

CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: Consent C 7

DATE: December 16, 2010

SUBJECT: Public Defender – Contract for Services with Aimee Trua

CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

ISSUE:

The issue before the Council is authorizing the Mayor to sign a renewal contract with Aimee Trua for Public Defender services. There are no changes to the contract service monthly fee.

SUMMARY:

The City is required to provide Public Defenders to indigent criminal defendants charged under ordinances of the City. The Court is responsible for interviews and screening of defendants to determine if they qualify for indigent defense.

In 2004, the City entered into a contract with Aimee Trua to provide these services. The contract calls for a set dollar amount of \$1,700 per month for services provided without consideration to the number of cases handled. The total annual cost is \$20,400. There will be no increase in the monthly fee for 2011. The contract amount has been at \$1,700 per month since 2007.

Ms. Trua represents the City of Sultan and City of Monroe as a Public Defender, does appeals for the City of Lynnwood and is on the public defender list for Snohomish County.

A change in the Evergreen court procedures requires arraignments at the Snohomish County Jail instead of at the court. There is no additional charge to the City for attending the arraignment hearings.

A second option available to the City is to have the courts assign Public Defenders from their pool. The issue with using court appointed Public Defenders from a pool is that each attorney has a different rate for billing. Instead of paying one attorney, the city would pay multiple attorneys. In 2009 the courts erroneously assigned Sultan cases to Public Defenders and requested the City pay \$700 to cover the cost of three cases for the first interview.

A third option would be for the City to issue a Request for Proposals for Public Defense services.

ALTERNATIVES:

1. Authorize the Mayor to sign the revised contract for Public Defender services.
2. Do not authorize the Mayor to sign the contract and direct staff to either update the Interlocal Agreement with Snohomish County for public defense or issue a request for proposal for Public Defender services.

STAFF RECOMMENDATION

Staff recommends that the Mayor be authorized to sign a contract with Aimee Trua for Public Defender services.

Attachments: A. Contract for Services

**AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SULTAN AND
AIMEE TRUA**

THIS AGREEMENT, is made this _____ day of _____, 2010 by and between the City of Sultan (hereinafter referred to as "City"), a Washington Municipal Corporation, and Aimee Trua, Attorney at Law (hereinafter referred to as "Service Provider"), doing business at _____.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of such services for Public Defender, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

- 1. Description of Work.** Service Provider shall perform work as described in Attachment A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
- 2. Payment.**
 - A. The City shall pay Service Provider at the hourly rate set forth in Attachment B, but not more than a total of Twenty four thousand dollars (\$24,000) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement.
 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
- 3. Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of

Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.

4. **Scope of Services.** Represents those indigent criminal defendants charged under ordinances of the City who qualify for appointed counsel. The Public Defender shall provide Legal representation for each of these defendants from the time of screening for eligibility through trial, sentencing and appeals to the superior court, if necessary.
5. **Term of the agreement.** Provisions of services pursuant to this agreement shall commence January 1, 2011 and the agreement shall remain in full force and effect through December 2011 unless terminated earlier by either party pursuant to the provisions herein.
6. **Termination.**
 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Attachment A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
7. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
8. **Indemnification / Hold Harmless.** The Service Provider 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.

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 Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider'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.

9. Insurance. The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Professional Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. **Minimum Amounts of Insurance.** Service Provider shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Professional Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

C. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.

2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
 - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
 - E. **Verification of Coverage.** Service Provider 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 of the Service Provider before commencement of the work.
 - F. **Subcontractors.** Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
- 10. Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
- 11. City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
- 12. Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- 13. Ownership of Products and Premises Security.**
- A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
- 14. Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.

- 15. Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
- 16. 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 this Agreement or such other address as may be hereafter specified in writing.
- 17. Non-Waiver 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 said covenants, agreements or options, and the same shall be and remain in full force and effect.
- 18. Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF SULTAN

SERVICE PROVIDER

By: _____
Carolyn Eslick, Mayor

By: _____
Title: _____
Taxpayer ID #: _____

CITY CONTACT

SERVICE PROVIDER CONTACT

City of Sultan
319 Main Street, Suite 200
Sultan, WA 98294
Phone: 360-793-2231
Fax: 360-793-3344

Phone: _____
Fax: _____

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney

Attachment A

1. Scope of Services: Represents those indigent criminal defendants charged under ordinances of the City who qualify for appointed counsel. The Public Defender shall provide Legal representation for each of these defendants from the time of screening for eligibility through trial, sentencing and appeals to the superior court, if necessary.
2. Applicant Screening: Determination for indigency for eligibility for appointed counsel under this contract shall be determined by an independent screening process as established by Snohomish County District Court, Evergreen Division. Should the Public Defender determine that the Defendant is not eligible for assigned counsel prior to the establishment of attorney/client privilege, the Defender shall so advise the City to reconsider the screening of that particular individual.
3. Associated Counsel: Any counsel associated with or employed by the Defender shall have the authority to provide the services called for herein, and the Public Defender may employ associate counsel to assist at Defender's expense. The Defender and all Defenders hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington.
4. Services: The Defender shall appear at the hearings for the defendant at all stages until the defendant is sentenced. Upon sentencing, the defender shall withdraw.
5. Discovery Provided: The City shall provide through the Court or the prosecution, at no cost to the Defender, one copy of all discoverable material concerning each case assigned.
6. Code Provided: the City shall provide the Defender, at no cost, one copy of all criminal and traffic ordinances enacted by the City, and any amendments thereto adopted during the term of this contract.

Attachment B

7. Compensation: The City shall pay the Public Defender for services rendered under this contract as follows:
 - A. A flat fee of \$1,700.00 per month for all cases assigned; and
 - B. An additional fee of \$40.00 per hour up to a maximum of \$160.00 for any case which proceeds to jury trial, provided that, if it settles on the jury trial date, additional fees shall be paid at the \$40.0 per hour rate for the court appearance.
 - C. The Defender shall bill the City the first week of the month, or as soon thereafter as possible, for the flat fee and any additional work as defined in 6(B) for approval, which payment thereof shall be made in the regular course by the City. The Defender shall provide a report on the number of cases handled each month.