

## **CITY OF ST HELENS PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement is entered into between the **City of St. Helens**, an Oregon municipality (“the City”) and **Steven Leskin** (hereinafter, “Contractor”).

### **RECITALS**

**A.** The City is in need of personal services for legal representation to indigent defendants, and Contractor represents that it is qualified and prepared to provide such services.

**B.** The purpose of this Agreement is to establish the services to be provided by Contractor and the compensation and terms for such services.

### **AGREEMENT**

In consideration of the mutual promises contained below, the parties agree as follows:

#### **1. Engagement**

The City hereby engages Contractor to provide services related to the provision of legal representation to indigent defendants charged with criminal misdemeanors before the St. Helens Municipal Court (“Services”), and Contractor accepts such engagement

#### **2. Scope of Work**

Contractor will perform legal defense services for indigent defendants appointed to by the St. Helens Municipal Judge.

#### **3. Compensation**

The City agrees to pay Contractor for and in consideration of the faithful performance of the Services, and Contractor agrees to accept from the City as and for compensation for the faithful performance of the Services, the amount of **\$2,000** per month. The City may suspend or withhold payments if Contractor fails to substantially comply with any requirement of this Agreement. At the time this Agreement is executed, sufficient funds either are available within the City’s current appropriation or are expected to become available to finance the costs of this Agreement. However, payments under this Agreement are subject to the availability and appropriation of funds. The City shall not be responsible for any expenses paid or incurred by Contractor unless otherwise agreed in advance in writing. Contractor agrees that it has secured or will secure at Contractor’s own expense all office space, equipment and supplies reasonably necessary to perform the Services.

#### **4. Term**

This Agreement, unless otherwise terminated pursuant to the terms of this Agreement, shall commence once executed by both parties (“Effective Date”) and shall last for one (1) year. The

Agreement may be extended by mutual written agreement of the parties for two (2) years in one (1) year increments.

## **5. Independent Contractor**

Contractor is, for all purposes arising out of this Agreement, an independent contractor, and shall not be deemed employees of the City. Contractor shall complete the requirements of this Agreement according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to control or supervision by the City, except as specified herein.

## **6. Standard of Care**

Contractor shall use their independent professional judgment in their representation at all proceedings related to the legal matters that are the subject of the representation. Contractor agrees to comply with the Oregon Rules of Professional Conduct, Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and to provide competent legal representation as mandated by state law.

## **7. Termination**

- a. **City Termination for Cause.** The City may terminate this Agreement effective upon delivery of written notice to Contractor under any of the following conditions:
  - i. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to finance this Agreement. This Agreement may be modified to accommodate a reduction in funding.
  - ii. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate under this Agreement.
  - iii. If any license or certificate required by law or regulation to be held by Contractor to provide the Services required by this Agreement is for any reason denied, suspended, revoked, or not renewed.
  - iv. If Contractor becomes insolvent, if a voluntary or an involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
  - v. If Contractor is in breach of this Agreement, and such breach is not remedied as contemplated by Section 7.b of the Agreement.
- b. **Breach of Agreement.**
  - i. Contractor shall remedy any breach of this Agreement within the shortest

reasonable time after Contractor first has actual notice of the breach or City notifies Contractor of the breach, whichever is earlier. If Contractor fails to remedy a breach within three (3) working days of its actual notice or receipt of written notice from the City, City may terminate that part of the Agreement affected by the breach upon written notice to Contractor, may obtain substitute services in a reasonable manner, and may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

- ii. If the breach is material and Contractor fails to remedy the breach within three (3) working days of receipt of written notice from the City, City may declare Contractor in default, terminate this Agreement and pursue any remedy available for a default.
  - iii. Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this Section, Contractor shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Contractor to resume those services after determining Contractor was not at fault, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
  - iv. In the event of termination of this Agreement due to the fault of the Contractor, City may immediately cease payment to Contractor, and when the breach is remedied, City may recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement, along with any additional amounts for loss and damage caused to the City by the breach, and withhold such amounts from amounts owed by City to Contractor. If the amount due Contractor is insufficient to cover City's damages due to the breach, Contractor shall tender the balance to City upon demand.
- c. **City Termination for Convenience.** City may terminate all or part of this Agreement at any time for its own convenience by providing three (3) days written notice to Contractor. Upon termination under this paragraph, Contractor shall be entitled to compensation for all services properly rendered prior to the termination, including Contractor's and sub consultants reasonable costs actually incurred in closing out the Agreement. In no instance shall Contractor be entitled to overhead or profit on work not performed.
- d. **Contractor Termination for Cause.** Contractor reserves the right to terminate this Agreement with cause with thirty (30) days prior written notice to the City should the City substantially breach its obligations under this Agreement. In the event that Contractor terminates this Agreement for reasons other than good cause

resulting a substantial breach of this Agreement by the City, Contractor shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the City that (i) no default actually occurred, or (ii) the failure to perform was without Contractor's control, fault or negligence.

## **8. Federal, State and Local Taxes**

The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Contractor. Contractor acknowledges and agrees that Contractor is solely responsible for the payment of any income or other taxes related to the Agreement and indemnifies and holds the City harmless for its failure to withhold or pay such income or payroll taxes.

## **9. Notices**

Contractor will immediately notify the City in writing if one of the following events occurs:

- a. Bar Discipline. When Contractor becomes aware that a complaint lodged with the Oregon State Bar has resulted in discipline, reprimand, suspension, or disbarment of Contractor.
- b. Criminal Charges or Conviction. When Contractor becomes aware that Contractor has been charged with or convicted of a crime.
- c. Ability to Accept Appointments to Eligible Clients. When Contractor becomes aware that Contractor is unable to accept appointments to represent a person who has been determined by the Municipal Court to be entitled to court-appointed attorney, pursuant to Oregon statute, the Oregon Constitution, or the United States Constitution.

## **10. Compliance With Laws**

Contractor will (a) comply with all federal, state and local laws, ordinances, regulations and orders with respect to performance of the Services, (b) file all reports relating to the Services (including, without limitation, tax returns), (c) pay all filing fees and federal, state and local taxes applicable to Contractor's business as the same shall become due, and (d) pay all amounts when due required under local, state and federal law related to Contractor's business, including, but not limited to, workers' compensation coverage, unemployment insurance and any other required employee benefits.

## **11. Disclaimer**

The City disclaims any responsibility for the safety of Contractor's workplace, and Contractor agrees to solely assume the risk of, and indemnify the City for, any injury or damage to persons or property arising out of or related to the Services contemplated under this Agreement.

## **12. Insurance**

- a) At all times during the term of this Agreement, Contractor shall carry, maintain and keep in full force and effect a policy or policies of insurance as specified in Attachment A attached hereto and incorporated herein by reference.
- b) All insurance policies shall provide that the insurance coverage shall not be canceled or reduced by the insurance carrier without thirty (30) days' prior written notice to the City. Contractor agrees that it will not cancel or reduce said insurance coverage without the written permission of City.
- c) Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon. If the City procures such insurance, the City may charge the cost against any moneys due Contractor hereunder or for any other contract.
- d) At all times during the term of this Agreement, Contractor shall maintain on file with the City a Certificate of Insurance or a copy of actual policies acceptable to the City showing that the aforesaid policies are in effect in the required coverages. The policies shall contain an endorsement naming the City, its council members, officers, employees and agents, as additional insureds (except for the professional liability and workers' compensation insurance).
- e) The insurance provided by Contractor shall be primary to any coverage available to the City. The insurance policies (other than workers' compensation) shall include provisions for waiver of subrogation. Contractor shall be responsible for any deductible amounts outlined in such policies.

### **13. No Conflicting Obligations**

Contractor warrants and represents that (a) Contractor will not, in performing the Services, make use of information which is the property of and/or confidential to any employer or other person or entity for whom Contractor has performed services, and (b) Contractor is not currently subject to any restriction which would prevent or limit Contractor from carrying out the Services for the City.

### **14. Business Opportunities**

Contractor agrees not to take advantage of or divert any actual or potential business opportunity of the City of which Contractor became aware during the course of Contractor's engagement for the gain, profit or benefit of Contractor or any other person.

### **15. Records; Inspection; Audit**

Contractor agrees to maintain records and accounts related to the Services performed under this Agreement. Records shall be retained as required by the Oregon State Bar. Contractor agrees to grant City access to records to verify compliance with this Agreement. At any time, upon

reasonable notice during business hours, Contractor shall provide to City requested records and/or access to records. Information that may be subject to any privilege or rules of confidentiality should be maintained by Contractor in a way that allows access without breaching such confidentiality or privilege. Notwithstanding the provisions herein, none of the constitutional, statutory, and common law rights and privileges of any client are waived by this Agreement..

## **16. Indemnification.**

- a. Liability of Contractor for Claims Other Than Professional Liability. For claims for other than professional liability, Contractor shall defend, save and hold harmless City, its officers, agents and employees from all damages, demands, claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities or omissions of Contractor, its subcontractors, sub-consultants, agents or employees under this Agreement. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Contractor unrelated to the quality of professional services provided by Contractor.
- b. Liability of Contractor for Claims for Professional Liability. For claims for professional liability, Contractor shall save, and hold harmless City, its officers, agents and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor, its subcontractors, sub-consultants, agents or employees in the performance of professional services under this Agreement. A claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Contractor, regardless of the type of claim made against the City

## **17. Assignment**

The contractual obligations of Contractor are personal and neither the rights nor obligations under this Agreement may be assigned or delegated by Contractor to any other person without the City's prior written consent.

## **18. Waiver**

Failure to insist upon strict compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition, nor shall any waiver or relinquishment of any right or power under this Agreement at any one or more times be deemed a waiver or relinquishment of such right or power at any other time.

## **19. Amendment**

No waiver, amendment or modification of this Agreement or any portion thereof, including any future representations that are inconsistent with the terms set forth herein, shall be valid unless made in writing and duly executed by each party hereto.

## **20. Applicable Law/Venue/Jurisdiction**

This Agreement shall be governed by, and construed and enforced in accordance with, the substantive and procedural laws of the State of Oregon without regard to rules governing conflicts of law applicable to contracts made and to be carried out in Oregon.

## **21. Compliance with Law**

Contractor represents and warrants that:

- a. Contractor shall comply with all applicable federal, state and local statutes, ordinances, administrative rules, regulations and other legal requirements in performance of this Agreement.
- b. The City will not control the means or manner of how Contractor will provide the labor or services, other than specifying the desired results;
- c. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for Contractor to conduct the business;
- d. Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.

Contractor shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.

- e. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, age, national origin, physical or mental disability, or disabled veteran or veteran status in violation of state or federal laws.

Any other condition or clause required by law to be in this Agreement shall be considered included by this reference.

## **22. Severability**

If any clause or provision in this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that clause or provision shall be void and the remainder of this Agreement shall remain in full force and effect.

## **23. Entire Agreement**

This Agreement contains the entire agreement of the parties. This Agreement shall terminate

and supersede any prior written or oral agreements or understandings between the parties regarding the subject matter of this Agreement.

#### **24. Acknowledgment**

Contractor acknowledges that Contractor has read this Agreement, has had an opportunity to consult with counsel regarding its terms, fully understands the meaning and significance of such terms, and accepts and signs this Agreement as Contractor's own free act and in full and complete understanding of its present and future legal effect.

*This space intentionally left blank.*



By signing below, each of the parties enters into this Agreement as of the date below.

**CITY OF ST. HELENS**

**CONTRACTOR**

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Steven Leskin

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Taxpayer ID #: \_\_\_\_\_

Address: 265 Strand Street  
St. Helens, OR 97051

Address: 2100 NE Broadway St., Ste. 319B  
Portland, OR 97232

Phone: (503) 397-6272

Phone: (971) 930-4716

Email: [StevenLeskin@LeskinLaw.com](mailto:StevenLeskin@LeskinLaw.com)

Attested:

By: \_\_\_\_\_  
Kathy Payne, City Recorder