



Memorandum

DATE: September 19, 2017

TO: Debbie Tarry, City Manager

FROM: Alex Herzog, Management Analyst

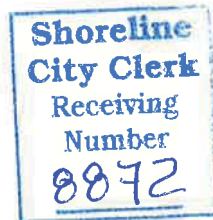
RE: First Appearance, In-Custody Public Defense at SCORE and KC Jail

On July 28, 2017 the City served the Law Office of Theresa and Phillip Griffin with 60-days' notice of intent to terminate the City's two existing contracts for first appearance, in-custody public defense; one for service at SCORE, the other for service at King County Jail in Downtown Seattle. Please reference Contracts 7749 (Amendment #1: 8274) and 7893 (Amendment #1: 8275)

The attached proposed contract would shift this work to the City's primary public defense firm, Stewart, MacNichols, Harmell (SMH). There are two primary benefits to this approach: a) defendants will no longer be represented by two law firms on the path to resolving their charges; instead one firm will likely handle the case from beginning to end, and b) the proposed rate is likely to be lower than that which the City experienced with the Law Office of Theresa and Phillip Griffin. Staff also recommends this approach because of SMH's superior performance as the City's primary public defense firm over the past couple years.

This transition is to be complete on October 1 when SMH takes over this role.

Please let me know if you have any questions. Thank you.



Contract No. 8872

Brief Description: First Appearance In-Custody Public Defense

CITY OF SHORELINE AGREEMENT FOR SERVICES

This Agreement is entered into by and between the City of Shoreline, Washington, a municipal corporation hereinafter referred to as the "CITY," and Stewart MacNichols Harmell, Inc., P.S., hereinafter referred to as the "ATTORNEY."

WHEREAS, the City desires to retain the services of an Attorney to provide in-custody public defense services at the South Correctional Entity (SCORE), Monday through Friday, and at the King County Correctional Facility (KCCF), and on a regular basis and

WHEREAS, the City has selected Stewart MacNichols Harmell, Inc., P.S to perform the above-mentioned services;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is mutually agreed as follows:

1. **Scope of Services to be Performed by the Attorney.**

The Attorney shall perform the services outlined in Exhibit A. In performing these services, the Attorney shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. The Attorney individually warrants that he/she, and every Attorney and/or intern employed by the Attorney to perform services under this Agreement, has read and is fully familiar with the provisions of the Washington Supreme Court rule and the any standards adopted by the City as well as the federal court decision in *Wilbur v. Mount Vernon* (2013) ("Standards"). In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. Compliance with these Standards and applicable directives of the courts goes to the essence of this Agreement.

- a. The Attorney shall maintain records documenting all work performed under this Agreement.
- b. The Attorney warrants that payment for services, reflected in Section 2, Compensation, includes all infrastructure, support, administrative services, routine investigation, and systems necessary to perform the services agreed to herein and those reimbursable expenses listed in Exhibit A.
- c. The Attorney agrees that he/she shall promptly notify the City if any circumstance, including change in rule or law, renders it difficult or impossible to provide service in compliance with this Agreement.

2. **Compensation.**

- A. Services will be paid at the rate set forth in Exhibit A, not to exceed a maximum of \$50,000.00, including all fees and those reimbursable expenses listed in Exhibit A.
- B. The City shall pay the Attorney for services rendered after receipt of a billing voucher in the form set forth on Exhibit B. **NO PAYMENT WILL BE ISSUED WITHOUT A BILLING**

VOUCHER. Payments will be processed within 30 (thirty) days from receipt of billing voucher. The Attorney shall be paid for services rendered but, in no case shall the total amount to be paid exceed the amount(s) noted in the Exhibit(s) and approved by the City. The Attorney shall complete and return a W-9 to the City prior to contract execution by the City. No payment will be issued without a Taxpayer Identification Number on file. Mail all billing vouchers to: the attention of the contract manager identified in Section 14, 17500 Midvale Avenue North, Shoreline, Washington 98133-4905.

3. Complaints.

- a. Investigation by the Attorney. In the event a complaint is received by the Attorney or by the City, the Attorney shall assign the complaint to a partner level attorney (excluding the attorney for whom the complaint is regarding) for investigation. The reviewing attorney shall review the entire file on the matter, court records, documents, dockets and any other information necessary to investigate the complaint. The reviewing attorney will inform the complainant of the results of their internal investigation and, if the complainant is still unsatisfied, will inform the complainant that the matter will be forwarded to the City for further investigation. The reviewing attorney will forward all documents related to the complaint and investigation to the Management Analyst in the City Manager's Office at the City of Shoreline. The Attorney shall not be required to compromise any attorney client privilege when providing the results of the internal investigation.
- b. Investigation by the City. In the event a complaint is received by or directed to the City's Management Analyst, and is not timely resolved by the reviewing attorney to the satisfaction of the complainant, the Management Analyst will investigate the complaint by reviewing the complaint and all supporting documents, discussing the matter with the complaining party, discussing the matter with the Attorney, and determining whether a violation of this Agreement has occurred. The Management Analyst may consult with legal counsel, or another expert as deemed necessary, in order to resolve the complaint. In addition, the City may consult with the Washington State Bar Association if, in the City's sole discretion, it is deemed appropriate. The Attorney shall fully cooperate in the City's investigation process.
- c. Corrective Action Plan or Termination. In the event the City determines that a violation has occurred, the City may develop a corrective action plan or terminate this Agreement in the event it is determined that termination is appropriate. Attorney shall cooperate in any investigation of a complaint, and any corrective action plan developed by the City.

4. Review and Renegotiation Due to Change in Rule or Standards.

This Agreement may be renegotiated at the option of either party if the Washington State Supreme Court, the Washington State Bar, or the City significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule or by the City pursuant to RCW 10.101.030. Either party shall give ten (10) days written notice of intent to renegotiate to the other party.

5. Term.

- A. The term of this Agreement shall commence September 1, 2017 and end at midnight on the 31st day of December, 2019.

6. Termination.

- A. The City reserves the right to terminate this Agreement at any time, with or without cause by giving fourteen (14) days written notice to Attorney. In the event of such termination, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Attorney pursuant to this Agreement shall be considered confidential client files.

- B. In the event this Agreement is terminated by the City, the Attorney shall be entitled to payment for all hours worked and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent the City from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Attorney. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
- C. The Attorney reserves the right to terminate this Agreement with not less than sixty (60) days written notice, or in the event outstanding invoices are not paid with 30 days written notice.
- D. If the Attorney is unavailable to perform the scope of services, the City may, at its option, cancel this Agreement immediately.
- E. Termination on Cessation of the District Court. In the event that the City, in its sole discretion, elects to terminate its Municipal District Court, this Agreement shall expire following one (1) years written notice by the City to the Attorney.
- F. Obligations survive Termination. In the event of termination of this Agreement, the following obligations shall survive and continue:
 - i. Representation. The compensation established in this Agreement compensates Attorney for services relating to each and every assigned case. Therefore, in the event this Agreement is terminated, the Attorney will continue to represent clients on assigned cases until a case is concluded on the trial court level with additional compensation as provided in Exhibit A.2.K.
 - ii. The provisions of Sections 1 (Scope of Services), 7 (Ownership of Documents), and 8 (Hold Harmless) as well as this subsection survive termination as to the Attorney. The City shall remain bound by the provisions Exhibit A with respect to additional costs incurred with respect to cases concluded after the termination of this Agreement.

7. Ownership of Documents and Public Records.

- A. All documents, recordings, and other products or materials produced by the Attorney in connection with the services rendered under this agreement shall be considered confidential client files.
- B. All services performed under this Agreement will be conducted solely for the benefit of the accused and will not be used for any other purpose without written consent of the accused.
- C. The Attorney shall preserve the confidentiality of all City documents and data accessed for use in Attorney's work product as governed by the Rules of Professional Conduct as promulgated by the Washington State Bar Association.
- D. If required by Washington State Law, including Chapter 40.14 RCW and the State's Records Retention Schedule, the Attorney shall retain all cases files in compliance with the law and regulations.
- E. The Attorney acknowledges that the City is a public agency subject to Washington's Public Records Act, Chapter 42.56 RCW (Act), and that this Agreement and all public records associated with the Agreement shall be available for inspection and copying by the public when required by the Act. The Attorney shall conduct for those public records then in the custody of the Attorney needed by the City to respond to a disclosure request under the Act. Unless an exemption applies, the Attorney agrees to make those public records promptly available to the City along with an index of any record withheld and the basis for withholding the record. To ensure compliance with the Act, the City may request confidential review of any record to which Attorney claims an exemption. If the City determines that the exemption does not apply and the record must be released, the City's

sole obligation shall be to notify the Attorney of the date that the record will be released unless the Attorney obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. The City shall not be liable to the Attorney for any public records that the City releases in compliance with the Act or in compliance with an order of a court of competent jurisdiction.

8. Independent Contractor Relationship.

- A. The Attorney is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Attorney and the City during the period of the services shall be that of an independent contractor, not employee. The Attorney, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Attorney shall have no obligation to work any particular hours or particular schedule, unless otherwise indicated in the Scope of Work where scheduling of attendance or performance is critical to completion, and shall retain the right to designate the means of performing the services covered by this Agreement, and the Attorney shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Attorney is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.
- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Attorney or any employee of the Attorney.
- C. The Attorney, at his/her sole expense, shall obtain and keep in force any and all necessary licenses required to perform the services set forth in this Agreement.

9. Hold Harmless.

The Attorney 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 resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the Attorney, its agents or employees 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.

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 Attorney and the City, its officers, officials, employees, and volunteers, the Attorney's liability hereunder shall be only to the extent of the Attorney's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Attorney's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose 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.

10. Gifts.

The City's Code of Ethics and Washington State law prohibit City employees from soliciting, accepting, or receiving any gift, gratuity or favor from any person, firm or corporation involved in a contract or transaction. To ensure compliance with the City's Code of Ethics and state law, the Attorney shall not give a gift of any kind to City employees or officials.

11. City of Shoreline Business License.

As mandated by SMC 5.05.030, the Attorney shall obtain a City of Shoreline Business License prior to performing any services and maintain the business license in good standing throughout the term of its agreement with the City.

12. Insurance.

During the term of this Agreement the Contractor shall secure and maintain professional services liability insurance with limits of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate and comprehensive general liability insurance with limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. All insurance policies shall be provided by an insurance company licensed to do business in the State of Washington, and the City shall be named as an additional insured. Contractor shall furnish proof of insurance to the City on an annual basis. Attorney's insurance coverage shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City

A. Verification of Coverage. Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements under this Agreement before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the City. Upon request of the City, and with no less than thirty (30) days notice to the Attorney, the Attorney shall provide the City with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Agreement. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Agreement or extension(s) thereof, but not filed during the term of the Agreement.

13. Delays.

Attorney is not responsible for delays caused by factors beyond the Attorney's reasonable control. When such delays beyond the Attorney's reasonable control occur, the City agrees the Attorney is not responsible for damages, nor shall the Attorney be deemed to be in default of the Agreement.

14. Successors and Assigns.

Neither the City nor the Attorney shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

15. Nondiscrimination.

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

16. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City Manager
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133-4905
(206) 801-2700

Scott Stewart
Stewart MacNichols Harnell, Inc., P.S.
655 West Smith Street, Suite 210
Kent, WA 98032
(253) 859-8840

17. Governing Law and Venue.

This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be King County Superior Court.

18. General Administration and Management.

The City's contract manager shall be (name and title): Alex Herzog, City Manager's Office Management Analyst.

19. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Attorney, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

20. Entire Agreement.

This agreement contains the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this agreement.

This agreement is executed by:

CITY OF SHORELINE

ATTORNEY

By: 

By: 

Name: Debra Curry

Name: Kew Hamble


Title: City Manager

Title: PARSON

Date: 11/3/17

Date: 10/1/17

Approved as to form:

By: 
Margaret J. King, City Attorney
Julie Ainsworth-Taylor, Assistant City Attorney

Attachments: Exhibit A (Scope and compensation)
Exhibit B (Billing Voucher)

EXHIBIT A
In-Custody King County Correctional Facility
Public Defense Service Contract
Scope of Work

The Attorney will provide legal representation of in-custody indigent criminal defendants at the King County Correctional Facility (KCCF), and at the South Correctional Entity (SCORE) Jail charged with misdemeanors, gross misdemeanors, and traffic violations.

In-Custody Services

The Attorney will be available on a regular basis to provide public defense services for the City's in-custody defendants at probable cause and release hearings, including defendants booked on both new criminal charges and on warrants:

- Monday through Saturday at KCCF.
- Monday through Friday, at the SCORE Regional Jail.

The Attorney will provide an adequate number of defense counsel to efficiently manage the in-custody court calendar in a manner which avoids unnecessary delays in completing the calendar, or unnecessary periods in custody. Sufficient counsel shall be provided so that defendants will receive representation when the Attorney is not available due to vacation or illness.

SCORE

The Attorney will follow all public defense procedures outlined in the City of Shoreline-SCORE Regional Jail-King County District Court Standard Operating Procedures for Video Bail Hearing Operations (Bail Hearing SOP), forthcoming. A copy of the Bail Hearing SOP will be provided to the Attorney at no cost.

The SCORE Regional Jail Video Courtroom in-custody calendar for the City is scheduled for 3:00 pm daily, unless changed by mutual agreement of both SCORE and the City. If the SCORE Regional Jail Video Courtroom in-custody calendar time slot for the City is changed by mutual agreement, the City will notify the Attorney of the change as soon as the change has been agreed upon. The Attorney will hold any pre-hearing conferences or discussions with clients prior to the beginning of the in-custody calendar time so that the in-custody calendar will begin promptly at 3:00 pm.

KCCF

The KCCF in-custody calendar for the City is scheduled for 9:00 am on weekdays and 12:30 pm on Saturdays. If the KCCF in-custody calendar time slot for the City changes, the City will notify the Attorney of the change as soon as possible. The Attorney will hold any pre-hearing conferences or discussions with clients prior to the beginning of the in-custody calendar time so that the in-custody calendar will begin promptly at 9:00 am on weekdays and 12:30 pm on Saturdays.

Associated Counsel

- A. Any counsel associated with, contracted or employed by the Attorney shall have the authority to perform the services set forth in this Scope of Services. The Attorney and all associates or attorneys who perform the services set forth in this Agreement shall be admitted to the practice pursuant to the rules of the Supreme Court of the State of Washington and will at all times remain members in good standing of the Washington State Bar.

- B. The Attorney shall be responsible for this Agreement, notwithstanding that other counsel may be employed or associated by the Attorney to perform services hereunder. The Attorney shall actively supervise associated and employed counsel throughout the term of this Agreement and during any renewals or extensions, to ensure that all cases are promptly and effectively handled from the time of appointment until the conclusion of the Attorney's representation of assigned clients. Sufficient counsel shall be provided to represent defendants during vacation, illnesses and settings in more than one courtroom.

Attorney Conflict

In the event that the Attorney is prevented from representing any defendant by presence of a conflict of interest, as under Washington's Rules of Professional Conduct, the defendant shall be referred back to the City for further assignment, without cost to the Attorney.

Discovery Provided

The City shall provide to the Attorney, at no cost to the Attorney or defendant, one copy of all discoverable material concerning each assigned case. This material shall include, where relevant, a copy of the abstract of the defendant's driving record.

Code Provided

Within 30 days written request, the City shall provide to the Attorney at no cost to the Attorney, a copy of the Shoreline Municipal Code and any amendments to the Code Adopted during the term of this Agreement.

Case Load Limits

The Shoreline City Council has elected to not weight misdemeanor cases and therefore not adopted and published written policies and procedures to implement a numerical case-weighting system to count cases. Cases will be counted according to the Washington State Bar's Standards for Indigent Defense which states that the caseload of a full-time public defense attorney should not exceed 400 misdemeanor cases per attorney per year if the jurisdiction has not adopted a case weighting policy.

Billing and Consultation

In addition to the billing voucher identified in Section 2.B. of the Agreement and in the form set forth in Exhibit B, the Attorney also agrees to:

- Quarterly phone discussions with the City's contract manager, if initiated by the contract manager, to review the number of in-custody public defense cases, overall performance of the Agreement, and issues of common concern.
- Attendance at King County District Court – Shoreline Courthouse - or City initiated meetings to address any ad hoc or ongoing issues or concerns with in-custody public defense cases at the Snohomish County Jail or Court operations, if necessary.
- In-person discussion with the City's contract manager, if initiated by the contract manager, at the end of each annual term of the Agreement to discuss any issues with the Agreement or services provided over the preceding year.

Compensation

Services at SCORE jail will be paid at a flat rate of \$1,000 per month. Services at KCCF will be paid at a flat rate of \$200 per calendar. These compensation amounts include all fees and other expenses incurred by the Attorney. Compensation for these services is not to exceed a maximum of \$50,000 for the life of the contract.

**EXHIBIT B
CITY OF SHORELINE
BILLING VOUCHER**

17500 Midvale Ave N, Shoreline, WA 98133-4905 ♦ (206) 801-2700 ♦ Fax (206) 801-2787

Contract No. 8872

Firm Name: Stewart, MacNichols, Harmell

Mailing Address:

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

Invoice No.: _____

Invoice Date: _____

Amount of Invoice: \$ _____

Contract Expiration Date: 12/31/19 Current Invoice Period: _____

Description of services performed this period, attach a separate sheet if necessary (if applicable, submit a separate voucher for each program which is funded by your City of Shoreline contract):

BUDGET SUMMARY:

Total Contract Amount (including amendments)	\$ _____
Previously Billed	\$ _____
Current Invoice Request	\$ _____
Total Payments Requested to date	\$ _____
Contract Balance Remaining	\$ _____

Payments will be processed within thirty (30) days from receipt of approved billing voucher.

Consultant Signature

For City of Shoreline Department Use Only

Approved for Payment:

Date: