

PUBLIC DEFENSE HOURLY COMPENSATION AGREEMENT
FOR EXISTING CONTRACTORS

INDIVIDUAL ATTORNEYS

NAME: _____ OSB#: _____

OFFICE ADDRESS: _____

OFFICE PHONE: _____ EMAIL: _____

COUNTIES IN WHICH I WILL ACCEPT APPOINTMENTS: _____

I (“Attorney”) hereby enter into this agreement with the Oregon Public Defense Commission (“OPDC”) under the terms and conditions of this Public Defense Hourly Compensation Agreement (“Agreement”) to receive fee-generating case assignments to represent persons entitled to public defense services for eligible cases in the State of Oregon. Attorney is not guaranteed case assignments and will only receive appointments if PDSC authorizes the assignment. In consideration of the receipt of any such assignments, Attorney agrees as follows:

1. Attorney is licensed to practice law in the State of Oregon and Attorney shall, at all times, remain in good standing to practice law in the State of Oregon.
2. The Attorney shall maintain an email address with PDSC as all notices, schedules, and other program information will be disseminated electronically. Attorney shall promptly inform OPDC of any change in Attorney’s contact information.
3. OPDC may publish the Attorney’s name, along with information on the types of cases that Attorney is qualified to provide legal services, to a list provided to the court.
4. This Agreement does not guarantee Attorney any actual fee-generating case assignments. OPDC may restrict the number and types of cases that Attorney is assigned.
5. Attorney shall be reimbursed at the rates approved by OPDC and in effect at the time of appointment. These rates are posted on the OPDC website.
6. Attorney agrees to comply with the OPDC's policies, including but not limited to, policies regarding performance standards, representational practices, billing and invoicing, and case support services.
7. Attorney agrees to comply with the Oregon Rules of Professional Conduct.

8. Attorney shall not accept any form of payment from or on behalf of an assigned client for the representation provided by the Attorney, related to the matter for which the attorney was assigned, except for payment from OPDC through billings submitted to OPDS.
9. Attorney shall maintain all liability insurance as required by the Oregon State Bar.
10. Attorney shall immediately notify OPDC of (1) any criminal action brought against Attorney, including criminal complaints, indictments, or convictions of crimes, and (2) any disciplinary action brought against Attorney by the Oregon State Bar.
11. The Agreement may be terminated at any time and for any reason whatsoever without regard to cause by either Attorney or OPDC by giving fourteen days' notice in writing to the other party. In the event of any such termination of the Agreement, Attorney will cooperate with OPDC regarding the completion of any assigned cases so that the rights of the client are always fully protected.
12. This Agreement applies to all cases for which Attorney is assigned from the effective date of the Agreement through September 30, 2025. Attorney is authorized to continue legal work on cases to which they are assigned during that period until the case reaches final judgment or order in circuit court.
13. Attorney shall protect, indemnify, defend, and hold harmless OPDC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Attorney's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. Notwithstanding the above, Attorney has no duty to indemnify, defend, or hold harmless OPDC, or the State for their actions, decisions, work, activities, or failures to act related to this Agreement.
14. I am compliant with my existing contract obligations pursuant to the case guideline numbers in the 2023-2025 Public Defense Legal Services Contract with the OPDC. I believe that I can ethically take more cases, and I am requesting that OPDC approve my request to accept cases pursuant to this Agreement.

I hereby attest that I have the time and capabilities to:

- Interview and counsel my clients;
- Promptly meet with clients after my appointment by the court and regularly meet with them thereafter;
- Advocate for pretrial release for my incarcerated clients;
- Conduct necessary investigations for my client's cases, including reviewing records and materials for mitigation;

- Obtain and review all discovery;
- Conduct sufficient and necessary legal research;
- Make sufficient preparations for all pre-trial hearings and trials;
- Make sufficient preparations for sentencing and disposition hearings;

15. Exhibit A, OPDC Agreement Terms Addendum for Executive Branch Transition, attached hereto, is incorporated into the Agreement.

I also agree that I will file an attestation declaring the above with the OPDC for each case assigned. I agree that I will not take on more cases than I can ethically handle at one time, allowing for sufficient time for all of the above tasks in all assigned court-appointed cases.

THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN ATTORNEY AND OPDC WITH RESPECT TO THE SUBJECT MATTER HEREOF AND REPLACES ANY PRIOR WRITTEN OR ORAL COMMUNICATIONS BETWEEN THE PARTIES.

| | |
|-------------------------------------------------------------|--------------------------------------------------------------------|
| Emese Perfecto, OPDC Deputy Director, or delegate Signature | Date |
| Attorney's Authorized Representative Printed Name | Attorney's Authorized Representative Title/Representative Capacity |
| Attorney's Authorized Representative Signature | Date |

Exhibit A, OPDC Agreement Terms Addendum for Executive Branch Transition, to Agreement

The following terms apply to the Agreement, as amended.

1. **Order of Precedence.** In the event of any conflict between the terms of the Agreement less this Exhibit A, and the terms of this Exhibit, the terms of this Exhibit A will prevail.
2. **Jurisdiction; Venue.** Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. ATTORNEY HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.

3. **Recyclable Products Requirement.** Attorney shall use recyclable products to the maximum extent economically feasible in the performance of the legal services described in this Agreement.

4. Prompt Payment Requirements. Attorney shall:

- 4.1. Make payment promptly, as due, to all persons supplying to the Attorney labor or material for the performance of the legal services provided for in the Agreement.
- 4.2. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- 4.3. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

This Section 4 does not apply to services to support the legal representation to clients assigned to Attorney that are approved and paid directly by OPDC through either OPDC Routine Expense or Pre-Authorized Expense policies.

5. **Termination for Lack of Funding.** Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OPDC's payment for amounts due after the last calendar day of the current State of Oregon biennium is contingent upon OPDC receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow OPDC, in the exercise of its reasonable administrative discretion, to continue to compensate Attorney. OPDC may immediately terminate this Agreement upon written notice if OPDC fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by OPDC's budget or spending plan and OPDC determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement.
6. **Funds Available and Authorized.** Attorney will not be compensated for legal services performed under this Agreement by any other agency or department of the State of Oregon. OPDC believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within its biennial appropriation or limitation. Attorney understands and agrees that OPDC's payments under this Agreement are contingent on OPDC receiving appropriations, limitations, or other expenditure authority sufficient to allow OPDC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

7. Attorney's Compliance with Tax Laws.

7.1 Attorney must, throughout the term of this Agreement, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state.

7.2 Any violation of this subsection constitutes a material breach of this Agreement. Further, any violation of Attorney's warranty in section 13.6 of this Exhibit, that Attorney has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state, also constitutes a material breach of this Agreement. Any violation shall entitle OPDC to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

7.2.1 Termination of this Agreement, in whole or in part;

7.2.2 Exercise of the right of setoff, or garnishment, if applicable, and withholding of amounts otherwise due and owing to Attorney, in an amount equal to State's setoff right, without penalty; and

7.2.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. OPDC shall be entitled to recover any and all damages suffered as the result of Attorney's breach of this Agreement.

7.2.4 These remedies are cumulative to the extent the remedies are not inconsistent, and OPDC may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

8. Pay Equity. As required by ORS 279B.235, Attorney shall comply with ORS 652.220 and not unlawfully discriminate against any of its employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, veteran status, disability, or age. Attorney's compliance with this section is a material term of this Agreement, and Attorney's failure to comply constitutes a breach entitling OPDC to terminate this Agreement or any Agreement for cause.

Further, Attorney may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Attorney shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

9. Anti-Discrimination. If the payments under this Agreement exceed or are anticipated to exceed \$150,000, and the Agreement is not the result of a procurement under ORS 279B.070, 279B.080, or 279B.085, then Attorney certifies that Attorney has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Attorney agrees, as a material term of this Agreement, to maintain such policy and practice in force during the entire Agreement term. Attorney's failure to maintain such policy and practice constitutes a breach entitling Agency to terminate this Agreement for cause.

10. Oregon False Claims Act. Attorney acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Attorney pertaining to this Agreement that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Amendment, Attorney certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Agreement. In addition to other penalties that may be applicable, Attorney further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Attorney. Attorney understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or OPDC under this Agreement or any Agreement or any other provision of law.

11. Indemnity. Related to Attorney's requirement to indemnify OPDC and the state of Oregon, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interest of, the State or its officers, employees and agents prior to such action or representation.

The State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time.

Notwithstanding the above, Attorney has no duty to indemnify, defend, or hold harmless OPDC and the state of Oregon for its actions, decisions, work, activities, or failures to act related to this Agreement.

12. Disclosure of Social Security Number. Attorney shall provide Attorney's Social Security number unless Attorney provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

13. Representations and Warranties: Attorney represents and warrants to OPDC that:

- 13.1** Attorney is not an "officer," "employee," or "agent" of OPDC, as those terms are used in ORS 30.265;
- 13.2** Attorney is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the Term of the Agreement;
- 13.3** Attorney has no undisclosed liquidated and delinquent debt owed to the State or any agency, board, commission, department or division of the State;
- 13.4** Attorney is not in violation of, charged with nor, to the best of Attorney's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the legal services, and Attorney's provision of the legal services shall not violate any such law, ordinance, regulation or order;
- 13.5** To the best of Attorney's knowledge, Attorney's performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS 244, for either Attorney or any Attorney personnel that will perform the Services under this Agreement;
- 13.6** Attorney (to the best of Attorney's knowledge), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:
 - 13.6.1** All tax laws of this State, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318;
 - 13.6.2** Any tax provisions imposed by a political subdivision of this State that applied to Attorney, to Attorney's property, operations, receipts, or income, or to Attorney's performance of or compensation for any legal services performed by Attorney;
 - 13.6.3** Any tax provisions imposed by a political subdivision of this state that applied to Attorney, or to goods, services, or property, whether tangible or intangible, provided by Attorney; and
 - 13.6.4** Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.