

**AGREEMENT FOR CITY OF BREMERTON
PUBLIC DEFENSE SERVICES
Cross, LaCross & Murphy, PLLC**

This Agreement is made and entered into by and between the **City of Bremerton** (“the City”), a Washington municipal corporation and **Cross, LaCross & Murphy, PLLC**, a Professional Limited Liability Corporation (“Public Defender”), whose address is 559 Bay Street Port Orchard, Washington 98366.

WHEREAS, the City desires to have legal services, as described in this Agreement, performed for indigent persons legally entitled to appointed representation in the City of Bremerton, by Public Defender as an independent contractor; and

WHEREAS, the City and the Public Defender agree that any and all funds provided pursuant to this Agreement are provided for the sole purpose of provision of legal services to indigent persons prosecuted with crimes in Bremerton Municipal Court;

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties agree as follows:

SECTION 1: DEFINITIONS

- A. Case Assignment: A case assignment is that particular case assigned by the City.
- B. Case Credit: Case credit is a case assignment.
- C. City: City is the City of Bremerton.
- D. Client: An indigent person who has been assigned to the Public Defender by the City.
- E. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client’s request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel.
- F. Contract Administrator: Contract Administrator is the City of Bremerton Municipal Court Administration.
- G. Court: Court is the Municipal Court of Bremerton.
- H. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent.
- I. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause

number for each case assignment. The case assignment remains in effect to the end of jurisdiction of the case and shall include the filing of an appeal, if applicable.

J. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.

K. Legal Service: Legal service is legal representation provided by a licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Public Defender to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Agreement.

L. Indigent Defendant: An indigent defendant is a person determined indigent by the Court, as being eligible for a court-appointed attorney, pursuant to RCW 10.101.

M. Mayor: Mayor is the Mayor of Bremerton or designee.

N. Misdemeanor Practice Area:

1. Misdemeanor Case: Any criminal case filed by the Bremerton City Attorney or designee in Bremerton Municipal Court whether a misdemeanor or a gross misdemeanor.

2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.

3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.

O. Paraprofessional Staff: Investigators, social workers and paralegals.

P. Public Defender: The Public Defender is Cross, LaCross and Murphy, PLLC.

SECTION 2: PUBLIC DEFENSE STANDARDS

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

A. Compensation of Counsel: Compensation of counsel shall be in accordance with the provisions set forth in sections 4 and 6 of this agreement.

B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with this agreement.

C. Caseload Limits: Public Defender will accept all caseloads for Bremerton misdemeanor cases, except cases in which there is a conflict of interest, and following six to eight months after the beginning of the term of this Agreement, shall review the case assignments with the City to evaluate and establish caseload limits, whether on a weighted basis or not, to meet the new case limit requirements set forth in Exhibit A.

D. Responsibility for Expert Witness and Investigator Fees: After approval by the Court, expert witness and investigator fees will be paid by the City.

E. Attorneys and Staff: The Public Defender shall provide, at a minimum, two full-time attorneys and one full-time paraprofessional staff person to provide services pursuant to this Agreement.

F. Supervision: The Public Defender shall provide supervising attorneys at the following standards: one supervisor for every two attorneys. Supervisor's shall ensure all new associates have been properly trained and are prepared to appear at the Bremerton Municipal Court and shall appear in court to assist in training of new associates as necessary.

G. New Standards: The Public Defender shall comply with the new standards for Indigent Defense adopted by the Washington State Supreme Court by order dated June 15, 2012, attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 3: TERM

This Agreement shall commence on the first (1st) day of November 2012 and terminate the thirty-first (31th) day of October 2014 unless extended or terminated earlier pursuant to the terms and conditions of this Agreement.

SECTION 4: SCOPE OF WORK

A. Purpose: The purpose of this agreement is to provide legal services through effective assistance of counsel to indigent persons. Legal services shall be statutorily and constitutionally based.

B. Professional Conduct:

1. The Public Defender shall provide the services of attorneys and staff members in compliance with all of the applicable laws and administrative regulations of the State of Washington, the United States, Bremerton Municipal Code, and the Washington State Rules for Professional Conduct (RPC).

2. Nothing in this Agreement shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Public Defender with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Agreement.

3. Nothing in this Agreement shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Public Defender or any such confidential communications made to

agents or employees of the Public Defender for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.

4. Attorneys and staff employed by the Public Defender shall not solicit or accept any compensation, gifts, gratuities or services from any client.

C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Bremerton Municipal Court, as assigned by the Court.

D. Case Assignment: The Public Defender shall accept all case assignments, except for cases in which there is a conflict of interest or other related issue that would prevent the Public Defender from accepting assignment of the case.

E. Conflicts: The Public Defender reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Public Defender shall be responsible for checking for conflicts and identifying if a conflict exists. The Public Defender shall have a written policy which explains how they define conflict cases. This policy must be approved by the Contract Administrator. The Public Defender shall perform a conflicts check before any substantial work is done on the case.

F. Duties and Responsibilities of the Public Defender: In order to perform its responsibilities under the Agreement, the Public Defender shall have the power and duty to:

1. Hire all Public Defender personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Public Defender program;
5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
6. In the event that this Agreement is terminated or not renewed, the Public Defender shall continue to provide services pursuant to this Agreement for three (3) months after the termination date. Public Defender shall not be assigned any new cases, however, Public Defender shall attempt to complete the representation of all clients who have been referred by the Court during the period in which the Agreement is in effect for the compensation received or receivable under the terms of the Agreement, provided that completed representation is not made impossible by a client's failure to appear.

G. Duties and Responsibilities of Public Defender Attorneys: In order to perform their duties under this Agreement, staff attorneys of the Public Defender shall:

1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing hearings or any other related proceedings.

2. Appear at all in-custody and arraignment calendars.

3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

SECTION 5: PERFORMANCE AND QUALIFICATIONS

A. Practice Standards and Records

1. The Public Defender shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator, subject to any ethical obligations of the Public Defender.

2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator, subject to any ethical obligations of the Public Defender.

3. The Public Defender shall establish practice standards to address the following substantive areas of Agreement compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Public Defender shall include a procedure for monitoring compliance with the standard. Written practice standards are due to the Contract Administrator annually. Practice standards should address the following areas:

- a. Attorney practice, including but not limited to;
 - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Public Defender management or Board.
 - ii. Attorney use of paraprofessionals and expert service.
- b. Paraprofessional practice.
- c. Supervision of attorneys and paraprofessionals.

4. The Public Defender agrees that, within available resources, reasonable efforts will be made by the Public Defender to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Public Defender is not prohibited from rotating attorneys or from assigning a single attorney to handle various aspects

of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.

5. A member of the Public Defender staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Public Defender of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within Kitsap County.

6. The Public Defender attorneys shall attempt to make contact with all assigned clients within five (5) working days from a case assignment or no later than the day prior to the first pretrial hearing whichever comes first.

7. The Bremerton City Attorney's Office or designee is responsible for making a copy of discovery available to the Public Defender. The Public Defender shall request discovery as soon as possible after case assignment but no later than three (3) business days of the assignment, whether initial or subsequent, on any case. The Public Defender shall obtain a copy of discovery at arraignment if available. The Public Defender agrees that discovery may be provided in electronic format.

8. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. The Public Defender shall notify the Contract Administrator immediately of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Public Defender shall provide the Contract Administrator with a written explanation stating the basis for the conflict in its notification.

9. The Public Defender shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Agreement shall only be used for work which is authorized by this Agreement.

10. The Public Defender shall ensure that a preliminary written response to any written complaints concerning services provided by the employees of the Defender or the Defender itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Public Defender. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Public Defender.

11. The Public Defender shall establish policies and procedures for pro-bono work provided by staff of the Public Defender. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Agreement.

12. The Public Defender or his attorneys shall not provide transportation to any client assigned to the public defender pursuant to this Agreement.

B. Minimum Attorney Qualifications:

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.

2. Every Public Defender attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; seven (7) hours of each year's required continuing legal education credits shall be in courses relating to criminal law practice or other areas of law in which the Public Defender provides legal services to clients under the terms of this Agreement or is approved by the Washington State Office of Public Defense. The Public Defender will maintain for inspection on its premises records of compliance with this provision.

3. The Public Defender may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Public Defender may be assigned to Rule 9 interns. However, Rule 9 interns may not be used to supplant the services of an attorney assigned by the Public Defender to perform the services of this Agreement.

4. The Public Defender attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.

5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Agreement if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

C. Evaluations:

The Public Defender Supervisor, or his/her designee, shall evaluate the professional performance of Public Defender attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Contractor shall submit to the City a summary report of the annual attorney performance evaluations. The Contractor shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Contractor's director and the Contractor attorney.

SECTION 6: PAYMENT

A. The City shall pay the Public Defender for the services as specified in Section 4, Scope of Work, in the amount not to exceed \$275,000.00 annually. Payments will be made in equal monthly payments.

B. The City will pay the Public Defender by the thirtieth (30) working day of the following month.

C. In the event of failure to comply with any items and conditions of this Agreement or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Section 13 of this Agreement.

SECTION 7: REPORTING REQUIREMENTS

Case Management System: The Public Defender will use a case management system that will allow them to file the monthly report described below electronically.

Reporting: The Public Defender will provide the City with monthly electronic reports within twenty (20) working days after the close of each calendar month in acceptable format on all closed cases. Cases must be closed within 60 days after the last hearing on the case. These reports must contain:

- Defendant's name
- Cause number(s)
- Criminal charges filed
- Disposition of each charge
- Number of court hearings
- Defendant's jail custody status prior to sentencing
- Bench Trial, Jury Trial, Plea or Dismissal
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney

The Public Defender must provide the Contract Administrator the reports described below.

Report Title	Due Date
Monthly Court activity reports including attorney assignments and hearings held	Monthly (by 20 th day of the following month)
Year end reports, additional summaries, other reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Bremerton, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20th) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Public Defender will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Agreement.

SECTION 8: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All official notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

City Clerk

City of Bremerton
345 6th Street, Suite 600
Bremerton, WA 98337
(360) 473-5323

If to the Public Defender:

John Cross

Cross, LaCross & Murphy, PLLC
559 Bay Street Port Orchard, WA 98366

SECTION 9: OTHER EMPLOYMENT

The Public Defender agrees that its legal staff assigned to the Bremerton Municipal Court shall have as their primary employment representation of indigent clients in Bremerton Municipal Court. The Public Defender further agrees that it will abide by all provisions of this Agreement regarding Personal Performance of this Agreement.

SECTION 10: CORRECTIVE ACTION

If the City believes that a breach of this Agreement has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. The City will notify the Public Defender in writing of the nature of the breach;
- B. The Public Defender shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Agreement into compliance, which date shall not be more than ten (10) working days from the date of the Public Defender's response;
- C. The City will notify the Public Defender in writing of the City's determination as to the sufficiency of the Public Defender's corrective action plan. The determination of the sufficiency of the Public Defender's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Public Defender's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Public Defender to implement the plan;
- D. In the event that the Public Defender does not respond within the appropriate time with the corrective action plan, or the Public Defender's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Agreement in whole or in part pursuant to Section 11 (B) Termination and Suspension;
- E. In addition, the City may withhold any payment owed the Public Defender or prohibit the Public Defender from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and

F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 13 Termination and Suspension.

SECTION 11: TERMINATION AND SUSPENSION

A. Either party may terminate this Agreement for convenience upon one hundred twenty (120) days prior written notice.

B. The City may terminate this Agreement in whole or in part upon ten (10) days' written notice to the Public Defender in the event:

1. The Public Defender substantially breaches any duty, obligation, or service required pursuant to this Agreement.

2. The duties, obligations, or services herein become impossible, illegal, or not feasible.

3. The City determines that the Public Defender Services are no longer necessary. Before the City terminates this Agreement pursuant to subsection 11(B), the City shall provide the Public Defender written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Public Defender shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Public Defender elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) days after receipt of the Public Defender's response.

In the event this Agreement is terminated in whole or in part pursuant to Subsection B (1) of this Section, the Public Defender shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Public Defender's control, fault or negligence.

C. Otherwise, this Agreement shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

D. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Agreement.

E. In the event of termination, suspension, or non-renewal of this Agreement, all cases not required to be completed by the Public Defender shall be returned to the Contract Administrator for reassignment.

SECTION 12: DISPUTES (OTHER THAN SUSPENSION OR TERMINATION)

The Public Defender shall address questions or claims regarding meaning and intent of the Agreement or arising from this Agreement in writing to the City Contract Administrator, within ten (10) calendar days of the date in which the Public Defender knows or should know of the question or claim. The City will ordinarily respond to the Public Defender in writing with a

decision, but absent such written response, the question or claim shall be deemed denied upon the thirtieth day following receipt by the City.

SECTION 13: EQUAL EMPLOYMENT OPPORTUNITY

The Public Defender shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification.

SECTION: 14 OTHER LEGAL REQUIREMENTS

A. General Requirement: The Public Defender, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Bremerton; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Public Defender shall specifically comply with the following requirements of this section.

B. Licenses and Similar Authorizations: The Public Defender, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

SECTION 15: INDEMNIFICATION

The Public Defender does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Public Defender's performance of the services contemplated by this Contract to the extent attributable to the acts or omissions, misconduct or breach of this Agreement by the Public Defender, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Public Defender waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Public Defender acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

SECTION 16: INSURANCE

A. **Insurance certification required.** The Public Defender must carry the following coverages and limits of liability:

- (1) Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$1,000,000 each claim.
- (2) Workers' Compensation per statutory requirements of the Washington industrial insurance RCW Title 51.

SECTION 17: ESTABLISHMENT AND MAINTENANCE OF RECORDS

A. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14.

B. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Public Defender and the Public Defender shall respond in writing. The time for notification and response shall be the same as set forth in Section 11 (A).

SECTION 18: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS

A. The Public Defender must ensure that the City has full access to materials necessary to verify compliance with all terms of this Agreement. At any time, upon reasonable notice during business hours and as often as the City may deem necessary for a period of six (6) years, the Public Defender shall provide to the City right of access to its facilities, including those of any subcontractor, data, and other data relating to all matters covered by this Agreement. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Public Defender must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege.

The Public Defender shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Agreement, unless the City agrees in writing to an earlier disposition.

The Public Defender agrees to cooperate with the City or its agent in the evaluation of the Public Defender's performance under this Agreement and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with RCW Chapter 42.17.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client represented pursuant to RCW 13.34 et seq, or RCW 71.02 et seq, or RCW 71.05 et seq.

B. All such reports as are required under the terms of this Agreement shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits for each report.

SECTION 19: CONTRACTUAL RELATIONSHIP

The relationship of the Public Defender to the City by reason of this Agreement shall be that of an independent contractor. This Agreement does not authorize the Public Defender to act as the agent or legal representative of the City for any purpose whatsoever and neither the Public Defender nor its employees shall be deemed employees of the City. The Public Defender is not granted any express or implied right or authority to assume or create any obligation or

responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Public Defender and the Public Defender's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Public Defender shall complete this Agreement according to the Public Defender's own means and methods of work, which shall be in the exclusive charge and control of the Public Defender and which shall not be subject to control or supervision by the City, except such requirements for performance as are specified in this City.

The Public Defender agrees that it has secured or will secure at the Public Defender's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Agreement.

SECTION 20: ASSIGNMENT AND SUBCONTRACTING

The Public Defender shall not assign or subcontract any of its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Public Defender not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Public Defender shall incorporate by reference all the terms of this Agreement. The Public Defender shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Public Defender from liability under this Agreement, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

SECTION 21: INVOLVEMENT OF FORMER CITY EMPLOYEES

A. The Public Defender shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Agreement and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.

B. The Public Defender shall ensure that no Work or matter related to the Work funded by this Agreement is performed by any person (employee, subcontractor, or otherwise) who:

- (1) was a City officer or employee within the past twelve (12) months; and
- (2) as such was officially involved in, participated in, or acted upon any matter related to the Work.

SECTION 22: NO CONFLICT OF INTEREST

The Public Defender confirms that the Public Defender does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Public Defender selection, negotiation, drafting, signing, administration, or evaluating the Public Defender's performance. As used in this section, the term "Public Defender" shall include any employee of the Public Defender who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-

law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

SECTION 23: ERRORS & OMISSIONS; CORRECTION

The Public Defender shall be responsible for the professional quality of all services furnished by or on the behalf of the Public Defender under this Agreement. The Public Defender, without additional compensation, shall correct or revise any Public Defender services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Agreement shall survive any termination or expiration of this Agreement.

SECTION 24: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

SECTION 25: EXTRA WORK

The City may desire to have the Public Defender perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Agreement. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

SECTION 26: MISCELLANEOUS PROVISIONS

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for Kitsap County.

D. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

E. Captions: The titles of sections are for convenience only and do not define or limit the contents.

F. Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Public Defender after the time the same shall have become due nor payment to the Public Defender for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.

H. Entire Agreement: This document, along with any exhibits and attachments, constitutes the entire Agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Public Defender, employee or associate of the Public Defender prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used in the performance of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

K. Security Access: City shall provide Public Defender three (3) access codes for entry into the court facility after hours, except that the Public Defender shall provide the names of those individuals who will use the access codes.

L. Parking: City shall provide two (2) parking slots near the Municipal Court for Public Defender Staff.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

CITY OF BREMERTON

CROSS, LACROSS & MURPHY, PLLC

PATTY LENT, MAYOR

Date: _____

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

Roger A. Lubovich, City Attorney

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