

AGREEMENT FOR KITTITAS COUNTY SUPERIOR COURT INDIGENT DEFENSE SERVICES (2018)

This agreement is entered into by and between the County of Kittitas (County) and the Superior Court of Washington in and for Kittitas County and Candy K. Powers (Contracting Attorney, WSBA #06705).

- 1. Scope of Services.** The Contracting Attorney agrees to provide, or arrange for the provision of, public defender services for all eligible indigent criminal defendants in cases filed in the Superior Court (Court) as set forth in this agreement. The Contracting Attorney or other assigned counsel shall provide legal representation for each assigned defendant from the time of receiving notice of appointment through every stage of the legal proceedings at the Superior court level including sentencing and the processing of notices of appeal and motions for orders of indigence for direct appeals. All cases assigned to the Contracting Attorney as of the date of termination of this contract for which the next set hearing date is within 180 days after such date of termination will be handled as set forth above; provided, that in any case where the client fails to appear for a trial or hearing after termination of the contract, the Contracting Attorney may withdraw from representation subject to order of the court and thereafter the Contracting Attorney shall have no obligation herein to represent the client or accept reappointment thereafter.
- 2. Attorney as Independent Contractor.** The parties recognize and affirm the understanding that the Attorney is an independent contractor having no relationship to the County except to provide professional legal defense services to the persons officially assigned to the Attorney pursuant to this Contract. Neither the Attorney nor any employee of the Attorney is an employee of the County. Neither the Attorney nor any employee of the Attorney is entitled to any benefits that the County provides its employees. The Attorney will provide the Court Administrator with proof of a valid Washington Uniform Business Identification number before commencement of work. The Attorney is solely responsible for the timely payment of any taxes, assessments, statutory workers compensation, or employer's liability insurance as required by Federal or state law for the Attorney and any employees of the Attorney. The Attorney guarantees such payment and will indemnify the County in that regard.
- 3. Applicant Screening.** Determination of Indigence for purposes of eligibility for appointed counsel under this contract shall be made by a screening process established by the Court. Counsel is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if counsel subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Counsel, if able to do so within the bounds of applicable ethical rules/ professional standards, shall promptly notify the appointing court of such possibility.

- 4. Associated Counsel.** Any counsel associated with or employed by the Contracting Attorney shall have the authority to perform the services called for herein, and the Contracting Attorney may employ and/or associate counsel to assist him/her. The Contracting Attorney and all counsel employed or associated pursuant to this section shall be admitted to the practice of law in the State of Washington and be in good standing as such, shall comply with applicable provisions of CrR 3.1 Standards for Indigent Defense, and shall have a minimum of five years' experience in the criminal law legal field (defense attorney and/or prosecutor and/or judicial). The Contracting Attorney shall be responsible for performance of this Agreement notwithstanding that other counsel may be employed or associated by the Contracting Attorney to perform services herein. The Contracting Attorney shall notify the Court of any proposed association or employment of counsel for purposes of performing the services called herein, and shall include in such notification documentation regarding the background, education, training, experience and qualifications of such counsel, and any additional training and supervision that is proposed to be provided to such associated or employed counsel for purposes of performing the services called for herein. The Contracting Attorney's selection of any counsel associated with or employed by the attorney to perform the services described in this contract shall be subject to the approval of the Court.
- 5. Training.** Attorneys providing public defense services shall complete seven hours of continuing legal education approved by the Washington State Office of Public Defense within each calendar year in courses relating to their public defense practice. (RCW 10.101.050; CrR 3.1 Standards) Attorneys providing public defense services shall comply with all applicable standards, training and/or certification requirements as may be required by court rule or regulations and shall provide written proof of such compliance to the court.
- 6. Certification.** Attorneys providing public defense services shall comply with the Standards for Indigent Defense adopted by the Supreme Court. Each attorney shall provide a Certification of Compliance with the applicable standards as required by CrR 3.1 which shall be filed with the Superior Court administrator on the last Monday of each January, April, July, and October by the Contracting Attorney and any associated or employed attorney providing legal defense in Superior Court under this agreement. The certification shall also include caseload reporting by the attorney consistent with the requirements imposed upon the County by RCW 10.101.050.
- 7. Liability of Contracting Parties, Attorney as Independent Contractor.** Each party to this agreement shall be responsible for the negligent acts or omissions of its own employees, officers or agents in the performance of this agreement. Neither party shall be considered the agent of the other nor does neither party assume any responsibility to the other party for the consequences of any act or omission of any party, firm or corporation not a party to this agreement.
- 8. Proof of Professional Liability Insurance.** The Contracting Attorney shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the

COUNTY should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor or agents of either, while performing under the terms of this contract. During the term of this agreement or extensions thereof, any attorney providing services under this contract shall secure and maintain at her own expense a policy of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington. CONTRACTOR shall instruct the insurers to give COUNTY 30-days advance notice of any insurance cancellation. Said policy shall have limits of not less than \$100,000 per occurrence and \$500,000 annual, aggregate limit.

- 9. Indemnification.** The Contracting Attorney shall indemnify, defend and hold the County, its elected officials, officers and employees harmless from any and all claims whatsoever arising out of performance of the Attorney's obligations pursuant to the Agreement, including but not limited to claims arising out of errors or omissions of the contracting Attorney (or his employees or associates) and/or by reason of accident, injury or death caused to persons or property of any kind occurring, except to the extent they are caused by the fault or neglect of the County or the Court.
- 10. Term of Agreement.** Provision of services pursuant to this Agreement shall commence January 1, 2018 and terminate on December 31, 2018, unless this Agreement is terminated earlier pursuant to the provisions of Paragraph 18, and the Contracting Attorney shall provide service to all defendants referred herein in accordance with the terms of this Agreement until representation of such defendant is complete, as provided in Paragraph 1 of this Agreement. This Agreement shall apply to all referrals made through December 31, 2018, unless the contract is terminated earlier, in which case the contract shall apply to all referrals made until 5:00 p.m. on the date of termination of the contract.
- 11. Scope of Work.** Over the course of any 365-day period the Contracting Attorney (and any associated or employed counsel) shall handle a caseload of up to, but no more than 100 felony cases, or an average number of 8.33 per month, plus 20 juvenile offender cases in that period, an average of 1.66 per month.
- 12. Compensation.** The Contracting Attorney shall be paid as follows:
The sum of ninety two thousand dollars (\$92,000) per year paid in equal monthly installments on the second Monday of the month.

 - Jury Trial: Shall be paid an additional \$375 per diem for jury trial.
- 13. Policy as it refers to appointments:** At the conclusion of the case the court will automatically withdraw the attorney from the case upon the filing of a notice of appeal or 30 days after the final (appealable) decision of the Court, as the case may be. Attorney does not need to sign a withdrawal. For the purposes of juvenile court proceedings not involving commitment to the

custody of the Department of Social and Health Services Juvenile Rehabilitation the case is not completed until the conclusion of supervision.

14. Investigators. The Court will set aside sufficient funds out of its public defender budget to fund defense investigators. Public Defenders may file ex parte motions for such investigator funds.

15. Experts. The court will set aside sufficient funds for expert defense witnesses. Public Defenders may file ex parte motions for such expert witness funds.

16. Extraordinary cases. If a public defender is assigned a case which requires an extraordinary amount of time and preparation, Counsel may apply to the Court in writing and subject to CR11A, for such additional compensation as the Court determines to be appropriate.

17. Conflict Counsel. The cost of conflict counsel shall be paid by the County and not by the contracting attorney. If the Contracting Attorney or any employed or associated attorney is precluded from representing a client because of a conflict which cannot be resolved by transfer of the case between the Contracting Attorney and employed or associated counsel, the attorney shall promptly notify the Court by notice of withdrawal and substitution of another attorney qualified under the terms of Paragraph 4. Conflict counsel shall be paid at the same per case compensation rate as the Contracting Attorney. For the purposes of this provision, a Conflict of Interest requiring any replacement of counsel shall be as defined in the applicable RPCs (Rules of Professional Conduct) promulgated by the Washington Supreme Court.

18. Termination.

- a. For Cause: Either party may terminate this Agreement immediately in the event the other party fails to perform its obligations as described in this Agreement and such failure has not been corrected to the reasonable satisfaction of the injured party in a timely manner after notice of breach has been provided to the other party. Compensation for cases assigned prior to the effective day of termination shall be as provided under this Agreement.
- b. For Reasons Beyond the Parties' Control: Either party may terminate this Agreement immediately without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's control, including but not limited to acts of nature, war, riot, personal disability or superior governmental regulation or control.
- c. Without Cause: Either party may terminate this Agreement without cause upon 90 days written notice, which date of termination shall correspond to the last day of a calendar month. The contracting attorney shall be responsible for completion of cases assigned prior to the effective date of termination.

19. Amendments. No modification or amendment of the provisions of this Agreement shall be effective unless in writing and signed by the authorized representative of the parties hereto.

20. Nondiscrimination. Contracting Attorney shall not discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the administration or delivery of public defense services. Counsel shall comply with all federal, state, and local non-discrimination requirements.

21. Physical Office/Communications and Support Staff. The Contracting Attorney will maintain a physical office or have access to an office that accommodates confidential meeting with clients; maintain a postal address and adequate telephone service to ensure prompt response to client contact, and will provide sufficient support staff to provide for effective assistance of counsel.

22. Entire Agreement. This instrument contains the entire Agreement between the parties and may not be enlarged, modified, or altered except in writings signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 2 day of Jan, 2018


Candy K. Powers, WSBA #06705
Contracting Attorney


Judge Scott R. Sparks
Kittitas County Superior Court


Laura Oriadacz
BOCC Chairman



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/02/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Daniels Head Insurance Agency, Inc. P.O. Box 1604 Palm Springs, CA 92263-1604	CONTACT NAME: Christopher D. Astorga	
	PHONE (A/C, No, Ext): (800) 848-7160	FAX (A/C, No): (877) 368-5788
INSURED C.K. POWERS, P.S. 707 North Pearl Street Suite A Ellensburg, WA 98926	E-MAIL ADDRESS: chris@dhia.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: American Guarantee & Liability Insurance Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		
NAIC #		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ OTHER \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Lawyers Professional Liability Insurance Policy			LPL 3692458-15	6/25/2017	6/25/2018	Each Claim \$ 1,000,000 Aggregate \$ 3,000,000 Deductible \$ 1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDERKittitas County Superior Court
205 W. 5th Ave., Suite 207
Ellensburg WA 98926**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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