

RESOLUTION R-4949

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING INDIGENT DEFENSE STANDARDS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PUBLIC DEFENSE CONTRACT INCORPORATING THE STANDARDS.

WHEREAS, RCW 10.101.030 requires the City to adopt public defense standards using the standards of the Washington State Bar Association for public defense services as guidance; and

WHEREAS, most recently, on October 4, 2011, the City Council passed Resolution R-4894, adopting public defense standards guided by the Washington State Bar Association standards to ensure indigent defendants charged with crimes that are filed in Kirkland Municipal Court receive a constitutionally appropriate level of criminal defense; and

WHEREAS, the City contracts with the law firm of Stewart MacNichols Harmell, Inc. P.S., for public defense services and the contract incorporate the standards established in Resolution R-4894; and

WHEREAS, the Washington Supreme Court by Order No. 25700-A-1004, as amended, has adopted new standards for indigent defense which became effective October 1, 2012, with the exception of Standard 3.4 relating to case load limits which will be effective September 1, 2013; and

WHEREAS, the contract with the law firm of Stewart, Beall, MacNichols, and Harmell, Inc. P.S., is set to expire December 31, 2012; and

WHEREAS, the Kirkland City Council deems it to be in the public interest to adopt the new Washington Supreme Court standards by reference, and incorporate those standards in its public defense contract, while continuing to use as guidance the Washington State Bar Association standards included in Resolution R-4894;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. Pursuant to the provisions of RCW 10.101.030 the City Council adopts as its standards for indigent defense the standards contained in Washington Supreme Court Order No. 25700-A-1004, as amended, provided Standard 3.4 shall become effective on September 1, 2013.

Section 2. Resolution R-4894 which includes the Washington State Bar Association standards shall serve as a guide to interpret and apply the standards adopted by the Washington Supreme Court.

Section 3. The City Manager is authorized to execute a public defense contract incorporating the Washington Supreme Court's new standards for indigent defense in a form substantially similar to Attachment A.

Passed by majority vote of the Kirkland City Council in open meeting this 11th day of December, 2012.

Signed in authentication thereof this 11th day of December, 2012.


MAYOR

Attest:


City Clerk



PUBLIC DEFENSE CONTRACT

THIS CONTRACT is entered into by and between the CITY OF KIRKLAND, a municipal corporation, herein referred to as the "City," and Stewart MacNichols & Harmell, Inc., P.S., herein referred to as the "Contractor."

1. Scope of Services. All indigent criminal defendants charged under ordinances of the City who qualify for appointed counsel shall be referred to the Contractor. The Contractor shall provide legal representation for each of these defendants from the time of screening for eligibility through trial, sentencing, post-trial appearances and appeals to the Superior Court, if necessary. Contractor shall maintain an office within the City as well as 425 area code and 800 phone numbers throughout the term of this Contract. Whenever Contractor is counsel of record for an individual who is jailed on a City matter, Contractor shall be available to appear in court before such individual has been in custody for 24 hours; except that, this provision does not require the Contractor to be available to appear in Court on Saturdays, Sundays, or City holidays. The Contractor may withdraw upon completion of the case or the Contract as allowed by the Rules of Professional Conduct. The Contractor may assist the Court by assisting other persons charged with violating the City's ordinances, such as with preparation of forms. Any such assistance shall not obligate the Contractor to represent said person unless the defendant qualifies for appointed counsel.
2. Applicant Screening. Determination of indigency for eligibility for appointed counsel under this Contract shall be determined by a screening process established by the City. The City shall be responsible for handling the screening process. Should the Contractor determine a defendant is not eligible for assigned counsel, the Contractor shall withdraw from the case and so advise the Court and the City of the withdrawal and the reason therefor, subject to the Contractor's professional duties under the Rules of Professional Conduct.
3. 24-Hour Telephone Access. Contractor shall provide to the City Police Department the telephone number or numbers at which an attorney may be reached for "critical stage" advice to defendants during the course of police investigations and/or arrest twenty-four (24) hours each day.
4. Associated Counsel. Contractor may arrange for other attorneys to perform services under this Contract at Contractor's expense. Contractor may delegate the authority to perform Contract services to an attorney who is licensed to practice law before the courts of record for the State of Washington, unless City objects to services by that attorney. In any event, Contractor shall be responsible for overseeing and approving services performed by other attorneys. Contractor must immediately report to the City any change affecting the maintenance of membership in good standing of the Washington State Bar Association.

5. Proof of Professional Liability Insurance. Contractor will, at Contractor's sole expense, obtain and maintain during the life of this Contract, a policy of comprehensive general liability and professional liability insurance. Said policy shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence and be placed with an insurer authorized to do business in the State of Washington. Certificates issued by the insurance carrier showing such insurance to be in force shall be filed with the City not less than ten days following signing of this Contract.

6. Indemnification.
 - A. Contractor shall indemnify and hold the City, its elected officials, officers and employees harmless from any and all claims, losses or liability, including attorney's fees, whatsoever arising out of the Contractor's performance of obligations pursuant to this Contract, including claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Contractor, his agents, associates or employees, or occurring without the fault or neglect of the City.

 - B. With respect to the performance of this agreement and as to claims against the City, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of the City, its agents, and employees. To the extent any of the damages covered by this paragraph were caused by or resulted from the concurrent negligence of the City, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the Contractor, its officers, agents and employees.

7. Compensation.
 - A. The City shall pay Contractor for services rendered under this Contract the sum of \$18,000 per month for the first 80 cases each month. Every three months, the Contractor will submit a bill in the amount of \$250 per case, for each case in excess of a total of 240 cases for the preceding three months. The City shall also pay to the Contractor a flat fee of \$500 for each case appealed from the District Court. In addition, the City shall be responsible for the preparation of appellate transcripts as required by court rules. The Contractor shall bill the City by the fifth day of the month for the previous month's services. Payment shall be made by the last day of each month, provided; the quarterly billing, described above, for the cases in excess of 240 cases shall be made by the fifth day of the month following completion of the quarter.

 - B. For the purposes of this section, "case" shall be defined as in Section 13.C. below.

- C. Either party may make a written request to re-open discussions regarding compensation. In the event that a party makes such a written request, the parties agree to engage in negotiations thereof for at least 30 days. If no agreement is reached after 30 days, then either party may give written notice of termination, to be effective no sooner than 30 days following the notice of termination.
8. Discovery Provided. The City shall provide to the Contractor, at no cost to the Contractor or the defendant, one copy of all discoverable material concerning each assigned case. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.
9. No Assignment or Subcontracts. No assignment or transfer of this Contract or any interest in this Contract shall be made by either of the parties without prior written consent.
10. Contractor Conflict. In the event the representation of a defendant hereunder raises a conflict of interest such that the Contractor cannot represent the defendant, said defendant shall be referred back to the City for further assignment.
11. Statistics. The Contractor shall provide statistics to the Municipal Court for all cases assigned, including the name of the client and the case number. In addition, this information shall be reported to the contract administrator no less often than within 30 days after the end of each quarter as to clients represented during the prior quarter.
12. Standards for Public Defense Services. The Contractor shall comply with the applicable Standards adopted by the Washington Supreme Court for attorneys to represent indigent persons. The Attorney shall also submit a certification to the Kirkland Municipal Court stating that the Attorney is in compliance with such standards. The certification shall be submitted on a quarterly basis throughout the term of this Contract.
13. Caseload Limits per Fulltime Equivalent Position
- A. Caseload Limits in General. The Contractor shall maintain a caseload such that each and every defendant can be provided effective assistance of counsel as required by this Contract. Subject to the remaining subsections of this section, a fulltime equivalent attorney position may be appointed to no more than 400 cases per year; provided, that a fulltime equivalent attorney position may be appointed to more than 400 cases per year if the managing partners of the Contractor determine that the Contractor will meet the terms of this Contract. Under no circumstances may a fulltime equivalent attorney position be appointed to more than 550 cases per year.
- B. Factors in Determining Permitted Caseload. In order to determine whether a fulltime equivalent attorney can be appointed to more than 400 cases per year, the Contractor shall consider the following:
- i. The experience of the attorneys who perform the work called for in this Contract.

- ii. The number of cases fulltime equivalent attorney positions are currently handling that are not in pre-trial status and not on appeal.
 - iii. The complexity of the cases.
 - iv. The services the Contractor provides to other municipalities or private clients.
- C. Case Defined. For the purposes of this section, the term "case" shall mean a group of criminal charges related to a single incident filed against a defendant to which the Contractor is appointed by the court, but shall not include temporary or provisional appointments at arraignments or in-custody hearings, appointments by a court at a court hearing for that one court hearing only, and shall not include pre-filing representation provided to a suspect who is under investigation for a violation of RCW 46.61.502, 46.61.503 or 46.61.504.
- D. Case Weighting. For the purposes of determining how many cases each fulltime equivalent attorney position is handling, each case shall be counted as follows:
- i. The charges listed below shall be counted as specified:

• Allowing Minor to Frequent Bar	1/3
• Allow Unauthorized Person to Drive	1/3
• Altered License	1/3
• Assault	
○ Domestic Violence	1
○ Non-Domestic Violence	1
○ With Sexual Intent	2
• Animal Cruelty	1
• Attempted Assault	2/3
• Attempted Forgery	2/3
• Attempted Theft	2/3
• Canceled Plates/Registration	1/3
• Complicity	2/3
• Commercial License Needed	1/3
• Concealed Weapon	2/3
• Conspiracy	2/3
• Counterfeiting Trademark	2/3
• Criminal Attempt	2/3
• Criminal Trespass	1/3
• Custodial Interference	1
• Cyber Stalking	1
• Dangerous Animal at Large	2/3
• Discharge of Firearm	2/3
• Disorderly Conduct	1/3
• Display of Weapon	2/3
• Driving with Suspended Registration	1/3
• DUI	1

• DWLS 1	1/2
• DWLS 2	1/2
• DWLS 3	1/3
• Criminal Assistance	1/3
• Escape	2/3
• Failure to Transfer Title	1/3
• Failure to Disperse	1/3
• Failure to Obey	1/2
• Failure to Obey Flagman	1/2
• Failure to Obtain Vehicle License	1/3
• Failure to Stop	1/2
• Failure to Secure Load	1
• Failure to Surrender License	1/3
• False Identification	1/2
• False Insurance Card	1/2
• False Information	1/2
• False Reporting	1/2
• False Statement	1/2
• Fraud Dr. License	1/2
• Furnishing Liquor to Minor	1/2
• Harm to Police Dog	1
• Harassment	1
• Telephone Harassment	1
• Domestic Violence Harassment	1
• Hit and Run Attended	1
• Hit and Run Unattended	1/2
• Illegal Fireworks	1/3
• Illegal Use of Dealer Plates	1/3
• Immoral Conduct with a Minor	1
• In Park After Hours	1/3
• Indecent Exposure	1
• Inhale Toxic Fumes	1
• Interfering with Reporting to 911	2/3
• Invalid Trip Permit	1/3
• Lewd Act	1
• Littering Prohibited	1/3
• Loiter for Prostitution	1/2
• Malicious Mischief Domestic Violence	1
• Malicious Mischief Non-Domestic Violence	2/3
• Minor Frequenting a Tavern	1/2
• Minor Intoxicated in Public	1/2
• Minor in Possession/Consumption	1/2
• Neglect of a Child	1
• Negligent Driving 1	1
• No Valid Operator's License	1/3
• Obstructing	2/3
• Operating Vehicle Without Cert. of Ownership	1/3
• Operating Vehicle Without Ignition Interlock	1/2

• Patronizing a Prostitute	1/2
• Physical Control	1
• Possession of Drug Paraphernalia	1/2
• Possession of Marijuana	1/2
• Possession of Stolen Property	2/3
• Possession/Making Burglary Tools	2/3
• Possession Another's ID	1/2
• Possession of Legend	2/3
• Prostitution	1/2
• Provoking Assault	2/3
• Public Disturbance	1/3
• Reckless Driving	2/3
• Reckless Burning	2/3
• Reckless Endangerment	2/3
• Refuse to Cooperate	1/2
• Crimes Requiring Registration as Sex Offender	2
• Resisting Arrest	2/3
• Selling Liquor to Minor	1/2
• Stalking	1
• Tampering with Property of Others	1/2
• Tampering with a Witness	1
• Theft 3	2/3
• Theft of Rental Property	2/3
• Unlawful Issuance of Bank Check	2/3
• Unlawful Bus Conduct	1/2
• Unlawful Camping	1/3
• Unlawful Racing	2/3
• Urinating in Public	1/3
• Vehicle Prowl	2/3
• Vehicle Trespass	2/3
• Violation of Anti-harassment Order	2/3
• Violation of No Contact Order	2/3
• Violation of Instruction Permit	1/3
• Violation of Occupancy License	1/3
• Violation of Protection Order	2/3
• Violation of Restraining Order	2/3
• Weapons Capable of Harm	2/3

ii. All other charges shall be considered one case unless designated otherwise by agreement of the Contractor and the City Manager's Office.

E. Full Time Attorney Equivalent Position. Fulltime attorney equivalent position shall mean 40 hours of attorney services provided pursuant to this Contract.

F. Caseload Monitoring. Contractor shall continually monitor the caseload and performance of the Contractor as a whole and each attorney providing services pursuant to this Contract. Contractor shall provide projections at least three months

in advance regarding the caseload limits based upon the number of attorneys employed by the Contractor and trends in case filings.

- G. Caseload Level Shifting. In the event an attorney is handling a caseload such that the attorney is unable to provide effective assistance of counsel to each and every defendant, Contractor shall reduce the caseload of that attorney, and shift the reduced portion of the caseload to another attorney employed by the Contractor.
14. Refusal of Appointments. Contractor shall monitor the total number of cases handled by the Contract pursuant to this Contract. In the event Contractor is handling an excessive number of cases such that Contractor is unable to provide each and every defendant with effective assistance of counsel, then Contractor shall refuse further appointment of cases until such time as Contractor employs additional attorneys or the number of cases per attorney is reduced. Work performed pursuant to this Contract shall be Contractor's priority, and prior to refusing further appointments, Contractor shall attempt to withdraw from cases that Contractor handles that are not within the scope of this Contract and shall refuse to accept cases from clients outside of the scope of the work called for in this Contract.
15. Term of this Contract.
- A. Provision of services pursuant to this Contract shall commence at 12:01 a.m. on January 1, 2013.
- B. This Contract shall remain in force through December 31, 2015, unless terminated earlier pursuant to the provisions hereof.
16. Termination.
- A. For Cause. Either party may terminate this Contract in the event the second party fails to perform its obligations as described in this Contract and if such failure has not been corrected to the reasonable satisfaction of the first party in a timely manner after notice of breach has been provided to the second party.
- B. For Reasons Beyond Control of Parties. Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, acts of nature; war or warlike operations; civil commotion; riot; labor dispute, including strike, walkout or lockout; sabotage; or superior governmental regulation or control. Notice of termination pursuant to this subsection shall be given as far in advance as is reasonable.
- C. Without Cause. Either party may terminate this Contract at any time without cause upon giving the non-terminating party not less than ninety (90) days prior written notice.
17. Amendment

- A. No modification or amendment of the provisions of this Contract shall be effective unless in writing and signed by authorized representatives of the parties hereto.
 - B. The parties nonetheless agree to negotiate a fee adjustment in good faith in the event that a material increase in Contractor's level of service is requested by Kirkland, or results from practices or policies outside Contractor's reasonable control.
18. Entire Agreement. This Contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in writing, signed by the parties and endorsed hereon.

DATED this ____ day of _____, 2012.

CITY OF KIRKLAND

CONTRACTOR
STEWART MACNICHOLS
& HARMELL, INC., P.S.

By _____
Title _____

By _____
Title _____

APPROVED AS TO FORM:
KIRKLAND CITY ATTORNEY

Date: _____