

CITY OF GLENDALE
PUBLIC DEFENDER JAIL COURT AGREEMENT

This Public Defender Jail Court Agreement (“Agreement”) is made and entered into this first day of June 2024, by and between the City of Glendale, an Arizona municipal corporation (“City”) and Eileen Sullivan, Attorney at Law (“Attorney”).

RECITALS

- A. The City Manager of the City of Glendale is authorized and empowered by provisions of the Glendale City Charter to execute contracts and contract amendments; and
- B. The City desires to provide legal counsel for the representation of possibly incompetent defendants (Advisory Counsel in Jail Court 1-day per week) (“Defendants”) in the Glendale City Court (“Court”), where such representation is required by the United States Constitution, the Arizona Constitution, and the Rules of Criminal Procedure for the State of Arizona; and
- C. Attorney is licensed to practice law in the State of Arizona, is a member in good standing with the Arizona State Bar (the “Bar”), is otherwise professionally qualified to provide the desired services and is ready, willing and able to do so; and
- D. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

- 1. **Term of Agreement.** The initial term of this Agreement shall be for the period of one year, commencing June 1, 2024, and expiring May 31, 2025 (“Term”).
- 2. **Renewal.** Not less than 30 days prior to the end of the Term, City may extend this Agreement for up to three additional one-year periods with the consent of Attorney. City may change the rate of compensation applicable to any extension period. No renewal will take place unless initiated by the City.
- 3. **Fees.** While this Agreement is in effect, the City will pay Attorney for all Jail Court legal services provided pursuant to this Agreement at the rate of \$13,002 per annum, payable monthly at the rate of \$1,083.50. If less than a full calendar month is included at any time within the Term of this Agreement, the monthly base compensation will be prorated for that month at a daily rate. Attorney must submit a monthly invoice for payment to the Agreement Administrator no later than the fifth day of the following calendar month for which Attorney is billing. The invoice must be substantiated with the appropriate statistical reports as referenced herein. In the event of termination prior to the expiration date of this Agreement, Attorney will submit a final bill.
 - 3.1 **Additional Fees.** At the sole discretion of and upon written approval of the Presiding City Judge or his/her designee (“Presiding Judge”), Attorney will be paid enhanced compensation at the rate of \$40.00 per hour for extraordinary cases that because of the complexity of facts, legal issues or proceedings, create significant additional work for Attorney. The filing of an appeal or a complaint

for Special Action will not, by itself, support a decision to approve additional fee compensation.

- 3.2 Costs. Attorney will pay all costs and expenses incurred in the representation of Defendants, except as otherwise expressly provided in this Agreement. Costs for which the Attorney is responsible include, but are not limited to, office rent, telephone, computer, expenses related to the maintenance and operation of an office, transportation, photographs, photocopies, secretarial services, law clerks, transcripts (other than appeal transcripts), depositions and preparation of reports required by this Agreement.
- 3.3 Court Costs and Third-Party Fees. The Court will pay costs of interpreters and appellate transcripts. Subject to prior motion and approval, the Court may agree to pay reasonable compensation for other necessary support services such as expert witnesses, investigators, out of court interpreters, and blood samples, when a finding is made by a judge of the Court that such services are indispensable to the interests of justice.
4. **Services**. Attorney will provide legal representation to Defendants when appointed to do so by a judge of the Court.
 - 4.1 Quality of Representation. Attorney will conduct the defense of assigned Defendants diligently and professionally, consistent with standards set forth in the Arizona Rules of Professional Conduct and case law defining the duties of defense counsel in criminal cases.
 - 4.2 Arizona State Bar Membership. Attorney must at all times remain an active member in good standing with the Arizona State Bar (the "Bar"). Attorney must immediately inform the Court Administrator of any changes in Attorney's active membership status and of any adverse Bar rulings. Failure to maintain membership status and/or failure to promptly apprise the Court Administrator of changes may result in the immediate termination of this Agreement.
 - 4.3 Availability. Attorney will maintain an office, or make arrangements to use an office, that is located within a 30-mile radius of the Court, to meet with Defendants, to accept telephone calls and to take messages during regular business hours.
 - 4.4 Ethical Limitations. Attorney agrees not to enter into a private agreement to represent defendants serviced pursuant to this contract.

Jail Court public defenders are acting as advisory attorneys as opposed to full representation of a trial court public defender. Any case that proceeds past the jail court stage will be assigned to a regular trial court public defender.
 - 4.5 Appearances. Attorney must appear for Defendants whom they represent in all matters set in the Court, including but not limited to motions; oral arguments; court sessions; unless the personal appearance by the Attorney is excused by a judge before whom the matter is to be heard or decided.

- a. Jail Court. Generally, attorney must appear to advise Jail Court defendants. Advisory counsel shall advise and advocate for defendants at initial appearance (IA) after arrest on new charge(s) or arrest on warrant(s) for a pending charge. If the in-custody defendant is not able to resolve their case, then the attorney will represent the defendant for the limited purpose of release review hearing in accordance with Rule 6.1(b)(1)(B) and Rule 7.4(f) of the Arizona Rules of Criminal Procedure. Attorney will also, provide assistance with pleas at Initial Appearance (IA) and advocate on the subject of bail conditions. Additionally, Advisory Counsel will assist in-custody defendants who appear for arraignment regarding legal and procedural matters, if they are facing jail time, or a term of probation, have questions the prosecutor cannot legally answer, or do not understand the process. Jail Court defendants will not be counted toward the maximum number of cases assigned to Attorney because services are not provided past the jail court phase and no pre-appearance date preparation is required.
- b. Association of Counsel. Attorney must provide for substitution of counsel when Attorney is unable for any reason to appear in Court. Substitute counsel shall not be used routinely and no more than in 20% of all court appearances in cases assigned to Attorney. Attorney must provide names, addresses and telephone numbers of substitute counsel who will be responsible to the same effect and extent as Attorney for performance of the services contemplated and enunciated in this Agreement. It will be the responsibility of the Attorney to compensate any substitute counsel under this paragraph of this Agreement. Substitute counsel will not be offered as a substitute or employed in the performance of this Agreement without the written consent of the Presiding Judge, which consent may be withdrawn at the Presiding Judge's discretion. The names of all attorney(s) who may be employed as substitute counsel in the performance of this Agreement, including those offered as substitute counsel, must be on file with the Presiding Judge during the Term of this Agreement. Substitute counsel will not conduct any jury trial or bench trial unless, pursuant to Rule 6.3, Arizona Rules of Criminal Procedure, a motion for substitution of attorney is granted by the Court.

5. Termination.

- 5.1 By City. This Agreement may be terminated by the City, without cause and for convenience, by a 30-day written notice of termination. In the event of termination for convenience, City's sole obligation to Attorney will be to pay the fees incurred for services performed as of the date of termination, except as provided below.
- 5.2 By Attorney. Attorney may terminate this Agreement upon a 60-day written notice of termination to the Presiding Judge or the Court Administrator.

- 5.3 For Cause. The City may also terminate this Agreement without notice for cause. Any of the following may constitute an event of default by Attorney which may constitute cause and entitle the City to terminate this Agreement immediately without notice for: (a) failure to comply with any of the terms and conditions of this Agreement, including but not limited to, all the reporting requirements in this Agreement; (b) unsatisfactory performance in the opinion of the Agreement Administrator or judges; (c) failure to maintain malpractice insurance; (d) failure to abide by current rules of professional ethics; (e) performance that falls below the guidelines set by the Arizona Supreme Court for legal services; (f) suspension or disbarment by the Arizona Supreme Court; and (g) failure to provide the City, upon request, reasonable assurances of future performance. In the event of termination for cause, the City will not be liable to Attorney for any damages sustained by reason of the default which gave rise to the termination, and the Attorney will be liable to the City for any and all damages sustained by the City by reason of the default which gave rise to the termination.
- 5.4 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. It may be canceled by the City, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time while this Agreement, or any extension, is in effect, Attorney's employee, agent or consultant, or consultant to the City with respect to the subject of this Agreement.
- 5.5 Funds Appropriation Contingency. If funds are not appropriated by the City Council for payment of charges hereunder, the City may terminate this Agreement.
6. **Insurance.** Attorney will provide the Court Administrator a certificate of insurance for malpractice coverage in an amount not less than \$100,000/\$300,000 within ten days of award. The deductible will be displayed on the certificate. The Court Administrator may require a financial statement so as to evidence the ability of the Attorney to fund the deductible. Insurance must remain in force during the Term of this Agreement. In the event the Attorney's insurance is terminated, Attorney must immediately notify the Court Administrator and this Agreement may be terminated. Insurance coverage must be written through a carrier possessing an A.M. Best rating of not less than A-.
7. **General Conditions.**
- 7.1 Modification of Agreement. This Agreement will be deemed modified to comply with any subsequent changes regarding indigent representation imposed by case law or rules promulgated by the Arizona Supreme Court.
- 7.2 Indemnification. Attorney will defend, indemnify, and hold harmless the City and any of its departments, agents, officers, and employees from all damages, claims, or liabilities and expenses, including attorney fees, arising out of or resulting from the performance of professional services under this Agreement and caused by any error, omission or negligent act of the Attorney, or anyone for whose acts the Attorney is legally liable.

- 7.3 Waiver of Liens. Attorney expressly waives any and all Attorney's liens that may arise in the course of performance under this Agreement.
- 7.4 Independent Contractor. The relationship created herein between Attorney and the City will be solely that of independent contractor, and nothing contained herein may be construed to create a relationship of principal/agent, employer/employee, partnership, joint venture, or any relationship of any kind other than independent contractor.
- 7.5 Integration. Except as stated herein, this Agreement constitutes the entire understanding of the parties and no representation or agreements, oral or written, made prior to this execution will vary or modify the terms herein.
- 7.6 Governing Law. This Agreement will be governed and interpreted according to the laws of the State of Arizona.
- 7.7 Amendments. Any amendment or modification of the terms of this Agreement must be in writing and signed by the parties.
- 7.8 Assignment. Services covered by this Agreement will not be assigned in whole or in part, except as necessary to provide for substitution of counsel as required herein.
- 7.9 Time of the Essence. Time is of the essence with respect to fulfillment of all obligations set forth herein.
- 7.10 Public Record. Attorney is hereby informed that this Agreement is a public record and is subject to full disclosure under Arizona law.
- 7.11 Agreement Administrator. The Agreement Administrator for the City will be the Presiding Judge or his/her designee. The Agreement Administrator will oversee performance of this Agreement, audit billings, and approve payments. The Attorney will submit reports, notices, requests, and other correspondence to the Agreement Administrator.
- 7.12 Immigration Law Compliance.
- a. Attorney, and on behalf of any substitute attorney, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
 - b. Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
 - c. City retains the legal right to inspect the papers of any Attorney or substitute attorney who performs work under this Agreement to ensure that the Attorney or any substitute attorney is compliant with the warranty under this section.

- d. City may conduct random inspections, and upon request of City, Attorney shall provide copies of papers and records of Attorney demonstrating continued compliance with the warranty under this section. Attorney agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
 - e. Attorney agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Attorney and expressly accrue those obligations directly to the benefit of the City. Attorney also agrees to require any substitute attorney to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
 - f. Attorney's warranty and obligations under this section to the City is continuing throughout the Term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
 - g. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
- 7.13 Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
8. **No Boycott of Israel.** The Parties agree that they are not currently engaged in and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

[Signatures on following page.]

ATTORNEY:

Eileen Sullivan
Attorney at Law

CITY OF GLENDALE:

Honorable Nicholas C. DiPiazza
Presiding City Judge

ATTEST:

Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney