

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 11/24/14

AGENDA ITEM: Professional Services Agreement between City of Marysville and Feldman & Lee, P.S.	
PREPARED BY: Gloria Hirashima, Chief Administrative Officer	DIRECTOR APPROVAL:
DEPARTMENT: Executive	
ATTACHMENTS: Professional Services Agreement for Indigent Defense Services	
BUDGET CODE:	AMOUNT:

SUMMARY:

The proposed agreement establishes a professional services agreement between the City and Feldman & Lee, P.S. for public defender services for all indigent criminal defendants charged under the city of Marysville Municipal Court who qualify for appointed counsel. Feldman & Lee have related matters. Marysville has utilized the services of Feldman & Lee, P.S. since 2010. The firm is contracted to provide qualified personnel and facilities necessary for the work and services identified within the contract. The work must be performed City's specifications, guidelines and/or rules specified by the State Office of Public Defense, and/or the Washington State Supreme Court.

Our current contract was approved through December 31, 2016, however both parties provided a reopener to address caseload limits established by the Washington State Supreme Court that are effective January 1, 2015. In addition, the Memorandum Decision dated December 4, 2013, in Wilbur v. City of Mount Vernon, United States District Court for the Western District of Washington Case No. C11-1101RSL, provides additional guidance on the delivery of public defense services, including municipal responsibilities for funding, administering and monitoring a constitutionally adequate public defense program under the Sixth Amendment to the U.S. Constitution.

The proposed fee is \$42,000 per month. The current rate is \$20,000 per month, so this represents over a 100% increase in costs of public defense for the city of Marysville.

RECOMMENDED ACTION:
Staff recommends that City Council approve the public defense service agreement with Feldman & Lee, P.S.

**PROFESSIONAL SERVICES AGREEMENT
FOR INDIGENT DEFENSE SERVICES**

WHEREAS, the City of Marysville, Washington, (“the City”) provides indigent defense services to individuals who have been determined to be eligible for representation at public expense for criminal charges before the Marysville Municipal Court (“the Municipal Court”); and

WHEREAS, the Supreme Court has by Order dated June 15, 2012, adopted New Indigent Defense Standards (“the Supreme Court Standards”), which impose a caseload limit of 400 unweighted misdemeanor cases per attorney; and

WHEREAS, the City has adopted Standards for Indigent Defense by Resolution No. 2363 adopted _____ (“the City Standards”); and

WHEREAS, based on current trends, the City anticipates filing approximately 1,600 cases in 2015 for which appointment of a public defender will be required, which will initially require four full time public defenders, and

WHEREAS, Feldman and Lee, P.S., (“the Firm”) is a law firm employing licensed attorneys in good standing in the state of Washington which has been selected by the City to provide representation of indigent defense clients under contract with the City (“the Services”); and represents that is willing and able to provide the required number of full time public defenders to provide the Services; and

WHEREAS, the City and the Firm desire to provide for compensation for the Services based on a flat monthly fee, subject to adjustment annually to reflect actual case filings.

Now, therefore, the City and Firm enter into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. Scope of Services, Standards and Warranty. The Firm will provide the Services in accordance with this Agreement, the Supreme Court Standards and the City Standards, which will initially require the provision of four (4) full time public defenders.

1.1 The Firm warrants that every attorney and/or intern employed by the Firm to perform services under this contract, has read and is fully familiar with the provisions of the Supreme Court Standards as it has been amended from time to time and the City Standards, which are hereby incorporated in this Agreement by this reference as if set out at length. Compliance with the Supreme Court Standards and the City Standards goes to the essence of this Agreement. Every attorney and/or intern performing services under this Agreement, shall certify compliance quarterly with the Municipal Court on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the City contemporaneously with filing with the Municipal Court. The Firm further warrants that it has analyzed the cost of providing the Services, and that its proposal,

reflected in Section 2, Compensation, is sufficient to cover all wages and benefits, infrastructure, support and administrative services and systems necessary to comply with the Standards.

1.2 The Firm shall maintain an office within the corporate limits of the City. The Firm shall ensure an attorney is available to each eligible City defendant to ensure that the defendant is provided with effective assistance of counsel. Defendant access to his or her attorney prior to court hearings is paramount. The Firm shall be responsible to use best efforts to ensure its attorneys confer with defendants about cases promptly after appointment and prior to trial or hearings. Defendants shall be provided access to the Firm's attorneys by means of a toll free local call from a Marysville telephone number made available by the Firm, attorney's email address, and attorney's office and postal address. Attorneys shall respond to defendant inquires within a reasonable time to ensure the effective assistance of counsel, whether such inquires are received by letter, telephone, email or otherwise.

1.3 The Firm shall provide an attorney to appear at all Municipal Court arraignment calendars.

1.4 The Firm shall maintain a case reporting and case management information system, and shall submit reports to the City, which shall be submitted in support of monthly invoices, and shall be a condition of payment pursuant to Section 2. The reports shall include the following information:

1.4.1 The number of cases to which the Firm's attorneys were appointed during the month and year to date.

1.4.2 For each appointment, the name of the defendant, the name of the attorney appointed, the date of appointment and the case number.

1.4.3 The charge(s) filed against the defendant.

1.4.4 The disposition of charge(s), including method of disposition, i.e., trial, plea motion, etc.

1.4.5 Such information required by the City Standards to allow the City to determine Attorney's compliance with caseload limits, including information pertaining to Attorney's other municipal public defense contracts and Attorney's private practice, if any.

1.5 The Firm shall employ an investigator to assist the attorneys providing the Services.

2. Compensation. Subject to all the provisions of this section, the City shall pay to the Firm a flat fee of Forty-two Thousand Dollars (\$42,000) per month for the Services, including all proceedings in the Municipal Court and all appeals therefrom. This flat monthly fee is based on Ten Thousand Five Hundred Dollars (\$10,500) per attorney.

2.1 Except as expressly provided in Section 2.2, the cost of all infrastructure, wages and benefits, administrative and support expenses, equipment and systems,

the investigator, and overhead costs necessary to comply with the City Standards is included in the payment provided in the flat monthly fee.

2.2 The City shall pay for the following case expenses in addition to the per case fee when reasonably incurred and approved by the Municipal Court on ex-parte motion:

2.2.1 Medical and psychiatric evaluations;

2.2.2 Expert witness fees and expenses;

2.2.3 Interpreters fees;

2.2.4 Polygraph, forensic and other scientific tests;

2.2.5 Lay witness fees and mileage incurred in bringing defense witnesses to court, including the cost of service of a subpoena, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses; and

2.2.6 The cost of obtaining medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs; and

2.2.7 Any other costs or expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

2.3. For post-conviction relief cases, the City shall pay the cost to obtain copies of the court file, the transcript and original charging documents.

2.4 In January of each year, the City and the Firm shall review the number of City cases to which the Firm's attorneys were appointed during the prior year, and shall adjust the number of attorneys providing the Services and adjust the flat monthly fee proportionately. Such adjustments shall be on the basis of increments of 0.5 full time public defenders at \$10,500 per attorney. By way of example, two hundred cases more than the anticipated 1,600 cases would result in an adjustment of the number of attorney from four to four and an adjustment of the flat monthly fee from \$42,000 to \$47,250. Two hundred fewer cases than the anticipated 1,600 cases would result in an adjustment in the number of attorney from four to three and a half and an adjustment of the flat monthly fee from \$42,000 to \$36,750.

2.5 In the event the Firm has a conflict that prevents it from representing a client for whom one of its attorneys has been appointed, the Firm shall not be required to compensate conflict counsel.

3. Term. The term of this Agreement shall be from the later of the date of mutual execution or January 1, 2015, through December 31, 2017, unless sooner terminated as provided in this Agreement, provided, this Agreement shall be automatically renewed for additional one year terms each year unless terminated as follows:

3.1 This Agreement may be terminated for cause for violation of any material term. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of the court and the ethical obligations established by the Washington State Bar Association, a violation of the Standards of the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Firm, or any attorney providing service under this agreement, has

been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Firm which shall have ten (10) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the City's discretion. In lieu of terminating this contract, the City may agree in writing to alternative corrective measures.

3.2 This Agreement may be terminated at any time without cause by either party giving the other party not less than ninety (90) days written notice.

3.3 The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

4. Nondiscrimination. Neither the Firm nor any person acting on behalf of the Firm, shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this Agreement.

5. Indemnification. The Firm agrees to hold harmless and indemnify the City, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorney's fees or awards, and including claims by Attorney's own employees to which Attorney might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Firm, its officers or agents. It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Firm's waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver. This clause shall survive the termination or expiration of this agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

6. Insurance. The Firm shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the attorneys, or agents, representatives, or employees of the Firm.

6.1 The Firm shall obtain insurance of the types described below:

6.1.1 Automobile Liability insurance covering all owned vehicles, if any, and all non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

6.1.2 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury,

and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 10 01 and CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

6.1.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

6.1.4 Professional Liability insurance appropriate to the Firm's undertakings. This policy shall not contain an exclusion for ineffective assistance of counsel claim, loss or liability.

6.2 The Firm shall maintain the following insurance limits:

6.2.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

6.2.2 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

6.2.3 Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall contain no exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

6.3 The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance.

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

6.3.2 The Firm's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

6.4 Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

6.5 The Firm shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.

7. Work Performed by the Firm. In addition to compliance with the City Standards, in the performance of work under this Agreement, the Firm shall comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to the Firm's

business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at the Firm's Risk. The Firm shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the the Firm's own risk, and the Firm shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. The Firm shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of the Firm's particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by the Firm without the express written consent of the City shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and the Firm.

11. Entire Agreement. This Agreement contains the entire agreement between the City and the Firm. The provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

TO CITY:

City of Marysville
Attn.: Chief Administrative Officer
1049 State Avenue
Marysville, WA 98207

TO THE FIRM:

James A. Feldman
Feldman and Lee, P.S.
19303 44th Ave. W.
Lynnwood, WA 98036

13. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred

in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options, and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Chief Administrative Officer, whose decision shall be final, provided, however, that any complaint regarding any violation of the City Standards or which relate to any manner whatsoever to trial strategy or an ongoing case, or any dispute concerning the City's determination on Attorney's request for higher compensation for a particular case, shall be referred to the Judge of the Municipal Court. Nothing herein shall be construed to obligate, require or permit the City, its officers, agents, or employees to inquire into any privileged communication between an attorney and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable attorneys' fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

CITY OF MARYSVILLE

FELDMAN AND LEE, P.S.

Mayor

James A. Feldman

Date signed:_____

Date signed:_____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney