



CITY OF CHANDLER SERVICES AGREEMENT PUBLIC DEFENDER SERVICES

THIS AGREEMENT ("Agreement") is entered into by and between the City of Chandler ("City"), an Arizona municipal corporation, by its Mayor, and Michael Smith, Attorney at Law ("Contractor"). (City and Contractor may individually be referred to as "Party" and collectively referred to as "Parties") and made this ____ day of _____, 20 ____ (Effective Date).

RECITALS

- A. City proposes to contract for public defense representation for eligible persons with matters before the Chandler Municipal Court as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.
- B. Contractor represents that he or she is licensed to practice law in Arizona and is qualified by reason of competence, training, and experience to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.
- C. City desires to contract with the Contractor to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

DEFINITIONS:

For purposes of this Agreement, the following definitions apply:

- "Agreement" means this legal agreement executed between the City and the Contractor.
- "City" means the City of Chandler, Arizona.
- "Contractor" means the individual, partnership, or corporation named in the Agreement.
- "Days" means calendar days.
- "May" or "Should" means something that is not mandatory but permissible.
- "Shall," "Will," or "Must" means a mandatory requirement.

SECTION I: CONTRACT ADMINISTRATOR

Contractor shall act under the authority and approval of the Presiding City Magistrate of the Chandler Municipal Court, or designee, ("Contract Administrator") to provide the services required by the Agreement.

SECTION II: CONTRACTOR'S SERVICES

This is a personal services contract. Contractor must perform the services described in Exhibit A to City's satisfaction within the terms and conditions of this Agreement and with the care and skill that a person who provides similar services exercises under similar conditions.

SECTION III: PERIOD OF SERVICE

Contractor must perform the services described in Exhibit A for the term of this Agreement.

The term of the Agreement is one year, commencing on July 1, 2021, and terminating on June 30, 2022, unless sooner terminated in accordance with the provisions herein. City and Contractor may mutually agree to extend the Agreement for up to two additional terms of one year each, or portions thereof. The Contract Administrator, at his/her sole discretion, is authorized to approve and execute the extensions on behalf of City. City reserves the right, at its sole discretion, to extend the Agreement for up to 60 days beyond the expiration of any extension term.

SECTION IV: PAYMENT OF COMPENSATION AND FEES

Unless amended in writing by the Parties, Contractor's compensation and fees, as more fully described in Exhibit B, for performance of the services approved and accepted by the City under this Agreement must not exceed \$50,000.00 (FIFTY THOUSAND DOLLARS) per year. Contractor must submit requests for payment of services provided during the previous billing period no later than the 7th day of each month and must include, as applicable, detailed invoices and receipts and a narrative description of the tasks accomplished during the billing period as set forth in Exhibit B. City will make payment for approved and accepted services within 30 days of City's receipt of the request for payment. Contractor bears all responsibility and liability for any and all tax obligations that result from Contractor's performance under this Agreement.

SECTION V: GENERAL CONDITIONS

5.1 Records/Audit.

(a) *Record Retention.* Contractor shall retain and shall contractually require each substitute attorney to retain all data and other records relating to the performance of and service rendered under this Agreement for a period of five years after completion of the Agreement.

(b) *Audit.* At any time during the term of the Agreement and up to five years thereafter, the books and records of Contractor or any substitute attorney shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or a subcontract hereunder. Upon request, Contractor shall produce a legible copy of any or all such records.

5.2 City's Contractual Remedies.

(a) *Right to Assurance.* If City in good faith has reason to believe Contractor does not intend, or is unable, to perform or continue performing under the Agreement, the Contract Administrator may demand, in writing, that Contractor provide a written assurance of intent to perform. Failure by Contractor to provide written assurance within the time period specified in the demand may, at the option of the City, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or the Agreement.

(b) *Right of Offset.* City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by City, or damages assessed by City concerning Contractor's nonconforming performance or failure to perform the Agreement, including expenses to bring in substitute counsel and other costs and damages incurred by City.

(c) *Non-exclusive Remedies.* The rights and remedies of the City under the Agreement are not exclusive.

5.3 Termination.

(a) *Termination for Convenience.* City and Contractor hereby agree to the full performance of the covenants contained herein, except that either Party may terminate the Agreement or any part thereof for its sole convenience with 60 days advance written notice. In the event of such termination, Contractor shall immediately cease all work hereunder. If the Agreement is terminated and Contractor has not rendered services for a full month, the payment for the month will be prorated accordingly. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items.

(b) *Termination for Cause.* City may, upon written notice, terminate the Agreement for Cause for any one or more of the following non-exclusive grounds: (i) Contractor fails to perform pursuant to the terms of this Agreement, (ii) Contractor willfully or repeatedly disregards the procedures required by the Court, (iii) Contractor demonstrates a continued inability to adequately serve the interests of his or her clients, (iv) Contractor fails to abide by the standards of performance and rules of professional conduct, (v) Contractor fails to maintain his/her license to practice law in Arizona in good standing, (vi) Contractor is adjudged a bankrupt or insolvent, (vii) Contractor makes a general assignment for the benefit of creditors, (viii) A trustee or receiver is appointed for Contractor or for any of Contractor's property (ix) Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (x) Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, (xi) Contractor fails to cure default within the time requested, or (xii) any other cause which has substantially impaired Contractor's ability to provide adequate services under the Agreement. Where the Agreement has been so terminated by City, Contractor shall continue to perform in accordance with the requirements of the Agreement up to the date of termination as set forth in the termination notice. The termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue. If City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.4 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnitee) from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) (Claims) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.5 Insurance Requirements. Contractor must procure insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit C against claims that may arise from or relate to performance of the work under the Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must maintain this insurance until all of their obligations have been discharged. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in the Agreement. City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under this Agreement by Contractor, Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.6 Cooperation and Further Documentation. Contractor agrees to provide City such other duly executed documents as may be reasonably requested by City to implement the intent of this Agreement.

5.7 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

For the City

Name: Alicia M. Skupin
Title: Presiding City Magistrate
(Contract Administrator)
Address: P.O. Box 4008, Mail Stop 302
Chandler, AZ 85244-4008
Phone: 480-782-4740
Email: alicia.skupin@chandleraz.gov

For the Contractor

Name: Michael J. Smith
Attorney at Law
Address: P.O. Box 94328
Phoenix, AZ 85070
Phone: (602) 228-9938
Email: gonzalezandsmith@aol.com

5.8 Professional Licenses. Beginning with the Effective Date and for the full term of this Agreement and any extension thereof, Contractor must at all times remain an active member in good standing of the State Bar of Arizona. Contractor shall immediately inform the Contract Administrator of any changes in the status of Contractor's license to practice law in Arizona. Contractor's failure to maintain active membership in good standing and/or failure to promptly apprise the Contract Administrator of changes in status may result in immediate termination of the Agreement. City may, upon written notice to Contractor, immediately terminate the Agreement if the City determines Contractor has been disbarred, suspended, or otherwise lawfully prohibited from practicing law.

5.9 Disputes.

(a) Alternative Dispute Resolution. The Parties agree that there shall be a 60 day resolution period commencing on the day a claim is filed by Contractor pursuant to A.R.S. § 12-821.01 during which time the Parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

(b) Fees and Costs. Except as otherwise agreed by the Parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorneys' fees, expert witness fees, and costs including, as applicable, arbitrator fees; provided, however, that no award of attorneys' fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

5.10 Acceptance and Documentation. Contractor's work shall be reviewed and approved by the Contract Administrator to determine acceptability. Contractor shall maintain current case logs and final disposition records, and shall provide written reports, as requested, to facilitate the Contract Administrator's evaluation of Contractor's performance under this Agreement.

5.11 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor until such time that a settlement on those claims has been reached.

5.12 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.13 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.14 Substitute Counsel. Prior to beginning the work, the Contractor must furnish the Contract Administrator for approval the names of any substitute attorneys to be used under this Agreement. Any subsequent changes are subject to the City's prior written approval.

5.15 Mandatory Notification. Contractor shall report to the Contract Administrator any Bar complaint, malpractice claim, or lawsuit in which a determination, finding, or decision adverse to Contractor has been made within three (3) work days of becoming aware of or receiving notice of the existence or occurrence of such complaint, determination, finding, or decision. Contractor shall report any arrest or conviction to the Contract Administrator as soon as possible after the arrest or conviction and before performing any additional services under the Agreement. Contractor's failure to provide such mandatory notifications constitutes a material breach of the Agreement.

5.16 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.17 Compliance with Federal Laws. Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The Contractor agrees to comply with these laws in performing this Agreement and to permit the City to verify such compliance.

5.18 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel as defined by state statute.

5.19 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Contractor's or subcontractor's employee who provides services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.20 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.21 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.22 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.23 Advertising, Publishing, and Promotion of Contract. Contractor shall not use, advertise, or otherwise promote information related to the Agreement or the services provided hereunder for commercial benefit without the prior written consent of City.

5.24 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in

this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to the Contractor or its subcontractors: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

5.25 Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.26 Jurisdiction and Venue. This Agreement is made under and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.27 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.28 Modification. Except as expressly provided herein to the contrary, no supplement,

modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.29 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.30 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.31 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.32 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.33 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.34 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.35 Document/Information Release. Documents and materials released to Contractor, which are identified by the City as sensitive and confidential, are City's property. The document/material must be issued by and returned to City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.36 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Project Description/Scope of Services
Exhibit B - Compensation and Fees
Exhibit C - Insurance Requirements

5.37 Waiver of Workers' Compensation Benefits. If a sole proprietor, Contractor shall execute the Sole Proprietor's Waiver of Workers' Compensation Benefits.

5.38 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.39 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither City nor Contractor may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and the City.

5.40 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.41 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as an expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council.

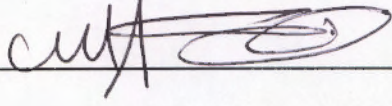
This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

FOR CITY

By: _____

Mayor

FOR CONTRACTOR

By:  _____

Its: _____

APPROVED AS TO FORM:

By: _____

-

City Attorney 

ATTEST:

By: _____

-

City Clerk

EXHIBIT A
SCOPE AND DESCRIPTION OF SERVICES

A. General

1. Contractor shall provide public defense services to eligible indigent defendants assigned to Contractor by a judicial officer of the Chandler Municipal Court.
2. On any day the Court is open, Contractor may be required to appear in any division of the Court as determined by the Court schedule. The Court schedule will not be changed arbitrarily and without prior consideration of Contractor's schedule.
3. Contractor shall prepare for and appear at all court proceedings pertaining to assigned defendants, including but not limited to, pretrial conferences, motions, jury and non-jury trials, evidentiary hearings, sentence reviews, revocation of probation hearings, special hearings, oral arguments, sentencings, order to show cause hearings, appeal proceedings, and special actions, as well as, appeals to higher courts.
4. Contractor will not be required to be present at arraignments except where the defendant requests appointment of counsel and qualifies for a Public Defender. In these instances, the arraignment will be continued until the time of a pretrial hearing, when Contractor shall be present.
5. Once appointed, Contractor shall represent each defendant throughout all stages of the proceedings, including appeals and other appropriate post-conviction relief, until Contractor is relieved from the case by the Court. No substitution of counsel shall be permitted without prior arrangement with the Contract Administrator.
6. Contractor is responsible for providing personal consultation with clients prior to pretrial disposition conferences when requested or otherwise appropriate. Contractor is required to maintain personal contact with defendant until the case is terminated and is required to use reasonable diligence in notifying defendant of official court action resulting from defendant's nonappearance at a scheduled court session (proof of such notice must be supplied upon request).
7. Contractor shall conduct the defense of all indigent defendants in conformance with the minimum standards and requirements set forth in applicable precedent including *State v. Watson*, 134 Ariz. 1, 653 P.2d. 351 (Ariz. 1982); *State v. Smith*, 140 Arizona 355, 681 P.2d 1374 (Ariz. 1984); and *State v. Lee*, 142 Ariz. 210, 689 P.2d 153 (Ariz. 1984).
8. Contractor shall provide substitute counsel when unable for any reason to appear in Court or at any of the events described above. Substitute counsel shall not be used routinely. In general, substitute counsel should be used only when Contractor cannot provide public defense services because of illness, a scheduled vacation, or a prior legal commitment of precedence in another court. Contractor shall provide the Contract Administrator with the names, addresses, and telephone numbers of substitute counsel who will be responsible for providing public defense services. No counsel shall be offered as a substitute in the performance of public defense services without the prior written consent of the Contract Administrator. Such consent shall not be arbitrarily or unreasonably withheld or withdrawn.
9. Contractor shall not serve as a contract Public Defender in any other court while this Agreement with the City is in force, if such service shall cause Contractor's case load to exceed the minimum standards and requirements imposed by Arizona Supreme Court precedent.
10. The Court will provide interpreters for non-English speaking defendants for all in court and pretrial proceedings. Contractor shall provide, at his or her own expense, interpreters for all out-of-court matters.
11. Contractor shall pay all costs incurred in the representation of indigent defendants assigned by the Court pursuant to this agreement including, but not limited to, costs of office space,

telephones, transportation, photographs (including photocopies of discoverable materials), photocopies, office supplies, office overhead, reports, secretarial services, and out-of-court interpreters. Contractor will not be charged for photocopies of discoverable materials obtained from the Chandler City Prosecutor's Office.

12. In the event a case involves two or more defendants or Contractor declares a conflict of interest, a magistrate may assign one or more defendants to another Public Defender.
13. The City will provide required forms for defendants to prepare and submit to the Court to determine a defendant's indigency. Contractor shall not be asked to advise clients until the Court has determined that they are indigent and entitled to public defender representation. Contractor may request a review of the indigence of any defendant assigned to Contractor. If a magistrate makes a determination of non-indigence of a defendant and allows Contractor to withdraw, Contractor shall not represent the defendant in that case for a fee. Contractor shall not solicit his public defender clients for future representation for a fee.
14. Contractor agrees that court settings in the Chandler Municipal Court are to take precedence over civil cases and all other criminal cases in other courts which do not have precedence as provided by the Arizona Rules of Criminal Procedure

B. Office

Contractor shall have an office or make arrangements to use an office that is located within the East Valley to provide personal consultation with clients when requested and otherwise appropriate.

C. Assignment of Cases

The Court shall determine the assignment of all indigent cases to Contractor. The City retains the exclusive right to assign cases based on the ability of Contractor to meet the City's calendars and schedule and Contractor's expertise in relation to each case.

D. Allowable Caseload

1. Contractor's Municipal Court contract caseload shall not exceed 300 misdemeanor cases per year, except at the request of and/or with the express permission of the Contract Administrator. Contractor agrees that s/he will not accept representation of clients, other than indigent persons represented pursuant to the Agreement, to the extent that such representation would increase his/her caseload beyond the guidelines set forth in *State v. Smith*. On cases Contractor views as unusually complicated, Contractor may make a written request to the Contract Administrator that said case to be counted as more than one case toward Contractor's 300 caseload limit. Final determination on such request shall be made by the Contract Administrator. At no time shall Contractor's private practice caseload reach such a volume, during his or her service as a Public Defender, so as to jeopardize Contractor's ability under *State v. Smith* to complete the 300 Municipal Court cases specified in this Agreement.
2. Under the guidelines of the aforementioned case, Contractor's caseload shall be reviewed quarterly during the course of the Agreement to evaluate the number and complexity of cases assigned during the quarter, the amount of time spent on those cases, and Contractor's professional competency to handle the caseload assigned in accordance with the Arizona Rules of Professional Responsibility (DR 6-101 and 7-101, Rules of the Supreme Court, 17A A.R.S.) and the American Bar Association (ABA) Standards (Standards 4-1.2 and 5-4.3), as cited in *State v. Smith*. Such review may include consultation by City staff with Court magistrates and Contractor, as necessary, to fairly evaluate his/her compliance with the terms of the Agreement.

E. Suspension of Appointments

1. If Contractor's caseload prevents Contractor from providing effective assistance of counsel to each client, Contractor shall move the Court for the suspension of indigent appointments until the case congestion clears.
2. The Court shall set a date to hear the motion within five days from its receipt. If the Court finds that Contractor's indigent caseload is adversely interfering with Contractor's ability to provide effective legal assistance, the Court, in the interest of justice, may suspend further indigent appointments to Contractor for a period not to exceed 30 days.
3. During the suspension of appointments, the Court shall appoint other counsel to represent eligible defendants.
4. It shall be Contractor's obligation to notify the Court immediately when the case congestion has cleared so that appointments may be reinstated to Contractor.
5. During the period of suspension, Contractor shall notify the Court in writing every Monday (or the next business day if Monday is a legal holiday) as to the status of his/her caseload and case congestion.
6. At the expiration of any suspension period ordered by the Court, or earlier if so notified by Contractor, the Court shall conduct a hearing for the purpose of determining whether the suspension should be lifted or a further suspension of appointments not to exceed 30 days should be granted. The suspension affects only the appointment of new clients to Contractor and in no other way releases either Party from other duties or obligations pursuant to the Agreement; provided, however, that City's monthly payments to Contractor will be prorated during any suspension of appointments that exceeds 30 days.

**EXHIBIT B
COMPENSATION AND FEES**

1. For performance of the duties and responsibilities set forth in this Agreement, Contractor shall receive the maximum amount of \$50,000.00 (Fifty Thousand Dollars) per 12-month contract term payable in 12 monthly payments as follows:

Payment Month 1: \$4,163.00

Payment Months 2-12: \$4,167.00

Payments for approved and accepted services will be made after presentation of a monthly invoice for payment to the Contract Administrator, or designee, for services performed in the preceding month. Invoices must be submitted no later than the 7th day of each month and must provide caseload details for the preceding month including: (i) the name of each Defendant, (ii) the associated case number(s), (iii) the date(s) services were provided, and (iv) a general description of the services provided. Payments shall be prorated for months in which Contractor did not perform services for all or part of the month.

2. The first monthly payment for services under the Agreement shall be made in August 2021 for services performed in July 2021. Contractor shall receive payment only for months in which services are rendered. If the Agreement is terminated and Contractor has not rendered services for the full month, the payment for the month shall be prorated.
3. Compensation paid under the Agreement is for Contractor's services performed through completion of all cases assigned to Contractor during the term of the Agreement. City shall not owe additional compensation to Contractor in excess of the total annual amount under the Agreement for any work performed after the end date of the Agreement (June 30, 2022), on matters assigned on or before the end date of the Agreement. For each extension of the Agreement, City shall not owe additional compensation in excess of the total annual amount for work performed after the end date of any Agreement extension (June 30) for work assigned on or before the end date of the extension.
4. The total amount payable to Contractor for services rendered under the Agreement shall not exceed \$50,000.00 (Fifty Thousand Dollars) per 12-month contract term; provided, however, the Contract Administrator may, for good cause, approve a contract amendment increasing the compensation to be paid under this Agreement by up to 10 percent. Any amendment to the Agreement shall be in writing and signed by both parties.
5. *Expert Fees.* The City will be responsible for fees for expert witnesses up to a maximum of \$500.00 per year. The \$500.00 annual maximum may be exceeded only when appointment of a witness is ordered by the Court.
6. Contractor shall not collect or receive any payment or remuneration in any form from defendants assigned to Contractor under this Agreement for services provided on the assigned cases.
7. *Taxes.* Contractor shall be solely responsible for any and all tax obligations, which arise out of the Contractor's performance of this contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by Contractor.

EXHIBIT C INSURANCE

General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Professional Liability.* Contractor must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Contractor, or anyone employed by the Contractor, or anyone whose acts, mistakes, errors and omissions Contractor is legally liable, with a liability limit of \$500,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for three years past completion and acceptance of the work or services, and Contractor will submit Certificates of Insurance as evidence the required coverage is in effect. Contractor must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a three year period.

Proof of coverage and effective dates thereof shall be submitted to the Presiding City Magistrate (Contract Administrator) at the address for Notices (Section 5.7) within 10 days of the effective day of the Agreement.

- B. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability

insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee. If the Contractor is a sole proprietor or a single member limited liability company with no employees, and has elected not to purchase Workers' Compensation Insurance; a completed and signed Workers' Compensation Waiver Form will substitute for the insurance requirement.

C. *Insurance Cancellation during Term of Agreement.*

1. If any of the required policies expire during the life of this Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then 10 days prior notice may be given. Such notice shall be sent to the Presiding City Magistrate (Contract Administrator) at the address for Notices in Section 5.7. If any insurance company refuses to provide the required notice, Contractor or its insurance broker shall notify City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect. Contractor's failure to maintain professional liability insurance will result in termination of the Agreement.