (a) & (b).

Section 10. Legal Interns: Legal interns employed by an attorney with a City indigent defense contract must meet the requirements set out in APR 9. Legal interns shall receive training pursuant to APR 9.

Section 11. Training: Attorneys should participate in regular training programs in areas relating to their indigent defense practice. Each contracted attorney shall attend a minimum of fifteen hours per year of continuing legal education credits in courses relating to criminal law practice or other areas of law in which they provide legal services to eligible clients. Every attorney providing counsel to indigent defense accused should take the opportunity to review professional publications and tapes.

Section 12. Supervision: The training and supervision of indigent defense attorneys and staff shall be the sole responsibility of the individual attorney, law firm or agency that holds the indigent defense contract. A minimum of one full-time qualified supervisor in the office shall be provided.

Section 13. Monitoring and Evaluation of Attorneys: Contracts for indigent defense services will be systematically monitored and evaluated. Supervision and evaluation efforts should include review of time and caseload records and at least quarterly meetings with the City Manager or designated contract manager.

Section 14. Substitution of Attorneys or Assignment of Contracts: The attorney or firm engaged by the City to provide indigent defense service shall not subcontract with another firm or attorney to provide representation without prior written approval and shall remain directly involved in the provision of representation. Any indigent defense contract shall address the procedures for new counsel taking over upon the conclusion of the contract to ensure a smooth

transition upon non-renewal or termination, with the minimal possible detriment to the indigent client.

Section 15. Limitations of Private Practice for Contract Attorneys: Contracts for indigent defense attorneys with private attorneys or firms may set limits on the number of private or special appointment cases which can be accepted by the contracting attorney or provide that the indigent defense contract be a priority over private or special appointment caseloads. An attorney or firm rendering indigent defense services shall not allow their private practice or special appointments to diminish their ability to represent indigent defense clients that they are obligated to serve by any contract.

Section 16. Disposition of Client Complaints: A method to respond promptly to indigent defendant complaints shall be included in the contract. Complaints should first be directed to the attorney, firm or agency which provides representation. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court to withdraw and substitute new counsel. If the indigent defendant believes he or she has not received an adequate response, the City Manager or designee shall evaluate the legitimacy of the complaint. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.

Section 17. Cause for Termination or Removal of Attorney: Contracts for indigent defense services should include grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for good cause. Good cause shall include the failure of the attorney to render adequate representation to the clients; willful disregard of the

rights and best interests of the clients; the willful disregard of standards herein addressed or violations of the Rules of Professional Conduct.

Section 18. Guidelines for Awarding Defense Contracts:

A. The City should award contracts for indigent defense services only after determining that the attorney or firm chosen can meet acceptable professional standards and qualifications. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms seeking contracts for indigent defense services must demonstrate their ability to meet these standards.

B. Prosecutors and law enforcement officers shall not select the attorneys who will provide indigent defense services.

Section 19. Non-Discrimination: Neither the City, its selection of an attorney, firm or agency to provide indigent defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital or military status, sex, sexual orientation or disability.

Section 20. Effective date: This ordinance shall become effective thirty (30) days following the date of final adoption.

Read first time: August 24, 2009
Ayes: Councilmembers Campbell, Smith, Leavitt, Stewart
Nays: Councilmembers Harris, Jollota, Pollard
Absent: Councilmembers None

Read second time: September 14, 2009

PASSED by the following vote:

Ayes: Councilmembers Campbell, Smith, Heavitt, Harris
Sollota, Pollard

Nays: Councilmembers None

Absent: Councilmembers Stewart

SIGNED this 14th day of September, 2009.



Royce E. Pollard, Mayor

Attest:



R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:



Ted H. Gathe, City Attorney

SUMMARY

ORDINANCE NO. M-3927

AN ORDINANCE adopting new standards for the delivery of indigent defense services as required under RCW 10.101.030; providing for savings, severability and an effective date thirty (30) days following the date of final adoption.

Attachment "B"

Certification of Compliance

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

CHECK APPLICABLE CASES: ___ STATE CASES; ___ CITY OF VANCOUVER
CASES;

In Re: Certification of Compliance for)	
)	CERTIFICATION OF APPOINTED COUNSEL
)	OF COMPLIANCE WITH STANDARDS
_____)	REQUIRED BY CrRLJ 3.1(d)(4)
[Attorney Name])	
)	

The undersigned attorney hereby certifies:

1. Approximately ____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:

a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.

b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.

c. **Investigators:** I have investigators available to me and will use investigation services as appropriate, in compliance with Standard 6.1.

d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.

Attorney Signature

Attorney Printed Name

WSBA #

Date