

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 22-256

APPROVING AND RATIFYING 2022 CONTRACTS FOR LEGAL SERVICES

WHEREAS, the Washington State Legislature passed Second Substitute Senate Bill 5064 (2SSB 5064), the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act, adding a new Section to RCW 11.130.200, effective January 1, 2021, requiring the court appoint an attorney to an adult or minor who is the subject of a proceeding under RCW 11.130.190, Petition for appointment of guardian for minor; and

WHEREAS, Snohomish County entered into agreement IAA22071 with the Washington State Administrative Office of the Courts for reimbursement of expenses related to 2SSB 5064 for the amount of \$716,205 on August 24, 2021; and

WHEREAS, the adopted 2022 Budget appropriated \$716,205 to the Superior Court to fulfill the requirements of 2SSB 5064; and

WHEREAS, Snohomish County entered into an agreement on February 07, 2022 for indigent guardianship legal defense services with Jay Carey; and

WHEREAS, the agreement was executed with an hourly rate of one-hundred twenty-five and no/100 Dollars (\$125.00) per hour for services with an initial maximum of twenty-five (25) hours per case; and

WHEREAS, the agreement does not include a not-to-exceed amount and was executed under Snohomish County Code 3.04.190; and

WHEREAS, the agreement with Jay Carey requires ratification by Council via motion to allow expenditure above \$25,000;

NOW, THEREFORE, ON MOTION, the Snohomish County Council hereby approves and ratifies the signature of the Snohomish County Executive, or designee, to the Contracts for Legal Services referenced above, copies of which are attached hereto as Exhibit A.

PASSED this 22<sup>nd</sup> day of June, 2022.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_  
Acting Council Chair

ATTEST:

  
\_\_\_\_\_  
Asst. Clerk of the Council

**EXHIBIT A**

CONTRACTOR: JAY CAREY  
CONTACT: Jay Carey  
ADDRESS: 420 Macleod Ave.  
Arlington, WA 98223

TELEPHONE NUMBER: 360-435-5707

COUNTY DEPT: OFFICE OF PUBLIC DEFENSE

CONTRACT CONTACT PERSON: JASON SCHWARZ, DIRECTOR

TELEPHONE/FAX NUMBER: 425-388-3032

PROJECT: GUARDIANSHIPS

AMOUNT: Fee for Services per Schedule B

CONTRACT DURATION: January 1, 2022 through December 31,  
2022. Extension period of two (2)  
additional one (1) year terms

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT (the "Agreement") is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County") and Jay Carey (the "Contractor"). In consideration of the terms and conditions set forth herein, the parties agree as follows:

1. Definition: "Administrator" means the Director of the Office of Public Defense or his designee.
2. Scope of Services to be Performed. The purpose of this agreement is to provide indigent representation services for parents and/or minors in Minor Guardianship actions pursuant to chapter 11.130 RCW. The scope of services is as defined in Schedule A attached hereto and by this reference made a part hereof.

The services shall be performed in accordance with the requirements of this Agreement, the generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed and the Rules of Professional Conduct. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

3. Duration of Contract. This Contract shall govern services from January 1, 2022, through December 31, 2022. Unless terminated as provided herein, the term of this Contract may be extended or renewed for up to two (2) additional one (1) year terms, at the sole discretion of the Administrator by written notice to the Contractor. PROVIDED, HOWEVER, that the County's obligations after December 31, 2022, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law.
4. Compensation: The County will pay the Contractor for services provided hereunder as set forth in Schedule B attached hereto and by this reference made part of the Contract.
5. Independent Contractor. The Contractor agrees that the Contractor will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control the Contractor's own activities in providing the agreed services in accordance with the specification set out in this Contract. The County shall only have the right to ensure performance.
6. Changes. No changes or additions shall be made in this Contract except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Contract.
7. Representation and Warranty. The Contractor represents and warrants that he/she/they is/are a member in good standing of the Washington State Bar Association, and that no disciplinary proceedings are pending against him/her/they. The Contractor will abide by the Rules of Professional Conduct.
8. Access to Books/Records. The County may, at reasonable times, inspect the books and records of the Contractor relating to performance of this Contract. Nothing in this paragraph shall be construed as constituting a waiver of the attorney-client and/or work product privilege. The Contractor shall keep all records required by this Contract for seven (7) years after termination of this Contract for audit purposes.
9. Hold Harmless and Indemnity. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this agreement, or those of Contractor's employees, agents, or subcontractors. PROVIDED HOWEVER, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers,

officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the Contractor's indemnity obligations hereunder shall apply only to the percentage of fault attributable to the Contractor, its employees, agents, or subcontractors.

With respect to the Contractor's obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions or suits filed against the County, the Contractor further agrees to waive its immunity under the Industrial Insurance Act, Title 51 RCW, for any injury or death suffered by the Contractor's employees caused by or arising out of the Contractor's acts, errors or omissions in the performance of this agreement. This waiver is mutually negotiated by the parties.

The Contractor's obligation hereunder shall include, but is not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the Contractor, Contractor's employees, agents, or subcontractors.

10. Insurance Requirements. The Contractor shall procure by the time of execution of this Contract, and maintain for the duration of this Contract, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Professional Liability, Errors and Omissions coverage, may be written on a "claims made" basis. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Contract.

By requiring the minimum insurance coverage set forth in this Section 9, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Contractor's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

- (i) Professional Liability: \$1,000,000.
  - (ii) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.
  - (iii) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.
  - (iv) If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.
- d. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

#### 11. Compliance with Laws.

- a. The Contractor shall comply with all applicable federal, state and local laws in performing this Contract, including, but not limited to laws against discrimination.
- b. The Contractor shall comply with the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Contract constitutes a certification by the Contractor of the Contractor's with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this Contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

#### 12. Termination

- a. If the Contractor breaches any of his/her obligations hereunder, and fails to cure the same within five (5) days of written notice to do so by the County, the County may terminate this Contract, in which case the County shall pay the Contractor only for the costs of services accepted by the County, in accordance with paragraph 4.

b. Either party may terminate this Contract upon thirty (30) days' written notice to the other party for any reasons other than stated in subparagraph "a" above, in which case the County shall pay the Contractor for all services performed by the Contractor pursuant to this Contract prior to the date of termination in accordance with paragraph 4.

c. Prior to termination, the Contractor shall resolve all assigned cases unless otherwise provided as follows:

i. Upon notice of termination, the Contractor shall promptly, but in no event later than three (3) business days after notice of termination, identify in writing to the Administrator the status of the pending case. The report shall include any special circumstances, such as an imminent trial schedule, lengthy or complex litigation needs, special client circumstances, or other client or case-based interests that may require continued representation by the Contractor.

ii. Within six (6) business days after notice of termination, Contractor shall provide Administrator or new counsel with all litigation related files needed to ensure ongoing, effective legal representation.

d. Termination shall not affect the rights of the County under any other paragraph herein.

13. Non Assignment. The Contractor shall not subcontract, assign or delegate, any of the rights, duties or obligations, covered by this Contract without the prior express written consent of the Administrator, which consent may be reasonably withdrawn.

14. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the

County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

15. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Contract, the text or main body of this Contract shall prevail.
16. Governing Law and Stipulation of Venue. The laws of the State of Washington shall govern this Contract and the parties stipulate that any lawsuit regarding this Contract must be brought in Snohomish County, Washington.
17. Severability. Should any clause, phrase, sentence, or paragraph of this Contract be declared invalid or void, the remaining provisions of this Contract shall remain in full force and effect.
18. Entire Contract. This Contract is the complete expression of the terms and conditions hereunder. Any oral or written representations or understandings not incorporated herein are specifically excluded.

“County”

“Contractor”

SNOHOMISH COUNTY:

JAY CAREY:



Klein, Kenneth  
2022.02.07 13:50:42 -08'00'



1/7/2022

County Executive

Date

Date

Approved as to insurance  
and indemnification provisions:

/s/ *Diane Baer*

2/1/2022

Risk Management

Date

Approved as to form only:

“/s/ George B. Marsh.”

Deputy Prosecuting Attorney

Date

## Schedule A

### SCOPE OF SERVICES

1. Services. Pursuant to an appointment under Section 2 below, the Contractor will provide thorough and professional representation. An individual case may not require all of the activities enumerated below; however, underlying each activity, is the expectation that an attorney assigned hereunder will possess knowledge and understanding of current statutes, rules of court, relevant case law, and the policies inherent within them in order to provide legal representation of the individuals for whom they have been appointed.
  - a. Maintain ongoing client contact and timely inform the client of any upcoming motions or other activity within the legal case
  - b. Provide legal representation at all stages of the proceeding, including attending and participating in all scheduled hearings
  - c. Provide legal advice and consultation as needed in a manner and using language that is consistent with the age, maturity level and developmental level of the child
  - d. Conduct legal research as needed
  - e. File pleadings, including petitions, motions, responses, or objections, as necessary to represent the client
  - f. Initiate and respond to discovery requested as required or necessary
  - g. Present and cross-examine witnesses, offer exhibits, and provide independent evidence as appropriate
  - h. Prepare and submit briefs or other appropriate pleadings prior to contested hearings
  - i. Initiate and participate in settlement negotiations to seek an expeditious resolution of the case, avoiding continuances and delays
  - j. Attempt to settle any contested issues by initiating and participating in settlement negotiations, including mediation
  - k. Be prepared to endorse, challenge, and amplify any reports submitted to the court
  - l. Ensure that the record reflects objections, reasoning, waivers, and the evidence upon which the court relies, and that it preserves issues for appeal
  
2. Attorney Registry. When an attorney is required to be appointed pursuant to chapter 11.130 RCW, the Snohomish County Office of Public Defense will manage the appointment from the Court on a rotating system.
  
3. Case Assignment and Control. The Contractor must provide a copy of any order of appointment or withdrawal to Administrator who will submit final billings to Finance.



## **Schedule B**

### **COMPENSATION**

1. **Invoices.** The Contractor shall submit to the Administrator properly executed invoices indicating Superior Court case numbers for each case to which the Contractor has been appointed, the total number of service hours per case, and the amount due in accordance with the rate set out below. Invoices shall be submitted no later than ten working days after the month in which the work was performed.
  
2. **Case Fees.** The Contractor shall be paid at the rate of one-hundred twenty-five and no/100 Dollars (\$125.00) per hour for services provided under this contract, with an initial maximum of twenty-five (25) hours per case. No payment for additional hours shall be made over without pre-approval by the Administrator.
  
3. **Procedure for Requesting Excess Fees.** The Contractor must seek approval for extension of fees by sending a request to the Administrator. The request for excess fees shall be supported by a declaration outlining: (i) the need for excess fees; (ii) the scope of services to be provided; and (iii) the estimated date upon which the service will be completed.