A-2015-9

AGREEMENT FOR INDIGENT DEFENSE SERVICES

Preliminary Appearance Representation
Adult Felony and Misdemeanor

This agreement is entered into by and between the County of Pend Oreille and Robin McCroskey.

1. **Scope of Services.**

a. The Attorney agrees to provide public defender services for the calendar year 2015 for felony and misdemeanor adult incarcerated individuals who request a public defender to represent them at their preliminary appearance in District or Superior Court. The services shall entail: meeting with incarcerated individual(s) in the Pend Oreille County jail prior to their preliminary appearances on four of five days, if necessary two of which, if at all possible, would include Sunday and Monday, exclusive of holidays; advising the individual of his/her constitutional rights, and his/her rights under CrR or CrRLJ3.2.1; inquiring of the prosecuting authority as to and advising the individual of the nature of the charge(s) against him/her; reviewing the individual's financial application for public defender for completeness, and advising the individual that the court may assess a fee for the service if the individual does not qualify for public defense services; gathering relevant pretrial release information from the individual; as feasible prior to the preliminary appearance, verifying key facts with respect to pretrial release; and representing the individual at his/her preliminary appearance only. Because of the necessity of avoiding conflicts of interest with the obligations of the District Court and Superior Court felony public defender contracts, the Attorney shall inform the individual that the Attorney is representing the individual on a limited basis only as above and will not be receiving from the individual any information as to the merits of the prosecuting authority's case against the individual unless later assigned by the court pursuant to another contract.

2. **Applicant Screening.** In view of the limited nature of the representation, determination of indigence for purposes of eligibility for appointed counsel under this Agreement shall be on the basis of the applicant's self-selection. However, after review of the financial application for public defense services, the court may require a reimbursement by the individual receiving the service of some or all of the county's expense in providing this service through the preliminary hearing.

3. **Associated Counsel.**

a. Any counsel associated with or employed by the Attorney shall have the authority to perform the services called for herein, and the Attorney may employ and/or associate counsel to assist him or her at the Attorney's expense. The 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, pursuant to the Rules for Admission to Practice (APR) as now or hereafter adopted by the Supreme Court of the State of Washington.

b. The Attorney shall be responsible for performance of this Agreement, notwithstanding that other counsel may be employed by or associated with the Attorney to perform any services hereunder. The Attorney shall actively supervise associated and employed counsel throughout the term of this Agreement, and any renewals hereof, to ensure that all cases are promptly and effectively handled from the time of appointment until conclusion of the Attorney's representation of the client.

c. The Attorney shall notify the Court of any proposed association or employment of counsel for purposes of performing the services called for herein, and shall include in such notification information regarding the background, education, training, experience and qualifications of such counsel, if not one of the

Other Attorneys, 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 Attorney shall be responsible for providing all such training and/or supervision at the Attorney's sole cost and expense.

d. The Court reserves the authority to approve or disapprove the assignment of cases dependent on the quality of services being performed by any employed or associated attorney.

e. If Attorney associates with Other Attorneys, issues regarding conflicts shall be handled as provided in Paragraph 12.

5. Proof of Professional Liability Insurance. During the term of this Agreement and any extensions thereof, the Attorney shall secure and maintain a policy of comprehensive professional liability insurance with an insurance company licensed to do business in the State of Washington, covering Attorney or any employed counsel; additionally, Attorney shall not associate any attorney who is not likewise covered. The minimum policy limits of coverage shall be $100,000 per person and $300,000 per occurrence.

6. 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 or of Other Attorneys and neither party assumes 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.

7. Indemnification. The Attorney shall indemnify, defend and hold the County of Pend Oreille, 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 Attorney 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 sole fault or neglect of the County or the Court.

8. Terms of Agreement. Provision of services pursuant to this agreement shall commence January 1, 2015, and continue through December 31, 2015, unless the Agreement is terminated earlier pursuant to the provision of Paragraph 14, and the Attorney shall provide service to all offenders referred to any in accordance with the terms of this Agreement until representation of such defendant is completed, as provided in Paragraph 1 of this Agreement. This Agreement shall apply to all referrals made to the Attorney though Pend Oreille County Juvenile Court.

9. Compensation. The Court shall pay Attorney for services rendered under this Agreement as follows:

For services performed from January 1, 2015 through December 31, 2015, the sum of $13,200.00 paid in 12 monthly installments payable on or before the 15th of each month commencing January, 2015.

10. Soliciting/Accepting Additional Compensation. Neither Attorney nor anyone employed by or associated with him or her shall accept additional compensation from an assigned client or anyone on behalf of the client for representation in connection with the assigned case. Notwithstanding the foregoing, Attorney may accept unsolicited non-monetary gifts with a value under $30. Nothing in this agreement prohibits the attorney from representing, for compensation, any individual, including an assigned client, in any other criminal or civil matter.

11. Interpreters and Other Costs. Out-of-court interpreter fees and other costs associated with representation will be provided upon request to the Superior or District Court Administrator.

12. Assignment/Subcontracts. No assignment or transfer of this Agreement or of any interest in this Agreement shall be made of the Attorney, without prior written consent of the Court. The County and the

Attorney agree that Other Attorneys shall be given the right of first refusal in the event Attorney intends to assign any interest in this Agreement, which right of first refusal shall expire following 30 days written notice.

13. **Attorney Conflicts of Interest.** If Attorney is precluded from representing client because of a conflict of interest as defined in the Washington State Supreme Court's Rules for Professional Conduct (RPC), the Attorney shall promptly move the Court to withdraw and substitute another attorney. If Other Attorneys are precluded from representing a particular client because of a conflict of interest not attributable to the association of any of the Other Attorneys, the Court shall appoint different counsel at the Court's expense. In the event that Attorney is precluded from representing a particular client and, but for the association of Attorney with one or more of Other Attorneys, one of the associating other Attorneys could represent that client, Attorney shall ask the Court to appoint different counsel at Court's expense.

14. **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 the Agreement and such failure has not been reasonably corrected in a timely manner as notice in writing 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 the Agreement.

b. **For Reasons Beyond Parties' Control:** Either party may terminate this Agreement 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 attorney shall be responsible for completion of cases assigned prior to the effective date of termination.

d. **Unexpired Term of Agreement:** In the event of termination for any reason, Court agrees to offer the unexpired term of this Agreement to Other Attorneys. If accepted, Other Attorneys will determine the division and assignment of Attorney's allocation of cases.

15. **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.

16. **Additional Services.** Attorney may be requested to perform additional services beyond the original Scope of Services as defined in Paragraph 1 of the Agreement. Such work will be undertaken only upon written authorization of the Court based upon compensation separately determined.

17. **Renewal and Future Contracts.** The parties agree to enter into good faith negotiations regarding an Agreement to provide the services described in this Agreement for the next year or other agreed term following the term of this Agreement not less than 90 days prior to entering into negotiations therefor with any third party or issuance of a request for proposals therefore

18. **Entire Agreement.** This instrument contains the entire Agreement between the parties and may not be enlarged, modified or altered except in writing signed by the parties thereto; provided, this agreement is in addition to another written agreement concerning representation of indigents in Pend Oreille County District and Superior Courts.

19. The Agency or Contractor shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability. The

Contractor shall make decisions with regard to selection and retention of sub-Contractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability. Compliance with Title VI of the Civil Rights Act of 1964, and RCW 49.60, Law against Discrimination, and other related laws and statutes is required.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 12 day of January, 2015.

ATTORNEY

Duly approved at its regular meeting on January 12, 2015

PEND OREILLE COUNTY BOARD OF COMMISSIONERS

CHAIR

MEMBER

MEMBER

Attest:

ELIZABETH BRAUN
Clerk of the Board