

RESOLUTION NO. 23-1930

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH STEWART MACNICHOLS HARMELL, INC., P.S. FOR PUBLIC DEFENSE SERVICES

WHEREAS, the Sixth Amendment to the U.S. Constitution grants all criminal defendants the right to an attorney; and

WHEREAS, if a defendant cannot afford an attorney, the defendant will be granted one by the governing body; and

WHEREAS, the City of Lake Forest Park is the governing body that contracts for public defense services to provide counsel for indigent criminal defendants at Lake Forest Park Municipal Court; and

WHEREAS, in 2018, the City requested proposals for public defense services and selected Stewart MacNichols Harmell, Inc., P.S. after a competitive Request for Proposals (RFP); and

WHEREAS, the City seeks to renew the contract with Stewart MacNichols Harmell for an additional three (3) year term with the possibility of two (2) additional one (1) year extensions; and

WHEREAS, the City Attorney has reviewed and approved the proposed contract and scope of work;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Lake Forest Park, as follows:

Section 1. CONTRACT APPROVED. The contract with Stewart MacNichols Harmell, Inc., P.S. for public defense services is approved, and the Mayor is authorized to sign the contract in substantially the same form as provided in the attached Exhibit A.

Section 2. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.


PASSED BY A MAJORITY VOTE of the members of the City of Lake Forest
Park City Council this 14th day of December, 2023.

APPROVED:



Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:



Matt McLean
City Clerk

FILED WITH THE CITY CLERK: December 8, 2023
PASSED BY THE CITY COUNCIL: December 14, 2023
RESOLUTION NO.: 23-1930

**CITY OF LAKE FOREST PARK
AGREEMENT FOR FIRM SERVICES**

**Contract Title: Primary Public Defender Services: Stewart MacNichols Harmell, Inc., P.S.
Contract #: _____**

WHEREAS, the City of Lake Forest Park, Washington (hereinafter "City") and Stewart MacNichols Harmell, Inc., P.S. (hereinafter "Public Defender") enter into this Agreement for Firm Services (the "Agreement") for the provision of public defense services that will comply with the City's adopted Standards for Indigent Defense.

NOW THEREFORE, in consideration of the mutual benefits to be derived and the promises contained herein, the City and the Public Defender enter into this Agreement.

1. Scope of Services, Standards and Warranties. The Public Defender will provide indigent defense services in misdemeanor cases in accordance with the standards adopted by the City in Resolution 1459 as the same exists or is hereafter amended (hereinafter "Standards"). The Public Defender warrants that each individual employed by the Public Defender to perform services under this Agreement has read and is fully familiar with the provisions of the Standards adopted by the City. Compliance with these Standards goes to the essence of this Agreement.

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

1.2 The Public Defender will maintain contemporaneous records on a daily basis documenting all work performed on each assigned case. The Public Defender will maintain and provide to the City a quarterly report detailing the information provided below in 1.2.1 – 1.2.7 so long as consistent with the attorney-client privilege and any protective order entered by a court of competent jurisdiction:

1.2.1 the number of cases assigned during the period;

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

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

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

EXHIBIT A to Resolution 23-1930

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

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

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

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

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

2. Compensation. Effective January 1, 2024, the City shall pay to the Public Defender for services rendered under this Agreement the lump sum of ten thousand dollars (\$10,000.00) per month. The basis of this lump sum payment represents compensation for all matters assigned involving representation at arraignments, pre-trial appearances, motions, bench trials, jury trials, sentencing, status conferences and review hearings.

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

2.1 Case Counts. Based upon case counts previously maintained for the City, current estimates for annual case counts for all indigent cases filed by the City is approximately 256 cases per year. As provided in the Standards, the case counts also include the Public Defender's appearance at arraignment calendars and status conferences. The terms "case" and "credit" shall be defined in accordance with the Washington State Supreme Court rule and Washington Office of Public Defense guidelines. The City adopts an un-weighted case count.

2.2 Adjustment; Internal Allocation. As provided in the Standards, case counts may be revised upwards based upon a variety of factors. Upon the Public Defender's request, the City

EXHIBIT A to Resolution 23-1930

shall review any particular case with the Public Defender to determine whether greater weighting should be assigned, and upward revisions shall not be unreasonably refused. The annual caseload shall be reviewed annually on or about June 30 each year.

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

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

2.4.1 Discovery. For post-conviction relief cases, discovery includes the cost to obtain copies of defense and prosecution files, and court records and transcripts.

2.4.2 Preauthorized Expenses. Case expenses may be requested by the Public Defender and preauthorized by order of the Court. Unless the services are performed by Public Defender's staff or subcontractors, such expenses include, but are not limited to:

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

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

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

2.4.5 Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Public Defender is limited to no more than two copies.

EXHIBIT A to Resolution 23-1930

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

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

2.4.8 Superior Court Appeals. Compensation of \$750.00 for any appeal to the Superior Court where a brief is filed, including an Anders Brief.

2.5 Review and Renegotiation.

2.5.1 Due to Increases or Decreases in Case Load. The City and the Public Defender shall, at the option of either party, renegotiate this Agreement if there is a significant increase or decrease in the number of cases assigned. Significant “decrease” shall mean a change of more than ten percent (10%) in the number of cases assigned. If cases are estimated to approach or exceed THREE HUNDRED TWENTY-SIX (326) cases per year or EIGHTY-TWO (82) cases per quarter, the parties may renegotiate this Agreement to increase case coverage and compensation to Public Defender. At the request of either party, the City and Public Defender will periodically review case assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications. Public Defender shall promptly notify the City when quarterly caseloads can reasonably be anticipated to require use of overflow or conflict counsel to assure that cases assigned to Public Defender remain within the limits adopted in this contract and comply with state and local standards.

2.5.2 Renegotiation Due to Change in Rule or Standard. This Agreement may be renegotiated at the option of either party if the Washington State Supreme Court, the Washington State Bar Association or the City significantly modifies the Standards for Indigent Defense adopted.

3. Term. The term of this Agreement shall be from the date of execution for a three (3) year initial term through December 31, 2026, unless sooner terminated as provided herein. The Agreement may be extended for two (2) additional one (1) year terms at the mutual agreement of the parties.

3.1 For Cause. This Agreement may be terminated for good cause for violation of any material term of this Agreement. “Material term” shall include any violation indicating a failure to provide representation in accordance with the rules of court, the ethical obligations established by the Washington State Bar Association, the willful disregard of the rights and best interests of the client, a willful violation of the Standards, or violation of the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney or any Public Defender 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 violation shall be provided to the Public Defender who shall have thirty (30) business days to cure the violation. Failure to correct the violation will give rise to termination for cause at the City’s

EXHIBIT A to Resolution 23-1930

discretion. In lieu of terminating this Agreement, the City may agree in writing to alternative corrective measures.

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

3.3 Termination on Cessation of the Municipal Court. In the event that the City chooses in its sole discretion to terminate its Municipal Court, this Agreement shall expire following one (1) year written notice by the City to the Public Defender.

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

3.4.1 Representation. The compensation established in this Agreement compensates Public Defender for services relating to each and every assigned case. Therefore, in the event this Agreement is terminated, the Public Defender will continue to represent clients on assigned cases until a case is concluded on the trial court level (e.g. plea, trial, dismissal).

3.4.2 The provisions of sections 1 and 5, as well as this subsection 3.4 survive termination as to the Public Defender. The City shall remain bound by the provisions of section 2.4 with respect to additional costs incurred with respect to cases concluded after the termination of this Agreement.

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

5. Indemnification. The Public Defender 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

EXHIBIT A to Resolution 23-1930

6. Insurance and City Business License. The Public Defender shall comply with the following conditions and procure and keep in force at all times during the term of this Agreement, at Public Defender's expense, the following policies of insurance with companies authorized to do business in the State of Washington. The Public Defender's insurance shall be rated by A. M. Best Company at least "A" or better with a numerical rating of no less than seven (7) and otherwise acceptable to the City.

- A. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Public Defender shall require each sub-consultant to provide Workers' Compensation Insurance for its employees, unless the Consultant covers such employees.
- B. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$2,000,000 per occurrence, at least \$2,000,000 in the general aggregate, and \$2,000,000 products-completed operations aggregate limit.
- C. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
- D. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate. Coverage may be written on a claims made basis; provided that the retroactive date on the policy or any renewal policy shall be the effective date of this Agreement or prior, and that the extended reporting or discovery period shall not be less than 36 months following expiration of the policy. The City may waive the requirement for Professional Errors and Omissions Insurance whenever the Work does not warrant such coverage or the coverage is not available.
- E. The Public Defender shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.
- F. Before the Public Defender performs any Work, Public Defender shall provide the City with a Certificate of Insurance acceptable to the City evidencing the above-required insurance and naming the City of Lake Forest Park, its officers, employees and agents as Additional Insured on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insured. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Public Defender's obligations to fulfill the requirements.
- G. Public Defender shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Public Defender shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.
- H. In case of the breach of any provision of this section, the City may provide and maintain at the expense of Public Defender insurance in the name of the Public

EXHIBIT A to Resolution 23-1930

Defender and deduct the cost of providing and maintaining such insurance from any sums due to Public Defender under this Agreement, or the City may demand Public Defender to promptly reimburse the City for such cost.

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

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

9. Independent Contractor. 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.

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

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

12. Entire Agreement; Prior Agreement Superseded. 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

EXHIBIT A to Resolution 23-1930

Agreement. Upon execution, this Agreement shall supersede any and all prior agreements between the parties.

13. 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 OF LAKE FOREST PARK:

Phillip Hill ICMA-CM
City Administrator
17425 Ballinger Way NE
Lake Forest Park, WA 98155

PUBLIC DEFENDER:

Jeff MacNichols, Partner
Stewart MacNichols Harmell, Inc., P.S.
655 West Smith Street, Suite 210
Kent, WA 98032

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of January, 2024.

CITY OF LAKE FOREST PARK

By: _____

Jeff Johnson, Mayor

Date: _____

EXHIBIT A to Resolution 23-1930

ATTEST/AUTHENTICATED:

By: _____
Matt McLean, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLIC DEFENDER

By: _____
Kim Adams Pratt, City Attorney

By: _____

Title: _____

Date: _____

EXHIBIT A to Resolution 23-1930

EXHIBIT A

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

Signed: _____

ATTORNEY: _____
Print Name

Signed: _____

ATTORNEY: _____
Print Name