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PURCHASING

Request for Proposal #2018-048

Point of Contact:
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Purchasing Manager
(425) 257-8901
bids@everettwa.gov

Primary Public Defense Services

TIME LINE - The following represents the schedule for this solicitation.

<u>Event</u>	<u>Date</u>
Issue Date.....	July 23, 2018
Deadline for Final Questions.....	August 13, 2018
Proposal Due Date.....	August 21, 2018 , 2:00 p.m. Pacific Time
Award	October, 2018
Contract Start Date	January 1, 2019
Contract Term	Five (5) Years

Submit Sealed Proposals to:

**City of Everett – City Clerk, 1st Floor
2930 Wetmore Avenue
Everett, WA 98201**

Clearly label the outside of the sealed envelope containing the original proposal and 6 complete copies with the Proposal Name, Proposal # and contact information listed above. Only Proposals that arrive in the City Clerk’s office by the deadline will be considered.

Information & Addenda: All Information including Addenda regarding this solicitation can be found at:

<https://everettwa.gov/319/Bid-Opportunities>

Proposers are responsible for checking the City of Everett website for the issuance of any addenda prior to submitting a Proposal.

Questions: All questions must be requested through Public Purchase utilizing the above link or e-mailed to procurement professional listed above.

Unauthorized contact regarding this Request for Proposal with any other City of Everett employee or contractor may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City of Everett. Proposers should rely only on written statements issued by the individual named listed above

SECTION 1 - INSTRUCTIONS

1.1 PROPOSAL SUBMITTAL

- 1.2 The City Clerk must receive the Supplier's proposal, in its entirety by 2:00 p.m. Pacific Time. Proposals arriving after the deadline will be returned unopened to their senders. All proposals and accompanying documentation will become the property of the City of Everett and may not be returned.

Proposal pricing must be submitted on the forms provided in this document. To receive consideration for award, the proposal shall be completed and signed by an authorized representative of the proposer. Submission of a proposal constitutes acceptance of the procedures, evaluation criteria, and other instruction of this RFP.

No proposer may withdraw their proposal after the hour set for the opening unless the award is delayed for a period exceeding one hundred and twenty (120) days.

1.3 PROPOSAL CLOSING

At the appointed time, the names of the suppliers who submitted proposals will be read aloud at an administrative opening in the 8th Floor, 2930 Wetmore, Everett, Washington.

1.4 OFFER PERIOD

All proposals submitted shall remain open for one hundred and twenty (120) days from the Proposal Due Date.

1.5 REQUEST FOR DUE DATE EXTENSION

Proposers may request an extension of the Proposal Due Date. Proposers shall supply any justification and additional information that will facilitate an evaluation and decision by the City. Any approved extension will be issued in an addendum.

1.6 WITHDRAWAL OF PROPOSALS PRIOR TO PROPOSAL DUE DATE

Proposers may withdraw a proposal which has been submitted at any time up to the due date and time. To accomplish this, a written request signed by an authorized representative of the proposer must be submitted to the procurement professional named on the RFP cover sheet.

1.7 SINGLE RESPONSE

A single response to the RFP may be deemed a failure of competition, and in the best interest of the City, the RFP may be cancelled.

1.8 EVALUATION & AWARD

The City will award the proposal to the responsive and responsible proposer(s) whose offer best meets the needs of the City or reject any and all proposals.

1.9 WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES

The City reserves the right, at its sole discretion, to waive minor administrative irregularities and informalities contained in any proposal submitted and accepted by the City. The City further reserves the right to make awards to the responsible offer whose proposal is determined to be the most advantageous to the City. The City reserves the right to reject any or all Proposals.

1.10 EXCLUDED PARTIES

All proposers must certify that they are not on the Comptroller General's list of ineligible contractors nor the list of parties excluded from Federal procurement or non-procurement programs. <https://www.sam.gov>

1.11 BUSINESS LICENSE

The successful proposer will be required to possess or be able to obtain a City of Everett Business License and pay City of Everett B & O Tax, when applicable. B & O Tax questions may be directed to Everett City Clerk, (425) 257-8610.

1.12 BID PROTEST PROCEDURES

Bid Protest Procedures are available for review in the Everett Municipal Code 3.46 which can be found at: <http://www.codepublishing.com/WA/Everett/>

1.13 NON-ENDORSEMENT

As a result of the selection of a proposer to provide products and/or services to the City, the City is neither endorsing nor suggesting that the Proposer's product is the best or only solution. The proposer agrees to make no reference to the City of Everett in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

1.14 NO PROPRIETARY MATERIAL

By submitting a proposal, the proposer agrees that no material submitted in response to this RFP (including the proposal) is confidential. **All materials, including without limitation all proposals, will be available for public inspection without notice to any proposer.** The City will comply with the Washington Public Records Act.

1.15 RESPONSE PROPERTY OF THE CITY OF EVERETT

All materials submitted in response to this request become the property of the City of Everett. Selection or rejection of a proposal does not affect this.

1.16 NO OBLIGATION TO BUY

The City reserves the right to refrain from contracting with any proposer. The release of this RFP does not compel the City to contract

1.17 COST OF PREPARING PROPOSALS

The City is not responsible for any costs incurred by proposers in the preparation of proposals submitted in response to this RFP.

SECTION 2 - SPECIFICATIONS

2.1 AGENCY BACKGROUND

The Community: Located in west Snohomish County on the shore of Port Gardner, Everett is a 125-year old city of about 110,000 residents. Everett is the fastest growing “central city” in the region and is currently the most populous city in Snohomish County and the 6th largest in Washington. Up to 150 languages are spoken. The languages most frequently spoken (other than English) are Spanish, Russian, Vietnamese, Ethiopian, and Tagalog (Philippine). The City provides translation services as necessary at no cost to the public defense services provider.

City Government: The City of Everett is a charter city with a Mayor-Council form of government. The Everett Police Department is a dynamic agency with just over 200 sworn officers and 45 civilians who handle a myriad of tasks every day.

Municipal Court: Two elected Everett Municipal Court judges and several non-elected pro tem judges hear municipal court cases. The Honorable Laura VanSlyck, the presiding judge, and the Honorable Amy Kaestner are both elected judges. Court Administrator Katie Traenkenschuh manages day-to-day Court operations. Court staff totals 18 full-time equivalent staff, counting the Court Administrator, 3 probation officers, and clerical staff. Prosecution is provided by the City Attorney’s Office. Defense services for the indigent persons accused of a crime are currently provided by The Everett Law Group, PLLC. The Everett Municipal Court judges determine eligibility for public defense services for individuals charged with a misdemeanor or gross misdemeanor who cannot afford an attorney. The City uses the Snohomish County Office of Public Defense to provide screening for indigent status. The Court may meet five days per week from 8:30 AM until 4:30 PM. The Court currently also holds night court one Wednesday night per month beginning at 5:00 PM. The calendar is subject to changes at the discretion of the presiding judge. In general, those providing indigent defense services are present in court from 36 to 46 hours per week. The City also contracts with a public defense overseer to help the City evaluate public defense services.

The following table shows filings for cases in Everett Municipal Court from 2016 and 2017 for Driving under the Influence, Non-Traffic Criminal, Traffic Criminal, and a total of all cases.

Table 1: Case Filings

	DUI	Criminal Non Traffic	Criminal Traffic	Total
2016	127	2644	389	3160
2017	162	2437	424	3023

The following table shows the approximate number of cases appointed to The Everett Law Group by Everett Municipal Court for indigent defense services from 2016 and 2017.

Table 2: Everett Law Group Appointments

	Newly opened and appeal-appointed cases
2016	2937
2017	2906

The following table shows the approximate number of cases appointed to lawyers other than The Everett Law Group by Everett Municipal Court for indigent defense services from 2016 and 2017.

Table 3: Other (Conflicts) Appointments

	Newly opened and appeal-appointed cases
2016	538
2017	454

2.2 PRIMARY PUBLIC DEFENSE CONTRACT

This RFP is for the bulk of public defense services at the Everett Municipal Court. The primary contractor will receive approximately the same case appointments as Everett Law Group as shown in Table 2 above. However, data from the first six months of 2018 suggests that case counts in 2018 may be decreasing to about 2600 to 2800.

Accordingly, the proposer in this RFP is asked to propose two prices, one price based on a projected case count of 2800 cases per year and a second price based on a projected case count of 3200 per year. At the time of contract award, the City will determine which projected case count will be used for the contract.

Proposers may wish to note that, in a separate RFP, the City is also seeking to award a secondary (conflicts) contract, which is for case appointments that the primary contractor cannot undertake, mostly because of conflicts. This secondary contractor will be the “default” conflicts counsel.

2.3 SCOPE OF SERVICES

The contractor(s) shall provide representational services, including lawyer services and appropriate staff services, infrastructure, investigation and appropriate sentencing advocacy. **All proposals should take into account the adopted Standards of the City and the Washington State Supreme Court ("Standards") when submitting proposals.** Proposals should include all necessary infrastructure, training, and services necessary to comply with the Standards. Legal services provided will include, but not be limited to, interviews of clients (including in-custody meetings at the jail) 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 court proceedings.

The Scope of Services is provided in detail in Exhibit A to the RFP, which is a copy of the draft contract.

SECTION 3 – PROPOSAL EVALUATION PROCESS

3.01 GENERAL

All proposals will be reviewed to determine compliance with the requirements as specified in the RFP. Proposals will be evaluated on how well the proposal meets the needs of the City, as described in the proposer's response to each requirement and the evaluation criteria identified in this RFP. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal.

3.02 SELECTION PROCESS

The City will select the proposal that, at its sole discretion, provides the best value to the city. "Value" shall be determined based on the proven capability of the proposer to provide quality public defense services meeting the City's Standards at a rate commensurate with the training and experience of the proposed team of attorneys, all as set forth in evaluation criteria below. The City reserves the right to make an award without further discussion of the proposal submitted; there may be no best and final offer procedure. Therefore, the proposal should be initially submitted on the most favorable terms that the proposer can offer.

3.03 CONTRACT AWARD AND EXECUTION

Contract award will be for the proposers that best meet the needs of the City of Everett.

The contracts resulting from the acceptance of the proposal will be in substantially in the forms attached as Exhibit A to this RFP. Any proposed revision to the contracts must be noted in the proposal. The City reserves the right to reject any proposed contract revision

3.04 EVALUATION CRITERIA

Selection will be based upon the ability of the proposer to best meet the guidelines established by the 2011 Washington State Bar Association, which state:

The object of these guidelines is to alert the attorney to the course of action that may be necessary, advisable, or appropriate and thereby assist the attorney in deciding the particular actions that must be taken in a case to **ensure the client receives the best representation possible.**

#	Criteria	Points	Description
A	Qualifications and Relevant Experience – experience providing and/or understanding of Criminal Defense Services, including consideration of the qualifications of the specific attorneys who would provide the service under the proposal	75	Evaluate responses to Questionnaire 4.04.
B	Technical Capability, Approach, and Capacity – proposed delivery of services, including the proven or potential ability of the proposer to fully comply with all standards	100	Evaluate responses to Questionnaire 4.04.
C	Communication, Customer Service and Training – the experience and ability of the attorneys to respond and communicate with clients	25	Evaluate responses to Questionnaire 4.04.
D	Past Contract Performance and References- including proposer’s history of successfully fulfilling contracts of this type and references	50	Evaluate responses to Questionnaire 4.04.
E	Price Proposal/Value	100	Evaluate price proposals (Price Sheet 4.03) to determine if they are realistic for the work to be performed and demonstrates understanding of the services to be provided. Evaluation is also based on whether the price proposed is commensurate with the training and experience of the proposed team of attorneys
	Total	350	

3.05 INTERVIEWS

The City of Everett may request interviews with the highest-ranked proposers. The purpose of the interview, if held, will be to further review the finalist(s) in specific areas to determine which proposal provides the best fit and value to the City of Everett. Finalist(s) shall have key employees available for these interviews.

SECTION 4 – PROPOSAL SUBMITTAL REQUIREMENTS

4.01 SUBMITTAL REQUIREMENTS

Proposers shall provide a proposal that demonstrates an understanding of the project requirements as stated throughout this RFP.

Proposals in response to this RFP must be submitted in the order specified below. Proposals must include:

- 1. Cover Page: Proposer Commitment and Information: Form 4.02 (attached).**
- 2. Price Sheet: Form 4.03 (attached)**
- 3. Narrative Responses to the Questions Asked in Form 4.04 (attached).** Proposers should re-type the heading, question identifier and question. Then answer the questions and provide in the order requested. Proposers may emphasize in their narrative any areas of their proposal that they believe exceed our requirements.
- 4. Suggested response format:**
 - Standard 8 1/2" x 11" paper
 - Double-sided, numbered pages
 - Typed with a minimum of 11-point font

PROPOSAL COVER PAGE

FORM 4.02 PROPOSER COMMITMENT AND INFORMATION

RFP #2018-048 PRIMARY PUBLIC DEFENSE SERVICES

Company Name:		
Company Address:		
City:	State:	ZIP:
Tax ID #:	UBI#:	
Legal status of organization, i.e., corporation, partnership, sole proprietorship.		
Website:	City of Everett Business License #	
Proposer Contact Name (if different from Authorizing Official):	Proposer Contact Title:	
Proposer Contact Email:	Proposer Contact Direct Phone:	
Proposer Contact Address (If different from above):		
City:	State:	ZIP:

By responding to this solicitation, the proposer understands and agrees to be bound by all requirements and contract terms and conditions contained in this solicitation. By signing this form, the proposer acknowledges receipt and understanding of any and all addenda issued for this solicitation. This form, signed by an individual authorized to legally commit the proposer, shall be submitted as the cover page.

The proposer also certifies that:

- I am authorized to commit my firm to this proposal and that the information herein is valid for 120 days from this date.
- That all information presented herein is accurate and complete and that the scope of work can be performed as presented in this proposal upon the City's request.
- That I have had an opportunity to ask questions regarding this proposal and that those questions have been answered.
- **That each and every attorney proposed to provide legal services has read and is familiar with the Supreme Court Standards originally adopted pursuant to the Order at 174 Wn.2d. 1177 and 1192, as amended.**
- That the proposal submitted includes all required training, infrastructure, and service required under such standards

Authorizing Official Name:	Authorizing Official Title:
Authorizing Official Email:	Authorizing Official Phone:
Authorizing Official Signature:	

FORM 4.03 PRICE SHEET
RFP #2018-48 PRIMARY PUBLIC DEFENSE SERVICES

Proposer's Name:

1. We propose a monthly compensation amount of \$_____ per month.
This is based on a projected case count of 2800 cases per year.

2. We propose a monthly compensation amount of \$_____ per month.
This is based on a projected case count of 3200 cases per year.

At time of award, the City will determine which projected case count (2800 or 3200) will be used for the Contract. The chosen projected case count and the proposed monthly compensation amount for that case count will be filled into Section 2 of the Contract. The Contract is attached as Exhibit A to the RFP.

FORM 4.04 QUESTIONNAIRE

RFP #2018-048 PRIMARY PUBLIC DEFENSE SERVICES

Proposers shall complete this "Questionnaire" providing the information in the same order requested below. Proposers may emphasize in their narrative any areas of their proposal that they believe exceed our requirements.

A. Qualifications & Relevant Experience - Experience providing and/or understanding of criminal defense services

1. Include resumes and the Washington Bar # of all attorneys who will provide legal services resulting from the award of this RFP. Include supervising attorneys. Specifically highlight experience in criminal defense.
2. Are all attorneys providing legal services in good standing in every bar association of which they are a member? If not, explain.
3. Describe the attorney's experience representing indigent clients. Include the types of cases.
4. How many courts do the attorneys providing legal services currently represent defendants? How many clients and in which courts did these attorneys appear in 2017?
5. Do any of the attorneys providing legal services, or individuals associated with these attorneys, have any conflicts of interest with any Everett Municipal Court judge or staff? If yes, explain.
6. Describe your experience working with ex-offenders, the mentally ill, or other clients in need of social service referrals.

B. Technical Capability, Approach, and Capacity - Proposed Delivery of Services

Taking into account the Standards for Services adopted by the Washington State Supreme Court:

1. How many attorneys providing legal services (FTE) will be employed to satisfy the requirements of this proposal? Include the supervising attorney(s).
2. How many support staff (FTE) do you anticipate employing to satisfy the requirements of this proposal?
3. Describe how you plan to handle the estimated annual caseload and required services.
4. What capacity for working with non-English speaking clients do the attorneys providing legal services possess? Explain in detail any experience representing non-English speaking clients.
5. Describe the strategies and use of support staff you plan to utilize in order to balance a high case load, high quality representation meeting the Standards, and cost effectiveness.
6. How will you monitor the case load of attorneys providing legal services?
7. Will the attorneys providing legal services, or associated attorneys, continue to maintain a private practice? If so, Washington Supreme Court Standard 3.3

requires attorneys who maintain a private practice in addition to a public defense practice have public defense caseloads that "should be based on the percentage of time a lawyer devotes to public defense." If your practice includes both public defense work and private clients, describe how attorney time will be allocated and how it will be monitored to maintain compliance with Standard 3.3?

8. Do you anticipate using APR 9 interns, and if so, how will they be used and adequately supervised?
9. Describe the strategies and use of support staff you plan to utilize in order to balance a high case load, high quality representation meeting the Standards, and cost effectiveness.
10. Provide any noteworthy elements of your approach to legal representation which speak to the types of cases or the demographic characteristics of Everett's public defense work.
11. Describe the system of performance reviews to assure that all attorneys are providing adequate legal representation and complying with the Standards.
12. Provide a statement explaining how you would define "conflicts of interest" and describe the procedure for screening conflicts.
13. Describe your approach to plea-bargaining and alternative dispositions of criminal charges would be utilized.
14. Standard 3.3 assumes "fully supported ... attorneys ... " Standard 5.2 identifies costs associated with public defense representation. Please describe the resources in your office that will be used to fully support attorneys providing public defense service.
15. Standard 6.1 provides that "Public defense attorneys shall use investigation services as appropriate. What do you think is the best manner in which investigative services shall be made available? Would you recommend a staff investigator be employed in your office? A panel to which attorneys can apply? What has been your previous experience working with and obtaining the services of an investigator?
16. In what circumstances would you allow for representation by an attorney other than the attorney of record?
17. Please describe how you propose to handle disagreements with court staff or court procedures.

C. Communication, Customer Service and Training

1. What philosophy would guide the provision of public defense services?
2. What systems would you put in place to assure that clients can easily contact their attorneys and that attorneys maintain client contact?
3. The City will require its public defense office to regularly report information demonstrating that its public defender is complying with the Standards adopted by the Washington Supreme Court and the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association. Refer to the contract for specifics.

- a. Please describe your firm's capacity to provide this information and any software or other reporting format utilized by the proposer.
4. How would success be measured for clients?
5. Describe how you will adequately serve clients within Everett and surrounding areas who may have limited abilities to travel. What processes will you utilize to provide adequate opportunity for communication?
6. Describe the type and amount of training provided to the attorneys associated with this RFP. How much in-house and courtroom mentoring and supervision will be available and how much emphasis do you place on mentoring and supervision?
7. Describe your firm's plan to ensure effective communication with clients and how you will coordinate internally to maintain consistency. Identify any constraints that might affect your ability to respond timely; include your plan to maintain services under such constraints.

D. Past Contract Performance & References

1. If any attorneys providing legal services have previously provided contract services for a city or county, please provide documents outlining the quality of contract compliance under those previous contracts. If such documents are not available, please provide contact information for the contract administrator at the contracting agency.
2. If applicable, have any of the attorneys providing legal services ever had a contract that was terminated partly or wholly for performance?
3. In the last five years, have any attorneys been placed on corrective action in relation to such contract?
4. Have any of the attorneys providing legal services been removed from representation in a case for any reason other than conflict of interest or irreconcilable differences with a client, or been found in any manner to be ineffective in the representation of his/her clients by an ethics panel or by any court? If yes, please explain.
5. Describe any past instances when an attorney providing legal services has been sanctioned by any court for any reason.
6. Has any attorney providing legal services settled a dispute relating to malpractice prior to filing or had an action for malpractice filed in any court? If yes, please explain.
7. Has any attorney providing legal services been subject to a complaint, claim, or case in which the Washington State Bar Association opened an investigation regarding any violation of the Rules of Professional Conduct? If yes, please explain.
8. Please explain what corrective action would be taken as a result of a disciplinary finding or sanction arising out of the provision of public defense services.
9. Please provide three (3) references (with name, title, address, and phone number) who can speak to your ability to provide defense services to indigent persons charged with misdemeanor offenses. Include a brief statement describing the relationship to the reference.

EXHIBIT A
(FORM OF PRIMARY CONTRACT)

AGREEMENT FOR INDIGENT DEFENSE SERVICES

The Agreement is dated as of _____, 2018, by and between the CITY OF EVERETT, a Washington municipal corporation (the “City”) and _____ (the “Public Defender”).

RECITALS

A. The City has adopted standards for the provision of indigent defense services in EMC 2.108.230 *et seq.*

B. Through a Request for Proposal process, the City has selected Public Defender to provide indigent defense services as set forth in this Agreement.

AGREEMENT

The parties agree as follows:

1. Scope of Services, Standards and Warranties. The Public Defender will provide indigent defense services in accordance with the standards adopted by the City in EMC 2.108.230 as the same exists or is hereafter amended (hereinafter “Standards”). The Public Defender individually warrants that the Public Defender, and every attorney and/or intern employed by the Public Defender to perform services under this Agreement has read and is fully familiar with the provisions of the Standards adopted by the City. Compliance with these Standards goes to the essence of this Agreement.

1.1 The Public Defender, and every attorney and/or intern performing services under this Agreement shall certify compliance with Supreme Court Rule and governing case load quarterly with the Everett Municipal Court on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing. The Public Defender and every attorney and/or intern warrants that he/she shall conform to the case load limitations not only with respect to services under this Agreement but also with respect to his/her practice as a whole, including other contracts for public defense and/or private practice.

1.2 Public Defender will maintain contemporaneous records on a daily basis documenting all work performed on a 1/10th of an hour basis on each assigned case. Public Defender will maintain and provide to the City a quarterly report detailing:

1.2.1 The number of cases assigned during the period and the time spent on each case;

1.2.2 the disposition of cases assigned indicating the number of cases dismissed, the number of cases in which charges were reduced, the number of cases tried, and the number of cases disposed of by plea;

1.2.3 The number of cases in which a motion was brought with the Court as well as cases in which a motion was filed with the prosecutor and a reduced sentence or dismissal was negotiated;

1.2.4 the number of cases in which an investigator was utilized;

1.2.5 the number of cases which were set for trial including cases in which the defendant failed to appear;

1.2.6 the number and type of criminal cases handled outside of this Agreement (including cases assigned by another public entity); and

1.2.7 the percentage of the Public Defender's practice spent on civil or other non-criminal matters.

1.2.8 **for each case:**

1. The date on which the case was assigned to Public Defender, and the attorney assigned to the case;
2. The nature of the charge(s) and whether the defendant is in or out of custody at time of first contact and/or at time of arraignment;
3. The date of first contact with the defendant by the attorney assigned to the case;
4. A description of any substantive motions filed by the attorney to include:
 - a. The nature of the motion;
 - b. Whether there was a hearing on the motion;
 - c. And, if there was a hearing, the outcome of the motion;
5. Whether an investigator was used. If not, why not
6. Whether there was an issue regarding competency, and if so, the nature of the issue;
7. The outcome of the case
 - a. Did the case proceed to trial, and if so, the outcome of the trial;
 - b. If the case did not proceed to trial, what was the disposition
 - i. Guilty plea as charged;
 - ii. Guilty plea to a reduced charge (specifying the reduced charge);
 - iii. Case dismissed, with a reason for the dismissal (i.e., city's witness did not appear, investigation

showed that defendant did not commit the crime and City dismisses in the interest of justice, dismissed as part of a global resolution [if so, what resolution], etc.)

- iv. Bench warrant issued based on defendant's failure appear for trial.

1.3 The Public Defender further warrants that its proposal, reflected in Section 2, Compensation, reflects all infrastructure, support, administrative services, routine investigation, and systems necessary to comply with the Standards except as provided in Section 2.4 below.

1.4 In addition to the detailed time reports referenced in Section 1.2 and its subsections, the Public Defender shall provide quarterly reports to the City regarding the training provided to each attorney/service provider and the time spent by the Public Defender supervising each attorney/service provider, broken down into in-court and out-of-court supervision. Supervision shall be provided in accord with standards by a supervisor without a workload or with an appropriately reduced workload. In addition, the Contractor shall establish a program for managing the performance of attorneys who provide the services called for in this Agreement. The performance monitoring program shall have the purpose of ensuring that each defendant receives effective assistance of counsel, and the terms and conditions of this Agreement are met. The monitoring program shall be developed and administered by the Contractor, and shall:

1. Be actively performed and managed by a partner-level attorney of the Contractor;
2. Be continual in nature. Monitoring shall occur no less than quarterly; provided, caseload monitoring shall occur no less than monthly;
3. Monitor the caseload of the Contractor and each attorney providing services pursuant to this Agreement;
4. Monitor the performance of each employee who provides services pursuant to this Agreement;
5. Hold employees accountable for deficient performance of the services called for in this Agreement;
6. Have measures to correct the deficient performance of employees performing under this Agreement; and
7. Contain measures to develop and improve the performance of each employee providing services pursuant to this Agreement.
8. The monitoring program shall, at a minimum, be designed to review the following of each attorney or Rule 9 Intern:
 - a. Knowledge of the law and expectations of criminal defense counsel
 - b. Preparation of cases
 - c. Responsiveness to clients
 - d. Effectiveness of In-court Interactions with clients
 - e. Effectiveness In the courtroom

EXHIBIT A (PRIMARY CONTRACT)

- f. Negotiation skills and strategy
- g. Attorney or Rule 9 caseload

The internal monitoring program shall be submitted to the Agreement Administrator within 60 days after the execution of this Agreement. Contractor shall certify no less than annually that monitoring has occurred in conformity with this Agreement and the monitoring program.

1.5 The Public Defender promises that he/she will promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with the Decision and/or the Standards.

1.6 In cases in which the Public Defender is appointed as attorney of record, and unless Public Defender is permitted by the court to withdraw at an earlier time, Public Defender shall represent the defendant at all stages of the criminal process, from the time of appointment as attorney of record through the appeals process (unless the appeal is based on ineffective assistance of counsel), as well as during any period in which the court retains jurisdiction over the terms and conditions of any sentence or deferral. All post-sentencing hearings will be counted as part of Public Defender's continuing representation of the defendant. Public Defender must accept all discovery from City Prosecutors in electronic form.

2. Compensation. Effective January 1, 2019, the City shall pay to the Public Defender for services rendered under this Agreement the sum of \$_____ per month, which is based on a projected case count of _____ cases per year (such case count, the "*Projected Case Count*").

The compensation amount represents the salary and benefits necessary to provide Public Defense services in accordance with the Standards and as supplemented in Section 2.4 below, along with all infrastructure, support, and systems necessary to comply with the Standards including by way of illustration and not limitation, training, research, secretarial and office facilities, and investigation, translation, and mental and physical evaluation services. As provided in Section 2.5 and its sub paragraphs below, the parties will periodically review staffing in light of changes in court rule and case load in order to adjust staffing based on experience. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense service will comply with the Standards with an adequate reserve capacity for each attorney. The Public Defender additionally agrees and promises that Public Defender will devote full effort to the performance of this Agreement and will undertake no private practice of law or other public contract that would impede its ability to perform under this Agreement or reduce the case count available to each Attorney.

2.1 Case Counts. Based upon case counts maintained by Public Defender and reviewed by the City, the Projected Case Count represents current estimates for annual case counts for all indigent cases filed by the City likely to be assigned to Public Defender. As provided in the Standards, the case counts also include the Public Defender's appearance at all arraignment calendars, an allocation of supervision time and a probation allocation. The terms "case" and "credit" shall be defined in accordance with the Washington State Supreme Court rule and Washington Office of Public Defense guidelines.

The City has adopted an unweighted case count. In the event the City or Public Defender determine that it is necessary or advisable to use a weighted case count, either party may propose to the other an alternative standard for caseload limits so long as such standard is fully consistent with the Standards. If the parties agree the proposed alternative standard is fully consistent with the Standards and such alternative standards do not create an undue administrative burden on either party and such proposal alternative is in the best interest of the City, the alternative standard shall be incorporated in this Agreement by amendment.

2.2 Adjustment; Internal Allocation. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Public Defender's request, the City shall review any particular case with the Public Defender to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused. The annual caseload shall be reviewed annually on or about June 30th each year.

2.3 Base Compensation. Except as expressly provided in Section 2.4, the cost of all infrastructure, administrative, support and systems as well as standard overhead services necessary to comply with the established standards are included in the base payment provided in Section 2.1 above.

2.4 Payments in Addition to the Base Compensation. The City shall pay for the following case expenses when reasonably incurred and approved by the Court from funds available for that purpose:

2.4.1 Discovery. Discovery shall be provided in accordance with law and court rule by the City Prosecutor.

2.4.2 Preauthorized Non-Routine Expenses. Non-routine case expenses requested by the Public Defender and preauthorized by order of the Court. Unless the services are performed by Public Defender's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) investigation expenses;
- (ii) medical and psychiatric evaluations;
- (iii) expert witness fees and expenses;
- (iv) interpreters;
- (v) polygraph, forensic and other scientific tests;
- (vi) unusually extensive computerized legal research;
- (vii) any other non-routine expenses the Court finds necessary and proper for the investigation, preparation, and presentation of a case. In the event any expense is found by the Court to be outside of its authority to approve, the Public Defender may apply to the Agreement Administrator for approval, such approval not to be unreasonably withheld.

2.4.3 Lay Witness Fees. Statutorily required lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.4.4 Copying Clients' Files. The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.4.65 Records. To the extent such materials are not provided through discovery, medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

2.4.6 Process Service. The normal, reasonable cost for the service of a subpoena.

2.5 Review and Renegotiation.

2.5.1 Due to Increases or Decreases in Case Load. The parties agree that the compensation stated in Section 2, unless adjusted under this Section 2.5, represents complete compensation to the Public Defender for the Projected Case Count. The City and the Public Defender shall, at the option of either party, renegotiate this Agreement if there is (or is reasonably anticipated to be) either (i) a significant increase in the cases assigned, such that the Public Defender would be required to hire additional attorney staff to remain in compliance with the Decision, Supreme Court Standards and the standards for the provision of indigent defense services adopted by the City, or (ii) a significant decrease in the number of cases assigned, such that the Public Defender could reduce attorney staff and remain in compliance with the Standards. At the request of either party, the City and Public Defender will periodically review case assignment trends, requests for additional credits and any other matters needed to determine Agreement compliance or necessary Agreement modifications. Public Defender shall promptly notify the City when quarterly caseloads can reasonably be anticipated to require use of overflow or conflict counsel to assure that cases assigned to Public Defender remain within the limits adopted in this Agreement and comply with state and local standards.

2.5.2 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, the Washington State Bar or the City significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule or City Ordinance/Resolution.

3. Term. The term of this Agreement shall be from January 1, 2019 for a 5 year term through December 31, 2023, unless sooner terminated as provided herein. The parties agree to negotiate in good faith to provide for an appropriate transition to a new Public Defender at the end of any term if the City is delayed in reaching agreement with a successor and the Public Defender is requested to continue past the termination date.

3.1 For Cause. This Agreement may be terminated for good cause for violation of any material term of this Agreement. “Material term” shall include any violation indicating a failure to provide representation in accordance with the rules of court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards, the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of an attorney providing service under this Agreement, has been suspended or revoked. Any violation of the other provisions of this Agreement shall be subject to cure. Written notice of Agreement violation shall be provided to the Public Defender who shall have thirty (30) 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.

3.2 Termination on Mutual Agreement. The parties may agree in writing to terminate this Agreement at any time. Unless otherwise agreed to in writing, termination or expiration of this Agreement does not affect any existing obligation or liability of either party.

3.3 Obligations survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

3.3.1 Representation. The compensation established in this Agreement compensates Public Defender for services relating to each and every assigned case. Therefore, in the event this Agreement is terminated, the Public Defender will continue to represent clients on assigned cases until either:

3.3.1.1 For those matters set for trial within sixty (60) calendar days of the final Agreement date, through trial or the failure of the defendant to appear (FTA) for trial, or

3.3.1.2 For all other matters, for a period of thirty (30) days, provided, however, that if the defendant fails to appear (FTA) for a court appearance, the Public Defender may withdraw following the FTA.

3.3.2 The provisions of sections 1 and 5, as well as this subsection 2.4 survive termination as to the Public Defender. The City shall remain bound by the provisions of section 2.4 with respect to additional costs incurred with respect to cases concluded after the termination of this Agreement.

4. Nondiscrimination. Neither the Public Defender nor any person acting on behalf of the Public Defender, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this Agreement.

5. Indemnification. The Public Defender agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Public Defender's fees or awards, and including claims by Public Defender's own employees to which Public Defender might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Public Defender, its officers or agents.

It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Public Defender's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

The City agrees to hold harmless and indemnify the Public Defender, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Public Defender's fees or awards, arising out of or in connection with any willful misconduct or negligent error or omission of the City, its officers or agents.

This clause shall survive the termination or expiration of this Agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

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

6.1 Minimum Scope of Insurance. The Public Defender shall obtain insurance of the types described below, naming the City as an additional named insured:

6.1.1 General Liability with a minimum limit of liability of \$2,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.2 Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.3 Professional Liability (Errors and Omissions) for Public Defender with a minimum limit of liability of \$2,000,000 each claim.

6.1.4 Workers' Compensation per statutory requirements of Washington industrial insurance RCW Title 51.

6.2 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 Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the City. The Public Defender shall provide the City with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the

Agreement. The purpose of “tail coverage” is to provide insurance coverage for all claims that might arise from occurrences during the term of the Agreement or extension(s) thereof, but not filed during the term of the Agreement.

7. Work Performed by Public Defender. In addition to compliance with the Standards, in the performance of work under this Agreement, Public Defender shall comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to Public Defender’s business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at Public Defender’s Risk. Public Defender shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorney’s own risk, and the Public Defender shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Public Defender shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, no Subcontracting. This Agreement has been entered into in consideration of the Public Defender’s particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Public Defender has personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City’s sole discretion. Any assignment of this Agreement by the Public Defender without the express written consent of the City shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Public Defender. An additional attorney may be added to this Agreement by adding his or her signature to these Agreements.

11. Entire Agreement. The written provisions in terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. This Agreement shall supersede any and all prior agreements between the parties.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITY:
City of Everett
2930 Wetmore
Everett WA 98201

PUBLIC DEFENDER:

13. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and Agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, Agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Agreement Administrator, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, shall be referred to the Judge of the City’s Municipal/District Court or to the Washington State Bar Association as appropriate. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between the Public Defender and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable Public Defender’s fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 20__.

CITY OF EVERETT

By: _____

ATTEST/AUTHENTICATED:

By _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF CITY ATTORNEY

By: _____

PUBLIC DEFENDER

By: _____

By: _____

EXHIBIT A (PRIMARY CONTRACT)

EXHIBIT 1

The undersigned Attorneys hereby personally warrants and certifies that as a condition of their performance of this Agreement on behalf of the Public Defender, they will commit to providing the services under this Agreement in accordance with the Standards set forth in sections 1, 4, and 7, and that the Attorney's personal warranty of that performance shall survive the Agreement in accordance with subsection 3.4 of this Agreement.

ATTORNEY: _____
Print Name

ATTORNEY: _____
Print Name

ATTORNEY: _____
Print Name

ATTORNEY: _____
Print Name