

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the \_\_\_\_ day of \_\_\_\_\_, 2014, the following Resolution:

**A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE PROFESSIONAL LEGAL SERVICE CONTRACT WITH DUSTIN E. USELTON, ESQ. TO SERVE AS A PUBLIC DEFENDER IN THE GULFPORT MUNICIPAL COURT AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT**

**WHEREAS**, the City of Gulfport, Mississippi, is a municipal corporation organized and existing according to the laws of the State of Mississippi and governed by its Mayor and City Council (“Governing Authority”); and

**WHEREAS**, the City of Gulfport recognizes its responsibilities under the laws of the State of Mississippi to provide legal counsel to indigent persons charged with potential loss of liberty offenses under State Law and its municipal ordinances; and

**WHEREAS**, due to the previous volume of cases assigned to a rotation of appointed public defenders, the Municipal Court Administrator for the Gulfport Municipal Court, pursuant to Miss. Code Ann. Sec. 21-23-7, as amended, recommended, and the Governing Authority previously authorized the appointment of an appointed Public Defender to represent indigent defendants charged in the Gulfport Municipal Court; and

**WHEREAS**, the Municipal Court Administrator has evaluated the current number of cases qualifying for this representation and has recommended to the Governing Authority to retain the services of an appointed Public Defender; and

**WHEREAS**, under the proposed agreement (Exhibit “A”), this appointed position would serve thru September 30, 2014, with no maximum number of assigned cases, for a stipulated sum; and

**WHEREAS**, Dustin Uselton, Esq., licensed by the Mississippi Bar, with offices located in Gulfport, Mississippi, has experience in the field of criminal defense and desires to represent indigent clients in the Gulfport Municipal Court and the Governing Authority believes his appointment to be in the best interest of the City.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF  
THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:**

**Section 1.** That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

**Section 2.** That the Professional Services Contract be and it is hereby approved in substantially the same form as is found in **Exhibit "A"** to this resolution, and the Mayor is, hereby, authorized to execute the same on behalf of the City of Gulfport.

**Section 3.** That this Resolution shall be in effect immediately upon its passage and enactment according to law, and shall be spread upon the minutes of the Gulfport City Council.

The above and foregoing Resolution, after having been first reduced to writing and read by the Clerk, was introduced by \_\_\_\_\_, seconded by \_\_\_\_\_, and was adopted by the following roll call vote:

**AYES**

**NAYS**

**ABSENT**

**WHEREUPON**, the President declared the motion carried and the Resolution adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

(SEAL)

**ATTEST:**

**ADOPTED:**

\_\_\_\_\_  
**CLERK OF THE COUNCIL**

\_\_\_\_\_  
**PRESIDENT**

The above and foregoing Resolution was submitted to and approved by the Mayor, this  
the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**APPROVED:**

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**MAYOR**

# GILLESPIESMITH LAW FIRM, PLLC

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VIRGIL G. GILLESPIE  
vgg@gillespiesmithlawfirm.com

RICHARD C. SMITH  
richard@gillespiesmithlawfirm.com

DUSTIN E. USELTON  
dustin@gillespiesmithlawfirm.com

February 26, 2014

Angela T. Kuhn  
Court Administrator  
Gulfport Municipal Court  
2218 15<sup>th</sup> Street, Gulfport, MS 39501

*Re: Public Defender Position with Gulfport Municipal Court*

Dear Mrs. Kuhn,

I was pleased to learn of your need for an attorney to serve in the role of Public Defender in Gulfport Municipal Court. With solid experience in practicing criminal law, specifically in Gulfport Municipal Court, I feel that I am prepared to become an immediate contributor to your team.

I was able to serve as a Legal Intern with the prosecutor's office in the summer of 2012, and this experience provides me with valuable knowledge of the interworking of both sides of the court, as I have had a unique opportunity to see situations from both perspectives, both as a prosecutor and a defense attorney.

My strong work ethic and exceptional organization skills, combined with my ability to work well under pressure, would allow me to excel under the large case load and timelines that this job entails. I will be able to step in from the first day and use my skills and abilities to serve as a liaison for the clients that I am assigned to represent.

Attached is my resume for your review. I welcome the opportunity to discuss with you personally my qualifications and how I can best serve the court.

Sincerely,

Dustin E. Uselton, Esq.

# **DUSTIN E. USELTON**

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10369 Sweet Bay Drive  
Gulfport, Mississippi 39503  
Cellular (228) 234-8634  
dustin@gillespiesmithlawfirm.com

## **EDUCATION**

**Mississippi College School of Law**, Jackson, Mississippi  
Doctor of Jurisprudence May 2013

**Mississippi College**, Clinton, Mississippi  
Bachelor of Arts May 2009  
Major: Christian Studies and Philosophy  
Minor: Mathematics

## **EXPERIENCE**

**Associate Attorney**, October 2013-Present  
**GillespieSmith Law Firm, PLLC**, Gulfport, Mississippi  
Practice litigation, primarily in the area of Criminal Law. Interpret and applied laws, court decisions, and other legal evidence in trial preparations. Prepare pleadings, motions, and other documents in preparation for trials, hearings, and other legal proceedings.

**Legal Intern**, January 2013-May 2013  
**First Judicial District Attorney's Office**, Jackson, Mississippi  
Researched law in relation to criminal sentencing statutes and rules of evidence. Observed criminal trials, including a capital murder case. Prepared trial notebooks and other items needed to proceed to trial.

**Legal Intern**, May 2012- August 2012  
**City Prosecutor's Office**, Gulfport, Mississippi  
Researched motions, prepared discovery on a variety of cases, questioned witnesses during trial, and worked on plea agreements with both defendants and defense counsel.

## **REFERENCES**

**Kirk Clark, Esq.**  
Senior Prosecutor  
Gulfport City Prosecutor's Office  
(228) 234-8376

**Rev. Tony Karnes**  
Senior Pastor  
Michael Memorial Baptist Church  
(228) 832-1709

**Virgil Gillespie, Esq.**  
Managing Partner  
GillespieSmith Law Firm, PLLC  
(228) 864-4520

STATE OF MISSISSIPPI

COUNTY OF HARRISON

CITY OF GULFPORT

**PROFESSIONAL LEGAL SERVICES AGREEMENT**

**THIS AGREEMENT FOR PROFESSIONAL LEGAL SERVICES** ("Agreement") entered into and executed in Gulfport, Mississippi on the day and year hereinafter set forth by and between the **CITY OF GULFPORT, MISSISSIPPI** (herein the "City"), having an address of Post Office Box 1780, Gulfport, Mississippi 39502, and **DUSTIN E. USELTON, ESQ.**, having an address of 1901 24<sup>th</sup> Avenue/P.O. Box 850, Gulfport, Mississippi 39501 (herein "UseltonUselton" or the "Attorney") for the purposes and according to the terms, covenants, and conditions hereinafter set forth, to-wit:

**WITNESSETH THAT:**

**WHEREAS**, the City of Gulfport, Mississippi is a municipal corporation organized and existing according to the laws of the State of Mississippi and is governed by its Mayor and City Council ("Governing Authority"); and

**WHEREAS**, under the laws of the State of Mississippi and under certain circumstances, the City of Gulfport provides legal counsel to indigent persons charged with potential criminal offenses; and

**WHEREAS**, the Municipal Court Administrator, pursuant to Miss. Code Ann. § 21-23-7, as amended, has recommended, and the Governing Authority has previously found it in the best interest of the City to retain the services of an appointed Public Defender to represent indigent defendants charged in the Gulfport Municipal Court, under the terms and conditions set forth herein and in accordance with appointment by Municipal Court Judges and any governing legal and ethical rules and responsibilities; and

**WHEREAS**, Uselton is an experienced attorney and Public Defender, licensed by the Mississippi Bar Association (Mississippi Bar No. \_\_\_\_\_), with offices located at 1901 24<sup>th</sup> Avenue, Gulfport, Mississippi 39501, and desires to represent indigent clients and to appear on their behalf in the Gulfport Municipal Court.

**NOW THEREFORE**, for good and valuable consideration as herein provided, Uselton agrees to perform professional legal services according to the following conditions, terms, and provisions, to-wit:

1. **Scope of Work.** The Attorney shall, in a satisfactory and proper manner, under the terms and conditions provided herein, and in accordance with any governing laws and professional rules of conduct, provide legal counsel and representation to assigned indigent or

otherwise eligible defendants charged with qualifying, non-felony criminal violations by the City of Gulfport. The eligibility for this service shall be determined and assigned by the Gulfport Municipal Court/Judicial System and such engagement shall commence upon appointment by the Municipal Court. The Attorney shall represent the aforementioned defendants in a professional manner that conforms to high and ethical standards of the legal profession in the community and in the State of Mississippi. The Attorney shall decline to be involved in any case to which he is appointed as "Public Defender" in which a conflict of interest or ethical problem is known to exist or any case in which the Attorney deems that he is not qualified. The Attorney's representation of indigent defendants under this Agreement shall further at all times comply with the Mississippi Rules of Professional Conduct or any similar code of ethics to which Mississippi attorneys may be subject.

2. **Manner of Service.** Services provided by Attorney pursuant to or in accordance with this Agreement shall be performed in a prompt and competent manner and in accordance with the laws of the State of Mississippi and the United States of America. Services to be provided by the Attorney, insofar as applicable and necessary in any given case, shall include, but not be limited to, counseling, investigation, preparation of pleadings, motions, memoranda, and court papers, attendance and representation at hearings and trials, preparation, submission, and argument involving pre- and post-trial motions, defense pre-sentence reports, and such other services as would normally be provided by competent private counsel. Attorney shall keep sufficient office hours within the corporate limits of the City, including a local telephone number or otherwise toll-free telephone number, so that indigent defendants are not required to travel outside the City limits or incur long distance telephone charges in order to consult with Attorney as necessary in preparation or presentation of their defense.

3. **Compensation.** The City of Gulfport shall pay the Attorney a monthly sum of One Thousand and Eight Hundred and Thirty-Three Dollars and 33/100 (\$1,833.33) for services provided during the Term of this Agreement, which shall constitute payment for services rendered for the preceding month of each payment made. Such monthly payments shall be due to Attorney on or by the last day of the month in which performance commences and on or by the last day of each succeeding month during the term of this Agreement; provided, however, that upon any termination of this Agreement prior to the end of the Term, the final payment, which may be pro-rated if the termination date is not on the last day of a month, shall be paid to Attorney in two (2) equal installments, one-half on or by the last day of the month in which termination is to occur or did occur and one-half on or by the last day of the immediately succeeding month. Attorney agrees to submit an invoice to the City on forms approved by the City for compensation in accordance with the Agreement terms set forth herein or as otherwise required by the City. There shall be no maximum amount of cases identified as eligible; however, the Attorney and the Court Administrator for the Gulfport Municipal Court shall work together to make sure that the Attorney is not overburdened in the number of assigned cases. When the Attorney is appointed by the Court pursuant to this Agreement to represent an individual in a criminal case, Attorney shall not receive any fee or expense for representation of that individual in that case except as provided for under this Agreement. Other than compensation for services as specifically set forth in this Paragraph, no other benefits or compensation shall be owed by City as a result of services performed under this Agreement.

4. **Term of Service.** The term of this Agreement shall be for the term April 8, 2014, and expiring on September 30, 2014, (“Term”) unless sooner terminated or canceled as set forth herein. The term of this Agreement may be extended for an additional period subject to approval by the City’s Governing Authority.

5. **Non-Exclusive Contract.** This is a non-exclusive contract as to each party hereto, and each party retains the right at any time to contract with another attorney or entity, including another governmental entity, where such engagement shall not result in a conflict of interest or other ethical conflict.

6. **Termination.** (a) *For convenience.* Either party may terminate this Agreement at any time for any reason (or no reason) by giving the other party written notice of termination at least thirty (30) days prior to the effective date of termination. Should this Agreement be terminated pursuant to the immediately-preceding provision, the Attorney agrees to complete all assigned cases to final disposition unless such completion would violate the Mississippi Rules of Professional Conduct or prescribed law or the case is re-assigned. In addition, this Agreement terminates automatically and immediately upon the Attorney ceasing to be a member in good standing of the Mississippi Bar Association, whether by suspension, disbarment, or otherwise. The Attorney shall notify the City in writing immediately of any change in standing as a member of the Mississippi Bar Association or any other Bar Association. (b) *For default.* Breach or failure to perform any provision of this Agreement shall be an “event of default.” If the party in breach fails to cure any default within fifteen (15) days from receipt of written notice of an event of default, then this Agreement may be terminated immediately for default by written notice to the breaching party or party in default and in such event, either party may assert any remedies at law or in equity that it/he deems to be entitled for breach of contract.

7. **Waiver; Remedies.** (a) Failure to enforce any provision of this Agreement in which an event of default has occurred shall not constitute a waiver of rights to subsequently enforce this contract and each provision hereof. To the extent allowable by law, and subject to any state and federal law immunities, each party agrees to indemnify the other against any loss or damages resulting from an event of default not cured as provided herein. (b) If any party is required to obtain or utilize the services of an attorney to enforce any provision of this Agreement for failure to cure any default as herein provided, then the party in default shall be liable for the other party’s reasonable attorney’s fees and costs of litigation.

8. **Independent Contractor; Professional Services Contract; Materials, Equipment., and Resources.** (a) Attorney certifies that he shall be licensed, certified, experienced, and qualified and able to perform any and all services for which he accepts engagement under this Agreement, and Attorney agrees to notify City immediately if his license is terminated or suspended or his credentials change so as to limit his professional qualifications, which shall be grounds for cancellation of this Agreement and of any further obligations for payment of unearned fees by the City hereunder. (b) This is a professional services contract in which the Attorney shall at all times be acting as and considered an independent contractor with the City and not an employee of the City. The Attorney shall have no claim under this Agreement or otherwise against the City for wages, salary, vacation pay, sick leave, retirement benefits, Social Security, Workers’ Compensation disability, unemployment insurance benefits, or benefits of any

kind or sort other than the compensation as set forth herein. (c ) The Attorney agrees that he has secured or will secure at his own expense, all persons, employees, equipment, and other resources required to perform the services contemplated and required under this Agreement.

9. **Taxes.** City and the Attorney acknowledge and agree that the Attorney will be solely and completely responsible for any and all taxes due and owing to any governmental entity or agency (local, state and/or federal) on any monies or compensation received by the Attorney from City under this Agreement.

10. **Compliance with Legal Obligations; Communication.** The Attorney agrees that, in rendering services to assigned indigent defendants under this Agreement, he shall comply with all legal requirements of any kind. Attorney shall further comply with all federal, state, and local laws. Attorney shall also make provision for prompt and effective communication with clients in cases undertaken pursuant to this Agreement. Such provision shall ensure that clients are able to have reasonable access to the Attorney by telephone from detention facilities.

11. **Record Retention.** The Attorney represents he will maintain files related to this Agreement, which in the sole professional judgment of the Attorney, he determines are necessary. After the representation ends, or a file is closed, the Attorney will maintain or destroy the files in accordance with any legal and ethical laws, obligations, or requirements. This Agreement does not limit the Attorney's other legal and ethical obligations to preserve client property and retain client files.

12. **Identification of Conflicts of Interest.** Upon assignment of a new client, the Attorney will make reasonable and diligent efforts to obtain and review relevant court documents and other discovery materials to determine if any potential conflicts of interest exist in the case. Record-keeping systems will be maintained which facilitate the early and efficient identification of conflicts of interest.

13. **Insurance; Defense of Claims.** Attorney agrees to carry and maintain professional liability insurance covering all services to be performed pursuant to this Agreement (including errors and omissions coverage) in an amount of not less than \$250,000 per claim and \$1,000,000 per occurrence and to provide to the City a certificate of insurance prior to the commencement date of this Agreement and to notify the City immediately if such insurance is cancelled, suspended, or expires during the term of this Agreement for any reason. Attorney covenants and agrees to indemnify and hold harmless the City and the City's employees, servants, agents, officials, and representatives from and against any loss, damage, costs, charges, expenses, and fees, whether direct or indirect and whether known or unknown, in any way arising out of or by reason of any negligent or intentional act or omission on the part of the Attorney or anyone acting for, on behalf of, or at the direction of the Attorney in the performance or execution of this Agreement or in any way arising out of this Agreement. In case any suit or legal proceedings shall be brought against the City or any of its employees, servants, agents, officials, or representatives at any time on account of or by reason of any negligent or intentional act or omission by the Attorney or anyone acting for, on behalf of, or at the direction of the Attorney, the Attorney hereby covenants and agrees to assume the defense thereof and to defend the same

at the Attorney's own expense and to fully pay for any and all loss, damages, costs, charges, expenses, fees, attorneys' fees and other expenses and any and all judgments that may be incurred by or obtained by or against the City or any of the City's employees, servants, agents, officials, or representatives in such suits or other proceedings or actions.

14. **Confidentiality.** The Attorney agrees to keep confidential and not use or disclose, except in furtherance of the purposes of this representation of indigent defendants, any confidential information that the Attorney may acquire during the term of, and in the course of, or as a result of, his representation of those indigent defendants Attorney is assigned to represent.

15. **Notices.** Official notice to the Attorney shall be to the mailing address identified above unless a change of address is provided to the City in writing. Official notice to the City shall be to the Mayor, City of Gulfport, 2309 15<sup>th</sup> Street, Gulfport, Mississippi 39501 with copies to the City Attorney at the same address. All official notices shall be in writing and served by U. S. Mail or by hand delivery. The point of contact for the City under this Agreement shall be the City Attorney.

16. **Severability.** Should any clause, portion or section of this Agreement be unenforceable or invalid for any reason, City and the Attorney acknowledge and agree that such unenforceability or invalidity shall not affect the enforceability or validity of the remainder of the Agreement. The captions/titles have no effect or meaning other than as headings to identify the paragraphs.

17. **Governing Law.** City and the Attorney acknowledge and agree that this Agreement shall be construed in accordance with the laws of the State of Mississippi.

18. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement of the parties and supersedes and cancels all previous written or oral agreements or representations relating to the subject matter hereof. This Agreement may not be amended, supplemented or modified except by a written document signed by the City and the Attorney.

19. **Successors.** This Agreement shall inure to the benefit of and may be enforced by the City, its successors and assigns, and shall be binding upon the Attorney, its executors, administrators, heirs, and other successors in interest. The Attorney's rights and obligations under this Agreement are not assignable.

20. **Official Approval of Contract.** This Agreement shall take full force and effect only after it is approved by the Governing Authority for the City and signed by the Mayor and also signed by the Attorney.

**WITNESS OUR SIGNATURES** as duly authorized and voluntarily signed on the day and  
year hereinafter stated.

**DUSTIN E. USELTON, Esq.**

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

**CITY OF GULFPORT**

Post Office Box 1780

Gulfport, Mississippi 39502-1780

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_