

**City of Langley**  
**MEMORANDUM**

**DATE:** May 28, 2008  
**TO:** Members of the City Council  
**FROM:** Paul Samuelson, Mayor  
**RE:** **PROPOSED ACTION – Public Defender Contract**

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The City is required to provide public defense services for persons declared indigent and involving cases brought before the Langley Municipal Court located in Oak Harbor. For the last several years, these services have been provided by Mimi Buescher. Ms. Buescher's contract expires on June 30, 2008 and she has indicated that she will be resigning as Public Defender for Langley on that date.

After seeking counsel from other agencies who employ a public defender, I am recommending that the City retain Thomas Pacher to fill this position. Mr. Pacher comes highly recommended and his firm is currently providing public defense services for both Island and San Juan Counties. The attached "Agreement for Public Defense" establishes the fees associated for the various services needed to support a public defense service.

I am recommending that the Council approve the "Agreement for Public Defense" with the firm of Thomas Pacher, effective July 1, 2008.

**THOMAS C. PACHER**

Attorney at Law, Inc.

*Tom Pacher, Director*  
*Mark Hanley, Island County Juvenile Court*  
*Darrin Hall, Island County Felonies*  
*Matt Montoya, Island County District Court*

*Kathy Marshall, San Juan County District Court*  
*Julia Williams, Legal Assistant II and Investigator*  
*Anna Ward, Legal Assistant I*

May 28, 2008

To: Mayor Samuelson  
 From: Tom Pacher  
 Re: Public Defense services for the City of Langley

Dear Mayor:

I've put together first-time (for me) contracts for two different counties now, and an extension for one of those counties. Something I've found to be true each time was that typing things out really got me wondering about wording, how things might be interpreted later, etc. I've gone to some lengths in the previous letter to explain myself on a few points. I don't want to repeat that, as doing so seems unnecessary. I will, however, explain a few things I spotted in fine-tuning on typing up the proposed agreement. Hopefully, doing so may save some time or questions later.

I should also add that I have assumed that the contract would be for indigent defendant services. If that assumption is incorrect, please let me know so that we can discuss possible changes needed. At the present time, I am unaware of the screening process used on City of Langley cases, or if there is one employed at all, so if I've made an incorrect assumption in this regards, I may need to re-word some things. A few additional points of explanation will be provided here in lieu of the usual discussions leading up to contracting and fine-tuning provisions following such discussions.

First, Contractor and City were terms used simply to clarify and make things a little simpler. Our business is incorporated, and we have more than one attorney. This simply saves the need to use a more complicated phrase. Second, I've referred to persons in custody who wish to consult with an attorney as "suspects". Until they are charged with any crime(s), they aren't really defendants. This eliminates another possible loophole for the City. On a related note, it also provides that we will provide consultation services if the person is being questioned by a city official or prosecuting attorney. This provides greater coverage, especially if a person is facing a potential criminal charge and is being detained by someone other than a police officer.

Additionally, there is a fairly glaring issue that is usually covered by such contracts, and I don't see it here. That is, what happens if a case requires the services of an expert witness? It's unlikely under

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such circumstances as we've discussed, but it should be clear, both in the contract as well as between the City and whatever court is handling the City's municipal cases. If, for example, we were to be handling a case where a psychologist is needed, it should be clear where the payment comes from. Given that such costs are not built into the contract, I would expect that would be worked out between the City and the court. At least a process for it, if not actual funds. I think the contract should reflect that process to make sure there is no question about it and about the contractor relationship (as opposed to us being some sort of City entity or employees).

Finally, I cleaned up some of the language defining cases and spelling out payment. I made the former a little more explicit and payment requirements simpler. As for payment, I didn't see a need to treat post-sentencing cases differently in that regards. As for cases, we do see, from time to time, some post-sentencing matters which tend to be a little more complicated and time-consuming than others. On the other hand, we see some cases where someone has allegedly violated the terms of sentences or probation in multiple cases, but the addition of the other cases doesn't really add to the amount of work we need to do to address the entire mess. What I did was insert some language similar to what we use in the second contract with San Juan that fine-tuned our actual handling and counting of cases. It seems to be a fair way to account for cases which require less work vs. those requiring more work and provides a way to address each, rather than have a blanket approach that would likely be more expensive for the City.

That's a lot to cover for a relatively small amount of cases. However, since some of this differs from what the City has done previously, I figured it would be best to explain why. And where applicable, we've taken from some experience in larger contexts and applied some care and common sense to try to anticipate how cases actually progress. A municipal contract will, by its nature, be less complicated than one covering defense services for an entire county. I've tried to anticipate questions, problems, situations, etc. and plan ahead, based upon experience in constructing and administering these types of contracts.

Please let me know if you have any questions, comments or need for clarification or amendments.

Sincerely,

  
Tom Pacher,  
Attorney at Law

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### AGREEMENT FOR PUBLIC DEFENSE SERVICES

This agreement is made between the CITY OF LANGLEY, hereinafter referred to as the "City", and Thomas C. Pacher, Attorney at Law, Inc., hereinafter referred to as "Contractor". This contract has an effective start day of \_\_\_\_\_ of \_\_\_\_\_, 2008. The primary purpose of this contract is to provide public defense services for the City. The City's municipal cases, at the time of the signing of this contract, are handled primarily in the court in Oak Harbor, Washington. Such other services as are described below are also included under the terms specified. No terms for cases, public defense, nor for any other matter or purpose not included below are excluded. Additionally, cases arising in Langley but which are handled by agencies other than City entities (for example, dependencies filed and/or handled by the State of Washington, felony criminal cases handled by the Island County Prosecutor's office or by the United States Attorney in other courts) are excluded from this agreement.

1. Contractor hereby agrees to provide services for individual defendants declared in need of such services at a fee of \$300.00 per case for the duration of this agreement for original or initial cases or case filings. Matters requiring appointment of a public defender for probation violations, show cause following sentencing, and other such post-sentencing cases not otherwise constituting an appeal shall be appointed to Contractor at a rate of \$150. Should this agreement be timely declared ended by either side in a manner described herein, Contractor shall cease to provide public defense services for the City.

2. Appeal of matters from the district or municipal court level, currently referred to as RALJ appeals, due to the nature of the rules which control such appeals, may be handled either by the City appointing Contractor to handle such appeals, in which case the fee shall be for \$60.00 per hour, U.S. funds, or the City may contract with any outside agency with whom it wishes to so contract. Contractor, when requested by a client in a manner whereby the client makes his/her wishes known that an appeal be filed before the expiration of the time in which to file the appeal, as noted in the applicable court rules. Nothing in this agreement obligates Contractor to handle any appellate matter, personal restraint petition or any form of relief from a lower court to a higher court except that the City may designate the Contractor to represent persons on RALJ appeals. A Notice of Appeal from the Superior Court following an unsuccessful RALJ appeal shall be filed by Contractor if the client so requests in a timely manner; further representation of the client will then be determined by the appellate court if client is unable to retain counsel at the client's own expense.

3. Fees established herein shall include such services necessary to assist and defend persons shall include consultation with persons charged with crimes, advice of rights, preliminary appearances (that is, appearances prior to formal charging and/or arraignment), arraignment on those cases to which the Contractor has been formally appointed, bail hearings, trials, pretrial motions if any are necessary, sentencing where a client has been convicted, filing of notices of appeals from the trial court level to the superior court level, as well as post trial motions for which Contractor is assigned. Contractor shall, upon filing of appeals from the trial court level, assist clients in seeking appeal bond or release pending appeal, together with the necessary order filing such appeals in forma pauperis if the client wishes to appeal but cannot afford to file an appeal on his or her own. Under no circumstances, however, shall Contractor

be responsible for the filing fee, costs, nor any other fee or assessment applicable to any case or appeal. Contractor shall not be made to bear the costs of filing of cases, filing of appeals, paying for investigation, costs for expert services, nor any costs associated with litigation, except as provided below. Contractor shall not be responsible for the costs of expert witness fees, evaluators, nor any other such costs as may be required to represent clients under this contract.

4. Contractor is an independent business and shall maintain at least one office for the carrying out of its obligations under the term of this contract. The City shall not be directly liable for the costs associated with hiring and retaining persons to assist in the performance of Contractor's obligations under this contract. Contractor may not seek any compensation directly from clients appointed under the terms of this contract. Contractor may convey information regarding any costs ordered to be paid pursuant to court order to clients, but any such payment must be made by the applicable client(s) without financial assistance of the Contractor. Contractor is not a department of the City. Employees and officers of Contractor are not employees of the City.

5. City shall make arrangements with a party capable of properly performing assessments to determine if a criminal defendant qualifies for representation by a public defender. Said assessments shall adhere to state rules regarding eligibility for appointed counsel under state guidelines. Contractor may represent other persons and entities, but shall not be required to accept appointment of a defendant under the terms of this contract if doing so would create an ethical conflict for Contractor or otherwise force Contractor to represent person(s) where doing so would require Contractor to violate the rules relating to ethical behavior for attorneys as established by the state bar association and/or State Supreme Court, nor where doing so would require Contractor to break any laws. Should the City or its designees appoint Contractor to any cases where the Contractor cannot represent the defendant because of some ethical and/or legal reason prohibiting Contractor from representing the defendant(s), Contractor shall notify the City and/or its designee as soon as practicable.

6. Contractor shall provide consultation for suspects during business hours, at which time Langley police, government or prosecution officials may contact Contractor's office in Coupeville so that the indigent suspect may consult with an attorney. Contractor shall provide after hours services at a rate of \$50 per call instigated by a Langley police, government or prosecution official or someone acting at the behest of, or under the authority of, a Langley police, government or prosecution official. Contractor will provide the City a phone number that may be used after hours and/or when an attorney cannot be reached during normal business hours, and will also provide the City information about any backup numbers should the primary on-call attorney be unavailable.

7. For purposes of this contract, a "case" shall consist of those cause number(s) arising out of the same event or related unbroken series of events pertaining to a single defendant. An incident or series of events which both results in new charges and the revocation or a probation in a previous matter, or other imposition of sanctions or punishment in a matter previously concluded, shall not be considered one case, but shall be considered a new case plus one new post-sentencing matter. Post-sentencing matters handled jointly, such as motions to revoke probation or suspended jail time in previously unrelated matters, shall be considered one post-

sentence matter when the cases can be resolved in the same setting in the same initial hearing or next court date after that initial hearing. More complex matters, such as revocation from a pre-trial diversion agreement or deferred prosecution which require evidentiary hearings or investigation or briefing prior to a final hearing shall be counted as separate post-sentencing matters.

8. Payment will be made after completion of the case upon billing in cases. Upon completion, Contractor will withdraw from the case in accordance with all applicable customs, statutes and/or rules, and will submit a billing statement to the City. City agrees to pay billing statement within 30 days of its submission.

9. As an independent contractor, Contractor will provide for its own insurance necessary to cover employees and corporate officers sufficient to cover for any liability while performing under the terms of this contract. The City is not responsible for medical insurance, worker's compensation nor any retirement.

10. Contractor will provide one or more qualified attorney(s), duly licensed to practice law in the State of Washington, to be assigned to the cases under this contract. Interns may assist in the handling of cases and trials, so long as a licensed attorney remains primarily responsible for the conduct of the case and any trials.

11. This contract may not be sub-contracted to other attorney(s) without written agreement of the City.

12. Either side may terminate this contract upon written agreement to the other side with 60 days minimum notice.

13. By signing this agreement, the parties below affirm and swear they have the authority to bind the agency and/or entity for whom they sign to the terms of this contract.

Agreed upon this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Tom Pacher, Attorney at Law  
President of Thomas C. Pacher,  
Attorney at Law, Inc.

Agreed upon this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Paul Samuelson

15