INTERLOCAL AGREEMENT BETWEEN THE CITY OF TUMWATER AND THURSTON COUNTY FOR INDIGENT DEFENSE LEGAL SERVICES

THIS AGREEMENT is entered into this _____day of _____, 2026, between the City of Tumwater, Washington, a municipal corporation, herein referred to as the "City," and Thurston County, herein referred to as the "County."

WHEREAS, the City and the County entered into an original Interlocal Agreement pursuant to RCW 39.34 on June 4, 2013, and amended it on October 18, 2018, November 3, 2020, June 21, 2022, and April 22, 2024 whereby the County, through its office of Assigned Counsel (OAC), now referred to as Thurston County Public Defense ("TCPD") agreed to provide indigent defense legal services ("Agreement"); and

WHEREAS, the City and the County desire to amend and restate a new Interlocal Agreement in its entirety.

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes agreements between public agencies for the performance of governmental services; and

WHEREAS, the City does not have the personnel to provide said services; and

WHEREAS, County through its TCPD, has the capability to provide the City with mandated indigent legal defense services; and

WHEREAS, County provides court services to the City; and

WHEREAS, County agrees to provide the City legal services for indigent defendants upon the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereby agree as follows:

1. Purpose.

   The purpose of this agreement is to provide legal representation services for indigent persons charged with criminal offenses by the City of Tumwater.

2. Scope of Services.

   A. All indigent defendants charged in the Thurston County District Court with violations of City ordinances, including those state laws adopted by reference, punishable by loss of liberty and who qualify for appointed counsel shall be referred to TCPD. TCPD shall provide legal representation for each of those defendants from arraignment through trial, sentencing,

post-trial review and any appeals. TCPD will assure that professional staff are available for interviewing and/or counseling individuals and defendants held in custody as needed twenty-four (24) hours per day and will assure that defendants held in custody pending trial are interviewed in a timely manner in accordance with established professional standards.

B. Services shall be provided in accordance with the City's and TCPD's standards for public defense services mandated by RCW Chapter 10.101, as well as the Rules of Professional Conduct prescribed by the Washington State Supreme Court. TCPD shall provide services at the same or higher level of quality and staff participation as is customarily supplied by TCPD to the County. TCPD shall carry on all activities pursuant to this Agreement in full compliance with all applicable laws, rules and regulations of the United States, State of Washington, Thurston County, and the City of Tumwater. Legal services provided by TCPD shall be provided without discrimination on the basis of race, color, creed, religion, national origin, ancestry, citizenship or immigration status, sex, gender identity or expression, sexual orientation, age, marital status, familial status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

C. Services by TCPD shall also include the representation of indigent defendants assigned to appointed counsel prior to the effective date of this Agreement and for whom the previously assigned counsel has withdrawn as counsel of record.

D. TCPD will comply with such reporting and project evaluation requirements as may be established by the City to enable it to appraise the effectiveness of TCPD's services. Quarterly reports detailing expenditures and caseload activity will be supplied by TCPD to the City Finance Director.

E. Services shall be provided in the most cost effective and efficient manner feasible including the efficient use of resources, personnel and facilities to minimize costs to both the County and City.

F. TCPD has provided the City with current salary schedules for the Defense Attorney I, Defense Attorney II, Defense Attorney III, and Legal Assistant II positions. Both parties understand that costs will increase as a result of the County's salary schedule step increases and anticipate an annual adjustment as both parties intend the services to be provided at cost.

3. Compensation for Services.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the City. No payment shall be made for any service rendered by TCPD except for services identified and set forth in this Agreement.

B. The City shall pay TCPD for work performed under this Agreement a total sum not to exceed **Six hundred eighty-five thousand, four hundred ninety and no/100 dollars ($685,490)** as follows:

1. The City shall pay TCPD the sum of **Two hundred ninety-five thousand, fifty and no/100 dollars ($295,050)** in 2027, and the sum of **Three hundred seventeen thousand, three hundred fifty-eight and no/100 dollars ($317,358)** in 2028. Except as expressly provided in Section 3(B)(2) and 3(B)(3), the cost of all infrastructure, administrative support and systems, as well as standard overhead services necessary to comply with the established standards, is included in this payment.

2. In addition to the base annual fee, the City shall pay the actual costs incurred, which are estimated to be, and shall not to exceed: **(a) Thirty-Two Thousand One Hundred Thirty-Nine and 00/100 dollars ($32,139) in 2027; and (b) Forty Thousand Nine Hundred Forty-Three ($40,943) and 00/100 dollars**, to be used for the following:

a. Non-routine case expenses requested by Department and preauthorized by order of District Court or pursuant to Local Court Rule 3.1(f)(2). Unless the services are performed by Department staff or subcontractors, non-routine expenses include medical and psychiatric evaluations; expert witness fees and expenses; interpreters; polygraph, forensic and other specific tests; investigation expenses; and any other non-routine expenses the Director of TCPD finds necessary and proper for the investigation, preparation and presentation of a case.

b. Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses.

c. On-call legal advisement services by a Defense Attorney twenty-four (24) hours a day, seven (7) days a week, including all

observed federal and county holidays. These services are specifically required under Washington law for defendants being questioned or detained under suspicion of driving under the influence (DUI) and shall include immediate telephonic consultation regarding constitutional rights and custodial procedures.

d. All indigent defendants determined to have a conflict of interest by TCPD under the Rules of Professional Conflict will be represented by outside conflict counsel. The County will be responsible for securing counsel for "conflict defendant" but will not bear the costs for furnishing conflict counsel. In the event that the retention of above services requires any additional funds for such outside counsel over and above the amount provided for this Section shall remain separate from the contract compensation to TCPD as set forth in this Agreement.

C. TCPD shall submit to the City Finance Director an invoice for services rendered during the quarterly pay period. The City shall initiate authorization for payment after receipt of said invoice and shall make payment to the County within approximately thirty (30) days thereafter.

D. When subcontracting services or purchasing goods from third parties, as identified and approved in the Agreement, TCPD must submit written documentation establishing that the goods and/or services have been provided, and the third party has been paid in order to receive reimbursement for such goods and/or services.

E. Invoices may be submitted immediately following performance of services, but not more often then monthly nor less often than quarterly. In no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term unless the contract term ends at the end of the calendar year where invoices must be submitted no more than five (5) business days following the end of the calendar year.

F. At the request of either party, but not more often than annually, the parties may review the Agreement to determine whether the rate of compensation is adequate to cover the costs actually incurred by TCPD. If such review demonstrates that TCPD's actual costs have exceeded the contract amount due to: (1) increases in required compensation rates, or (2) costs associated with conflict counsel retention, both parties agree that the compensation rate shall be adjusted to reimburse such excess costs. However, any such adjustment under this Section shall not exceed ten percent (10%) of the annual contract compensation. If the review determines the rate is in excess of services provided, both parties shall negotiate a reasonable credit.

4. Compliance with the Washington State Supreme Court Caseload Standards.

The parties acknowledge that the Washington State Supreme Court has issued Order No. 25700-A-1644 and related orders mandating phased reductions in indigent defense caseload standards. The parties further acknowledge that compliance with these standards may require the addition of one (1) or more full-time equivalent (FTE) defense attorneys commencing in the contract year 2028.

A. Caseload Trajectory Review. In 2027, before the 2028-2029 budget cycle, the parties shall meet and review TCPD's actual and projected City caseloads against the phase-in targets required by the Supreme Court; as implemented by the City, and County.

B. Conditional Amendment. If this review demonstrates that current staffing levels are insufficient to meet the mandated caseload standards for 2028, the parties agree to negotiate in good faith an amendment to this Agreement. Such amendment shall provide additional compensation specifically designated for the retention of the necessary defense attorney FTE(s) to ensure compliance.

5. Term and Termination.

A. Term. This agreement shall commence January 1, 2027, and shall be completed no later than December 31, 2028. This agreement may be extended for additional periods of time upon mutual written agreement of the parties.

B. Termination.

1. Either party may terminate this Agreement for cause in the event the other fails to perform its obligations as described in this Agreement, and such failure has not been corrected after notice of breach and an opportunity to cure has been provided.

2. Either party may terminate the Agreement without cause, in its sole discretion, by giving the other party sixty (60) days written notice prior to the date of the proposed termination.

3. Withdrawal. If the Agreement is terminated in accordance with this Section, TCPD shall take reasonable steps to withdraw from any pending cases and the City shall not be responsible to compensate TCPD for services provided after such withdrawal.

6. Force Majeure

Neither Party will be liable for any failure or delay in performing an obligation under this contract that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts of omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy.

A. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the ability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

7. Applicant Screening.

Determination of indigence for eligibility for appointed counsel under this Agreement shall be determined using the County's customary screening process.

8. Independent Contractor Relationship.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of TCPD. No agent, employee, servant or representative of TCPD shall be deemed to be an employee, agent, servant or representative of the City for any purpose, and the employees of TCPD are not entitled to any of the benefits the City provides for its employees. TCPD will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated by TCPD is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the City and shall by subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

C. The City may at its sole discretion require TCPD to remove an employee, agent or servant from services performed for the City. TCPD may however employ that individual on other non-City related services.

9. Consultation.

The Finance Director for the City and the Director of TCPD shall be the respective representatives responsible for administering this Agreement. Each party may change its designated representative upon written notice to the other party. There will be no joint board created for the purpose of administering this Agreement. Disputes that cannot be resolved by the designated representatives shall be referred to the City Administrator and the County Administrator.

10. Indemnification.

A. The County agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the County, its elected officials, officers, employees, agents, and volunteers or by the County's breach of this Agreement.

B. County expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Department indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. This waiver has been mutually negotiated by the parties.

C. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

11. No Assignments.

Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

12. Modification.

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and County.

13. Entire Agreement.

This agreement constitutes the entire agreement between the parties and represents the entire understanding of the parties hereto. The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City or County, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement.

14. Compliance with Laws.

TCPD agrees to comply with all federal, state, and municipal laws, rules, and regulations, including the Rules of Professional Conduct, Court Rules and City Standards for Delivery of Public Defense Services that are now effective or in the future become applicable to TCPD and its employees or contractors engaged in provision of services covered by this Agreement.

15. No Third-Party Benefits.

This agreement is entered into for the benefit of the parties to the Agreement only and shall confer no benefits, direct or implied, on any third-party persons.

16. No Waiver.

Failure or delay of either Party to declare any breach or default immediately upon occurrence shall not waive such breach or default.

17. Written Notice.

All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

City of Tumwater:
Attn: Finance Director
555 Israel Road SW
Tumwater, WA 98501

Thurston County:
Attn: TCPD Director
3000 Pacific Avenue SE
Olympia, WA 98501

18. Equal Opportunity to Draft.

The parties have participated and had equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against either party upon a claim that the party drafted ambiguous language.

19. Recording.

Prior to its entry, this Agreement shall be filed with the Thurston County Auditor's Office or posted on the websites as required by 39.34.040 RCW.

20. Counterparts.

This agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates listed below.

City of Tumwater:
555 Israel Road SW
Tumwater, WA 98501

Thurston County:
3000 Pacific Avenue SE
Olympia, WA 98501

_____
Leatta Dahlhoff, Mayor

Date:_____

ATTEST:

_____
Melody Valiant, City Clerk

APPROVED AS TO FORM:

_____
Karen Kirkpatrick, City Attorney

_____
Patrick O'Connor, Director TCPD

Date:_____

ATTEST:

_____
Clerk of the Board

APPROVED AS TO FORM:
Jon Tunheim, Prosecuting Attorney

_____
By: Deputy Prosecutor