

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

<b>AGENDA TITLE:</b>	Authorizing the City Manager to Execute a Contract with Stewart, MacNichols, Harmell, Inc., PS for Public Defense Services Through December 31, 2024 in an Amount Not to Exceed \$1,403,440
<b>DEPARTMENT:</b>	City Manager's Office
<b>PRESENTED BY:</b>	Christina Arcidy, 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 of Shoreline is required by state law to provide criminal justice services for misdemeanor and gross misdemeanor offenses and must provide public defense services to those defendants unable to afford private representation. Public defense attorneys must be present at all criminal hearings, motions, and trials that occur at the Shoreline Courthouse.

The City's current public defense contract began on January 1, 2014 and expires on December 31, 2019. To award the new contract, the City issued a request for proposals (RFP) on July 22, 2019 and received one proposal in response from the firm of Stewart, MacNichols, Harmell, Inc., P.S. This firm has provided public defense services for the City for the previous five years.

The contract for Council consideration is for in-custody and primary public defense services beginning January 1, 2020. The proposed contract term is for five years unless terminated sooner according to the contract's provisions. Tonight, staff is seeking Council authorization for the City Manager to enter into this new contract for public defense services.

**RESOURCE/FINANCIAL IMPACT:**

The 2019-2020 public defense budget is \$666,118, with the in-custody and primary public defense services accounting for \$303,059 annually. The contract calls for the City to provide a base rate of compensation of \$18,500 per month (not to exceed \$222,000 per year), plus costs for Community Court (not to exceed \$39,000 per year) and other additional services (estimated at no more than \$5,000 per year). After 2020, additional contract years covering 2021-2024 will be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U. Given this estimated cost, the five year contract do not exceed amount is \$1,403,440.

**RECOMMENDATION**

Staff recommends that Council authorize the City Manager to execute the contract in an amount not to exceed \$1,403,440 with Stewart, MacNichols, Harmell, Inc., PS for public defense services for 2020-2024.

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

## **BACKGROUND**

Cities in the State of Washington are required by [RCW 39.34.180](#) to provide criminal justice services for misdemeanor and gross misdemeanor offenses committed by adults. This includes jail, court, prosecution, and public defense services. Shoreline contracts with external partners to form the City's criminal justice system, including public defense for individuals unable to afford private representation. Indigent defendants must receive representation at all criminal hearings, motions, and trials that occur at the Shoreline Courthouse.

Indigency is determined by the King County Public Defender's Office, which the City contracts with through 2023. Defendants are determined to be indigent, nearly indigent (can contribute towards defense), or not indigent. During a defendant's arraignment, which is when a defendant is advised of the charges brought against them, they are appointed an attorney if they have been deemed indigent or nearly indigent.

Since incorporation, services provided to indigent defendants by the City's contracted public defense firm include preparing for and attending all hearings; preparing and advising on pleas; conducting research; reviewing discovery materials; attending bench and jury trials; and post-conviction review hearings. Over time, the City has increased the public defense services it provides defendants to be aligned with best practices and the [Criminal Rules for Courts of Limited Jurisdiction](#).

The Schlotzhauer Law Group provided primary public defense services on behalf of the City from incorporation until 2014. The firm of Stewart, MacNichols, and Harmell, P.S., Inc. then began providing this service in 2015 under the City's current five year public defense contract. Upon executing this contract with Stewart, MacNichols, Harmell, staff added representation at out-of-custody arraignments which had previously not been available to indigent defendants.

In-custody public defense services and conflict public defense services have been provided by a variety of different attorneys over the years. In 2017, the Stewart, MacNichols, Harmell contract was expanded to include in-custody public defense services after the City terminated its contract with Theresa and Phillip Griffin. The City currently contracts with the Law Office of Christian W. Smith for conflict public defense services through December 31, 2022.

## **DISCUSSION**

As the City's current public defense contract will conclude at the end of 2019, the contract for Council consideration is for in-custody and primary public defense services beginning January 1, 2020.

### **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 July 22, 2019 with a due date of August 26, 2019 for this service and received one proposal from a public defense firm. The City had previously responded to several public disclosure requests in the preceding year from public defense firms interested in this contract, however none of those firms submitted a bid.

The proposal was 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; and
- Cost to perform the requested work.

While only one proposal was received, the evaluation team met to evaluate the proposal based on the above criteria. The following summarizes the findings:

- Approach: Provided methodology, work plan, project organization and staffing with resumes in sufficient detail to determine that the public defense approach is in accordance with best practices and will ensure defendants receive a high level of service from their attorney.
- Expertise: Assigned Lead Attorney and staff attorneys have more than five years of experience providing public defense services; Lead Attorney and firm has experience providing public defense services in an alternative court, such as drug court, mental health court, etc. and video court.
- Related experience: References provide examples of exemplary public defense services rendered, including alternative court and video court services.
- Cost: Met criteria.

Based on the evaluation, staff selected Stewart, MacNichols, Harmell, Inc., P.S. as the 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. (Public Defender) as the preferred public defense firm, staff negotiated the contract with attached scope of work (Attachment A). The Public Defender shall perform the services outlined in accordance with the Standards for Indigent Defense previously adopted by the City in [Resolution No. 365](#).

### **Compensation:**

The Public Defender will be compensated at a base rate of \$18,500 per month for the first 120 cases appointed per quarter up to initial resolution of matters assigned. Additional appointed cases above 120 per quarter will be billed at \$400.00 per case. Appeals will be billed at \$750 per appeal. Community Court will be billed at \$750 per half day calendar, not to exceed \$39,000 annually.

The City shall also pay for other expenses when reasonably incurred and approved by the Court, such as medical and psychiatric evaluations; expert witness fees and expenses; and investigation expenses, just to name a few. These are not expected to exceed \$5,000 in any given year. Given these expected and estimated expenses, costs are estimated at \$267,000 for the base year.

After 2020, additional contract years covering 2021-2024 will be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U.

<b>Contract Year</b>	<b>Estimated Base Compensation</b>	<b>Estimated Additional Services Costs</b>	<b>Total Annual Estimated Contract Costs</b>
2020	\$222,000 (\$18,500 month x 12 months)	\$45,000	\$267,000
2021	\$227,550 (\$18,500 x 2.5% inflator x 12 months)	\$46,125 (\$45,000 x 2.5% estimate cost inflator)	\$273,675
2022	\$233,239 (\$18,963 x 2.5% inflator x 12 months)	\$47,278 (\$46,125 x 2.5% cost inflator)	\$280,517
2023	\$239,070 (\$19,437 x 2.5% x 12 months)	\$48,460 (\$47,278 x 2.5% cost inflator)	\$287,530
2024	\$245,046 (\$19,922 x 2.5% inflator x 12 months)	\$49,672 (\$48,460 x 2.5% inflator)	\$294,718
<b>Estimated Total</b>	<b>\$1,166,905</b>	<b>\$236,535</b>	<b>\$1,403,440</b>

**Table 1: Estimated 5-Year Contract Compensation for In-Custody & Primary Public Defense Services**

Term:

The term of the contract, scheduled to begin on January 1, 2020, is for five years. Council authorization of the contract would provide enough funding for the full contract term.

Conference and Reporting Requirements:

The Public Defender is required to give regular reports to the City and meet with the City’s representative (CMO Management Analyst) regularly to discuss contracting requirements. Specifically, the Public Defender must complete:

- 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;
- District Court- or City-initiated meetings to review, revise or enhance the operating performance of judicial functions; and
- End of annual term conference with the City’s representative.

Twenty-Four Hour Telephone Access:

The Public Defender provides the City of Shoreline Police Department a telephone number for an attorney to be reached for “critical stage” advice to indigent defendants during the course of police investigations and/or arrest 24 hours each day.

Schedule:

Public defense services must be available on a regular basis at the South Correctional Entity (SCORE) Regional Jail and King County District Court, West Division, Shoreline Courthouse (“Shoreline Courthouse”). The in-custody calendar at SCORE takes place five days per week, Monday through Friday, and begins at 3:00 pm. The Shoreline arraignment calendar is on Mondays and begins at 8:45 am and runs for approximately two hours. The City’s regular court calendar at the Shoreline Courthouse occurs on Tuesdays and Thursdays beginning at 8:45 am. Public defense attorneys must also be available on the third Wednesday of every month at 1:30 pm at the Shoreline Courthouse for jury selection, and every day the following week if a jury trial occurs.

The City’s public defense contractor will also be required at Shoreline Community Court, beginning in January 2020 and occurring weekly in the Council Chambers and lobby at City Hall on Tuesdays at 2:00 pm. The Public Defense attorneys will be present from 12:00 pm to 5:00 pm on Tuesdays for Community Court proceedings as well as District Court-initiated meetings to review, revise, or enhance the operating performance of the Court.

<b>City of Shoreline Public Defender Schedule</b>				
<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
<b>SCORE – In Custody</b>				
3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.
<b>Shoreline Courthouse</b>				
8:45 a.m. – 10:45 a.m. (arraignment)	8:45 a.m. – 12:00 p.m. (regular)	1:30 – 4:00 p.m. (jury call, 3 <sup>rd</sup> Wed. only)	8:45 a.m. – 4:00 p.m. (regular)	
1:30 – 4:00 p.m. (regular)				
<b>Shoreline City Hall – Community Court</b>				
	12:30 – 4:00 p.m.			
<b>Shoreline Courthouse – Jury Trials (4<sup>th</sup> week of the month)</b>				
8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.

**Table 2: City of Shoreline Public Defender Schedule**

### Compliance with Standards for Indigent Defense

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; and
- Continuing legal education and training requirements for attorneys.

### **RESOURCE/FINANCIAL IMPACT**

The 2019-2020 public defense budget is \$666,118, with the in-custody and primary public defense services accounting for \$303,059 annually. The contract calls for the City to provide a base rate of compensation of \$18,500 per month (not to exceed \$222,000 per year), plus costs for Community Court (not to exceed \$39,000 per year) and other additional services (estimated at no more than \$5,000 per year). After 2020, additional contract years covering 2021-2024 will be inflated by 90% of the June to June Seattle-Tacoma Area CPI-U. Given this estimated cost, the five year contract do not exceed amount is \$1,403,440.

### **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to execute the contract in an amount not to exceed \$1,403,440 with Stewart, MacNichols, Harmell, Inc., PS for public defense services for 2020-2024.

### **ATTACHMENT**

Attachment A – Scope of Work with Stewart, MacNichols, Harmell, Inc., PS for Public Defense Services

## **EXHIBIT A SCOPE OF WORK**

The Public Defender shall 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 for both in- and out-of-custody defendants and other related services and tasks.

Legal representation shall be available on a regular basis 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 Friday at the South Correctional Entity (SCORE) Jail. From time to time, the Public Defender may need to be available to appear at and King County Correctional Facility (KCCF).

Legal representation shall 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, WA.

Legal representation for the Community Court calendar shall be available on a regular basis at City Hall ("City Hall") located at 17500 Midvale Ave North in Shoreline, WA.

The Public Defender will provide an adequate number of defense counsel to efficiently manage the court calendar, whether at the Shoreline Courthouse or City Hall, 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.

As set forth in the Table below, the City's calendar is as follows:

The City's in-custody calendar at SCORE is held five (5) days a week, Monday through Friday, and begins at 3:00 p.m. The City's arraignment calendar day is on Mondays and runs for approximately two (2) hours beginning at 8:45 a.m.

The City's regular court calendar days are Mondays (1:30 p.m.), Tuesdays (8:45 a.m.), and Thursdays (8:45 a.m.) at the Shoreline Courthouse. 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.

Community Court is regularly held at City Hall on Tuesdays (12:30 p.m.).



<b>City of Shoreline Public Defender Schedule</b>				
<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>
<b>SCORE – In Custody</b>				
3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.	3:00 p.m.
<b>Shoreline Courthouse</b>				
8:45 a.m. – 10:45 a.m. (arraignment)	8:45 a.m. – 12:00 p.m. (regular)	1:30 – 4:00 p.m. (jury call, 3 <sup>rd</sup> Wed. only)	8:45 a.m. – 4:00 p.m. (regular)	
1:30 – 4:00 p.m. (regular)				
<b>Shoreline City Hall</b>				
	12:30 – 4:00 p.m. (Comm. Court)			
<b>Shoreline Courthouse – Jury Trials (4<sup>th</sup> week of the month)</b>				
8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.	8:45 a.m. – 4:00 p.m.

## 1. Scope of Work

The Scope of Work includes:

- Arranging pre-hearing conferences
- Appearance at all arraignment calendars
- 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.**

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

**C. Twenty-Four Hour Telephone Access.**

The Public Defender 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.**

- i. Any counsel associated with, contracted or employed by the Public Defender shall have the authority to perform the services set forth in this Scope of Work. The Public Defender 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.
- ii. The Public Defender shall be responsible for this Agreement, notwithstanding that other counsel may be employed or associated by the Public Defender to perform services hereunder. The Public Defender 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 Public Defender’s representation of assigned clients.

**E. Attorney Conflict.**

In the event that the Public Defender 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 Public Defender.

**F. Introduction to Clients.**

The Public Defender 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.

**G. Discovery Provided.**

The City shall provide to the Public Defender, at no cost to the Public Defender 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.

**H. Code Provided.**

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

**I. Case Load Limits.**

The Shoreline City Council has elected to not weight misdemeanor cases and therefore has 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.

**J. Transfer of Caseload.**

Upon conclusion of the Public Defender'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.

**3. 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 Public Defender 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.

#### 4. Compensation

Compensation for these services shall be the sum of:

- A. For the period between January 1, 2020 and December 31, 2020, a fixed rate of eighteen thousand five hundred dollars (\$18,500) per month for the provision of all services in this Scope of Work, up to initial resolution of matters assigned. The \$18,500.00 per month shall provide attorney services for the first 120 cases appointed per quarter. Additional appointed cases above 120 per quarter will be billed at \$400.00 per case. RALJ appeals will be billed at \$750.00 per appeal. Community Court will be billed at \$750.00 per half day calendar, not to exceed \$39,000. Billing for cases above 120 per quarter will be included with the April 2020, July 2020, October 2020 and January 2020 bills submitted by Public Defender.
- B. The City shall pay for the following case expenses when reasonably incurred and approved by the Court from funds available for that purpose
  - i. Non-routine case expenses requested by the Public Defender and preauthorized by order of the Court. Unless the services are performed by Public Defender's staff or subcontractors, non-routine expenses may include, but shall not be limited to:
    - a. medical and psychiatric evaluations;
    - b. expert witness fees and expenses;
    - c. investigation expenses;
    - d. direct costs transcribing court hearings;
    - e. record costs, including, but not limited to medical, school, 911, and similar records;
    - f. service of process;
    - g. interpreters for attorney/client communication, including use of the language line;
    - h. polygraph, forensic, and other scientific tests; and
    - i. 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.
  - ii. Lay witness fees and mileage incurred in bringing defense witnesses to court.
- C. 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 2020, if executed, will be inflated annually by 90% of the June to June Seattle-Tacoma-Bremerton area Consumer Price Index (CPI-U).