

CITY OF ST HELENS, OREGON

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is entered into between **Steve Sharfstein** (hereinafter, “Attorney”) and the City of St. Helens (“the City”) for the limited purpose of retaining Attorney to provide legal assistance to indigent defendants charged with criminal misdemeanors in The St. Helens Municipal Court.

AGREEMENT:

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

1. Independent Contractor

Attorney has been engaged by the City to provide certain limited services to the City which shall be referred to in this Agreement as the “Services.” The parties recognize and agree that Attorney is acting as an independent contractor, and not as an agent or employee of the City. As an independent contractor, Attorney is not eligible for, and shall not participate in, workers’ compensation, retirement, insurance or other benefits afforded to employees of the City. Attorney waives any and all rights that Attorney might have under the City’s welfare, pension, profit-sharing or other benefit plans.

The City shall not withhold or pay any federal, state or local income or payroll tax of any kind on behalf of Attorney. Attorney acknowledges and agrees that they are 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.

Nothing in this Agreement shall create any partnership, joint venture, employment relationship or similar relationship between Attorney and the City. Attorney will not represent that they are the City’s employee or agent nor enter into any agreement on the City’s behalf. Neither party can be bound by the other to any contract, arrangement or understanding except with that party’s prior written consent.

In the event that Attorney is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Attorney under the terms of this Agreement, to the full extent of any benefits or other remuneration Attorney receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Attorney or to a third party) as a result of said finding.

2. The Services

Attorney will perform legal defense services for indigent defendants appointed to Attorney by the St. Helens Municipal Judge. Attorney will provide all equipment and supplies reasonably necessary to perform services. Attorney will perform the Services in a professional manner, and Attorney is responsible for any deficiencies in their work product or Services. Subject to the conditions of this Agreement, Attorney will retain control over the manner in which they perform the Services. Attorney will not subcontract any Services and will personally perform all Services.

3. Compensation

Payment for the services rendered by Attorney will be at the rate of **\$2,000** per month, paid out of the City's budget for indigent defense with approval of the City's Finance Department.

4. Term

The term of this Agreement, unless otherwise terminated pursuant to the terms of this Agreement, shall commence from **August 1, 2023 to June 30, 2024**. This term may be extended by mutual written agreement of the parties.

5. Termination

Either party may terminate this Agreement without cause by providing the other party with 30 days' prior written notice at the address listed below the party's signature line at the end of this Agreement. Upon receipt of notice from the City, Attorney may, at their option, decline to accept any additional new cases and so notify the City immediately in writing.

6. No Fringe Benefits

As an independent contractor, Attorney is not eligible for, and shall not participate in, workers' compensation, retirement, insurance or other benefits afforded to employees of the City. Attorney waives any and all rights that Attorney might have under the City's welfare, pension, profit-sharing or other benefit plans.

7. Expenses

The City shall not be responsible for any expenses paid or incurred by Attorney unless otherwise agreed in advance in writing.

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 Attorney. Attorney acknowledges and agrees that Attorney 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. Compliance With Laws

Attorney 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 Attorney's business as the same shall become due, and (d) pay all amounts when due required under local, state and federal law related to Attorney's business, including, but not limited to, workers' compensation coverage, unemployment insurance and any other required employee benefits.

10. Disclaimer

The City disclaims any responsibility for the safety of Attorney's workplace, and Attorney 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.

11. Insurance; Risk of Loss

Attorney will maintain insurance policies (including, without limitation, professional liability insurance and statutory workers' compensation insurance) that are sufficient to protect Attorney's business against all applicable risks. Attorney will be liable for all loss or damage, other than ordinary wear and tear, to the City's property in Attorney's possession or control. In the event of any such loss or damage, Attorney will pay the City the full current replacement cost of such equipment or property within 30 days after its loss or damage.

12. No Conflicting Obligations

Attorney warrants and represents that (a) Attorney 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 Attorney has performed services, and (b) Attorney is not currently subject to any restriction which would prevent or limit Attorney from carrying out the Services for the City.

13. Business Opportunities

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

14. Protection of City Property

All records, files, manuals, client lists, forms, materials, supplies, computer programs, and other information or materials furnished to Attorney by the City, used on its behalf, or generated or obtained during the course of providing the Services are the property of the City (collectively "City Property"). Attorney will use City Property for the sole use and benefit of the City and will take all reasonable precautions to safely secure and preserve such property. Attorney, except as necessary for the benefit of the City and to provide the Services, agrees not to make or cause to be made any copies, duplicates or other reproductions, or abstracts or summaries, of any

of the City's Property. Upon termination of this Agreement, and at any other time upon the City's request, Attorney will immediately deliver to the City or its authorized representative, all of the City Property. Attorney shall retain no copies of any of the City Property.

15. Indemnification

Attorney will indemnify, defend and hold the City (and the City's agents and contractors) harmless from all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from any claim, action or other proceeding (including any proceeding by any of Attorney's employees, agents or other contractors) that is based upon (a) Attorney's breach of this Agreement, (b) a claim that Attorney is not an independent contractor or (c) any negligent act or omission of Attorney.

16. Assignment

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

17. 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.

18. 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.

19. 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.

20. Compliance with ORS 670.600

Attorney warrants that he understands and agrees that:

- (1) The City will not control the means or manner of how Attorney will provide the labor or services, other than specifying the desired results;

- (2) Attorney is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for Attorney to conduct the business;
- (3) If licensure is required under ORS chapter 671 or 701, Attorney will ensure that they are licensed;
- (4) Attorney is customarily engaged in an independently established business (that is, Attorney meets 3 out of the 5 requirements below):
 - (a) Maintains a business location that is separate from the business or work location of the City, or that is in a portion of the Attorney's residence that is used primarily for business.
 - (b) Bears the risk of loss related to the business or the provision of services as shown by factors such as:
 - (A) The person enters into fixed-price contracts;
 - (B) The person is required to correct defective work;
 - (C) The person warrants the services provided; or
 - (D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
 - (c) Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - (d) Makes a significant investment in Attorney's business through means such as purchasing tools or equipment necessary to provide the services; paying for the premises or facilities where the services are provided; or paying for licenses, certificates or specialized training required to provide the services.
 - (e) Has the authority to hire and fire other persons to provide or to assist in providing the services and has the authority to fire those persons.

21. 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.

22. 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.

23. Acknowledgment

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

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

CITY OF ST. HELENS

ATTORNEY

By: _____

By: _____

Printed Name: John Walsh
Title: City Administrator

Printed Name: Steve Sharfstein

Federal Taxpayer ID #:

Date: _____

Date: _____

Address: 265 Strand Street
St. Helens, OR 97051

Address:

By: _____,
Kathy Payne, City Recorder

Date: _____