

**RESOLUTION NO. 1630**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY A PROFESSIONAL SERVICES AGREEMENT WITH THE LAW OFFICE OF THOMAS GUILFOIL, PLLC, FOR PUBLIC DEFENSE SERVICES

WHEREAS, the City of Fife The City is required by law and court rule to provide legal representation to indigent persons charged with offenses under the City's municipal code that are punishable by loss of liberty; and

WHEREAS, the City has determined that public defense services can be more efficiently and cost-effectively provided through use of an independent contractor rather than a fulltime employee of the City; and

WHEREAS, in 2010 the City went through a formal process of requesting proposals from qualified individuals, and Thomas Guilfoil was determined to best meet the needs and requirements of the City; and

WHEREAS, the current contract with Mr. Guilfoil expires at the end of 2014, and the City Council has determined that it is in the best interests of the City to continue the services of Mr. Guilfoil and the Law Office of Thomas Guilfoil, PLLC for the years 2015-16, with a potential two year renewal term; and

WHEREAS, the court case of *Wilbur v. Mt. Vernon*, and new caseload limits adopted by the Washington State Supreme Court that go into effect on January 1, 2015, have significantly increased the costs of providing public defense services; now, therefore,

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute on behalf of the City the professional services agreement with the Office of Thomas Guilfoil, PLLC attached hereto as Exhibit A to provide public defense services to the City for the at the base amount of \$14,000 per month.

ADOPTED by the City Council at an open public meeting held on the 13<sup>th</sup> day of November, 2014.

  
Tim Curtis Mayor

Attest:

  
\_\_\_\_\_  
Carol Etgen, City Clerk

## **CITY OF FIFE CONTRACT FOR PUBLIC DEFENSE SERVICES**

**1. Parties.** This Agreement is entered into between the City of Fife, Washington (“City”), and the Law Office of Thomas Guilfoil, PLLC (“Public Defender”), collectively, the “Parties.”

**2. Effective Date and Term.** This Agreement shall be effective as of **January 1, 2015** and continue through December 31, 2016. Absent termination or amendment as set forth elsewhere in this Agreement, this Agreement shall automatically renew under the existing terms of the Agreement for an additional two year period.

**3. General Description of Services.** The City is required by law and court rule to provide legal representation to indigent persons charged with offenses under the City’s municipal code that are punishable by loss of liberty. Public Defender has been retained by the City to provide such legal representation in Fife Municipal Court and other courts as required.

**4. Scope of Work.**

A. Public Defender agrees to provide all necessary defense services to every defendant charged with a violation of the Fife Municipal Code that is subject to a loss of liberty, provided:

- (1) Each defendant must qualify as eligible for the services of the Public Defender, either at no cost or at some cost to a particular defendant, according to the standard guidelines adopted by the state of Washington. Should Public Defender determine during the course of representation that a client is no longer eligible for public defense, Public Defender shall so advise the court.
- (2) Public Defender shall, at the discretion of the court and subject to court rule, be excused from representing defendants who decline to be represented or assisted by the Public Defender regardless of defendant’s eligibility for public defense.
- (3) Any defendant determined to be eligible for public defense, but who is also determined to have a conflict with the Public Defender such that no attorney employed by Public Defender is able to represent the defendant, shall be assigned outside counsel. Pursuant to RPC 1.8, in such cases Public Defender shall be responsible for securing outside counsel but shall not be required to pay the costs related to providing such counsel, as described in Section 6 of this Agreement.

- B. For each defendant that the Public Defender has been appointed to represent, the Public Defender shall provide all necessary legal assistance, including but not limited to:
- (1) Appearing at arraignments as standby counsel only, unless specifically appointed to a client by the court;
  - (2) Appearing at pretrial hearings for appointed clients.
  - (3) Appearing at motion hearings and other special hearings that may be required on a particular case.
  - (4) Handling all phases of jury or bench trials for appointed clients.
  - (5) Appearing at sentencing and any post-sentencing review hearings where the defendant is still represented by the Public Defender.
  - (6) Preparing and appearing in any appeals at additional compensation;
  - (7) Meeting with defendants inside a corrections facility as needed.
  - (8) Contacting new clients within 72 hours of appointment and/or ensuring that the client receives all necessary contact information to enable client to contact the Public Defender. In-court contact at time of appointment shall satisfy the 72-hour rule.
  - (9) Maintaining offsite office space that allows clients to meet with the Public Defender in privacy.
  - (10) Providing access to an attorney on a 24-hour basis for persons requesting legal advice during a "critical stage" of a police investigation. Such access may be by telephone.
- C. Public Defender shall also provide general legal information to all pro se in-custody defendants as well as general legal information to pro se defendants at out-of-custody arraignments, but shall not represent these persons unless appointed to a given defendant by the court.
- D. Public Defender shall also provide representation to indigent defendants who were previously assigned to appointed counsel prior to the effective date of this agreement but whose previously assigned counsel has withdrawn as counsel of record.
- E. The services performed by Public Defender shall not exceed the Scope of Work without prior written authorization from the City.
- F. The City may from time to time require changes or modifications in the Scope of Work. However, such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

5. **Schedule of Work and Continuity of Representation.**

- A. It is agreed by the parties that continuity of representation is very important for effective defense and smooth functioning of the court. Therefore, Public Defender shall make good faith efforts to ensure that there is as much continuity of representation as possible, understanding that substitution may be required due to vacation, illness, emergency, or occasional scheduling conflicts.
- B. Public Defender shall appear for all scheduled court hearings in the Fife Municipal Court, or other courts as required, to perform the services described in the Scope of Work.
- C. As of the effective date of this Agreement, Public Defender shall be required to appear in Fife Municipal Court on a four-day-a-week schedule. In addition, jury trials, motions, and other special hearings may require occasional additional appearances. Should the City decide to increase the court schedule, the City shall give Public Defender a minimum thirty (30) days prior notice.
- D. Public Defender agrees and understands that, while the City will make good faith efforts to consult with Public Defender prior to changing the schedule of court hearings, and will take Public Defender's needs into account, the City will have final discretion to alter the scheduling of court hearings and it shall be Public Defender's responsibility to ensure such hearings are covered by Public Defender.
- E. The Public Defender may associate or employ additional attorneys to represent defendants under this Agreement at Public Defender's expense. Any attorneys who provide public defense services under this Agreement must meet all required licensing and professional standards. No legal interns shall be used unless adequately supervised by a member of the bar. Public Defender shall be responsible for overseeing and approving services performed by other attorneys under this Agreement.

6. **Compensation.**

- A. Flat Rate. The City shall pay the Public Defender at a rate of \$14,000 per month for each month under this Agreement. Payment for partial months shall be pro-rated. The parties agree that this amount shall include compensation for out-of-court preparation time and all normal office expenses (including but not limited to clerical staff; office rent; photocopies and letters; mailing costs; telephone expenses). Investigation costs incurred by Public Defender shall be reimbursed by the City as required under RPC 1.8.

- B. Services requiring additional compensation. Appeals shall be compensated at a flat rate of \$350 for each level of appeal; retrials resulting from an appeal shall be compensated at \$350 per trial.
- C. Conflict counsel. Pursuant to RPC 1.8, the City shall pay the cost of providing counsel to defendants who are eligible for the public defender but whom the Public Defender cannot represent due to a conflict.

**7. Payment.**

- A. Prorated payment. Should this Agreement be terminated and Public Defender therefore does not provide services through the end of a full month, the flat fee shall be prorated by subtracting payment for any scheduled court days where Public Defender did not appear.
- B. Other compensation. Public Defender shall maintain time and expense records for any costs or services that are eligible for additional compensation and shall provide an invoice to the City within thirty (30) days of incurring the costs or performing the services. Such invoices shall be in a format acceptable to the City. All invoices for additional services shall be paid within sixty (60) days of receipt of a proper invoice.
- C. Records retention. Public Defender shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.
- D. Dispute over services. If the services rendered do not meet the requirements of the Agreement, Public Defender will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work again meets the requirements of the Agreement.

**8. Discrimination and Compliance with Laws.**

- A. Public Defender agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.
- B. Public Defender shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

- C. Violation of Section 8 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility of Public Defender to do further work for City.

**9. Termination of Agreement**

- A. Termination for fault. This Agreement may be terminated by the City at any time upon the willful failure of Public Defender to comply with the terms of this Agreement, including acts by Public Defender, or Public Defender's agents, that could result in loss of public confidence in the City and its courts, including but not limited to Public Defender or Public Defender's agents being charged with or being convicted of a criminal offense.
- B. Termination without fault. Either party may terminate this Agreement without cause, by giving the other party ninety (90) days written notice.
- C. Effect of termination. Upon termination of this Agreement, Public Defender shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Public Defender shall not be entitled to any reallocation of cost, profit or overhead. Public Defender shall not in any event be entitled to anticipated profit on work not performed because of such termination. Public Defender shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Public Defender shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed, unless excused from further performance by City. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Public Defender. The Public Defender shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

**11. Private Clients.** During the term of this Agreement, Public Defender shall not provide legal representation in the Fife Municipal Court to any private clients of Public Defender.

**12. Addresses of Parties for Notices.** Public Defender agrees to accept notices under this Agreement via facsimile. It is the responsibility Public Defender to notify City in writing if any of the contact information appearing below should change. Any notices required to be given by City to Public Defender or by Public Defender to City shall be in writing and delivered to the parties at the following addresses:

**CITY:**

**PUBLIC DEFENDER:**

CITY OF FIFE

Law Office of Thomas Guilfoil, PLLC

5411 – 23<sup>RD</sup> Street East  
Fife, Washington 98424  
Contact: Sally Jacobsen  
Phone: (253) 922-6635  
Fax: (253) 926-5435

4505 Pacific Hwy E, Suite C6  
Fife, WA 98424  
Tax I.D. # 531-78-7409  
Email: [toplaw@comcast.net](mailto:toplaw@comcast.net)  
Phone: (253) 517-3689  
Fax: (253) 517-5247

**13. Standard of Care.**

- A. Public Defender represents and warrants that he or she, and any agents used to perform services under this Agreement, has the requisite training, skill and experience necessary to provide the services described herein and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.
- B. Public Defender represents and warrants that he or she, and any agents used to perform services under this Agreement, shall fully comply with the requirements for effective legal representation outlined in the Washington State Supreme Court's *Standards for Indigent Defense*, as currently promulgated or hereafter amended, and by the City of Fife Public Defense Standards and *Caseload Weighting Standards*, as currently adopted or hereafter amended by the City.

**14. Indemnification / Hold Harmless.** Public Defender shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Public Defender in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**15. Insurance.** During the term of this Agreement, Public Defender shall have professional liability coverage in a minimum amount of \$1,000,000 per claim and \$1,000,000 in general aggregate covering Public Defender and Public Defender's agents and employees providing services under this Agreement. Proof of this coverage must be provided to the City prior mutual acceptance of this contract.

**16. Assigning or Subcontracting.** Except as expressly provided herein, Public Defender shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City.

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

**18. Governing Law and Venue for Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

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

**20. Entire Agreement/Modification.** This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

**CITY OF FIFE**

**PUBLIC DEFENDER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_