

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Motion to Authorize the City Manager to Execute a Contract with Stewart, MacNichols, Harmell, Inc., P.S. for Primary Public Defense Services
<b>DEPARTMENT:</b>	City Manager's Office
<b>PRESENTED BY:</b>	Alex Herzog, Management Analyst
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

**PROBLEM/ISSUE STATEMENT:**

The City is required to provide the services of a public defender to individuals who are determined to be indigent or nearly indigent and unable to afford representation themselves. Representation must be present at all criminal hearings, motions and trials that occur at the Shoreline Courthouse. This contract also includes provisions for representation at out of custody arraignment hearings, which the City has not provided prior to this contract.

The public defense contract for Council consideration is for primary public defense services beginning January 1, 2015. The proposed contract's initial term is for two years and includes three one-year options to extend, for a total contract life of five years (through December 31, 2019) if the option years are executed.

To award this contract, the City conducted a competitive bid process and issued a request for proposals (RFP) on September 19, 2014. The City received seven proposals, and Stewart, MacNichols, Harmell, Inc., P.S. was selected as the most qualified firm.

**RESOURCE/FINANCIAL IMPACT:**

The total cost of the primary public defense contract is estimated to be \$248,000 in 2015. For this initial year, the terms of the contract call for the City to provide a base rate of compensation of \$19,000 per month plus costs for additional services of \$20,000 annually. In 2016, the base rate of compensation will increase to \$20,000 per month with the proposed \$20,000 for additional services to be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U. If, after the initial two-year term, the additional contract years are executed (potentially covering 2017-2019), the base compensation rate and the annual additional service costs cap will be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U. If an annual contract inflator rate of 2.5% is estimated, the total five year cost of the contract would be \$1,369,739. Given this estimated cost, the five-year contract do not exceed amount is \$1,370,000.

The proposed 2015 budget appropriates \$250,000 for primary public defense services. Although the proposed 2015 budget was developed prior to the competitive bid process and funds for this service were estimated based on past contract costs and estimated bid amounts, this contract is within the 2015 budget amount.

### **RECOMMENDATION**

Staff recommends that Council move to authorize the City Manager to execute a contract with Stewart, MacNichols, Harmell, Inc., P.S. for primary public defense services for two years and three one-year options to extend, for a total contract do not exceed amount of \$1,370,000 in a form to be approved by the City Attorney.

Approved By:            City Manager ***DT***    City Attorney ***MK***

## **BACKGROUND**

Under Washington State law, cities are responsible for providing criminal justice services for misdemeanor and gross misdemeanor offenses. This includes jail, court, prosecution and public defense services. Thus, the City is required to provide the services of a public defender to individuals who are determined to be indigent or nearly indigent and unable to afford representation. Representation must be provided at all criminal hearings, motions and trials that occur at the Shoreline Courthouse.

Public defense services are provided two days per week (Tuesdays and Thursdays) most weeks and five days per week during the week of the month in which jury trials are held. From 2011 to 2013, a total of 2,399 cases (an average of 800 cases per year) were referred to the primary public defender for defense representation. This annual approximate caseload is expected to continue. It is anticipated that public defense services provided at out of custody arraignment hearings, a service that is not currently provided by the City, will add another 46 cases to the annual number of total cases assigned to the City's public defenders.

Since incorporation, the City has contracted with The Schlotzhauer Law Group (SLG) for primary public defense services. The current term of the contract will end on December 31, 2014.

## **DISCUSSION**

As the City's current public defense contract will conclude at the end of the year, the contract for Council consideration tonight is for primary public defense services beginning January 1, 2015.

### **Request for Proposals**

The City's purchasing ordinance requires that a competitive bid process be used if the cumulative cost of a contract exceeds \$50,000 in one year. The City issued a request for proposals (RFP) on September 19, 2014 for this service and received seven proposals from public defense firms.

Proposals for the RFP were evaluated using the following criteria:

- Approach, including a work plan, an organization and staffing plan and a demonstration of ability to complete all work within an established budget and timeline
- Related experience, including public defense services within the last three years and references
- Expertise of the team that will provide the services
- Cost to perform the requested work

Additionally, the evaluation panel held in-person interviews with the four firms that scored highest using the above criteria. Based on the initial rating criteria and these interviews, Stewart, MacNichols, Harmell, Inc., P.S. was selected by the evaluation

panel as the preferred service provider. Staff is confident in the firm's ability to execute all the terms of the contract.

### **Proposed Contract**

Following the selection of Stewart, MacNichols, Harmell, Inc., P.S. as the preferred public defense firm, staff negotiated the attached scope of work (Attachment A). The initial term of the contract, scheduled to begin on January 1, 2015, is for two years. The proposed contract includes three additional one-year options to extend, for a total possible life of five years. Award of the initial contract is no guarantee that any options to extend will be executed. The City Manager would have the authority to enter into the initial term and potentially execute subsequent option years. Council authorization of the contract would provide enough funding for all five terms.

In addition to all of the primary public defense services outlined in the Scope of Work, the proposed contract includes an aspect of public defense service that is new for the City: representation at out-of-custody arraignment hearings. During arraignment, the charges and the possible penalties a defendant faces are read to the defendant, and the defendant may enter a plea. For out-of-custody defendants (those defendants that are not incarcerated), typically there is no mechanism for getting a public defender until charges are formally read. Currently, the out-of-custody arraignment is set before defendants can receive appointed counsel, which often results in case continuances so defendants may be screened for indigence and potential appointment of a public defender. The court assigns cases to a public defender after the King County Office of Public Defense completes screening for indigence.

Staff has found public defense at arraignment to be a 'best practice' and providing this service conforms to the Criminal Rules for Courts of Limited Jurisdiction. Council considered adding defense services at arraignment in 2012 after a Study Session on Criminal Justice topics and in the development of the 2013 budget. Council opted to forego that service at the time.

The proposed contract also covers all aspects of the Washington State Bar Association's Standards for Indigent Defense. The Council adopted by reference the Bar Association's Standards on November 3, 2014. The standards include a number of provisions focused on ensuring high-quality public defense, including:

- Annual caseload limits
- Use of investigative services
- Adequate support services and personnel to ensure effective performance
- Maintaining a case-reporting and management information system
- Continuing legal education and training requirements for attorneys

### **Transition to New Public Defense Firm**

As noted above, the City's current public defender is the SLG. As the SLG was not one of the seven bidding firms for this contract, staff understood that there would be a work effort to transition to a new service provider. During the evaluation process, firms were asked to propose a solution to handle the transition of cases and other information to

their firm from the SLG. Staff is confident that Stewart, MacNichols, Harmell, Inc., P.S. will be able to manage the transition process well. This transition work will begin in December of this year if this contract is authorized by the Council. All open cases assigned prior to December 31, 2014, will be transferred from SLG to Stewart, MacNichols, Harmell, Inc., P.S. as soon as possible.

**FINANCIAL IMPACT**

The RFP required that submittals include two costs: a monthly rate for defense services as they have historically been provided (“Primary Scope of Work”), and a monthly rate for defense services at out-of-custody arraignment hearings (“Additive Scope of Work”). The cost of the contract was negotiated in terms of a flat monthly fee for both the primary and additive scope of work, rather than on a “per case” or “fee for service” basis.

The terms of the contract call for the City to provide a base rate of compensation for 2015 of \$19,000 per month plus costs for additional services of \$20,000 annually, should they be authorized by the Court. The Standards for Indigent Defense Services adopted by the Council on November 3 require that contracts for public defense provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation. The additional services that may be provided under the contract include costs for transcriptions, lay witness fees, and medical and psychiatric evaluations. For 2015, the total cost of the primary public defense contract is estimated to be \$248,000 (\$19,000 per month x 12 months + \$20,000 in additional services).

In 2016, the base rate of compensation will increase to \$20,000 per month with the proposed \$20,000 for additional services to be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U. If, after the initial two-year term, additional contract years are executed (potentially covering 2017-2019), the base compensation rate and the annual additional service costs cap will be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U.

As part of the base rate for each contract year, the firm will service 840 cases. For each case appointment above the 840th case, if there are any, the City will be billed \$300 per case. Given past case loads, the City does not expect to incur any significant costs for these additional case appointments. If costs are incurred, they should be covered by the proposed funds for additional services noted above. For reference, the numbers of misdemeanor cases defended from the past three years (2011, 2012, and 2013) are as follows:

<b>Year</b>	<b>Cases Defended by Shoreline Public Defenders</b>
2011	885
2012	803
2013	711
Three-Year Average	800

In addition to the base rate and costs for additional services, the contract also contains provisions for cases transferred from the City's existing public defense firm to Stewart, MacNichols, Harmell, Inc., P.S. The City's existing public defense firm estimates that approximately 175 cases will be transferred immediately. An additional 175 post-disposition cases (cases where probationary hearings require the public defender) will be billed when/if they are appointed to attorneys at Stewart, MacNichols, Harmell.

The cost of these transition cases will be split as evenly as possible and billed in equal parts in January 2016 and January 2017. For each transition case appointment also above the 840 total annual case load, the City will be billed \$200 per case. These one-time costs for cases transferred are unknown at this point. When and if the cases are transferred to Stewart, MacNichols, Harmel will largely depend on the details of each particular case. Given that staff anticipates that these cases will be transferred at some point and billed for in 2016 and 2017, staff recommends including additional funds in the contract to cover these case transfer costs. Therefore, staff has included \$40,000 in the contract to cover these transferred costs should they be incurred.

If an annual contract inflator rate of 2.5% is used, the estimated five year cost of the contract would be \$1,369,739. The annual estimated cost breakdown is as follows:

<b>Contract Year</b>	<b>Estimated Base Compensation</b>	<b>Estimated Additional Services Costs</b>	<b>Estimated Transition Case Costs</b>	<b>Total Annual Estimated Contract Costs</b>
2015	\$228,000 (\$19,000 month x 12 months)	\$20,000		\$248,000
2016	\$240,000 (\$20,000 x 12 months)	\$20,500 (\$20,000 x 2.5% estimate cost inflator)	\$20,000	\$280,500
2017	\$246,000 (\$20,000 x 2.5% inflator x 12 months)	21,013 (\$20,500 x 2.5% cost inflator)	\$20,000	\$287,013
2018	\$252,156 (\$20,500 x 2.5% x 12 months)	\$21,538 (\$21,013 x 2.5% cost inflator)		\$273,694
2019	\$258,456 (\$21,013 x 2.5% inflator x 12 months)	\$22,076 (\$21,538 x 2.5% inflator)		\$280,532
<b>Estimated Total</b>	<b>\$1,224,604</b>	<b>\$105,127</b>	<b>\$40,000</b>	<b>\$1,369,739</b>

The proposed 2015 budget appropriates \$250,000 for primary public defense services. Although the proposed 2015 budget was developed prior to the competitive bid process and funds for this service were estimated based on past contract costs and estimated bid amounts, this contract is within the 2015 budget amount.

### **RECOMMENDATION**

Staff recommends that Council move to authorize the City Manager to execute a contract with Stewart, MacNichols, Harmell, Inc., P.S. for primary public defense services for two years and three one-year options to extend, for a total contract do not exceed amount of \$1,370,000 in a form to be approved by the City Attorney.

### **ATTACHMENTS**

Attachment A: Proposed Scope of Work for Primary Public Defense Services with Stewart, MacNichols, Harmell, Inc., P.S.

## **EXHIBIT A SCOPE OF WORK**

The Attorney will provide effective legal representation for indigent or nearly indigent individuals charged with misdemeanor or gross misdemeanor offenses by the City of Shoreline's prosecuting attorney. The court assigns cases after the King County Office of Public Defense completes screening for indigence. The Scope of Work includes indigent defense services and other related services and tasks.

Legal representation must be available on a regular basis at the King County District Court, West Division, Shoreline Courthouse ("Shoreline Courthouse") located at 18050 Meridian Avenue North in Shoreline. The Attorney will provide an adequate number of defense counsel to efficiently manage the court calendar in a manner which avoids unnecessary delays in completing the calendar, or unnecessary periods in custody and complies with the Supreme Court's Standards for Indigent Defense regarding case load limits. Shoreline regular court calendar days are Tuesdays and Thursdays beginning at 8:45 a.m. at the Shoreline Courthouse. Typically, the Shoreline arraignment calendar day is on Mondays and runs for approximately two hours beginning at 8:45 a.m. Jury trials are typically held on the fourth week of the month. Legal representation must also be available on the third Wednesday of each month at 1:30 p.m. at the Shoreline Courthouse for the Shoreline Jury Call calendar.

### **1. Scope of Work**

The Scope of Work includes:

- Arranging pre-hearing conferences
- Attending hearings
- Preparation and negotiation of pre-trial hearings
- Motion hearings
- Readiness hearings
- Preparing pleas and pleadings
- Counseling clients
- Conducting research
- Reviewing discovery materials
- Scheduling and preparing for trials
- Attending bench and jury trials
- Post-conviction review hearings
- Other work essential to providing ordinary legal representation for the accused from receipt of Order Appointing Counsel
- Representation for out-of-custody arraignment hearings, including:
  - Counseling clients
  - Reviewing discovery materials
  - Attending arraignment hearings
  - Other work essential to providing ordinary legal representation for arraignment hearings



## 2. Other Requirements

### A. Conference and Reporting Requirements:

- Reports showing newly appointed client name, client offense(s), case number, as well as case outcomes for cases in which a disposition has been reached submitted with monthly billings.
- Quarterly Conferences with the City’s representative to review performance, develop and monitor performance benchmarks, review issues of common concern and review of quarterly caseload documents/records including:
  - the number of cases assigned during the period
  - 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
  - the number of cases in which a motion was brought with the Court as well as cases in which a motion was filed with the prosecutor and a reduced sentence or dismissal was negotiated
  - the number of cases in which an investigator was utilized
  - the number and type of criminal cases handled outside of this contract by the specific attorneys who are assigned cases under this contract (including cases assigned by another public entity); and
  - the percentage of practice of the attorney’s assigned cases under this contract spent on civil or other non criminal matters.
- District Court- or City-initiated meetings to review, revise or enhance the operating performance of judicial functions
- End of annual term conference with the City’s representative

**B.** Sufficient counsel shall be provided to represent indigent defendants during periods when counsel takes leave for vacation and illness, or is otherwise unavailable.

### C. Twenty-Four Hour Telephone Access

- a. The individual or firm selected shall provide to the City of Shoreline Police Department the telephone number(s) at which an attorney may be reached for “critical stage” advice to indigent defendants during the course of police investigations and/or arrest twenty-four (24) hours each day.

### D. 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 Work. 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.

**E.** 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.

**F. 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.

**G. Introduction to Clients**

The Attorney will also provide at its expense an introduction letter to each client at the beginning of legal representation. This letter will advise the client of his/her responsibilities, how to contact the attorney assigned to the case and when to do so.

**H. 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.

**I. Code Provided**

Within 30 days written request of the Attorney, 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.

**J. 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.

**K. Transfer of Caseload**

Upon conclusion of the Attorney's contractual relationship with the City, to the extent the client can be adequately represented, all cases assigned prior to the Agreement term expiration, including those which have not reached resolution, initial or otherwise, shall be transferred to the new service provider as efficiently and practicably as possible, and within the guidelines and restrictions of the Rules of Professional Conduct. Cases in progress at the Agreement expiration or termination will be compensated at one hundred-forty dollars (\$140.00) per hour until completed or transferred to the new service provider, whichever is most efficient and simultaneously allows for the protection of the rights of the accused.

**Billing and Consultation**

Monthly billings will be prepared ten (10) working days after the end of each calendar month using the City's Service Contract Exhibit B – Billing Voucher

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 public defense cases, overall performance of the Agreement, and issues of common concern and review of quarterly caseload documents/records
- Attendance at King County District Court – Shoreline Courthouse - or City initiated meetings to address any ad hoc or ongoing issues or concerns with public defense cases 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**

Compensation for these services shall be the sum of:

1. For the period between January 1, 2015 and December 31, 2015, a fixed rate of nineteen thousand dollars (\$19,000) per month for the provision of all services in this Scope of Work, up to initial resolution of matters assigned, including as many as six appeals to the King County Superior Court. The \$19,000.00 per month shall provide attorney services for the first 210 cases appointed per quarter, and first six RALJ appeals per year. Additional appointed cases above 210 per quarter will be billed at 270.00 per case.<sup>1</sup> Additional appeals beyond the first six RALJ appeals will be billed at \$750.00 per appeal. Billing for cases above 210 per quarter will be included with the April 2015, July 2015, October 2016 and January 2016 bills submitted by Attorney.

For the period between January 1, 2016 and December 31, 2016, a fixed rate of twenty thousand dollars (\$20,000.00) per month for the provision of all services in this Scope of Work. The \$20,000.00 per month shall provide attorney services for the first 210 cases appointed per quarter, and first six RALJ appeals per year. Additional appointed cases above 210 per quarter will be billed at 300.00 per case. Additional appeals beyond the first six RALJ appeals will be billed at \$750.00 per appeal. Billing for cases above 210 per quarter will be included with the April 2016, July 2016, October 2016 and January 2017 bills submitted by Attorney.

2. The City shall pay for the following case expenses when reasonably incurred and approved by the Court from funds available for that purpose
  - a. Non-routine case expenses requested by the Attorney and preauthorized by order of the Court. Unless the services are performed by Attorney’s staff or subcontractors, non-routine expenses may include, but shall not be limited to:
    - i. investigation expenses

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<sup>1</sup> Effective January 1, 2015, attorney will immediately begin representing persons who were previously appointed to the predecessor public defender and are in pre-disposition status. Attorney will accept appointments for **post**-disposition cases as they are directed by the court. Attorney agrees that the cost of transition cases will be split as evenly as possible and billed in equal parts in January 2016 and January 2017. City will only be billed for these cases to the extent that total appointed cases for 2015 exceed 840. For each of these appointments that occur between January 1, 2015 and December 31, 2015 attorney will bill client \$200.00 per case. [As such, if the Attorney takes over 100 cases from the Schlotzhauer Law Group, and there are only 700 appointments in 2015, there would be no additional billing. However, if there are 840 or more appointments in 2015, Attorney would bill for all 100 cases at \$200.00 per case, and if there are 780 appointments in 2015, attorney would not bill for 60, but would bill for the other 40 at \$200 per case.]

- ii. medical and psychiatric evaluations
  - iii. expert witness fees and expenses
  - iv. The direct cost of transcriptions
  - v. 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 Attorney may apply to the Contract Administrator for approval, such approval not to be unreasonably withheld
- b. Lay witness fees and mileage incurred in bringing defense witnesses to court
3. If notice of termination of this Agreement is not sent 30 days prior to the end of the current term, the monthly fixed compensation rate and the additional services 'do not exceed' amount for the terms beyond 2016, if executed, will be inflated annually by 90% of the June to June Seattle-Tacoma-Bremerton area Consumer Price Index (CPI-U).