



City of Sunnyside REQUEST FOR QUALIFICATIONS

DESCRIPTION: PUBLIC DEFENDER –Sunnyside Municipal Court

DUE DATE: FRIDAY, November 18, 2022
NO LATER THAN 4:30 P.M.

SUBMIT TO: Jacqueline Renteria, City Clerk
Sunnyside City Hall
818 East Edison Avenue
Sunnyside, Washington 98944

QUESTIONS: Please direct any questions you have regarding this Request for Qualifications to Jacqueline Renteria, City Clerk.

Phone: (509) 836-6301

The City of Sunnyside does not discriminate against persons on the basis of any factor identified in RCW 49.60.030(1). All interested and qualified applicants are encouraged to submit applications.

INTRODUCTION

Sunnyside is located in Yakima County, Washington, roughly 45 miles from both Yakima and the Tri-Cities. With more than 17,000 residents, Sunnyside is the second largest city in Yakima County. Sunnyside is led by a Council-Manager form of government consisting of seven members who serve four-year terms and who elect a Mayor from their ranks. An appointed City Manager oversees the operations of the City. The City offers a full range of police, fire, ambulance, streets, water, sewer, parks, planning, code enforcement, and administrative services. We operate one of the few remaining Municipal Courts and Jails in eastern Washington.

PURPOSE OF REQUEST

The City of Sunnyside is seeking interested parties to **provide Public Defender services for indigent criminal defendants for an initial term of four (4) years commencing on January 1, 2023**, with the option to automatically extend the Contract annually with the mutual agreement of both parties. Interest is sought from private law firms, not-for-profit entities, and public agencies. This RFQ is not a competitive bid based on price, but allows the City to select the Attorney or Law Firm which, in its sole discretion, best meets the needs of the City, taking into consideration qualifications, service capabilities, and other factors relevant to the City's policies, programs, and resources.

The City will pay the Public Defender for representational services, including lawyer service and appropriate support staff services, sentencing advocacy, investigatory, and legal services including but not limited to interview of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at court proceedings. **The compensation package for these services are based on a standard contract of \$330 per case, with an annual base case load of 300 cases or case-equivalents, annualized and paid monthly at \$8,250.** The full details of the agreement can be found in the sample agreement in Exhibit A.

INSTRUCTIONS TO INTERESTED PARTIES

- A. All application materials should be sent as follows:

In Person or through US Mail:

City of Sunnyside
ATTN: Jacqueline Renteria, City Clerk
RE: Public Defense Services
818 E. Edison Avenue
Sunnyside, WA 98944

Through Email:

To: jrenteria@sunnyside-wa.gov
Cc: jhorner@sunnyside-wa.gov
Subject: Public Defense Services

- B. **All application materials must be received by Friday, November 18, 2022, at 4:30 p.m.**, at which time the review process will begin. No faxed or telephone proposals will be accepted.
- C. Application materials should be prepared simply and economically, providing a straight forward, concise description of the provider's capability to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content.
- D. The City may choose to hold any necessary interviews of selected applicants, but applicants should take note that a selection may be made by the City based on the written application materials submitted.
- E. Any cost incurred by the applicants in preparation, transmittal, and/or presentation of any materials submitted in response to this RFQ shall be borne solely by the applicant.
- F. At the City's sole discretion, application materials submitted after the due date and time may be considered. Applicants accept all risks of late delivery of mailed proposals.
- G. The City of Sunnyside reserves the right to cancel this solicitation at any time, to reject any or all applications, waive technicalities or irregularities, and to accept any application if such action is determined to be in the best interest of the City. The City, in its sole discretion, further reserves the right award to multiple law firms/attorneys if such action is determined to be in the best interest of the City.
- H. The firm(s) or attorney(s) selected will be notified in December of 2022.

APPLICATION MATERIALS REQUIRED

In a narrative not to exceed ten (10) standard letter-sized single-sided pages, please provide the following information:

- A. Basic Firm Information
 1. The names of individuals who are proposed to provide public defense services and their areas of responsibility.
 2. A resume of all attorneys who will provide legal services, or supervise the provision of legal services by others, illustrating the attorney's specific experience in criminal defense.
 3. A proposed outline of tasks necessary to represent eligible indigent defendants under current defense standards, including the number of hours required to complete each task.
 4. Tasks relating to managing the caseload (include recommendation for transition of current cases from previous law firm, if applicable). A description of your case management system is required along with your capability to provide accurate monthly reports of the information referred to in Section 1.4 *et seq* of the attached sample agreement in Exhibit A.

5. A description of the means by which the attorneys providing legal services may be reached by defendants after normal office hours, and how attorneys will communicate with non-English speaking clients.
6. References.
7. Types of insurance (self-insurance or policy coverage) and level of insurance coverage.

B. Experience in Providing Defense Services

1. How long has your firm been in existence? How many years has it practiced criminal defense?
2. Has your firm handled indigent clients through a public defense contract? Describe the types of cases in which you have represented such clients.
3. How many attorneys currently employed by your firm would be involved in public defense under the proposal? Resumes and references must be provided for each attorney.
4. How many staff employees does your firm employ? How many staff will be assigned to the public defense services contract(s)?
5. Does any employee of the firm have or could reasonably be anticipated to have any conflict of interest with the City and if so, how will that conflict be addressed?

C. Contract performance:

1. If your firm has previously provided or is providing contract services for a city or county, please provide documents, if any exist, which outline or evaluate the quality of contract compliance under these contracts.
2. Please note specifically any termination for cause of such a public contract in whole or in part. Please note any corrective action required under such public contracts.
3. Has any attorney employed by the firm been disciplined by the Washington State Bar Association, or any other mandatory bar association of any other state?
4. Has any attorney employed by the firm been removed from a case because of a court finding of ineffective assistance of counsel? Has any attorney in your firm been monetarily sanctioned by a court for any reason? Please provide a summary of the sanction, including the court and date sanction was imposed.
5. Has any attorney in your firm had an action for malpractice filed in any court? If so, what is the status or disposition of the filing?
6. Please describe your firm's general policy guidelines when addressing the needs of indigent misdemeanor clients.
7. How will you monitor the caseload of attorneys providing indigent defense services?
8. What type of training do the attorneys in your firm receive which would be relevant to practice in criminal law and public defense? How will you supervise and monitor the attorney(s) who provide services under this contract?
9. What is your firm's capacity for working with non-English speaking clients?
10. Does your firm have any experience working with ex-offenders, the mentally ill or other clients who are in need of social service referrals?

MINIMUM QUALIFICATIONS:

- A. Each attorney in the application must possess a Juris Doctorate degree and have graduated from a law school accredited by the American Bar Association.
- B. Each attorney in the application must be a member in good standing of the Washington State Bar Association.
- C. Each attorney in the application must possess insurance for general commercial, professional liability, and automobile liability in amounts satisfactory to the City.

ADDITIONAL TERMS AND CONDITIONS

- A. The City reserves the right to request clarification of information submitted, and to request additional information from any applicant.
- B. The City reserves the right to disqualify any selected applicant and award a different qualified applicant, if the selected applicant does not execute a contract within thirty (30) days of notification of selection.
- C. Any application may be withdrawn prior to executing a contract at any time and for any reason.
- D. The contract resulting from this RFQ shall be in a form supplied or approved by the City, and shall reflect the specifications in this RFQ. A sample contract is attached for review in Exhibit A. The City reserves the right to reject any proposed contract that does not conform to the specifications contained in the RFQ, and which is not approved by the City Attorney's office.
- E. By submitting a response to this RFQ, the Public Defender warrants that adequate staff services and facilities will be established to enable the effective provision of legal services in accord with the contract.
- F. Determination of defendant eligibility for appointment under this contract will be determined by the Sunnyside Municipal Court Judge or Court Administrator. The Public Defender will not be responsible for screening potential clients. Should the Public Defender determine a defendant is not eligible for assigned counsel, the Public Defender will so inform the court and move to withdraw from the case.
- G. The Public Defender shall file quarterly reports with the City delineating each client who has been appointed to the Public Defender, in the format directed by the City. See the sample contract in Exhibit A, section 1.4 *et seq.* The format shall not include any attorney client privileged information. The report shall designate whether the client was "conflicted" to another attorney for representation or the client hired another private attorney. The report is due on or before the tenth (10th) day of the month following the completion of each quarter. Quarters are established as follows: Quarter 1 – January, February, March; Quarter 2 – April, May, June; Quarter 3 – July, August, September; Quarter 4 – October, November, December.

- H. Case Count. A misdemeanor or gross misdemeanor appointment shall be counted as one (1) case. Multiple charges arising out of or related to the same incident or event shall be included as one case. A case equivalent is defined as any post-judgment review hearing related to probation, deferred prosecution, stipulated order of continuances, restitution, and/or fine payments. Each case equivalent will be counted as one half (.5) of one case for the purpose of calculating compensation and caseload maximums. Multiple post-judgment review hearings arising out of or related to the same incident or event shall be considered as one case equivalent and counted as one half (.5) of one case.
- I. Any counsel associated with or employed by the Public Defender may have the authority to perform the services under this contract when approved by the City at the Public Defender's expense. All associated counsel performing services pursuant to this contract must be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington and must meet the minimum qualifications set forth here and in an executed contract for services. Sufficient counsel shall be provided to represent defendants during vacation and illnesses. No assignment or transfer of the contract or of any interest in the contract shall be made by the Public Defender without the prior written consent of the City.
- J. In the event the Public Defender must withdraw from a case because of a conflict of interest, the Public Defender shall refer the defendant to another attorney approved by and under contract with the City. The cost of conflict counsel shall be paid by the City and not by the Public Defender.
- K. The Public Defender shall provide to the City police department the telephone number or numbers at which the Public Defender can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day.
- L. The Public Defender will comply with court policy consistent with Washington Supreme Court Rules now or hereafter adopted. Proposers should take into account the Supreme Court's review of CrR 3.1 and CrRLJ 4.1 as well as the Standards for Indigent Defense Representation adopted by the City, as the same exist or are hereafter amended. The Public Defender will comply with RPC 3.2 by expediting litigation consistent with the client's interests. The Public Defender must establish reasonable office hours to meet clients prior to the day of hearing or trial, and within seventy-two hours of appointment, provided that they must meet with in-custody defendants within twenty-four to forty-eight hours of appointment except in emergent circumstances. The Public Defender shall ensure that client communications occur in a confidential setting.
- M. The Public Defender shall be responsible for ensuring their ability to properly communicate with all clients. Many clients will speak English as a second language, or not at all.
- N. The Public Defender must provide Professional Liability Insurance with limits no less than \$50,000 per claim; or alternatively, if the proposer is a public agency, shall provide proof of self-

insurance with terms acceptable to the City. The Public Defender shall provide the City with insurance for “tail coverage” for all claims that might arise from occurrences during the term of the contract or extension(s) thereof, but not filed during said term. The Liability Insurance provided by the Public Defender shall be primary to Liability Insurance of the City and shall list the City as an additional insured. Without proof of coverage, no payment will be made to the Public Defender until such proof of insurance has been received by City. Additional detail is provided in the sample contract in Exhibit A.

- O. The Public Defender shall hold harmless and indemnify the City as provided in section 7 *et seq* of the sample contract found in Exhibit A.
- P. The City shall provide the Public Defender with a copy of the Criminal Code and any amendments thereto adopted during the term of this contract.
- Q. Any attorney providing services pursuant to this contract shall at its cost take training approved by the State Office of Public Defense, including at least seven (7) hours per year of continuing legal education (CLE) credits related to criminal defense.
- R. The Public Defender shall provide appropriate and competent supervision of attorneys, if necessary, depending on their experience, skill and the simplicity or complexity of the cases they are assigned.
- S. The Public Defender in their representations of clients shall not discriminate on the grounds of race, color, religion, national origin, age, marital status, gender, sexual orientation/gender identity, or disability. The Public Defender shall comply with all federal, state, and local non-discrimination requirements.

SELECTION OF PUBLIC DEFENDER(S)

Applications will be evaluated by considering quality of experience, strength of the approach described in the application materials, and any applicable interview or oral review. The City will consider the completeness of the application materials, the qualifications of the specific individuals for assignment to act as Public Defender, the applicant’s history of successfully fulfilling contracts of this type, and experience in similar work. The selection of a Public Defender will be based upon the ability of the applicant to best provide indigent defense services in accordance with the Standards for Indigent Defense, and Certification and Compliance as approved by the Washington Supreme Court. The City Manager will make appointment and enter into contract(s) with selected applicant(s) in accordance with the City’s established Procurement and Contracting Policies. **Selected applicants will be notified no later than December 5, 2022.**

Questions and requests for clarification regarding this RFQ must be sent via email, to the City Clerk (contact information above) by 4:00 pm on November 10, 2022. If needed, a response or addendum will be issued no later than 4:00 pm on November 16, 2022, prior to the due date.

Exhibit A

AGREEMENT FOR INDIGENT CRIMINAL DEFENSE PERSONAL SERVICES

WHEREAS, the City of Sunnyside, Washington (hereinafter "City") provides indigent defense services to individuals who have been certified for representation in criminal charges before the Sunnyside Municipal Court (hereinafter "Municipal Court") located at Sunnyside Law and Justice Center, 401 Homer Street, Sunnyside, WA 98944; and

WHEREAS, _____ (hereinafter "Attorney") is a licensed attorney in good standing in the State of Washington who has been selected to perform services to indigent defense clients under contract with the City; and

WHEREAS, the City has adopted the Standards for Public Defense ("Standards") pursuant to the requirements of RCW 10.101.030; NOW, THEREFORE,

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, it is agreed as follows:

1. Scope of Services, Standards and Warranty.

- 1.1 The Attorney will provide indigent defense services in accordance with the Standards for Indigent Defense and Certification and Compliance as approved by the Washington Supreme Court by its Order of September 7, 2012, found at CrRLJ 3.1, and as may thereafter be amended, including required consultation with incarcerated and non-incarcerated defendants.
- 1.2 The Attorney warrants that he is and during the term of this Agreement, qualified to provide indigent criminal defense as defined by Standard 14; and further warrants that he and every attorney and/or intern employed by the Attorney to perform services under this Agreement has read and is fully familiar with the provisions of the Washington Supreme Court Rules and the Standards, including the qualifications provided in Standard 14, as adopted by the City; and *Wilbur vs. City of Mount Vernon*, No. CL-1100RSL (December 2013).
- 1.3 Compliance with these Standards goes to the essence of this Agreement. The Attorney, and every attorney and/or intern performing services under this Agreement, shall certify compliance quarterly with the Municipal Court on the form established for that purpose by Court Rule.
- 1.4 The Attorney will collect and maintain data reporting to the City without violating client privileged communications, the following:
 - 1.4.1 A quarterly reporting statement detailing: year to date case assignments; and year-to-date case dispositions, including motions filed, jury and non-jury trials, and cases in which an investigator, or other outside assistance, was utilized.

- 1.4.2 An annual reporting statement detailing: The number and types of private practice cases in which the Attorney provided legal services during the year.
- 1.5 Attorneys who provide public defense services must limit their privately retained work as not to exceed the case limits as required by the Standards.
- 1.6 The Attorney, without violating attorney-client privilege, will co-operate with the City to verify that the attorney and client are communicating privately prior to court appearances and/or resolution of cases assigned under this contract.
- 1.7 The Attorney further warrants that all infrastructure, support, administrative services, computerized legal research and systems necessary to comply with the Standards, is available to the Attorney, and will further notify the City immediately if unable or fails to meet the required Standards.

2. Case Assignment and Compensation.

- 2.1 Case Load and Schedule. The compensation provided in this agreement is based on the expectation the Attorney will be assigned up to 300 misdemeanor and gross misdemeanor cases per calendar year, counted as set forth in paragraph 2.3 below. These cases will be spread out over no more than 2 separate ½ day dockets each month.
- 2.2 Base Compensation.
 - 2.2.1 For calendar year 2023, City shall pay to the Attorney for services rendered under this Agreement three hundred and thirty dollars (\$330.00) per case with an annual base case load of three hundred (300) cases or case equivalents. Payments shall be made each month at the rate of eight thousand two hundred and fifty dollars (\$8,250.00) per month, payable on or before the last day of each month.
 - 2.2.2 Beginning on January 1, 2024, and continuing each year thereafter, compensation rates set forth in paragraph 2.2.1 shall be increased by the percentage change in the Consumer Price Index (CPI) for the prior year. The specific CPI to be used is All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982–1984=100, for the month November published in December by the United States Bureau of Labor Statistics. However, the annual adjustment may not be less than 2% or exceed 5% on an annual basis.
- 2.3 Case Counts.
 - 2.3.1 Case Defined. A misdemeanor or gross misdemeanor appointment shall

be counted as one (1) case. Multiple charges arising out of or related to the same incident or event shall be included as one case.

- 2.3.2 Case Equivalent Defined. A case equivalent is defined as any post-judgment review hearing related to probation, deferred prosecution, stipulated order of continuances, restitution and/or fine payments. Each case equivalent will be counted as one half (.5) of one case for the purpose of calculating compensation and caseload maximums. Multiple post-judgement review hearings arising out of or related to the same incident or event shall be considered as one case equivalent counted as one half (.5) of one case.
- 2.3.3 Reassignment. Any case scheduled for a hearing after having been on warrant or failure to appear status for a period of less than one year shall be reassigned to the Attorney and shall not count as a new case. Any case scheduled for hearing after having been on warrant or failure to appear status for a period of one year or more, or any case refiled after dismissal without prejudice at any time, reassigned to the Attorney will count as a new case.
- 2.3.4 Trial Stipend. The Attorney will be paid four hundred and fifty dollars (\$450.00) per day of trial. To qualify for the stipend the Attorney must appear on the date the case is scheduled for trial prepared to try the case, and continue representation until a judgment or other resolution is rendered on the record. The Attorney will submit an invoice to the City showing the name of the defendant, the case number, the dates of the jury trial.
- 2.3.5 The Attorney's case assignments shall not extend to arraignment dockets, appeals or habeas corpus matters.
- 2.4 Case Assignments. The maximum cases and case equivalents for which defense services shall be provided during any 12-month period during the term of this Agreement shall be 300 total cases or case equivalents as calculated, and certified by the Attorney in accordance with the Standards. Upon adoption of a case weighting criteria by the Supreme Court, pursuant to Standard 3.5, the City reserves the right to revise the case count to maximum cases permitted under such schedule as approved by the Supreme Court and adopted by the City, but the adoption shall not affect the terms of this Agreement.
- 2.5 Adjustment. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Attorney's request, the City shall review any particular case with the Attorney to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused.

- 2.6 Conflicts of Interest and Recusal. In the event that the Attorney is unable to accept an assignment or must withdraw from representation, due to conflict or otherwise, the Attorney shall provide immediate notice to the City of the conflict and the City shall reassign the case to Conflict Counsel. Cases reassigned to Conflict Counsel before or at the first status conference/pre-trial hearing will not be counted as a case or case equivalent unless the Attorney has performed substantial work. If the Attorney 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.
- 2.7 Overhead. Except as expressly provided in Section 2.6 below, the cost of all infrastructure, computerized legal research, administrative support and systems, and standard overhead services necessary to comply with the established standards is included in the base payment provided in Section 2.1 above.
- 2.8 Payments in Addition to the Base Compensation. The City shall pay the following case expenses when reasonably incurred from funds available for that purpose:
- 2.8.1 Discovery. Discovery shall be provided in accordance with law and Court Rule by the City Prosecutor. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, prosecuting attorney making this charge or Court files pertaining to the underlying case.
- 2.8.2 Interpreters. Interpreter services for languages other than English.
- 2.8.3 Communication. The City will provide the Attorney access to a secure internet connection and attorney conference space during court dockets.
- 2.8.4 Preauthorized Non-Routine Expenses. Non-routine case expenses requested by the Attorney and preauthorized by order of the Municipal Court. Unless the services are performed by the Attorney's staff or subcontractors, non-routine expenses include, but are not limited to:
- (i) medical and psychiatric evaluations;
 - (ii) expert witness fees and expenses;
 - (iii) forensic and other scientific tests;

- (iv) investigation expenses; and
- (v) any other non-routine expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2.8.5 Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to Court;

2.8.6 Copying Clients' Files. The cost, if it exceeds \$25.00, 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;

2.8.7 Records. 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 \$75.00; and

2.8.8 Process Service. The reasonable cost for the service of a subpoena.

2.9 Renegotiation Due to Decrease in Case Load. The City and the Attorney 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 Attorney as determined on a calendar year basis. In such event there shall be a reduction in the stated case assignment for the Attorney and a commensurate reduction in the Attorney's compensation, with both reductions proportional to the percentage decrease observed during the relevant calendar year comparison.

2.10 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 Association, or the City significantly modifies the Standards for Indigent Defense adopted pursuant to Court Order or City Resolution.

3. Term. The term of this Agreement shall be for _____ years commencing on _____, 2023, and terminating on _____, 2026, unless earlier terminated.

4. Automatic Extension. Should neither party provide notification in writing to the other party of the intent negotiate by _____, 2026, or _____ of any subsequent year, this agreement shall continue for an additional 12-month period under the same terms as provided herein.

5. Termination. Either party to this contract may terminate this contract upon thirty (30) days written notice of their intent to terminate.

5.1 For Cause. This Agreement may be terminated for 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 the Court and the ethical obligations established by the Washington State Bar Association; a violation of the Standards; violation of Section 6 relating to insurance; conviction of a criminal charge; or a finding that the license of the Attorney, or any 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 Attorney who shall have ten (10) business days to correct 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.

5.2 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.

5.3 Obligations Survive Termination. In the event of termination of this Agreement, the following obligations shall survive and continue:

5.3.1 Representation. The Attorney will continue to represent clients on assigned cases for a period of up to 60 days, unless a case is earlier concluded by entry of an order of dismissal, entry of a stipulated order continuing the prosecution of the matter on conditions, entry of an order deferring prosecution, or entry of a judgment and sentence. The Attorney will use their best efforts to resolve all assigned cases during the 60-day period unless such resolution will result in prejudice to the client.

5.3.2 The provisions of Section 1 "Scope of Services, Standards and Warranty"; Section 7 "Indemnification"; and this Section 5.3 shall survive termination as to the Attorney. The City shall remain bound by the provisions of Section 2.3.4 "Trial Stipend; and Section 2.8 "Payments in Addition to the Base Compensation" with respect to cases concluded after the termination of this Agreement.

6. Non-discrimination. The Attorney shall not discriminate on the basis of race, creed, color, national origin, sex, sexual preference, gender identity, or physical, mental or sensory handicap in the performance of this agreement.

7. Indemnification.

7.1 The Attorney 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 attorney's fees or awards, and including claims by Attorney's own employees to which Attorney might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorney, his officers or agents.

- 7.2 It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Attorney's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.
- 7.3 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.

8. Insurance. The Attorney 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 Attorney, or the agents, representatives, employees, or subcontractors of the Attorney.

8.1 Minimum Scope of Insurance. The Attorney shall obtain insurance of the types described below:

8.1.1 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, if required by State law.

8.1.2 Professional Liability insurance appropriate to the Attorney's profession.

8.2 Minimum Amounts of Insurance. The Attorney shall maintain Professional Liability insurance with limits no less than \$50,000 per claim. The policy shall contain no exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

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

8.4 Verification of Coverage. The Attorney shall furnish the City with certificates of insurance evidencing the insurance requirements under this Agreement.

9. Work Performed by Attorney. In addition to the responsibilities mentioned in Section 1 above, the Standards for Indigent Defense (SID) and Certification and Compliance approved by the Washington Supreme Court by its Order of September 7, 2012 found at CrRLJ 3.1, the Attorney shall complete seven (7)

hours of continuing legal education within each calendar year of this Agreement in courses relating to public defense practice including, but not limited to, consequences of the conviction or adjudication, including possible immigration consequences and a possibility of civil commitment proceedings based upon a criminal conviction; statutes, Court Rules, Constitutional provisions, and case law relevant to public defense practice; and such other courses and study to maintain the qualification familiarity as required under Standard 14.1. In addition to compliance with the Standards, in the performance of work under this Agreement, the Attorney shall comply with all Federal, State and City laws, ordinances, rules and regulations which are applicable to the Attorney's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

- 10. Work Performed at Attorney's Risk.** The Attorney 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 Attorney shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. The Attorney shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and other employment related charges, taxes or fees in accordance with law and IRS regulations.
- 11. Personal Services, No Subcontracting.** This Agreement has been entered into in consideration of the Attorney's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Attorney has personally signed this Agreement below to indicate that he 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 Attorney without the express written consent of the City shall be void. The Attorney may allow another Washington-licensed attorney to make temporary substitute appearances for the Attorney on routine docket matters and routine court appearances on an as-needed basis.
- 12. 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 Attorney.
- 13. 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.
- 14. Nonwaiver of Breach.** The failure of either party 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.

15. 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 a neutral third party to arbitrate the dispute. The arbitrator shall be agreed upon by both parties. Arbitration shall be conducted according to the mandatory arbitration rules of Washington State. 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 Municipal 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 Attorney and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable attorney'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 Yakima County, Washington Superior Court.

16. 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:
Jacqueline Renteria, City Clerk
City of Sunnyside
818 E Edison Avenue
Sunnyside, WA 98944
jrenteria@sunnyside-wa.gov

Attorney:

(Signatures on following page)

IN WITNESS WHEREOF, the parties have executed this Agreement on _____, 2023.

CITY:

ATTORNEY:

Elizabeth Alba, City Manager
