

**CITY OF YAKIMA
PUBLIC DEFENDER AGREEMENT**

THIS AGREEMENT, made and entered into by and between TROY LEE & ASSOCIATES, hereinafter the "Public Defender", and the CITY OF YAKIMA, a municipal corporation, hereinafter referred to as the "City."

WHEREAS, the Public Defender is a firm of attorneys licensed to practice law in the State of Washington, with a current office located at **117 N. 3rd St, Ste. 201**, Yakima, WA.

WHEREAS, the parties hereto are desirous of effectuating an agreement whereby the Public Defender will provide legal services for indigents and other eligible persons in the Yakima Municipal Court and its various departments; now, therefore,

IT IS HEREBY mutually agreed as follows:

1. **DUTIES:** The Public Defender or his duly appointed designee shall provide high quality defense attorney services for indigent defendants charged with misdemeanor and gross misdemeanor allegations occurring within the City of Yakima and processed by the City of Yakima Municipal Court. Such services shall include promptly filing a notice of attorney designation and subsequent legal representation at the following types of hearings for defendants assigned to the Public Defender: arraignment, change of plea, pre-trial motions, pre-trial conferences at Court, jury and non-jury trials, post-trial motions (excluding claims of ineffective assistance of counsel), sentencings, probation revocation hearings, and all proceedings in connection with deferred prosecutions and competency hearings as assigned by Yakima Municipal Court in accordance with this agreement. The Public Defender's duties shall not extend to appeals. Such services shall comply with the performance of the work set forth in the PUBLIC DEFENDER - STATEMENT OF WORK - EXHIBIT A and consistent with CLIENT REPRESENTATION PRACTICE GUIDELINES- EXHIBIT B. The Public Defender acknowledges and agrees that the parties may make changes to the specific duties of the Public Defender as necessary to maintain conformity with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Should such changes represent a material increase in the Public Defender's work load, the Public Defender may make a written request to re-open negotiations regarding compensation. In the event the Public Defender makes such a written request, the parties agree to engage in negotiations in good faith thereof for at least 30 days. If no agreement is reached after 30 days, then either party may give written notice of termination, to be effective no sooner than 30 days following the notice of termination. At the request of either party, the Public Defender and the City will periodically review case assignment trends and any other matters appropriate to determine contract compliance or necessary contract modifications. The results of this examination may be a basis to determine modifications to this contract.
2. **MINIMUM STAFFING:** The Public Defender must provide a sufficient number of defense attorneys to provide the services generally described in this agreement so that all indigent defendants for whom defense counsel is appointed by the Court will be adequately

represented. Such attorneys shall be admitted to practice in Washington. At a minimum, the Public Defender shall provide 4 full-time public defenders by not later than the date of execution, subject to the examination of case filing trends as set forth above (with the exception that one attorney can maintain an 85% caseload dedicated to providing services hereunder). The term "full-time" does not preclude attorneys from taking cases outside the public defense contract as long as those additional cases do not exceed the caseload requirements and do not interfere with proper service of the public defense contract. The Public Defender shall provide adequate staffing to monitor and administer the duties of this agreement.

3. **CASE ASSIGNMENT:** Except as provided in paragraph 5 below, the compensation provided in this agreement is based on the expectation that the Public Defender will take up to 1,540 cases per year after ratification of this contract by the parties, with cases to be counted as described in paragraphs 4 and 8. However, the parties recognize that there may be a slight variance from those numbers as the caseload dictates, although the intent under the court rule is to attempt to assign a full-time attorney 33 case equivalents per month. The specific cases for which the Public Defender will be responsible will vary, but will be allocated by assignment of the Court on a random basis. These cases will be spread between no more than 2 separate ½ day dockets, or as may otherwise be administered by the Court. Public defense cases will be assigned between the dockets handled by the Public Defender and the dockets handled by any other law firms/attorneys with which the City contracts for indigent defense services (currently Gilliland Law Firm, PLLC, of Yakima, WA) in proportion to the number of full-time public defense attorneys contracted for in the respective contracts of said indigent defense law firms. The Public Defender may, from time to time, provide updates to the Court and to the City informing the Court and the City of any requested modification or adjustment in the case assignment process to ensure the proportionality of assignments as contemplated herein.
4. **CASE COUNTING:** Cases will be counted as follows, based upon the Washington State Supreme Court standards for attorneys under court rules CrRLJ 3.1:
 - a. **Criminal Charges:** Any and all charges arising for a single defendant out of an individual incident will count as 1 case, regardless of the number of charges. Cases assigned to the Public Defender to which the Public Defender has a conflict will not count as cases unless substantial work has been done on the case.
 - b. **Failure to Comply with Probation (FTC):** Each FTC arising out of an individual incident will count as 1 case.
 - c. **Temporary or Provisional Appointments:** Temporary or provisional appointment at arraignment or in-custody hearing, appointment by a Court at a hearing for that one hearing only, or pre-filing representation provided to a suspect who is under investigation shall count as less than one case as allowed under CrRLJ 3.1.
 - d. **Arraignment Cases:** Pursuant to CrRLJ 3.1, resolutions of cases by a plea of guilty to criminal charges on an arraignment or first appearance are presumed to be rare

occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as 1 case.

5. **TERM AND TERMINATION:** This agreement shall commence on January 1, **2021**, and terminate on January 1, **2025**, unless extended or terminated as provided herein.

- a. **Automatic Extension:** Should neither party provide notification in writing to the other party of the intent to negotiate by November 30, **2024**, or November 30 of any subsequent year, this agreement shall continue for an additional 12 month period under the same terms as provided herein.
- b. **Termination for Good Cause, Impossibility, or Illegality:** This agreement may be terminated for good cause for violation of any material term of this agreement. Either party may terminate this agreement where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, the duties, obligations, or services herein having become impossible or illegal. Notice of termination pursuant to this paragraph shall be given as far in advance as is reasonable under the circumstances. Any alleged violation of the other provisions of this agreement by the Public Defender shall be subject to cure. Written notice of contract violation shall be provided to the Public Defender who shall have ten (10) business days to cure the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this agreement, the City may agree in writing to alternative corrective measures.
- c. **Withdrawal Upon Termination:** Should this agreement expire by its natural terms or be terminated by either party, the Public Defender may commence withdrawing from all cases on the last day the contract is in effect; provided however, that the Public Defender shall complete all cases set for trial and be compensated at a rate of \$100 per hour for time spent after termination of this agreement.
- d. **Renegotiation Due to Decreases in Case Load:** The City and the Public Defender shall, at the option of either party, renegotiate this agreement if there is a significant decrease in the number of cases assigned. Significant decrease shall mean a decline of more than ten percent (10%) in the number of cases assigned to the Public Defender as determined on a calendar year basis. In such event there shall be a reduction in the stated case assignment for the Public Defender and a commensurate reduction in the Public Defender's compensation, with both reductions proportional to the percentage decrease observed during the relevant calendar year comparison.
- e. **Renegotiation Due to Change in Rule or Standard:** This agreement may be renegotiated at the option of either party if the Washington State Supreme Court or the Washington State Bar significantly modifies the standards for indigent defense adopted pursuant to court rule. In the event such a renegotiation topic arises and the parties fail to reach agreement on terms of a revised agreement, this agreement may be terminated by either party upon thirty (30) days written notice to the other party. In order to exercise the termination option, the negotiation must be done in good faith.

5. **COMPENSATION:** In return for the services enumerated herein, the Public Defender shall receive compensation in a total fixed-fee amount as follows:
- a. **Generally:** Beginning annual compensation rate of \$461,585.29, or \$38,465.44 per month for 2021.
 - b. **In Later Years, Specifically:**
 - **2022:** \$470,817.00 annually; \$39,234.75 per month
 - **2023:** \$480,233.34 annually; \$40,019.45 per month
 - **2024:** \$489,838.00 annually; \$40,819.83 per month
 - c. **Additional Years:** Current yearly amount increased by 2% per annum.
6. **PAYMENT:** Payments shall be made upon proper voucher for the same, submitted by the Public Defender and received by the Director of Finance and Budget at City Hall, Yakima, Washington. Unless notified of a new email address, proper voucher may be made by sending an email with monthly invoice attached to cally.price@yakimawa.gov. Payment shall be remitted to the Public Defender by no later than the first Friday following submittal of a voucher for the previous month's services. All payments shall be mailed to the Public Defender or available to the Public Defender for in-person receipt at Yakima City Hall.
7. **CONFLICTS OF INTEREST:** In the event that representation of a defendant creates a conflict of interest under the Rules of Professional Conduct such that the assigned Public Defender cannot represent the defendant, the Public Defender shall immediately inform the Court so that the case may be transferred to another Public Defender. The Public Defender will be responsible for checking for conflicts and identifying whether a conflict exists. Whenever possible, the Public Defender will perform a conflict check and make a determination of the absence of any conflict of interest before any substantial work has been done on a case.
8. **DEFINITIONS:**
- a. **Individual Incident:** An individual incident includes all charges arising from one dispatched or observed event at a single location.
 - b. **Substantial Work:** If the Public Defender has interviewed at least one witness (except as may be necessary to determine the presence or absence of a conflict of interest), represented the client at more than one hearing, spoken to his or her client, prepared substantive documentation, or negotiated resolution with the prosecutor, then substantial work will be considered done on the case.
 - c. **Case Equivalent:** A "case equivalent" is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. This section also incorporates Paragraph 4 above.

- 8.c.1 The number of counts in a single cause number does not affect the definition of a “case equivalent.”
 - 8.c.2 Multiple citations from the same incident are counted as one “case equivalent.”
 - 8.c.3 A newly charged case and one or more sentence violations for the same client assigned to the same attorney are one “case equivalent” if the violations are solely based upon the new charge and in the same court.
 - 8.c.4 Multiple sentence violations for the same client assigned to the same attorney are one “case equivalent” if the violations are based upon the same petition.
 - 8.c.5 As detailed under Paragraph 4.d above, cases appointed at arraignment count as the same “case equivalent.”
 - 8.c.6 The above definitions are based upon CrRLJ 3.1 and any court rules relating to the application of that rule or additional rules governing attorney indigent defense caseloads. As such, if there are changes to that rule or application of that rule that go into effect after the date of this contract, those court rules or guidelines supersede any conflicting definitions contained in this section.
9. **EXPERT WITNESSES:** The City shall pay for expert witnesses as reasonably necessary to provide quality and constitutionally satisfactory indigent defense as determined by approval of the Court.
10. **INTERPRETERS:** The City shall pay for interpreter services as is necessary for the Public Defender or his designee to communicate with, and effectively represent indigent defendants.
11. **INVESTIGATORS:** The City shall pay for investigators as is necessary for the Public Defender to effectively investigate and prepare cases for trial.
12. **INSURANCE:** It is agreed that the Public Defender shall maintain in force, at all times during the term of this agreement, a policy or policies of insurance covering its operation as described below.
- a. **General Liability Insurance:** The Public Defender shall maintain continuously public liability insurance with limits of liability not less than One Million Dollars (\$1,000,000) for each occurrence, personal injury, and/or property damage liability. Such insurance policy or policies shall specifically name the City, its elected and appointed officials, employees, volunteers, and agents as additional insureds. Said insurance coverage shall be primary insurance with respect to the City, and any insurance, regardless of the form, maintained by the City shall be in excess of any insurance coverage which the Public Defender is required to maintain pursuant to this agreement. The Public Defender shall provide a certificate of insurance or, upon written request of the City of Yakima, a duplicate of the policy as evidence of insurance protection. The Public Defender shall

immediately notify the City of any communication with their insurance provider canceling or threatening to cancel insurance coverage under this provision.

- b. **Professional Liability Insurance:** The Public Defender shall maintain or ensure that its professional employees and/or independent contractors maintain professional liability insurance for any and all acts which occur during the course of their employment with the Public Defender which constitute professional services in the performance of this agreement. For purposes of this agreement, professional services shall mean any services provided by a licensed professional. Such professional liability insurance shall be maintained in an amount not less than One Million Dollars (\$1,000,000) combined single limit per claim/aggregate. The Public Defender further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but not limited to the amount of the deductible under the insurance policy. The Public Defender shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the City. The Public Defender shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Public Defender and the City. Such insurance shall not be reduced or canceled without thirty (30) days' prior written notice to the City. If such insurance is obtained on a "claims made" basis, the Public Defender will continue to carry coverage for not less than three (3) years after expiration of this agreement, and will provide a certificate in form and content satisfactory to the City demonstrating such continuing coverage. The Public Defender shall provide certificates of insurance or, upon written request of the City, duplicates of the policies as evidence of insurance protection.
- c. **Automobile Insurance:** The Public Defender shall maintain in force at all times during the term of this agreement a policy or policies of insurance covering any automobiles owned, leased, hired, borrowed or used by any employee, agent, subcontractor or designee of the Public Defender to transport clients pursuant to this agreement with the City. Such insurance policy or policies shall specifically name the City, its elected and appointed officials, employees, volunteers, and agents as additional insureds. Said insurance coverage shall be primary insurance with respect to the City, and any insurance, regardless of the form, maintained by the City shall be in excess of any insurance coverage which the Public Defender is required to maintain pursuant to this agreement. Automobile liability coverage as stated herein shall be maintained at One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- d. **Workers' Compensation:** The Public Defender shall maintain Workers' Compensation coverage as required by law. The Public Defender shall provide a certificate of insurance or, upon written request of the City, a certified copy of the policy as evidence of insurance protection.

13. **SUCCESSORS AND ASSIGNEES:** This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

14. **REPORTS AND INFORMATION:** The Public Defender will maintain records that fully and accurately reflect the contract work together with records of any costs, expenses or other matters related to the performance of the contract work. The Public Defender shall make available to the City for inspection upon reasonable prior notice any and all records that relate to the contract work that are not confidential attorney-client documents. Said reporting requirement shall include submittal of the following information as described below:

- a. Monthly Reporting:
 - Year-to-date case assignments;
 - Year-to-date individual attorney case assignments;
- b. A quarterly reporting statement detailing:
 - The number of cases tried;
 - Year-to-date case dispositions;
 - The number and type of criminal cases handled (whether adult felony, juvenile, or misdemeanor) outside of this agreement (including cases assigned by another public entity); and
 - The approximate percentage of the Public Defender's practice within the hours of a standard public defense work week spent on civil or other non-criminal matters.
- c. Defendant's name
- d. Cause number(s)
- e. Criminal charges filed
- f. Disposition of each charge
- g. Date case assigned
- h. Date case closed

15. **ETHICS COMPLIANCE AND TRAINING:** The Public Defender will provide the aforementioned services in conformity with all applicable Rules of Professional Conduct and will provide, as reasonably requested, the Municipal Court and the City with any reports, fiscal or otherwise, which are reasonably required in the performance of the Municipal Court's and the City's responsibilities.

16. **TOTALITY OF COMPENSATION:** The compensation provided in this agreement is full compensation to the Public Defender for all costs associated with performing the Public Defender's obligations herein, including, but not limited to: employee compensation and for paying all related taxes, deductions, and assessments, including but not limited to, leasehold excise taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this agreement; rent for office space; costs for necessary insurance; and state and local business license fees. In the event the City is assessed a tax or assessment as a result of a failure of the Public Defender to abide by the terms of this agreement, the Public Defender shall pay the same before it becomes due and indemnify and hold the City harmless from any liability arising out of the same. In addition,

in the event the Public Defender is assessed a tax or assessment as a result of a failure of the City to abide by the terms of this agreement, the City shall pay the same before it becomes due and indemnify and hold the Public Defender harmless from any liability arising out of the same.

17. **INDEPENDENT CONTRACTOR:** The parties agree that the Public Defender is an independent contractor with the responsibility and authority to control and direct the performance of the details of the work described herein in accordance with the terms and conditions of this agreement. The implementation of contracted activities and the results to be achieved are solely the responsibility of the Public Defender. No agent, employee, subcontractor, or representative of the Public Defender shall be deemed to be an employee, agent, servant, or representative of the City or of the City of Yakima Municipal Court for any purpose, and the employees, agents, subcontractors, or representatives of the Public Defender are not entitled to any of the benefits the City provides for its employees. The Public Defender will be solely and entirely responsible for his or her acts and for the acts of his or her agents, employees, subcontractors, or otherwise, during the performance of this agreement.
18. **INDEMNIFICATION:** The Public Defender hereby agrees to release, indemnify, protect, defend and save harmless the City and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of the operation of this agreement, caused or contributed thereto by the Public Defender or his employees or subcontractors. Provided, however, that nothing herein shall be deemed to require the Public Defender to indemnify the City or its elected or appointed officials, agents, volunteers, or employees for injury to persons, corporation, and/or property arising from the sole negligence of the City and its elected or appointed officials, employees, volunteers, and agents. In case of suit or action brought against the City and/or its elected or appointed officials, agents, volunteers, and employees for damages arising out of or by reason of any of the above-mentioned causes, the Public Defender agrees to pay the costs of defense, including reasonable attorney's fees and any judgment proportional to the Public Defender's negligence.
19. **NON-DISCRIMINATION:** The Public Defender shall not discriminate on the basis of race, creed, color, national origin, or physical, mental, or sensory handicap in the performance of this agreement.
20. **GOVERNING LAW:** This agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this agreement shall be governed by the laws of the State of Washington both as to interpretation and performances.
21. **VENUE:** Any action at law, suit in equity, or judicial proceeding for the enforcement of this agreement or any provisions thereof, shall be instituted and maintained only in the Superior Court for Yakima County, Washington.

22. **INTEGRATION:** It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this agreement, made by the other, and that this agreement may not be changed except by an instrument in writing signed by both parties.

23. **WAIVER OF BREACH:** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

CITY OF YAKIMA

By: _____
Robert Harrison,
City Manager

Date: _____

TROY LEE & ASSOCIATES

By: _____
Troy K Lee

Its: _____

Date: 11/25/20

ATTEST:

_____, City Clerk

City Contract No. ____

EXHIBIT A

PUBLIC DEFENSE STATEMENT OF WORK

1. **PUBLIC DEFENDER CONTRACTOR DUTIES AND RESPONSIBILITIES** – The Public Defender shall provide high quality indigent defense representation in the cases assigned to it by the Yakima Municipal Court. The representation shall be consistent with **EXHIBIT B, CLIENT REPRESENTATION PRACTICE GUIDELINES**, as set forth below, and with the City’s adopted standards for the delivery of public defense services. The representation shall be provided in a professional and skilled manner and shall be in compliance with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender’s primary and most fundamental responsibility is to promote and protect the best interests of the client.
2. **TASKS** – The Public Defender, his designee, or assignee shall perform the following tasks with regard to each case to which the Public Defender is appointed.
 - A. Maintain a law office with a suitable client interview facility. The Public Defender will provide adequate phone lines, computers, postage, office equipment, office supplies, office furniture and legal research tools to maintain a smooth-running and efficient law office.
 - B. Receive notices of appointment for indigent defendants each court day. Set up and maintain files, as is necessary, on each assigned defendant.
 - C. Establish and maintain client contact, keep the client informed of the progress of the case, and effectively provide legal advice to the client throughout the representation.
 - D. Timely interview defendants in custody anywhere in Yakima County.
 - E. Maintain continuity of representation at all stages of a case, including attendance at all first appearance proceedings, such as arraignments, as is reasonably possible, for in-custody defendants. Except for illness, vacation or occasional conflicts, the assigned Public Defender shall appear at all Municipal Court hearings with their clients.
3. **COMPLAINTS**
 - A. A method to respond promptly to indigent defendant client complaints shall be established by the Public Defender. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court for permission to withdraw

and substitute new counsel. 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.

- B. The Public Defender shall notify the City and respond in writing to the City within seven (7) days of learning of any complaint against the Public Defender or against the City relating to the provision of indigent defense legal representation.
- C. The Public Defender shall immediately notify the City of Yakima in writing when it become aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment.

EXHIBIT B

CLIENT REPRESENTATION PRACTICE GUIDELINES

- Meet and communicate regularly with the client.
- Thoroughly explain to clients the constitutional, statutory and other rights that they have with regards to their case.
- Be aware of clients' immigration status, research the implications of it for their cases, advise clients of the consequences of a conviction or adjudication, and document said work as appropriate.
- Thoroughly explain to clients the elements of the offense(s) that the City must prove in order to obtain their conviction at a trial.
- Describe case procedures and timelines.
- Listen to client's questions and respond to them.
- Enable clients to candidly communicate with counsel.
- Facilitate agreements by realistically evaluating allegations and evidence with clients.
- Promptly communicate all offers of settlement.
- Prepare cases well.
- Conduct high quality, early case investigation.
- Conduct early case negotiations.
- Use discovery appropriately.
- Prepare for and participate in alternate resolution opportunities that may be available.
- Obtain experts and evaluators for cases involving disability, mental health, substance abuse or similar issues, when appropriate.
- Draft well-researched and written motions and other legal memoranda and other documents.
- Competently and aggressively litigate hearings and trials if no agreement is reached.
- Appear at all court hearings with clients except as otherwise discussed in this agreement. Ensure clients have adequate access to services, including court ordered treatment and/or counseling.
- Explain the importance of obtaining court ordered treatment and/or counseling services to clients.
- Develop a thorough knowledge of the resources available.
- Explore with clients ways to effectively participate in court ordered treatment and/or counseling.
- Ask clients for feedback if obstacles prevent or impede their participation, and follow up with the agency and in court when appropriate.
- In appropriate cases, encourage clients to obtain necessary evaluations and enroll in counseling and/or treatment even before ordered by the court to do so.
- Prevent continuances and delays within attorney's control.
- Treat all cases assigned to counsel with the highest priority.
- Avoid over scheduling whenever possible.
- Request continuances only if they are needed for substantive reasons.

- Take all necessary action to identify conflicts at the earliest practicable time upon receiving case assignments and case reports.