

## **INDIGENT DEFENSE CONTRACT ABERDEEN MUNICIPAL COURT**

**THIS AGREEMENT**, is made and entered into effective as of October 1, 2012, between the **CITY OF ABERDEEN**, a municipal corporation of the State of Washington, hereinafter referred to as "City", and **JOHN ERIC GIBSON**, hereinafter referred to as "Attorney".

**NOW, THEREFORE**, it is agreed by the parties as follows:

1. **SCOPE OF SERVICE.** Except as set out below, Attorney shall be responsible for representing or providing suitable representation for every person involved as a party in a case before the Aberdeen Municipal Court whenever publicly provided counsel for such person is required by the constitution or laws of the United States or the State of Washington and such representation has not been lawfully waived. The types of cases for which Attorney is to provide counsel shall include, but not be limited to, all criminal charges filed in Aberdeen Municipal Court, contempt proceedings, revocations and other supplemental proceedings for which counsel for an indigent person is required by law. In the event a change of venue is granted to a person for whom Attorney is to provide representation pursuant to this contract, Attorney shall continue to represent such person in that court with no additional compensations over the contract price.

(a) **Appeals.** Whenever a person represented by Attorney requests an appeal from a matter filed in Aberdeen Municipal Court, Attorney shall assist said person in perfecting the appeal and shall represent said person in Superior Court or subsequent remands to Aberdeen Municipal Court. Attorney shall also provide these services for a person who was not represented by Attorney in Aberdeen Municipal Court but who is entitled to court-appointed counsel, either on appeal or following remand.

(b) **Expenses.** All expenses incurred by Attorney under this contract, except the costs of obtaining investigative, expert, or other extraordinary services necessary to an adequate defense, as per CrRLJ 3.1(f), shall be the sole responsibility of Attorney. City agrees to reimburse Attorney for expenses incurred in obtaining outside investigative, expert or other extraordinary services necessary to an adequate defense, provided that Attorney shall seek and obtain the approval of the Court prior to incurring such expenses.

(c) **Withdrawals.** Attorney may withdraw from cases where bench warrants for failure to appear have been issued for the arrest of the defendant.

(d) **Probation review docket.** Attorney shall appear at the Aberdeen Municipal Court's probation review docket, held as part of the court's regular Thursday docket, in order to assist in routine appearances at which defendant's may request or require legal representation and to be available to accept notice of appointments in cases set for revocation hearings. The Attorney's obligation to be present during the Thursday docket probation reviews does not include an obligation to monitor a defendant's compliance with probation conditions or to provide continuous representation to defendants after entry of judgment and sentence. Nothing herein shall be construed as limiting Attorney's obligation to represent defendants in probation revocation proceedings or Attorney's right to withdraw from a case after entry of a judgment and sentence or completion of an appeal and subsequent remand.

**ORIGINAL**

2. **MANNER OF SERVICE.** Services provided by Attorney pursuant to this contract shall be performed in a prompt and competent manner in accordance with the laws of the State of Washington and the rules adopted by the State Supreme Court. Services to be provided by Attorney, insofar as applicable and necessary in any given case, shall include counseling, investigation, preparation of motions and court papers, hearings and trial work, post-trial motions, defense pre-sentence reports, and such other services as would normally be provided by competent private counsel. Attorney shall keep sufficient office hours within the corporate limits of the City, including a local telephone number or otherwise toll-free telephone number, so that indigent defendants are not required to travel outside the city limits or incur long distance telephone charges in order to consult with Attorney as necessary in the preparation of their defense. The Attorney may use City facilities, as available, for the purpose of conducting client interviews during normal business hours.

Attorney shall attend at least one training session approved by the Washington State Office of Public Defense during the term of this contract and provide a certified statement specifying the date and location of the training to the court administrator.

3. **PERFORMANCE.** Subject to other terms and conditions contained herein, Attorney must provide representation for those qualified people who, during said period, request the assistance of appointed counsel and for whom appointed counsel is not otherwise provided. Attorney's obligation to provide representation pursuant to this Contract includes the obligation to complete representation in all pending cases or matters covered by this agreement as of the date of termination. For the purposes of determining Attorney's obligation to complete representation under this paragraph, pending cases shall not include hearings to review compliance with conditions of suspended sentences where no request to impose sanctions has been filed or cases in which there are active bench warrants, and the Attorney has been allowed to withdraw by the court.

4. **PAYMENT.** In consideration for Attorney's performance hereunder, including the completion of all cases and matters covered by the Contract as of the date of any termination, City shall pay Attorney SIX THOUSAND SIX HUNDRED NINETY-TWO DOLLARS (\$6,692.00) per month until any termination. The first payment is due on the last day of the month in which performance commences, and each succeeding payment is due on the last day of each month thereafter, provided, however, that upon any termination the final monthly payment shall be paid in two installments, one-half on the last day of the month in which termination is to occur and one-half on the last day of the following month. Attorney agrees to submit an invoice to the City on forms approved by the Finance Director for compensation in accordance with the Contract terms set forth herein.

5. **TERMINATION.**

(a) Termination without cause. This Contract may be terminated by either party without cause, after ninety (90) days written notice has been delivered to the other party. Attorney agrees to complete all pending cases or matters that have been set for trial, probation revocation hearing, or appellate argument as of the date of any termination. Attorney's performance under this contract does not include completion of cases pending as of the termination date in which: [1] briefs have been filed and oral arguments on appeal in Superior Court have been held; or [2] a pre-trial

conference has not been held, unless the speedy trial rights of the defendant would be violated by Attorney's withdrawal. It is the intent of the parties that City will enter into a separate contract to retain legal counsel to complete the cases that Attorney is not required to complete under this agreement.

(b) Termination for cause. If a court of competent jurisdiction rules that Attorney is incapable of providing competent legal representation, this Contract shall automatically terminate. However, at City's discretion, such agreement may continue until the validity of any lower court ruling has been ultimately determined on appeal.

6. **INITIAL TERM AND RENEWAL.** The initial term of Attorney's performance shall commence October 1, 2012, and shall terminate on August 31, 2013, both dates inclusive. The initial term may be extended as provided in Section 7 or as mutually agreed by the parties.

7. **IMPLEMENTATION OF NEW STANDARDS FOR INDIGENT DEFENSE AND CERTIFICATION OF COMPLIANCE.** It is the intent of the parties to work jointly during the term of this Contract to develop proposed written policies and procedures to implement a numerical case-weighting system in accordance with the Supreme Court of Washington Order No. 25700-A-1004 (June 15, 2012). During the term of this Contract the parties will follow the interim Case Weighting policies and procedures set forth in Exhibit A. Both parties agree to track the number and type of cases assigned to Attorney during the term of this agreement and to meet periodically to review, confirm, and update the case weighting policies and procedures in Exhibit A. It is the expectation of the parties that the total case load, adjusted for case weighting, will comply with the standards adopted by the Supreme Court and allow Attorney to certify compliance to the municipal court.

The City intends to formally adopt case weighting policies and procedures no later than June 12, 2013, to take effect on September 1, 2013, and to be included in the terms of any successor agreement for indigent defense services. If the Attorney has requested renewal of this Contract and proposed any changes in its terms by June 12, 2013, the City shall notify Attorney no later than June 26, 2013, as to whether or not the City has accepted the terms proposed by Attorney. If the City fails to notify the Attorney by June 26, 2013, that the Attorney's proposed renewal has been rejected the initial term of this contract shall be extended until terminated as provided by paragraph 5, above. It is the intent of this provision to provide adequate time for joint development of case weighting policies and renewal negotiations while ensuring adequate time for transition if an extension is not agreed upon.

8. **DETERMINATION OF INDIGENCE.** For the purposes of this Contract a person is indigent when either a magistrate or other person authorized by City to appoint counsel has determined, in accordance with any applicable law or court rule, that such person is financially unable to obtain the services of an attorney. However, any person arrested and held in custody for a crime and who claims to be indigent shall be represented by Attorney until a magistrate determines that such person is not indigent and permits Attorney to withdraw. Attorney shall provide the Aberdeen Police Department the name and 24-hour local or otherwise toll-free telephone number of Attorney to be provided to persons in custody claiming the right to publicly-provided legal counsel. In each instance where Attorney undertakes to represent an indigent person, Attorney shall make an

inquiry into such person's financial ability to employ private legal counsel and shall report to the court or other appointing authority any information indicating a financial ability to employ private counsel unless such information has already been provided. Attorney shall also report to the court any improvement in the person's financial condition which occurs subsequent to the initial appointment of counsel.

9. **ASSOCIATED ATTORNEYS.** Attorney may designate one or more licensed attorneys, including those authorized to practice under APR 9, to associate with Attorney in the performance of this Contract. Any attorney so designated shall be responsible for the performance of this Contract in the same manner as Attorney.

10. **ASSIGNMENT.** Attorney shall not assign or subcontract his responsibility for performance of this Contract without the prior written approval of City.

11. **INSURANCE - INDEMNIFICATION AND HOLD HARMLESS.**

(a) **Insurance.** During the life of this contract, Attorney shall maintain errors and omissions insurance and shall include anyone else acting for or on behalf of Attorney in the performance of this Contract, as an additional named insured on any such policy. Such insurance shall be obtained from any insurance company authorized to do business as such in the State of Washington and shall have policy limits of \$250,000.00 or more. At the time performance commences hereunder, Attorney shall submit evidence that such insurance is in force and that such insurance will not be canceled without first giving 30 days written notice to City.

(b) **Indemnification.** Attorney covenants and agrees to indemnify and hold harmless City and any of City's officers, employees and agents from any loss, damage, costs, charge or expense whether direct or indirect and whether to persons or property to which City or agents may have been put or subjected by reason of any act, action, neglect, omission or default on the part of Attorney or anyone acting for, on behalf of, or at the direction of Attorney in the performance of the Contract.

(c) **Defense of claims.** In case any suit or legal proceedings shall be brought against City or any of City's officers, employees or agents at any time on account of or by reason of any act, action, neglect, omission or default of Attorney or anyone acting for, on behalf of, or at the direction of Attorney, Attorney hereby covenants and agrees to assume the defense thereof and to defend the same at Attorney's own expense and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred by or obtained against City or any of City's officers, employees or agents in such suits or other proceedings.

12. **RECORDS.** Attorney agrees to provide the Court with a record of time and expenses incurred in the representation of a defendant at the time of sentencing in those cases where recoupment of all or a portion of the Attorney's fees is deemed appropriate by the Court.

13. **NON-DISCRIMINATION.**

(A) **Non-Discrimination in Employment.** During the performance of this Contract, Attorney shall comply with the Washington "Law Against Discrimination", and should any part of the performance contemplated hereunder be financed by federal funds, Attorney shall comply with all

applicable federal laws against discrimination in employment. Satisfactory performance of this clause by Attorney shall include, but not be limited to the following:

(i) During the performance of this Contract, Attorney shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicap;

(ii) Attorney shall ensure that applicants are employed and that employees are treated during employment without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicap. Performance under (i) and (ii) above shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other form of compensation, and programs for training including apprenticeships, unless such distinctions are based upon a bona fide occupational qualification.

(B) Non-Discrimination in Subcontracting. If subcontracting is authorized as provided in this Contract, any contract or subcontract resulting therefrom must include appropriate safeguards against discrimination in employment binding upon each contractor or subcontractor. Attorney will take such action with respect to any contract or subcontract, or purchase order as may be required to insure full compliance with RCW 49.60, and any applicable federal law against discrimination in employment including sanctions for noncompliance.

(C) Compliance. To insure compliance with the non-discrimination clause set out herein, Attorney will permit access to his records of employment, employment advertisements, application forms and other pertinent data and records. Such access shall be by City, the Washington state Human Rights Commission, and any applicable federal agency or any appropriate employees, department or agent thereof designated by such federal, state or local agency respectively, for the purpose of investigation to ascertain compliance with the appropriate non-discrimination laws or this non-discrimination clause.

DATED: September 26, 2012.

ATTORNEY



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John Eric Gibson, Esq.

CITY OF ABERDEEN



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Bill Simpson, Mayor

Attest:



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Kathryn Skolrood, Finance Director

## **EXHIBIT A**

### **MODEL PUBLIC DEFENDER CASELOAD WEIGHTING POLICIES AND PROCEDURES**

Rule 3.3      Experience is a factor in establishing caseload for attorneys<sup>1</sup>

**Less than five years misdemeanor and/or gross misdemeanor criminal experience caseload is 25 cases per month for a total of 300 cases per year**

(300 cases/year ÷ 48 weeks = 6.25 cases/week ÷ 5 days = 1.25 cases/day)<sup>2</sup>

**For five years misdemeanor and/or gross misdemeanor criminal experience increase caseload by 50 per month for a total of 600 cases per year.**

(600 cases/yr ÷ 48 weeks = 12.5 cases/week ÷ 5 days = 2.5 cases/day)

**For five years misdemeanor and/or gross misdemeanor coupled with five years felony criminal experience increase caseload by 60 per month for a total of 720 cases per year.**

(720 cases/yr ÷ 48 weeks = 15 cases per week ÷ 5 days = 3 cases/day)

**Definition of case:** Requires appointment of public defender.

Rule 3.6(b)(v) Stipulated Orders of Continuance (SOC), Deferred Prosecution (DP), Deferred Sentence (DS), or other alternative disposition weighted 1/3.

### **WEIGHTING**

**The weighting formula is generally based upon the input of the City's primary public defense firm.**

1. Cases weighted from 1/3 up to 2 (see pages 3-5).
2. Review and non-compliance revocation hearings are not counted separately if current public defense firm represented defendant on underlying criminal charge; otherwise count hearings as 1/3 (consolidated hearings are not counted separately).
3. Revocation hearings based on a new criminal charge are not counted separately but are counted as part of the new charge.
4. Cases resolved at arraignment count as 1; subsequent review hearings are not counted.
5. Cases resolved by Stipulated Order of Continuance or Deferred Prosecution count as 1/3.
6. FTA's at first PTC before defendant has met with attorney are not counted until defendant reappears and meets with attorney.

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<sup>1</sup> Suggested experience factors to be reviewed and confirmed by public defender based on actual experience

<sup>2</sup> 48 weeks factors 2 weeks vacation and 2 weeks for holidays

September 1, 2012, through August 31, 2013 Cases

### Total cases filed

3

1. \_\_\_\_\_ defendants proceeded as pro se after completing the attorney waiver documents and acceptance by the Court. Of these, \_\_\_\_\_ cases were resolved at pre-trial.
  2. \_\_\_\_\_ cases reduced to infractions
  3. Crimes that may be reduced at arraignment include:
    - a. DWLS 3<sup>4</sup>
    - b. Title
    - c. Failure to obey
    - d. False insurance
    - e. No trip permit
    - f. Register
    - g. Cancel plate
    - h. No valid operator's license
    - i. Occupational driver's license

**Subtotal criminal cases** (total filed) – (reduced to infraction at arraignment) = (subtotal)

## Cases assigned to primary defender, John Gibson (to be tracked)

DV (cases filed) – (SOC) + (SOC ÷ 1/3) = total DV caseload

DUI (cases filed) – (SOC + DS + DP) – (SOC, etc. ÷ 1/3) = total DUI caseload

### **Subtotal remainder cases to weight (to be tracked)**

(cases assigned) – (total DV) – (total DUI) = (subtotal remainder to weight)

(Cases weighted 1/3 per attachment) + (cases weighted 2/3) = (full case equivalents)

## **TOTAL WEIGHTED CASES**

(total DV) + (total DUI) + (other FCE) = (total weighted caseload)

Total cases per defense attorney under contract: (w/out factoring experience)

<sup>3</sup> The primary public defender was appointed on 799 new criminal filings in 2011. The total number of cases assigned and the break-down of charges has not been determined.

<sup>4</sup> Filing DWLS 3 as a crime allows the prosecution to view criminal history. A new DWL3 conviction mandates a 30 days in jail if the defendant is currently on a DUI probation.

## Case Weighting Standards-City of Aberdeen

• Allowing Minor to Frequent Bar	1/3
• Allow Unauthorized Person to Drive	1/3
• Altered License	1/3
• Assault:	
▪ Domestic Violence	1
▪ Non Domestic Violence	1
▪ With Sexual Intent	2
• Animal Cruelty	1
• Attempted Assault	2/3
• Attempted Forgery	1/3
• Attempted Theft	1/3
• Camping in the Park	1/3
• Contempt of Court	2/3
• Canceled Plates/Registration	1/3
• Complicity	2/3
• Commercial License Needed	1/3
• Concealed Weapon	2/3
• Conspiracy	2/3
• Counterfeiting Trademark	2/3
• Criminal Attempt	1/3
• Criminal Trespass	1/3
• Custodial Interference	1
• Cyber Stalking	1
• Dangerous Animal at Large	2/3
• Discharge of Firearm	1
• Drug Loitering	1/3
• Disorderly Conduct	1/3
• Display of Weapon	2/3
• DUI	1
• DWLS 1	1/2
• DWLS 2	1/2
Cases reduced to DWLS 3 or NVOL =1/3	
• DWLS 3	1/3
• Criminal Assistance	1/3
• Escape	2/3
• Exposing Children to DV-DV	1
• Failure to Transfer Title	1/3
• Failure to Disperse	1/3
• Failure to Obey	1/2
• Failure to Obey Flagman	1/2

• Failure to Obtain Vehicle License	1/3
• Failure to Stop	1/2
• Failure to Secure Load	1
• Failure to Surrender License	1/3
• False Identification	1/3
• False Insurance Card	1/3
• False Information	1/3
• False Reporting	1/3
• False Statement	1/3
• Fraud Dr. License:	1/3
• Forgery	1
• Furnishing Liquor to Minor	2/3
• Harm to a Police Dog	1
• Harassment	1
• Telephone Harassment	1
• Domestic Violence Harassment	1
• Hit and Run Attended	1
• Hit and Run Unattended	2/3
• Illegal Fireworks	1/3
• Illegal Use of Dealer Plate	1/3
• Immoral Conduct with a Minor	1
• Indecent Exposure	1
• Inhale Toxic Fumes	1
• Interfering with reporting to 911	1
• Invalid Trip Permit	1/3
• ID Theft	1
• Loiter for Prostitution	1/3
• Leaving Child Unattended	1
• Letting Minor Drive	2/3
• Littering	1/3
• Malicious Mischief Domestic Violence	1
• Malicious Mischief Non-Domestic Violence	2/3
• Minor Frequenting a Tavern	1/2
• Minor Intoxicated in Public	1/2
• Minor in Possession/Consumption	2/3
• Neglect of a Child	1
• Negligent Driving 1	1
• No Valid Operator's License	1/3
• No License On Person	1/3
• Obstructing	2/3
• Operating Vehicle Without Cert. of Ownership	1/3
• Operating Vehicle Without Ignition Interlock	1/2
• Patronizing a Prostitute	1/3

• Physical Control	1
• Possession of Drug Paraphernalia	1/3
• Possession of Marijuana	1/3
• Possession of Stolen Property	2/3
• Possession/Making Burglary Tools	2/3
• Possession Another's ID	1/3
• Possession of Legend	2/3
• Prostitution	1/3
• Provoking Assault	2/3
• Public Disturbance	1/3
• Possession of Dangerous Weapon	1
• Public Nuisance-Animal	1/2
• Reckless Driving	1
• Reckless Burning	1
• Reckless Endangerment	2/3
• Refuse to Cooperate	1/2
• Crimes Requiring Registration as Sex Offender	2
• Resisting Arrest	2/3
• Selling Liquor to Minor	1/2
• Stalking	1
• Tampering with Property of Others	1/2
• Tampering with a Witness	1
• Theft 3	1/3
• Theft of Rental Property	1/3
Trip Permit Violation	1/3
• Unlawful Issuance of Bank Check	2/3
• Unlawful Bus Conduct	1/3
• Unlawful Camping	1/3
• Unlawful Racing	1
• Urinating in Public	1/3
• Vehicle Prowl	2/3
• Vehicle Trespass	2/3
• Violation of Anti-harassment Order	1
• Violation of No Contact Order	1
• Violation of Instruction Permit	1/3
• Violation of Occupancy License	1/3
• Violation of Protection Order	1
• Violation of Restraining Order	1
• Violation of S.O.A.P. Order	1/2
• Weapons Capable of Harm	2/3