

**GRANDVIEW CITY COUNCIL  
COMMITTEE-OF-THE-WHOLE  
REVISED MEETING AGENDA  
TUESDAY, MAY 23, 2017**



**COMMITTEE-OF-THE-WHOLE MEETING – 6:30 PM**

**PAGE**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT** – At this time the public may address the Council on any topic whether on the agenda or not, except those scheduled for public hearing.
4. **NEW BUSINESS**
  - A. Resolution authorizing the Mayor to sign the Washington State Transportation Improvement Board Fuel Tax Grant Agreement for the 2017 Emergency Pavement Repair Project 3-E-183(006)-1 1-9
  - B. Resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Daniel Polage 10-21
5. **OTHER BUSINESS**
6. **ADJOURNMENT**

**CITY OF GRANDVIEW  
AGENDA ITEM HISTORY/COMMENTARY  
COMMITTEE-OF-THE-WHOLE MEETING**

**ITEM TITLE**

Resolution authorizing the Mayor to sign the Washington State Transportation Improvement Board Fuel Tax Grant Agreement for the 2017 Emergency Pavement Repair Project 3-E-183(006)-1

**AGENDA NO.:** New Business 4 (A)

**AGENDA DATE:** May 23, 2017

**ORIGINATING SOURCE**

Public Works Department

**FUNDING CERTIFICATION** (City Treasurer)  
(If applicable) N/A

**DEPARTMENT HEAD REVIEW**

Cus Arteaga, City Administrator/Public Works Director

**CITY ADMINISTRATOR**



**MAYOR**



**ITEM HISTORY** (Previous council reviews, action related to this item, and other pertinent history)

The winter of 2016 took a real toll on City streets and the repairs are beyond what the City street budget can support therefore the City applied to the Transportation Improvement Board (TIB) for financial assistance.

**ITEM COMMENTARY** (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

TIB implemented a one-time financial program for 2017 to assist cities in repairing and maintaining their street system due to the harsh 2016 winter. Grandview applied for the maximum amount of \$50,000 for various locations throughout the City to repair classified streets.

On May 9, 2017, TIB announced that the City of Grandview was selected for \$50,000 from the TIB 2017 Emergency Repair Program.

Attached is the Fuel Tax Grant Agreement with TIB that will require Council approval.

**ACTION PROPOSED**

Move a resolution authorizing the Mayor to sign the Washington State Transportation Improvement Board Fuel Tax Grant Agreement for the 2017 Emergency Pavement Repair Project 3-E-183(006)-1 to the regular Council meeting for consideration.

**RESOLUTION NO. 2017-\_\_\_\_\_**

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN THE WASHINGTON STATE  
TRANSPORTATION IMPROVEMENT BOARD FUEL TAX GRANT AGREEMENT  
FOR THE 2017 EMERGENCY PAVEMENT REPAIR PROJECT 3-E-183(006)-1**

**WHEREAS**, the City of Grandview has been selected by the Washington State Transportation Improvement Board to receive TIB funds in the amount of \$50,000.00 for the 2017 Emergency Pavement Repair Project for various locations,

**WHEREAS**, the City must execute a Fuel Tax Grant Agreement setting forth the terms and conditions and the regulations by which the City must comply in order to receive said funding,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, AS FOLLOWS:**

The Mayor is hereby authorized to sign the Fuel Tax Grant Agreement between the State of Washington Transportation Improvement Board and City of Grandview in the form as is attached hereto and incorporated herein by reference for the 2017 Emergency Pavement Repair Project 3-E-183(006)-1 for various locations.

**PASSED** by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on \_\_\_\_\_, 2017.

**MAYOR**

\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

**CITY CLERK**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**



# Washington State Transportation Improvement Board

## TIB Members

Commissioner Richard Stevens,  
Chair  
Grant County

Mayor Patty Lent, Vice Chair  
City of Bremerton

Jim Albert  
Office of Financial Management

Jeff Carpenter, P.E.  
WSDOT

Barbara Chamberlain  
WSDOT

Elizabeth Chamberlain  
City of Walla Walla

Wendy Clark-Getzin, P.E.  
Clallam Transit

Gary Ekstedt, P.E.  
Yakima County

Commissioner Terri Jeffreys  
Mason County

Mayor Glenn Johnson  
City of Pullman

John Klekotka, P.E.  
Port of Everett

Commissioner Robert Koch  
Franklin County

Colleen Kuhn  
Human Services Council

Mayor Ron Lucas  
Town of Steilacoom

Mick Matheson, P.E.  
City of Mukilteo

E. Susan Meyer  
Spokane Transit Authority

Laura Philpot, P.E.  
City of Maple Valley

David Ramsay  
Feet First

Martin Snell  
Clark County

Jay Weber  
County Road Administration Board

May 9, 2017



Mr. Cus Arteaga  
City Administrator/Public Works Director  
City of Grandview  
207 West 2nd Street  
Grandview, WA 98930-1398

Dear Mr. Arteaga:

Congratulations! We received and reviewed your application. The enclosed project scope meets TIB criteria and is approved for funding. We are pleased to announce the selection of your city for \$50,000 from the TIB 2017 Emergency Repair Program.

### In order to receive reimbursement for your project, you must:

Sign and return both copies of the Fuel Tax Grant Agreement to TIB. TIB will return one executed agreement for your files.

### How does the City of Grandview receive reimbursement?

Send the final invoices to your TIB Engineer. Your engineer will prepare project closeout paperwork for your signature. After you return the signed paperwork, TIB will release payment to the City of Grandview.

If you have questions, please contact Christa Draggie, TIB Project Engineer, at (360) 586-1147 or via e-mail at [ChristaD@TIB.wa.gov](mailto:ChristaD@TIB.wa.gov).

Sincerely,

Ashley Probart  
Executive Director

Enclosure

Ashley Probart  
Executive Director  
PO Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
[www.tib.wa.gov](http://www.tib.wa.gov)

# 2017 APP Emergency Repair Program Approved Scope for GRANDVIEW

## Approved Repair List

Total Approved Repair Area (Sq Ft) 12,430 Sq Ft

Approved Pavement Repair Cost \$62,150

Approved OTHER Cost \$0

Total Approved Pavement Repair Cost \$62,150

Approved TIB Funds \$50,000

Required Local Funds \$12,150

Repair Site	Federal Route Number	STREET NAME	LIMITS Enter Cross Streets	Repair Length (Ft)	Repair Width (Ft)	Repair Area (Sq Ft)	Approved	Cost
1	8056	Wine Country Road	Stover Road to Euclid Road	2,850 ft	4 ft	11,400 sq ft	y	\$57,000
2	8051	Euclid Road	Wine Country Road to Bonnieview Road	15 ft	4 ft	60 sq ft	y	\$300
3	8051	Euclid Road	Wine Country Road to Bonnieview Road	6 ft	4 ft	24 sq ft	y	\$120
4	8051	Euclid Road	Wine Country Road to Bonnieview Road	6 ft	4 ft	24 sq ft	y	\$120
5	8051	Euclid Road	Wine Country Road to Bonnieview Road	25 ft	3 ft	75 sq ft	y	\$375
6	8051	Euclid Road	Wine Country Road to Bonnieview Road	8 ft	4 ft	32 sq ft	y	\$160
7	8051	Euclid Road	Wine Country Road to Bonnieview Road	4 ft	13 ft	52 sq ft	y	\$260
9	8054	N. Elm Street	Washington Street to Wine Country Road	5 ft	4 ft	20 sq ft	y	\$100
11	8054	N. Elm Street	Washington Street to Wine Country Road	7 ft	4 ft	28 sq ft	y	\$140
13	8055	S. Elm Street	4th Street to 3rd Street	6 ft	6 ft	36 sq ft	y	\$180
14	8053	Avenue B/Grandridge Road	2nd Street to 5th Street	70 ft	3 ft	210 sq ft	y	\$1,050
15	8056	E. Wine Country Road	Vista Grande Way to McCreadie Road	6 ft	4 ft	24 sq ft	y	\$120
16	8056	E. Wine Country Road	Vista Grande Way to McCreadie Road	55 ft	3 ft	165 sq ft	y	\$825
17	8056	E. Wine Country Road	Vista Grande Way to McCreadie Road	20 ft	4 ft	80 sq ft	y	\$400
18	8056	Wine Country Road	Avenue B/Grandridge Road	25 ft	8 ft	200 sq ft	y	\$1,000



CITY OF GRANDVIEW  
3-E-183(006)-1  
2017 Emergency Pavement Repair Project  
Various Locations

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
CITY OF GRANDVIEW  
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 2017 Emergency Pavement Repair Project, Various Locations (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and CITY OF GRANDVIEW, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

TIB hereby grants funds in the amount of \$50,000 for the project specified above, pursuant to terms contained in the RECIPIENT'S TIB-approved Grant Application on file, which is incorporated into this Agreement by this reference; supporting Project Documentation in 3.0; chapter 47.26 RCW; title 479 WAC; and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and previously incorporated by reference into this Agreement. Scope and Budget may be further developed and refined. Any alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to, the following:

- a) Contract Completion Updated Cost Estimate with final summary of quantities; and
- b) Project Accounting History

4.0 BILLING AND PAYMENT

At the closeout of the Project, but no later than August 31<sup>st</sup>, 2017, the Recipient must submit an invoice for all costs and expenditures actually incurred in the course of performing eligible work directly related to the Project, during the Project period. Any invoice received after August 31, 2017, will not be eligible for reimbursement, unless the local agency has received prior approval from TIB. TIB agrees to reimburse the Recipient for those Project-related costs and expenditures properly documented on the Recipient's invoice.



## 5.0 TERM OF AGREEMENT

The term of this Agreement shall commence on the latest date of signature of the Parties and terminate upon closeout of the grant or when terminated as provided herein, but in no event shall the term of this Agreement exceed six months unless amended by the Parties.

## 6.0 AMENDMENTS

This Agreement may be amended by mutual agreement and written amendment executed by both of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

## 7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

## 8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## 9.0 DEFAULT AND TERMINATION

### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, that the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance;
- b) TIB denies the RECIPIENT's request to amend the Project, if any; and
- c) After investigation, TIB confirms RECIPIENT'S non-compliance.



TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

### 9.3 TERMINATION

a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.

b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.

c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

### 10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than roadway system pavement repair is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9.

### 11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the TIB funds for the specific Project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All requests for such increases must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for costs incurred in excess of the grant amount. In the event that final costs related to the specific Project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the original ratio between TIB funds and total project costs.

### 12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.



### 13.0 INDEMNIFICATION AND HOLD HARMLESS

- a) The RECIPIENT shall indemnify and hold TIB, its agents, employees, and officers harmless from, and process and defend at its own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs (hereinafter referred to collectively as "claims"), of whatsoever kind or nature brought against TIB and arising out of, in connection with or incident to this AGREEMENT and/or the RECIPIENT's performance or failure to perform any aspect of this AGREEMENT. This indemnity provision applies to all claims against TIB, its agents, employees and officers arising out of, in connection with or incident to the negligent acts or omissions of the RECIPIENT, its agents, employees, officers and subcontractors. Provided, however, that nothing herein shall require the RECIPIENT to indemnify and hold harmless or defend the TIB, its agents, employees or officers to the extent that claims are caused by the negligent acts or omissions of the TIB, its agents, employees or officers; and provided further that if such claims result from the concurrent negligence of (a) the RECIPIENT or its employees, agents, officers or contractors and (b) the STATE, its employees or authorized agents, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of the PARTY, its employees, officers, authorized agents, and/or contractors. This indemnification and hold harmless provision shall survive termination of this AGREEMENT.
- b) The RECIPIENT specifically assumes potential liability for actions brought by RECIPIENT's employees and/or subcontractors; and, solely for the purposes of this indemnification and defense, the RECIPIENT specifically waives any immunity under the State Industrial Insurance Law, Title 51 Revised Code of Washington.
- c) In the event either the RECIPIENT or TIB incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section of this AGREEMENT against the other PARTY, all such fees, costs and expenses shall be recoverable by the prevailing PARTY.

### 14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT to avoid additional incurred costs and delays to the project. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed-upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.
- e) In the event of litigation or other action brought to resolve a dispute or enforce this Agreement, each Party shall be responsible for its own attorneys' fees and costs.



**15.0 ENTIRE AGREEMENT**

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

**16.0 RECORDS MAINTENANCE**

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**17.0 AUTHORIZED SIGNATURES**

The undersigned acknowledge that they are authorized to execute this Agreement and bind their respective agencies to the obligations set forth herein.

**Lead Agency**

**Transportation Improvement Board**

\_\_\_\_\_  
Chief Executive Officer                      Date

\_\_\_\_\_  
Executive Director                      Date

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

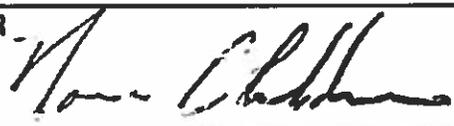
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**CITY OF GRANDVIEW  
AGENDA ITEM HISTORY/COMMENTARY  
COMMITTEE-OF-THE-WHOLE MEETING**

<b>ITEM TITLE</b>  Resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Daniel Polage	<b>AGENDA NO.</b> New Business 4 (B)  <b>AGENDA DATE:</b> May 23, 2017
<b>ORIGINATING SOURCE</b>  City Attorney & City Clerk	<b>FUNDING CERTIFICATION</b> (City Treasurer) (If applicable)

**DEPARTMENT HEAD REVIEW**  
  
Anita Palacios, City Clerk (Municipal Court)

<b>CITY ADMINISTRATOR</b> 	<b>MAYOR</b> 
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**ITEM HISTORY** (Previous council reviews, action related to this item, and other pertinent history)  
  
The City contracts with Yakima County District Court for municipal court services. Under the terms of the contract, the City must provide indigent defense services to indigent defendants. In the event of a conflict with the current public defender, the City must also provide alternate counsel for indigent defendants.

**ITEM COMMENTARY** (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.  
  
Currently, the City has only one attorney providing conflict indigent defense counsel and it would be in the best interest of the City to have more than one.  
  
The City has negotiated contract terms with Daniel Polage to provide conflict indigent defense counsel through December 31, 2018.

**ACTION PROPOSED**  
  
Move a resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Daniel Polage to the regular Council meeting for consideration.

**RESOLUTION NO. 2017-\_\_\_**

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN A PUBLIC DEFENDER AGREEMENT  
FOR CONFLICT INDIGENT DEFENSE COUNSEL WITH DANIEL POLAGE**

**WHEREAS**, the City of Grandview contracts with the Yakima County District Court for municipal court services; and,

**WHEREAS**, under the terms of the Yakima County District Court contract, the City is to provide indigent defense services to indigent defendants; and,

**WHEREAS**, the City is also to provide alternate counsel for indigent defendants ("conflict counsel") should there be a conflict with the current public defender; and,

**WHEREAS**, the City of Grandview formerly contracted with attorney Daniel Polage for conflict indigent defense services, but said contract has expired; and

**WHEREAS**, the City of Grandview and Daniel Polage have negotiated a new contract for conflict indigent services to run through the end of 2018; and

**WHEREAS**, the City Council of the City of Grandview finds it to be in the interest of the City of Grandview to enter into a contract with Daniel Polage, in the form attached hereto as Exhibit A, for the provision of conflict indigent defense services;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON**, as follows:

The Mayor is hereby authorized to enter into a contract for conflict indigent defense services with Daniel Polage in the form attached hereto as Exhibit A and to take such other action as necessary to effectuate said contract.

**PASSED** by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on May \_\_\_\_\_, 2017.

**MAYOR**

\_\_\_\_\_  
**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**

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**CITY OF GRANDVIEW  
PUBLIC DEFENDER AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_ day of May 2017, by and between Daniel Polage, PLLC, hereinafter the "Public Defender", and the CITY OF GRANDVIEW, a municipal corporation, hereinafter referred to as the "City".

WHEREAS, the Public Defender is an attorney licensed to practice law in the State of Washington, with offices at 2004 St. Helens Street, Yakima, WA, 98902; and

WHEREAS, the parties hereto are desirous of effectuating an agreement whereby the Public Defender will provide legal services for one indigent defendant in the Grandview Municipal Court and its various departments; now, therefore,

IT IS HEREBY mutually agreed as follows:

1. **Duties.** The Public Defender shall provide high quality defense attorney services for indigent defendants charged with misdemeanor and gross misdemeanor allegations occurring within the City of Grandview and processed by the City of Grandview Municipal Court where the City's primary public defender has a conflict that prevents representation of the defendant or defendants.

2. **Public Defender Availability.** Public Defender must be available by telephone 24 hours a day, seven (7) days a week, for each week of the year in order to give legal advice to the client described in Section 1 herein during the course of representing said client.

3. **Administrative and Support Services.** Public Defender shall be responsible for administrative costs associated with providing legal representation. Such costs include, but are not limited to, travel, telephones, law library, electronic research, financial accounting, case management systems, computers, software, office space, supplies, training, meeting reporting requirements imposed by the City, the WSBA and the Washington Supreme Court, and other costs necessarily incurred in the day-to-day management of the contract. Public Defender shall maintain an office that accommodates confidential meetings with clients. Public Defender shall staff their office with an appropriate number of support staff and other support services, including a postal address and adequate telephone service to ensure prompt response to client contact. Public Defender shall maintain appropriate computer/word processing equipment in order to handle the paperwork generated by the contract case load as well as to comply with all reporting procedures.

4. **Insurance.** Without limiting the Public Defender's indemnification, it is agreed that the Public Defender shall maintain in force, at all times during the term of this Agreement, a policy or policies of insurance covering its operation as described below.

**A. General Liability Insurance**

The Public Defender shall maintain continuously public liability insurance with limits of liability not less than Two Hundred Fifty Thousand Dollars (\$250,000) for each occurrence, personal injury, and/or property damage liability.

The Public Defender shall provide a certificate of insurance or, upon written request of the City of Grandview, a duplicate of the policy as evidence of insurance protection. The Public Defender shall immediately notify the City of any communication with their insurance provider canceling or threatening to cancel insurance coverage under this provision.

**B. Professional Liability Insurance**

The Public Defender shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Public Defender which constitute professional services in the performance of this Agreement. For purposes of this Agreement, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than Two Hundred Thousand Dollars (\$200,000) combined single limit per claim/aggregate. The Public Defender further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but not limited to the amount of the deductible under the insurance policy. The Public Defender shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the City. The Public Defender shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Public Defender and the City.

Such insurance shall not be reduced or canceled without thirty (30) days' prior written notice to the City. If such insurance is obtained on a "claims made" basis, the Public Defender will continue to carry coverage for not less than three (3) years after expiration of this Agreement, and will provide a certificate in form and content satisfactory to the City demonstrating such continuing

coverage. The Public Defender shall provide certificates of insurance or, upon written request of the City, duplicates of the policies as evidence of insurance protection.

### **C. Workers' Compensation**

The Public Defender shall maintain Workers' Compensation coverage as required by law. The Public Defender shall provide a certificate of insurance or, upon written request of the City, a certified copy of the policy as evidence of insurance protection.

5. **Specific Duties.** The Public Defender shall provide services necessary or incidental to the performance of the work set forth in the PUBLIC DEFENDER - STATEMENT OF WORK - EXHIBIT A and consistent with CLIENT REPRESENTATION PRACTICE GUIDELINES- Exhibit B. The Public Defender acknowledges and agrees that the City may make changes to the specific duties of the Public Defender as necessary to maintain conformity with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. No such changes will be grounds for additional or revised compensation under this Agreement, unless the Public Defender demonstrates to the City's reasonable satisfaction that the change imposes an undue burden on the Public Defender's ability to provide the services required under this Agreement.

6. **Term and Renegotiation.** This Agreement shall commence on June 1, 2017 and expires on December 31, 2018.

7. **Compensation.** In return for the above-enumerated services, the Public Defender shall receive compensation in an amount of \$350.00 per case, payable upon proper voucher for the same, submitted by the Public Defender and received by the City Clerk at City Hall, Grandview, Washington. Payment shall be sought and paid upon certification that the case has been resolved and closed. All payments shall be made to:

Daniel Polage, PLLC  
2004 St. Helens Street  
Yakima, WA 98908

For purposes of compensation, case will be "resolved" and may be closed by Public Defender, and he may request to withdraw, after a finding of guilt in a pending criminal case, after the probation matter for which a hearing is currently set is resolved, or after the issues to be reviewed on a Deferred Prosecution or SOC have been decided.

8. **Client Transport.** Public Defender, or his employees or subcontractors, shall not transport clients by vehicle (personal or otherwise) while

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undertaking services pursuant to this Agreement. In the event Public Defender does transport clients during the course of representation as contemplated in this Agreement, Public Defender hereby agrees to release, indemnify, protect, defend and save harmless the City and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of such transport, caused or contributed thereto by the Public Defender or his employees or subcontractors.

9. **Expert Witnesses.** The City shall, in addition, compensate the Public Defender for all expert witness fees incurred by the Public Defender on behalf of indigent clients covered by this Agreement upon application and approval of the court.

10. **Costs and Fees Assessed Against Defendants.** Any and all payments for reimbursement of court-appointed attorney's fees, as ordered and assessed by the Grandview Municipal Court or other court having jurisdiction to hear a City case, shall be payable by defendant directly to the Grandview Municipal Court.

11. **Assignment.** The Public Defender shall not assign, transfer, or subcontract this Agreement without obtaining prior written approval from the City.

12. **Successors Bound.** Subject to the provisions of Section 11, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

13. **Ethic Compliance, Reports, and Training.** The Public Defender will provide the aforementioned services in conformity with all applicable Rules of Professional Conduct and will provide the Municipal Court and the City with any reports, fiscal or otherwise, which are reasonably required in the performance of the Municipal Court's and the City's responsibilities. An annual report shall be provided by the Public Defender on or before August 1 of each year. The report must include a statement of hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases, as the same may be required by RCW 10.101.050, as now exists or may be subsequently amended. The Public Defender agrees to attend training approved by the Washington Office of Public Defense at least once per calendar year, as the same may be required by RCW 10.101.050 and 10.101.060, as now exist or may be subsequently amended.

14. **Taxes and Assessments.** The Public Defender shall be solely responsible for compensating its employees and for paying all related taxes, deductions and assessments, including but not limited to, leasehold excise taxes, federal income tax, FICA, social security tax, assessments for unemployment

and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Public Defender shall pay the same before it becomes due.

15. **Independent Contractor.** The parties agree that the Public Defender is an independent contractor with the responsibility and authority to control and direct the performance of the details of the work described herein in accordance with the terms and conditions of this Agreement. The implementation of contracted activities and the results to be achieved are solely the responsibility of the Public Defender. No agent, employee, subcontractor, or representative of the Public Defender shall be deemed to be an employee, agent, servant, or representative of the City or of the City of Grandview Municipal Court for any purpose, and the employees, agents, subcontractors, or representatives of the Public Defender are not entitled to any of the benefits the City provides for its employees. The Public Defender will be solely and entirely responsible for his acts and for the acts of his agents, employees, subcontractors, or otherwise, during the performance of this Agreement.

16. **Indemnity.** The Public Defender hereby agrees to release, indemnify, protect, defend and save harmless the City and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of the operation of this Agreement, caused or contributed thereto by the Public Defender or his employees or subcontractors. Provided, however, that nothing herein shall be deemed to require the Public Defender to indemnify the City or its elected or appointed officials, agents, volunteers, or employees for injury to persons, corporation, and/or property arising from the sole negligence of the City and its elected or appointed officials, employees, volunteers, and agents. In case of suit or action brought against the City and/or its elected or appointed officials, agents, volunteers, and employees for damages arising out of or by reason of any of the above-mentioned causes, the Public Defender agrees to pay all costs of defense, including reasonable attorney's fees and any judgment.

17. **Non discrimination.** The Public Defender shall not discriminate on the basis of race, creed, color, national origin, or physical, mental, or sensory handicap in the performance of this Agreement.

18. **Termination.** The City of Grandview may terminate this Agreement, with or without cause, upon ninety (90) days written notice sent by certified mail to the Public Defender at the address listed in this Agreement. The parties shall negotiate a reasonable fee for services to complete client representation which cannot be done through substituted counsel.

19. **Governing Law.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performances.

20. **Venue.** Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in the Superior Court for Yakima County, Washington

21. **Integration.** It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

22. **Waiver of Breach.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

DATED this \_\_\_\_ day of June, 2017.

CITY OF GRANDVIEW

PUBLIC DEFENDER

By: \_\_\_\_\_  
Mayor Norm Childress  
207 West Second Street  
Grandview, WA 98930

By: \_\_\_\_\_  
Daniel Polage, WSBA #40052  
2004 St. Helens Street  
Yakima, WA 98902

ATTEST:

\_\_\_\_\_  
City Clerk

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## EXHIBIT A

### PUBLIC DEFENSE STATEMENT OF WORK

1. **PUBLIC DEFENDER CONTRACTOR DUTIES AND RESPONSIBILITIES**
  - The Public Defender shall provide high quality indigent defense representation in the cases assigned to it by the Grandview Municipal Court. The representation shall be consistent with **EXHIBIT B, CLIENT REPRESENTATION PRACTICE GUIDELINES** as set forth below, and with the City's adopted standards for the delivery of public defense services. The representation shall be provided in a professional and skilled manner and shall be in compliance with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the best interests of the client.
  
2. **TASKS** – The Public Defender shall perform the following tasks with regard to each case to which the Public Defender is appointed.
  - A. Maintain a law office with a suitable client interview facility. The Public Defender will provide adequate phone lines, computers, postage, office equipment, office supplies, office furniture and legal research tools to maintain a smooth-running and efficient law office.
  - B. Receive notices of appointment for indigent defendants each court day. Set up and maintain files on each assigned defendant.
  - C. Establish and maintain client contact, keep the client informed of the progress of the case, and effectively provide legal advice to the client throughout the representation.
  - D. Timely interview defendants in custody anywhere in Yakima County.
  - E. Meet at least weekly with the Assigned Prosecutor to discuss pending matters.
  - F. Maintain continuity of representation at all stages of a case, including attendance at all first appearance proceedings, such as arraignments, for in-custody defendants. Except for illness, vacation or occasional conflicts, the assigned Public Defender shall appear at all Municipal Court hearings with their clients.

### **3. COMPLAINTS**

- A. A method to respond promptly to indigent defendant client complaints shall be established by the Public Defender. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court for permission to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.
- B. The Public Defender shall notify the City and respond in writing to the City within seven (7) days of learning of any complaint against the Public Defender or against the City relating to the provision of indigent defense legal representation.
- C. The Public Defender shall immediately notify the City of Grandview in writing when it become aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment.

## EXHIBIT B

### CLIENT REPRESENTATION PRACTICE GUIDELINES

Meet and communicate regularly with the client

- **Thoroughly explain to clients the constitutional, statutory and other rights that they have with regards to their case.**
- **Thoroughly explain to clients the elements of the offense(s) that the City must prove in order to obtain their conviction at a trial.**
- **Describe case procedures and timelines.**
- **Listen to client's questions and respond to them.**
- **Enable clients to candidly communicate with counsel.**
- **Facilitate agreements by realistically evaluating allegations and evidence with clients.**
- **Promptly communicate all offers of settlement.**

Prepare cases well

- **Conduct high quality, early case investigation.**
- **Conduct early case negotiations.**
- **Use discovery appropriately.**
- **Prepare for and participate in alternate resolution opportunities that may be available.**
- **Obtain experts and evaluators for cases involving disability, mental health, substance abuse or similar issues, when appropriate.**
- **Draft well-researched and written motions and other legal memoranda and other documents.**
- **Competently and aggressively litigate hearings and trials if no agreement is reached.**
- **Appear at all court hearings with clients.**

Ensure clients have adequate access to services, including court ordered treatment and/or counseling

- **Explain the importance of obtaining court ordered treatment and/or counseling services to clients.**
- **Develop a thorough knowledge of the resources available.**
- **Explore with clients ways to effectively participate in court ordered treatment and/or counseling.**
- **Ask clients for feedback if obstacles prevent or impede their participation, and follow up with the agency and in court when appropriate.**

- **In appropriate cases, encourage clients to obtain necessary evaluations and enroll in counseling and/or treatment even before ordered by the court to do so.**

Prevent continuances and delays within attorney's control

- **Treat all cases assigned to counsel with the highest priority.**
- **Avoid over scheduling whenever possible.**
- **Request continuances only if they are needed for substantive reasons.**