

**CITY OF PORT ORCHARD PROFESSIONAL SERVICES AGREEMENT
CITY CONTRACT NO. 0**-10**

THIS Agreement is made effective as of the ____ day of _____ 2010, by and between

CITY OF PORT ORCHARD, WASHINGTON (“CITY”)
216 Prospect Street
Port Orchard, Washington 98366
Contact: Mayor Lary Coppola Phone: 360.876.4407 Fax: 360.895.9029

and

_____ (“PUBLIC DEFENDER”)

Contact: _____ Phone: _____
Fax: _____

Tax Id No.: _____

for professional services in connection with the following Project:

Provision of professional legal services to serve as designated Public Defender for the City of Port Orchard, serving the Port Orchard Municipal Court.

TERMS AND CONDITIONS

1. Services by Public Defender

- A. Public Defender shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Public Defender shall not exceed the Scope of Work without prior written authorization from the City.
- B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.
- C. Public Defender shall, at such times and in such form as the City may require, furnish to City such reasonable periodic reports and documents as City may request related to any matter covered by the Agreement between the City and Attorney.
- D. Within thirty (30) days of receiving notice of award and on an annual basis thereafter, Public Defender shall submit an affidavit to the City Clerk attesting that the Public

Defender and any other attorneys who perform services for the City meet the minimum qualifications as stated in Exhibit A.

2. Schedule of Work/Term

- A. Public Defender services shall commence on July 24, 2010.
- B. The term of this Agreement shall be for 2 years; PROVIDED HOWEVER, that absent an agreement being entered by the City with another lawyer or law firm, the Public Defendant shall remain as the attorney of record on all cases to which the Public Defendant has been appointed until the court's jurisdiction is terminated by the Court, unless withdrawal is permitted by the Court as may be required by the Rules of Professional Conduct. Such representation shall continue beyond the term of this agreement and all provisions of this agreement shall continue to apply to services performed.
- C. The Agreement will be automatically renewed for two-year periods without action being taken by either party.

3. Compensation

Compensation for these services shall be at a flat rate of _____ per month and shall not exceed this sum without written authorization as further detailed in the attached Exhibit "B."

4. Payment

- A. Public Defender shall maintain time and expense records and provide them to the City monthly, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- B. All invoices shall be paid by City warrant within thirty (30) days of receipt of a proper invoice.
- C. Public Defender shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. If the services rendered do not meet the requirements of the Agreement, Public Defender will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

5. Discrimination and Compliance with Laws

- A. Public Defender agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Public Defender shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Public Defender shall obtain a City of Port Orchard business license prior to commencing services under this agreement, or within 30 days of notice of award, whichever occurs first.
- D. Under no circumstances will Public Defender transport by vehicle, or any other mode of transportation, any persons they represent as Public Defender under the terms of this agreement. Should Public Defender transport any person in violation of this provision, Public Defender assumes all risk and liability and shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of or resulting from the transport of said persons. This section shall survive the expiration of this Agreement.
- E. Violation of this Paragraph 5 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

6. Suspension and Termination of Agreement

- A. This Agreement may be terminated by the City at any time upon the default of the Public Defender or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Public Defender pursuant to this Agreement shall be submitted to City, and Public Defender shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Public Defender shall not be entitled to any reallocation of cost, profit or overhead. Public Defender shall not in any event be entitled to anticipated profit on work not performed because of such termination. Public Defender shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Public Defender 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 Public Defender. The Public Defender shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

- B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to Public Defender. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Public Defender's reasonable expenses, and shall be subject to verification. The Public Defender shall resume performance of services under this Agreement without delay when the suspension period ends.
- C. Either party may terminate this Agreement with or without cause by providing one-hundred twenty (120) days written notice to the other party.
- D. If within 60 days of commencing the services contemplated in this agreement, the City is not satisfied with the work performance of the person assigned by the Public Defender to perform services under this agreement the City may terminate this agreement by thirty (30) days written notice to the other party.

7. Standard of Care

Public Defender represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Public Defender under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

8. Ownership of Work Product

All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 6 above, all finished or unfinished documents, reports, or other material or work of Public Defender pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Public Defender for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold Public Defender harmless therefore.

9. Indemnification/Hold Harmless/Third Party Rights

Public Defender shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Public Defender, its agents, employees, or sub contractors in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. This indemnification and hold harmless shall apply regardless of whether the claim is brought pursuant to the Worker's Compensation Act, RCW Title 51, or otherwise, and the Public Defender waives any immunity whatsoever with respect to such indemnification.

The terms of this Agreement are made and entered into for the sole protection and benefit of the Parties hereto. Nothing contained in this Agreement shall be construed to create a liability or a right of indemnification in any third party.

This section shall survive the expiration of this Agreement.

10. Insurance

The Public Defender shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Public Defender, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Public Defender shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Public Defender's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Public Defender's profession.

B. Minimum Amounts of Insurance

Public Defender shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Public Defender's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Public Defender's insurance and shall not contribute with it.
2. The Public Defender's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Public Defender shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Public Defender before commencement of the work.

11. Assigning or Subcontracting

Public Defender shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

12. Independent Contractor

Public Defender is and shall be at all times during the term of this Agreement an independent contractor.

13. Notice

Any notices required to be given by the City to Public Defender or by Public Defender to the City shall be in writing and delivered to the parties at the following addresses:

Lary Coppola
Mayor
216 Prospect Street
Port Orchard, WA 98366

Attn: _____

Phone: 360.876.4407
Fax: 360.895.9029

Phone: _____
Fax: _____

14. Disputes

Attempts to resolve disputes between the City and the Public Defender will first be through mediation. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Kitsap County Superior Court.

15. Attorneys Fees

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

16. Extent of Agreement/Modification

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF PORT ORCHARD,
WASHINGTON

PUBLIC DEFENDER

By:

By:

Lary Coppola
Mayor

Manager/Owner

Date: _____

Date: _____

Attest:

By:

Patricia Kirkpatrick
City Clerk

EXHIBIT – A

SCOPE OF WORK AND MINIMUM QUALIFICATIONS

Minimum Experience/Qualifications

1. Each attorney who is proposed to perform services pursuant to this RFP must be a member in good standing with the Washington State Bar Association. No Rule 9 attorneys will be allowed to perform any services under this agreement.
2. The Public Defender appointed pursuant to this RFP must have a minimum of 3 years of criminal law experience. The Public Defender may retain the assistance of other qualified attorneys in his or her firm. At all times, the designated Public Defender will properly supervise attorneys having less than 3 years of experience to ensure that defendants charged in the Port Orchard Municipal Court receive competent legal representation.
3. The Public Defender and any attorneys working under the supervision of the Public Defender shall:
 - A. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to criminal law;
 - B. Be familiar with the collateral consequences of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction;
 - C. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
 - D. Complete a minimum of seven (7) hours of continuing legal education within each calendar year in courses relating to their public defense practice.

Scope of Service

The attorney or firm awarded the contract shall be designated Public Defender for the City's Municipal Court, and shall be duly appointed to represent all defendants who are appointed legal counsel by the Port Orchard Municipal Court.

Representation as the City's Public Defender shall include but not be limited to:

1. Attending all scheduled court appearances. In the event of vacation or illness Public Defender is responsible for arranging coverage by another qualified attorney.
2. Acting as stand-by counsel available to all defendants at arraignments and in-custody bail hearings;
3. Representation of appointed cases at pre-trial hearings, trials, sentencing, and post-disposition proceedings; and
4. Representation of criminal defendants on appeals to Superior Court.

5. The Public Defender shall consult with defendants prior to pretrial hearings. Appointment as the City's Public Defender will require meetings with defendants at the Public Defender's office or at the Kitsap County Jail. Failure to consult with defendants prior to pretrial shall only be excused for good cause. Examples of "good cause" include: scheduled vacation, illness, extended trials, or when the defendant fails to cooperate with the Public Defender in scheduling a time to consult.
6. Pursuant to CrRLJ 3.1(c)(1)-(2), Public Defender services shall also include providing legal representation to persons wishing to consult with an attorney while in the custody of the Port Orchard Police Department. The City's Public Defender shall ensure that an attorney is available at all times (24 hours a day) to provide legal representation, including evenings, holidays, and weekends. The City's Public Defender shall provide the Port Orchard Police Department with a monthly schedule of attorneys available to receive calls during non-business hours. This schedule shall include the name of the attorney and a designated telephone or cellular phone number. Only attorneys who meet the experience requirements set forth above, and are either a member of the Public Defender's firm or have received prior written approval by the City may be included in the above-described schedule.
7. When a defendant exercises his or her right to trial, the City's Public Defender shall diligently prepare for trial and ensure that the defendant receives adequate representation. Preparation for trial shall include but not be limited to: interviewing witnesses identified by the City Prosecutor, interviewing witnesses identified by the defendant, review of police reports and evidence, research legal issues, preparing a witness list on behalf of the defendant, and consultation with the defendant.
8. Absent an agreement being entered by the City with another lawyer or law firm, the Public Defendant shall remain as the attorney of record on all cases to which the Public Defendant has been appointed until the court's jurisdiction is terminated by the Court, unless withdrawal is permitted by the Court as may be required by the Rules of Professional Conduct.
9. If a defendant represented by the City's Public Defender elects to appeal a conviction to Superior Court, the Public Defender is responsible for timely filing a Notice of Appeal to Superior Court.
10. Services do not extend to forfeiture hearings or hearings with the Department of Licensing.
11. The City and/or Port Orchard Municipal Court will provide a space for the Public Defender's assigned attorney to consult with clients

Exhibit B – Compensation

1. Compensation shall be paid to Public Defender at a flat rate of _____ per month for all services performed by Public Defender as set forth in Exhibit B.
2. The City will reimburse the Public Defender for the following costs when prior written approval has been given by the Port Orchard Municipal Court Judge for the expenditure of public funds: costs for hiring an investigator, filing fees for Appeals, and costs for verbatim transcripts. All administrative costs, including but not limited to: copies, travel time, mileage, facsimiles, legal research, equipment, etc. shall be born by the Public Defender. Any costs not otherwise detailed in this agreement shall be considered administrative costs unless the parties otherwise agree in writing.
3. In the event that the Port Orchard Municipal Court adds additional calendars (i.e. pretrial hearings, in-custody arraignments, probation violations, video arraignments, compliance hearings, status hearings) such that it results in an overall 25% increase above the current average of 20 hours per week that the Public Defender spends in court for aforementioned calendars then either party can, in good faith, request that this contract be renegotiated.
4. Annual compensation shall automatically be adjusted based upon the Consumer Price Index-All Urban Consumers Seattle-Tacoma-Bremerton Area as published by the United States Department of Labor's Bureau of Labor Statistics (or the successor to such index or if no successor then in any generally accepted index showing the inflation rate, if any, for the United States as a whole)(1982-84 equals 100) for the last month that statistics are published prior to the effective date of the contract. However the annual adjustment shall not exceed 5% or be less than 2% unless otherwise specifically negotiated between the parties.