

CITY OF GLENDALE

PUBLIC DEFENDER FULL-TIME AGREEMENT

This Public Defender Full-Time Agreement ("Agreement") is made and entered into this first day of July, 2015, by and between the City of Glendale, an Arizona municipal corporation ("City") and Courtney Boyd, Attorney at Law ("Attorney").

RECITALS

- A. The City Manager of the City of Glendale is authorized and empowered by provisions of the Glendale City Charter to execute contracts and contract amendments; and
- B. The City desires to provide legal counsel for the representation of indigent defendants ("Defendants") in the Glendale City Court ("Court"), where such representation is required by the United States Constitution, the Arizona Constitution, and the Rules of Criminal Procedure for the State of Arizona; and
- C. Attorney is licensed to practice law in the State of Arizona, is a member in good standing with the State Bar of Arizona ("Bar"), is otherwise professionally qualified to provide the desired services and is ready, willing and able to do so; and
- D. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

1. **Term of Agreement.** The term of this Agreement shall be for the period commencing July 1, 2015 and expiring on June 30, 2016 ("Term").
2. **Renewal.** Not less than 30 days prior to the end of the Term, City may extend this Agreement for up to one additional one year period with the consent of Attorney. City may change the rate of compensation applicable to any extension period. No renewal will take place unless initiated by the City.
3. **Fees.** From July 1, 2015 to June 30, 2016, the City will pay Attorney for all full-time legal services provided pursuant to this Agreement, at the rate of \$42,000 per annum, payable monthly at the rate of \$3,500. If less than a full calendar month is included at any time within the Term of this Agreement, the monthly base compensation will be prorated for that month at a daily rate. Attorney must submit a monthly invoice for payment to the Agreement Administrator no later than the tenth day of the following calendar month for which Attorney is billing. The invoice must be substantiated with the appropriate statistical reports as referenced herein. In the event of termination prior to the expiration date of this Agreement, Attorney will submit a final billing.
  - 3.1 **Additional Fees.** Upon written approval of the Presiding City Judge or his/her designee ("Presiding Judge"), Attorney will be paid enhanced compensation at the rate of \$40.00 per hour for extraordinary cases that because of the complexity of facts, legal issues or proceedings, create significant additional work for Attorney. The filing of an appeal or a complaint for Special Action will not, by itself, support a decision to approve additional fee compensation.

3.2 Costs. Attorney will pay all costs and expenses incurred in the representation of Defendants, except as otherwise expressly provided in this Agreement. Costs for which the Attorney is responsible include, but are not limited to, office rent, telephone, computer, expenses related to the maintenance and operation of an office, transportation, photographs, photocopies, secretarial services, law clerks, transcripts (other than appeal transcripts), depositions and preparation of reports required by this Agreement.

3.3 Court Costs and Third Party Fees. The Court will pay costs of interpreters and appellate transcripts. Subject to prior motion and approval, the Court may agree to pay reasonable compensation for other necessary support services such as expert witnesses, investigators, out of court interpreters, and blood samples, when a finding is made by a judge or judge pro-tem of the Court that such services are indispensable to the interests of justice.

4. Services. Attorney will provide legal representation to Defendants when appointed to do so by a judge or judge pro-tem of the Court.

4.1 Quality of Representation. Attorney will conduct the defense of assigned Defendants diligently and professionally, consistent with standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of defense counsel in criminal cases.

4.2 State Bar of Arizona Membership. Attorney must at all times remain an active member in good standing with the Bar. Attorney must immediately inform the Court Administrator of any changes in Attorney's active membership status and of any adverse Bar rulings. Failure to maintain membership status and/or failure to promptly apprise the Court Administrator of changes may result in the immediate termination of this Agreement.

4.3 Availability. Attorney will maintain an office, or make arrangements to use an office, that is located within a 20 mile radius of the Court, to meet with Defendants, to accept telephone calls and to take messages during regular business hours.

4.4 Caseload. No more than 400 cases will be assigned to Attorney during the Term of this Agreement, except at the request of Attorney and with written permission of the Court Administrator. No more than 400 cases per year will be assigned to Attorney during any one-year extensions of this Agreement, except at the request of Attorney and with written permission of the Court Administrator. If Attorney is appointed to represent a Defendant who has more than one court case pending, Attorney will be credited with one appointment for each additional court case associated with each Defendant.

a. Ethical Limitations. Attorney agrees not to accept representation of clients, other than Defendants represented pursuant to this Agreement, to the extent that such representation would increase the caseload beyond the guidelines set forth in *National Legal Aid and Defender Association*,

*American Council of Chief Defenders, Statement on Caseloads and Workloads, Resolution (August 24, 2007)*. On cases that Attorney views as unusually complicated, Attorney may make written requests to the Presiding Judge, requesting said case to be counted as more than one case toward Attorney's 400 caseload limit. Final determination will be made by the Presiding Judge. At no time shall Attorney's private practice caseload reach such a level, during his or her service as Public Defender, so as to jeopardize Attorney's ability to complete the 400 court cases specified in this Agreement.

- b. **Review of Caseload.** To ensure effective representation of Defendants, Attorney will review the assigned caseload quarterly during the Term of this Agreement. The ABA standards and the guidelines set forth in *State v. Smith* will be employed and Attorney will consider the number and complexity of cases assigned during the quarter, the amount of time spent on those cases and Attorney's capability to handle the caseload assigned. Additionally, Attorney must provide a caseload report to the Presiding Judge on a quarterly basis stating the number of completed cases and the number of open cases for that quarter. The caseload report must be submitted to the Presiding Judge no later than April 10th, July 10th, October 10th, and January 10th of each year. The caseload report will be compiled in spreadsheet format and submitted electronically to the Presiding Judge.
- c. **Change in Defendant's Financial Circumstances.** If Attorney becomes aware of a material change in financial circumstances of any assigned Defendant, Attorney must notify the Court. If Attorney requests a re-determination of the indigence of any Defendant that Attorney represents, and if the Court makes a determination of non-indigence of such Defendant and allows Attorney to withdraw, Attorney agrees he or she will not represent that Defendant in that case for a fee.
- d. **Suspension of Appointments.** Should Attorney experience a caseload that prevents Attorney from giving effective assistance of counsel to each Defendant, Attorney must file a motion requesting the Presiding Judge for a suspension of further appointments until such congestion clears. Notice of any motion filed pursuant to this provision must be given to the Glendale City Prosecutor.
  - (1) **Hearing to Suspend Appointments.** The Presiding Judge, upon receipt of a motion filed pursuant to this section, will set it for hearing not later than five days from its receipt. Should the Presiding Judge find at such hearing that the indigent caseload is excessive, and is adversely interfering with the Attorney's ability to give effective legal assistance, the Presiding Judge may suspend further appointments to Attorney for a period not to exceed 30

days, when such suspension is deemed necessary in the interest of justice. During any suspension imposed under this section, the Presiding Judge will appoint such additional private counsel as may be necessary to represent Defendants and will compensate such private counsel for services rendered.

- (2) Reporting. During any period of suspension of appointments granted or imposed by the Presiding Judge, the Attorney must notify the Presiding Judge in writing every Monday (or Tuesday if Monday is a legal holiday) as to the status of the caseload and congestion. The Attorney must notify the Presiding Judge immediately when the congestion that was the basis upon which the suspension was imposed has been relieved sufficiently to permit reinstatement of the regular appointment procedure.
- (3) Hearing to Terminate Suspension. At the expiration of any suspension period ordered by the Presiding Judge, or earlier if so notified by Attorney, the Presiding Judge will set and conduct a hearing for the purpose of determining whether such suspension should be lifted or if a further suspension of appointments not to exceed 30 days should be granted.
- (4) Continued Representation. Suspension of appointments under this section affects only the appointment of new Defendants to Attorney and in no way releases either party from other duties or obligations pursuant to this Agreement, or Attorney from obligations to Defendants already assigned to Attorney.

4.5 Appearances. Attorney must appear personally for Defendants whom they represent in all matters set in the Court, including but not limited to: pretrial dispositions; motions; evidentiary hearings; oral arguments; calendar calls; trials; sentencings; sentence reviews; orders to show cause hearings; revocation of probation proceedings; court sessions; appeals and special actions unless the personal appearance by the Attorney is excused by a judge or judge pro-tem before whom the matter is to be heard or decided.

- a. Jail Court. Attorney must appear personally to represent Jail Court Defendants as assigned. Jail Court Defendants will not be counted toward the maximum 400 cases annually assigned to Attorney.
- b. Treatment Court Program. Attorney must appear personally to represent Defendants in the Court's Treatment Court Program as assigned. Treatment Court Program Defendants will not be counted toward the maximum 400 cases annually assigned to Attorney.
- c. Association of Counsel. Attorney must provide for substitution of counsel when Attorney is unable for any reason to appear in Court. Substitute counsel shall not be used routinely and in no event no more

employer/employee, partnership, joint venture, or any relationship of any kind other than independent contractor.

- 7.5 Integration. Except as stated herein, this Agreement constitutes the entire understanding of the parties and no representation or agreements, oral or written, made prior to this execution will vary or modify the terms herein.
- 7.6 Governing Law. This Agreement will be governed and interpreted according to the laws of the State of Arizona.
- 7.7 Amendments. Any amendment or modification of the terms of this Agreement must be in writing and signed by the parties.
- 7.8 Assignment. Services covered by this Agreement will not be assigned in whole or in part, except as necessary to provide for substitution of counsel as required herein.
- 7.9 Time of the Essence. Time is of the essence with respect to fulfillment of all obligations set forth herein.
- 7.10 Public Record. Attorney is hereby informed that this Agreement is a public record and is subject to full disclosure under Arizona law.
- 7.11 Agreement Administrator. The Agreement Administrator for the City will be the Presiding Judge or his/her designee. The Agreement Administrator will oversee performance of this Agreement, audit billings, and approve payments. The Attorney will submit reports, notices, requests, and other correspondence to the Agreement Administrator.
- 7.12 Immigration Law Compliance.
- a. Attorney, and on behalf of any substitute attorney, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
  - b. Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
  - c. City retains the legal right to inspect the papers of any Attorney or substitute attorney who performs work under this Agreement to ensure that the Attorney or any substitute attorney is compliant with the warranty under this section.
  - d. City may conduct random inspections, and upon request of City, Attorney shall provide copies of papers and records of Attorney demonstrating continued compliance with the warranty under this section. Attorney agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate

with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

- e. Attorney agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Attorney and expressly accrue those obligations directly to the benefit of the City. Attorney also agrees to require any substitute attorney to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- f. Attorney's warranty and obligations under this section to the City is continuing throughout the Term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

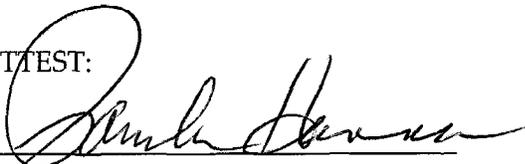
ATTORNEY:

  
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Courtney Boyd,  
Attorney at Law

CITY OF GLENDALE:

  
\_\_\_\_\_  
Honorable Elizabeth R. Finn  
Presiding City Judge

ATTEST:

  
\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney