

Ordinance No. 122724

Council Bill No. 116232

AN ORDINANCE concerning indigent public defense services; authorizing the Director of the Department of Executive Administration to execute indigent public defense contracts with the Associated Counsel for the Accused (ACA), The Defender Association (TDA), and Northwest Defenders Association (NDA) for a period of three years; and ratifying and confirming certain prior acts.

CF No. \_\_\_\_\_

Date Introduced: <u>6-2-08</u>	
Date 1st Referred:	To: (committee) <u>Public Safety, Human Services</u>
Date Re - Referred:	To: (committee) <u>+ Education</u>
Date Re - Referred:	To: (committee)
Date of Final Passage: <u>6-23-08</u>	Full Council Vote: <u>8-0</u>
Date Presented to Mayor: <u>6-24-08</u>	Date Approved: <u>6-25-08</u>
Date Returned to City Clerk: <u>6-25-08</u>	Date Published: <u>4</u> T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_  
Councilmember

## Committee Action:

MSP as amended 3-0-0 TB, BH, NL

6-23-08 Passed 8-0 (Excused: Rasmussen)

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

May 20, 2008

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Director of Executive Administration to execute indigent public defense contracts with three defender agencies to provide services for a period of three years.

In February 2008 the Office of Policy and Management (OPM) released a request for proposals (RFP) that was reviewed by our RFP Review Panel as called for in Ordinance 122602. The Panel considered four proposals and awarded contracts to three defender agencies at the end of March. The primary agency is the Associated Counsel for the Accused (ACA); the secondary agency is The Defender Association (TDA); and the tertiary agency is Northwest Defenders Association (NDA).

In accordance with state law, each contract was reviewed by Foster Pepper, the City's outside counsel. Review by outside counsel is appropriate in order for the City to avoid any potential or perceived conflict of interest that might result from a review by the City's Law Department as set forth in RCW 10.101.040.

Approval of the contracts with ACA, TDA, and NDA will ensure that any qualifying person, regardless of ability to pay, will continue to have the availability of legal representation in order to secure equal justice under the law. Thank you for your consideration of this legislation. Should you have questions, please contact Linda Taylor-Manning at 206-684-8376.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a printed name and title.

GREG NICKELS  
Mayor of Seattle

cc: ~~Honorable Members of the Seattle City Council~~  
P. Stephen DiJulio, Foster Pepper PLLC

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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ORDINANCE 122724

AN ORDINANCE concerning indigent public defense services; authorizing the Director of the Department of Executive Administration to execute indigent public defense contracts with the Associated Counsel for the Accused (ACA), The Defender Association (TDA), and Northwest Defenders Association (NDA) for a period of three years; and ratifying and confirming certain prior acts.

WHEREAS, it is a constitutional requirement, a requirement of Chapter 10.101 RCW and a public purpose that each person charged with a crime punishable by incarceration or involved in certain other proceedings that may result in loss of liberty or loss of fundamental rights, be provided with effective legal representation in order to ensure equal justice under law without regard to ability to pay; and

WHEREAS, it is the intention of The City of Seattle (the "City"), consistent with Chapter 10.101 RCW and other applicable law, to make such services available in an efficient manner that provides effective representation at reasonable cost to the City; and

WHEREAS, the provision of indigent public defense services by nonprofit service providers helps ensure a client focus by those entrusted with representing indigent persons; and

WHEREAS, the City Council and Mayor desire Seattle's public defense program to be representative of the community it serves; and

WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the Washington State Bar Association Standards for Public Defense Services (2007); and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

WHEREAS, in 2004, the City Council passed Ordinance 121501, stating that public defense contracts shall require caseloads no higher than 380 cases per-attorney per-year; and



1 WHEREAS, an August 2007 City of Seattle audit found that the Office of Policy and  
2 Management's (OPM's) method of determining attorney caseload could conflict with the  
3 City's caseload standard; and further found that in 2005 and 2006, the current primary  
4 public defense agency's caseload exceeded the standard established in Ordinance 121501;  
and

5 WHEREAS, overall, this 2007 City Audit contained 36 recommendations for improving the  
6 City's public defense program; and

7 WHEREAS, in September 2007, the City Council passed Ordinance 122493, specifically stating  
8 that public defense contracts shall require caseloads that not exceed 380 total "assigned"  
cases per-attorney per-year; and

9 WHEREAS, the City Council adopted Ordinance 122602 on December 17, 2007, establishing a  
10 process for selecting indigent public defense providers; creating a Request for Proposal  
11 (RFP) review panel; setting out standards for those indigent public defense services;  
12 establishing contractual requirements for agreements between the City and public defense  
service providers; requesting that the Seattle City Auditor audit compliance; and  
repealing Ordinance 122493 and Ordinance 121501; and

13 WHEREAS, the Executive has complied with the directives established in Ordinance 122602;  
14 and

15 WHEREAS, in accordance with RCW 10.101.040 the City had outside counsel, Foster Pepper  
16 PLLC, review these contracts;

17  
18 **NOW, THEREFORE,**

19  
20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21 Section 1. The Director of the Department of Executive Administration is hereby  
22 authorized to execute the contract substantially in the form of Exhibit 1 for primary public  
23 defense services negotiated with the Associated Counsel for the Accused (ACA) for the period of  
24 July 1, 2008 through June 30, 2011.  
25  
26  
27



1 Section 2. The Director of the Department of Executive Administration is hereby  
2 authorized to execute the contract substantially in the form of Exhibit 2 for secondary public  
3 defense services negotiated with The Defender Association (TDA) for the period of July 1, 2008  
4 through June 30, 2011.

5 Section 3. The Director of the Department of Executive Administration is hereby  
6 authorized to execute the contract substantially in the form of Exhibit 3 for tertiary public  
7 defense services negotiated with the Northwest Defenders Association (NDA) for the period of  
8 July 1, 2008 through June 30, 2011.

9 Section 4. Any act consistent with the authority of this ordinance and taken after passage  
10 but prior to the effective date of this ordinance is hereby ratified and confirmed.  
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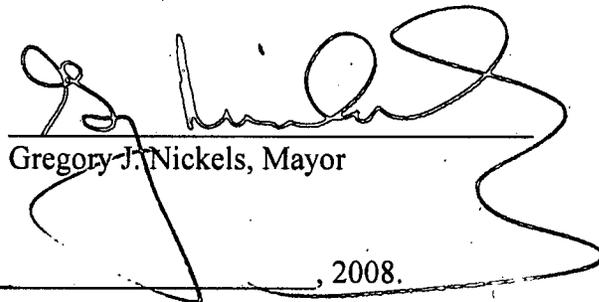


1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

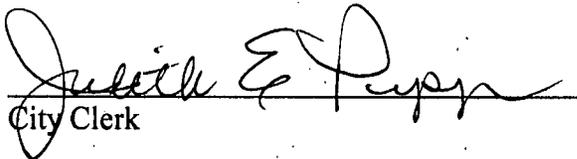
4 Passed by the City Council the 23<sup>rd</sup> day of June, 2008, and  
5 signed by me in open session in authentication of its passage this  
6 23<sup>rd</sup> day of June, 2008.

8   
9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council

11 Approved by me this 25<sup>th</sup> day of June, 2008.

13   
14 \_\_\_\_\_  
15 Gregory J. Nickels, Mayor

16 Filed by me this 25<sup>th</sup> day of June, 2008.

18   
19 \_\_\_\_\_  
20 City Clerk

21 (Seal)

22 EXHIBITS:

- 23 Exhibit 1: Public Defense Services, Primary Defender, Associated Counsel for the Accused  
24 Exhibit 2: Public Defense Services, Secondary Defender, The Defender Association  
25 Exhibit 3: Public Defense Services, Third Defender, Northwest Defenders Association



**City of Seattle**

**Public Defense Services**  
*Primary Defender*  
*Associated Counsel for the Accused*

**2008 – 2011 Contract for Services**

**July 1, 2008**  
**Version 8.0**  
**Exhibit 1**



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**2008 - 2011 CONTRACT FOR**

**CITY OF SEATTLE PUBLIC DEFENSE SERVICES – PRIMARY DEFENDER**

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and Associated Counsel for the Accused (the "Agency"), an independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

**Section 1: DEFINITIONS**

- A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the Agency.
1. Provisional case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. Final case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. Case Credit: Case credit is a unit of work. Credit per case is awarded as follows.
1. One case is equivalent to one case credit



2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A), 2 of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.



2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. Indigent Defendant: An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. Mayor: Mayor is the Mayor of Seattle or designee.
- P. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.



- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender and the Agency under this Contract is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- U. Working Day: Any day other than (a) a Saturday or Sunday, or (b) an official city holiday.

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan. The City will fund half of the attorneys at salary of “Public Defense Attorney”, Range 2, Step 2, and half of the attorneys at salary of “Public Defense Attorney”, Range 4, Step 1.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 (F) as well as the practice standards required by Section 5 (A).
- C. Caseload Limits:
  1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.



- G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants. The Agency shall provide a .5 FTE paraprofessional staff person for every 1.0 FTE caseload attorney. Paraprofessional staff include social workers, investigators, and paralegals.
- H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as follows:

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
  1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.



4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.
- D. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- E. Duties and Responsibilities of the Agency: In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:
  1. Hire all Agency personnel;
  2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
  3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
  4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;
  5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
  6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;



7. The Agency shall provide legal advice twenty-four (24) hours each day, seven days per week via pager (or comparable technology) access for critical stage advice to defendants during the course of police investigations and/or arrests.
8. The Agency will provide caseload attorneys as well as attorneys and staff to handle the calendars set forth in Sections 9 – 12 below and consistent with Attachment 2. Calendar and calendar schedules are subject to change during the duration of the Contract. Increases or decreases in service levels will be subject to further negotiations between the City and the Agency.
9. The Agency will staff the In-custody arraignment calendar. Services provided at this calendar shall include representation of all otherwise unrepresented defendants.
10. The Agency will staff the Out-of-custody intake (arraignment) calendar including Driving with License Suspended 3 (DWLS3) cases, and Domestic Violence arraignments.
11. The Agency will staff the Seattle Mental Health Court (“MHC”) calendar.
  - a. The MHC model uses an individualized, defendant-based, long-term, problem-solving approach in which the assigned public defender remains the Attorney of Record for as long as the defendant participates in MHC. This commitment includes keeping abreast of the defendant’s participation in and compliance with the MHC Conditions of Release or Sentence, appearing with the defendant at scheduled reviews or other hearings, and being assigned to the defendant for any new cases in the MHC filed with Seattle Municipal Court.
  - b. The Agency and the attorneys assigned to MHC shall embrace the MHC goals, philosophy and principles, including working collaboratively with the MHC team, provided that such collaborative approach is not in conflict with counsel’s duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.
  - c. The Agency shall assign specific attorneys who are experienced in working with mentally ill misdemeanants to the MHC for a period of two (2) years to assure consistency of experienced staff. The attorneys assigned to MHC shall continue the assignment on cases of MHC defendants through the length of jurisdiction (up to 2 years) and appear for all hearings, including review hearings, status hearings, etc.
  - d. The Agency and the attorneys assigned to MHC shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the MHC *prior to* arraignment and without undue delay in the schedule for arraignment. This shall include MHC referrals from the weekend calendar.
  - e. The Agency and the attorneys assigned to MHC shall address all hearings as defined in RCW 10.77 for MHC defendants.



- f. The Agency and the attorneys assigned to MHC shall participate as required by SMC for future and on-going evaluation efforts and in MHC program development processes as scheduled.
12. The Agency will staff the Seattle Community Court calendar. The Seattle Community Court serves "chronic public system users" – offenders who repeatedly commit low-level crimes, fail to comply with sanctions, fail to appear for Court, and who use jail days when they could be more effectively rehabilitated through alternative strategies.
- a. The Agency and the attorneys assigned to Community Court shall embrace the Community Court goals, philosophy and principles, including working collaboratively with the Community Court team, provided that such collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.
  - b. The Agency shall assign specific attorneys who are experienced in working with chronic homeless, alcoholic and mentally ill misdemeanants who voluntarily opt-in to the Community Court for a period of, usually, up to 90 days. The attorneys assigned to Community Court shall continue the assignment on cases of Community Court defendants through the length of jurisdiction and appear for all hearings, including but not limited to review hearings and status hearings.
  - c. The Agency will provide defense services at in-custody and out-of-custody arraignment (intake) hearings and will be available to talk and meet with Community Court defendants who are in-custody in the King County Jail Facilities.
  - d. The Agency and the attorneys assigned to Community Court shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the Community Court at arraignment and without undue delay in the schedule for arraignment. This shall include Community Court referrals from the weekend calendar.
  - e. The Agency and the attorneys assigned to Community Court shall participate as required by SMC for future and on-going evaluation efforts and in Community Court program development processes as scheduled.
13. Provide for representation on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup.



- F. Duties and Responsibilities of Agency Attorneys: In order to perform their duties under this Contract, staff attorneys of the Agency shall:
1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.
  2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court and related infractions, writs, and RALJ appeals. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
  3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

## **Section 5: PERFORMANCE AND QUALIFICATIONS**

### **A. Practice Standards and Records**

1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.
3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case



in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.

5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.
6. The Agency attorney of record shall attempt to make contact with all assigned clients within five (5) working days from a case assignment and meet them in person no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) working days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.
8. Discovery shall be reviewed within five (5) working days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.
9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by each supervisor documenting the complaints. Subject to the Rules of Professional Conduct the Agency will provide the Contract Administrator with a



summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct the Agency will also provide the Contract Administrator with a summary of cases transferred to the Secondary Agency for conflict that was due to the breakdown in attorney-client communications.

12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.

**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.
4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

**C. Evaluations:**

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.



## **Section 6: PAYMENT**

- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$1,672,000. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated by OPM yearly to show the 2009, 2010 and 2011 charges.

The amount of payment to the Agency (“Payment”) for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payments as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor’s Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. Payment shall be made by the City to the Agency upon the City’s receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The Agency shall provide the City with the invoice and documentation twenty (20) days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) day of the following month.
- C. The Contract Payment identified in Section 6 (A) includes amount to staff the arraignment, intake, Community Court, and Seattle Mental Health Court calendars. This cost will be updated annually as described in Section 6 (A) and as shown in Attachment 2.
- D. The total Payment under this Contract shall be based on the completed case credits with an estimate of 2,090 case credits in the second half of 2008. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Contract Administrator. The cost per case and estimated number of cases will be updated annually as described in Section 6 A and as shown in Attachment 2.
- E. Contract Payment includes the Agency’s provision of legal advice 24 hours a day 7 days a week via pager (or comparable technology) access and response by phone promptly to any accused adult who is in the investigation phase or recently charged with a misdemeanor offense within the jurisdiction of the City. This cost will be updated annually as described in Section 6 (A) and as shown in Attachment 2.



- F. Completed cases shall be closed and submitted to the Administrator for payment within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator for payment.
1. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within twelve (12) months of the case closure.
  2. If the warrant is quashed or served and new hearing dates are set more than twelve (12) months after the case was closed, it will be treated as a new case and may be submitted for payment upon case completion.
- G. The Agency will receive no additional payment for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.
- H. No payment shall be made for work on cases which are subsequently identified as conflicts with the exception of cases in which the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be considered if a minimum of two (2) hours of attorney work has been performed.
- I. The Agency will be paid four (4) case credits to defend appeals in King County Superior Court and three (3) case credits to defend a writ. Two (2) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.
- J. In the event the appeal or writ is withdrawn, the City will not pay the remaining case credits.
- K. In the event that one probationary hearing handles probationary matters related to more than one case, only one probationary credit (.6 credit) will be paid to the Agency.
- L. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Contract Section 11.

## **Section 7: REPORTING REQUIREMENTS**

The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case.

These reports must contain:

- Defendant's name
- Cause number(s)
- Most serious criminal charge filed
- Number of charges filed in each case



- If it was a probation review hearing
- Disposition of most serious charge
- Bench Trial, Jury Trial, Plea or Dismissal
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

The Agency must provide the Contract Administrator the reports described below.

<b>Report Title</b>	<b>Due Date</b>
Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports, including calendar coverage	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Contract.

### **Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this



Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

### **Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

### **Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.
  1. The City will notify the Agency and the Board President in writing of the nature of the breach;
  2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;
  3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;



4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
  5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
  6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.
- B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

### **Section 11: TERMINATION**

- A. The City may terminate this Contract in whole or in part upon ten (10) working days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:
1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
  2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
  3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates the Contract under this Section, the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) working days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor by written appeal filed within ten (10) days of the Contract Administrator's decision, to the Office of the Mayor. The Contract shall remain in full force and effect until a decision is made and communicated to the Agency by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate following the tenth (10) working day from the date of the final decision of and notice by the Mayor, unless a later termination date is specified in the Mayor's notice.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of



similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.

- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.
- D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, in addition to such other remedies available to the City, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.



- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual, written agreement of the parties.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

**Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.



- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

**Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency's used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
  - 1. Terminate the Contract;
  - 2. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; and



3. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

**Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. **General:** The City encourages the use of Women and Minority Business Enterprises (“WMBEs”) as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- C. **Non-Discrimination:** The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. **Record-Keeping:** The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct,



including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.

### **Section 16: OTHER LEGAL REQUIREMENTS**

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its



obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

- E. Fair Contracting Practices Ordinance: The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

### **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

### **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:

- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 17 constitutes the Agency's waiver of immunity under Title 51 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

### **Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.



- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14. RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11 (A).

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.

## **Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.

Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.



The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

## **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the



City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

## **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

## **Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

## **Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance.



As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

### **Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

### **Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.



## **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

## **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.

## **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

## **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.



- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

### **Section 31: MISCELLANEOUS PROVISIONS**

- A. Amendments: Modifications shall not be effective unless in writing and signed by an authorized representative of each of the parties hereto. Contract modifications relating to indigent defense services; schedules and court calendars; attorney assignments and staffing; reporting and records; and, such other matters regarding the administration of the Contract which can be made within existing appropriation authority and consistent with public defense standards is delegated to the Office of Policy and Management through the Department of Executive Administration. Contract modification requiring additional appropriations to the Indigent Defense Services Budget not authorized in the scope of work or otherwise provided by the Contract shall require appropriate legislative authorization.
- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.



- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.



K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745

If to the Agency:

Donald Madsen, Managing Director  
Associated Counsel for the Accused  
110 Prefontaine Place S. Suite 200  
Seattle, WA 98104

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**PRIMARY DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
  
Donald Madsen  
\_\_\_\_\_  
Managing Director,  
Associated Counsel for the Accused

By \_\_\_\_\_  
Signature Date  
  
Fred Podesta  
\_\_\_\_\_  
Director,  
Department of Executive Administration

**City of Seattle Business License Number: 29393001**  
**Washington State Unified Business Identifier Number (UBI): 600 144 320**  
**Federal Tax ID Number: 91-1431100**



**ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN**

<b>RANGE</b>	<b>2008 Kenny Salary Table (2008 COLA RATE - 2.38%)</b>						
	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>	<b>STEP 6</b>	<b>STEP 7</b>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

**TOTAL COSTS**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Staffing Level:**

Total Attorneys	18.05	
		11.00 FTE for caseload
		2.00 FTE for Mental Health Court
		3.35 FTE for In-Custody Arraignment
		1.10 FTE for Out of Custody Intake
		0.60 FTE for Community Court
Attorney Supervisors	2.00 FTE	
Social Workers	2.00 FTE	
Investigators	3.00 FTE	
Paralegal	1.00 FTE	
Word Processor	1.00 FTE	
Receptionist	1.00 FTE	
Docket Clerk	1.00 FTE	
Office Tech I	0.28 FTE	
Director	0.28 FTE	
Assistant Director	0.28 FTE	
Office Manager	0.28 FTE	
Controller	0.28 FTE	
HR Manager	0.28 FTE	
Staff Accountant	0.28 FTE	
IT Manager	0.28 FTE	

*This percentage represents the portion that SMC would comprise of the FTE Attorney workforce*

31.27

**SALARY**

Attorneys:

		Annual Salaries	Jul-Dec 2008 Costs
	9.03 FTE @ PD2-2	\$580,650	\$290,325
	9.03 FTE @ PD4-1	\$734,382	\$367,191
Attorney Supervisors	2.00 FTE @ SPD2-4	\$216,934	\$108,467
Social Workers	2.00 FTE @ SCW-05	\$117,598	\$58,799
Investigators	3.00 FTE @ INV-05	\$176,397	\$88,199
Paralegal	1.00 FTE @ PLG-05	\$44,151	\$22,076
Word Processor	1.00 FTE @ WPT-05	\$36,894	\$18,447
Receptionist	1.00 FTE @ OA2-05	\$31,863	\$15,932
Docket Clerk	1.00 FTE @ OT1-09	\$36,894	\$18,447
Office Tech I	0.28 FTE @ OT1-04	\$9,074	\$4,537
Director	0.28 FTE @ SPD4-1	\$33,225	\$16,613
Assistant Director	0.28 FTE @ SPD3-7	\$32,026	\$16,013
Office Manager	0.28 FTE @ LSM-10	\$15,540	\$7,770
Controller	0.28 FTE @ CTR-09	\$25,613	\$12,806
HR Manager	0.28 FTE @ HRM-04	\$23,154	\$11,577
Staff Accountant	0.28 FTE @ ACT-06	\$12,787	\$6,394
IT Manager	0.28 FTE @ ITM-02	\$18,775	\$9,388
Beeper Service		\$10,950	\$5,475
	<b>31.27 TOTAL</b>		

**TOTAL SALARY EXPENSE** **\$2,156,908** **\$1,078,454**

**TAXES**

FICA	\$165,003	\$82,501.75
State Unemployment	\$6,971	\$3,485.65
Workman's Comp	\$11,135	\$5,567.53

**TOTAL TAX EXPENSE** **\$183,110** **\$91,554.93**



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

		Annual Costs	Jul-Dec 2008 Costs
<b>BENEFITS</b>			
	Retirement	\$43,138	\$21,569.08
	Medical Insurance	\$445,696	\$222,848.20
	Dental Insurance	\$72,796	\$36,398.08
	Vision Insurance	\$11,388	\$5,694.24
	Life/AD&D	\$1,388	\$694.19
	Disability Insurance	\$11,561	\$5,780.51
	Licenses/Certificates	\$12,150	\$6,075.18
	Professional Insurance	\$21,181	\$10,590.66
	Memberships/Dues	\$3,838	\$1,918.90
	Employee Relations	\$1,586	\$792.85
<b>TOTAL BENEFIT EXPENSE</b>		<b>\$624,724</b>	<b>\$312,361.89</b>
<b>TRAINING</b>		<b>\$12,206</b>	<b>\$6,103.07</b>
<b>OPERATING</b>		<b>\$92,719</b>	<b>\$46,359.35</b>
<b>OVERHEAD</b>			
	Space Rental/Insurance	\$209,320	
<b>TOTAL OVERHEAD EXPENSE</b>		<b>\$209,320</b>	<b>\$104,660.24</b>
<b>CAPITAL</b>			
	Capital Purchases & Leases	\$19,506	
<b>TOTAL CAPITAL EXPENSE</b>		<b>\$19,506</b>	<b>\$9,753.05</b>
<b>CASE RELATED</b>		<b>\$3,203</b>	<b>\$1,601.58</b>
<b>TRAVEL</b>			
	Mileage/Parking/Transportation	\$26,352	
<b>TOTAL TRAVEL EXPENSE</b>		<b>\$26,352</b>	<b>\$13,176.14</b>
<b>OTHER EXPENSE</b>		<b>\$14,733</b>	<b>\$7,366.48</b>
<b>TOTAL</b>		<b>\$3,342,782</b>	<b>\$1,671,390.94</b>



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

**FIXED COSTS (As a part of total costs.)**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Proposed Staffing Level:**

<b>Total Attorneys</b>	7.05		
		FTE for caseload	
		2.00 FTE for Mental Health Court	
		3.35 FTE for In-Custody Arraignment	
		1.10 FTE for Out of Custody Intake	
		0.60 FTE for Community Court	
<b>Attorney Supervisors</b>	1.00 FTE		
<b>Social Workers</b>	2.00 FTE		
<b>Investigators</b>	FTE		
<b>Paralegal</b>	1.00 FTE		
<b>Word Processor</b>	FTE		
<b>Receptionist</b>	1.00 FTE		
<b>Docket Clerk</b>	1.00 FTE		
<b>Office Tech I</b>	0.28 FTE	} This percentage represents the portion that SMC would comprise of the FTE Attorney workforce	
<b>Director</b>	0.28 FTE		
<b>Assistant Director</b>	0.28 FTE		
<b>Office Manager</b>	0.28 FTE		
<b>Controller</b>	0.28 FTE		
<b>HR Manager</b>	0.28 FTE		
<b>Staff Accountant</b>	0.28 FTE		
<b>IT Manager</b>	0.28 FTE		
	<b>15.27</b>		

**SALARY**

**Attorneys:**

			<b>Annual Salaries</b>	<b>Jul-Dec 2008 Costs</b>
	3.53 FTE	@ PD2-2	\$226,791	\$113,396
	3.53 FTE	@ PD4-1	\$286,836	\$143,418
<b>Attorney Supervisors</b>	1.00 FTE	@ SPD2-4	\$108,467	\$54,234
<b>Social Workers</b>	2.00 FTE	@ SCW-05	\$117,598	\$58,799
<b>Investigators</b>	0.00 FTE	@ INV-05	\$0	\$0
<b>Paralegal</b>	1.00 FTE	@ PLG-05	\$44,151	\$22,076
<b>Word Processor</b>	0.00 FTE	@ WPT-05	\$0	\$0
<b>Receptionist</b>	1.00 FTE	@ OA2-05	\$31,863	\$15,932
<b>Docket Clerk</b>	1.00 FTE	@ OT1-09	\$36,894	\$18,447
<b>Office Tech I</b>	0.28 FTE	@ OT1-04	\$9,074	\$4,537
<b>Director</b>	0.28 FTE	@ SPD4-1	\$33,225	\$16,613
<b>Assistant Director</b>	0.28 FTE	@ SPD3-7	\$32,026	\$16,013
<b>Office Manager</b>	0.28 FTE	@ LSM-10	\$15,540	\$7,770
<b>Controller</b>	0.28 FTE	@ CTR-09	\$25,613	\$12,806
<b>HR Manager</b>	0.28 FTE	@ HRM-04	\$23,154	\$11,577
<b>Staff Accountant</b>	0.28 FTE	@ ACT-06	\$12,787	\$6,394
<b>IT Manager</b>	0.28 FTE	@ ITM-02	\$18,775	\$9,388
<b>Beeper Service</b>			\$10,950	\$5,475
	<b>15.27 TOTAL</b>			
<b>TOTAL SALARY EXPENSE</b>			<b>\$1,033,745</b>	<b>\$516,873</b>



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

**FIXED COSTS (As a part of total costs.)**

		Annual Salaries	Jul-Dec 2008 Costs
<b>TAXES</b>			
FICA	\$79,082		\$39,541
State Unemployment	\$3,404		\$1,702
Workman's Comp	\$5,438		\$2,719
<b>TOTAL TAX EXPENSE</b>		<b>\$87,923</b>	<b>\$43,962</b>
<b>BENEFITS</b>			
Retirement	\$20,675		\$10,337
Medical Insurance	\$217,645		\$108,822
Dental Insurance	\$35,548		\$17,774
Vision Insurance	\$5,561		\$2,781
Life/AD&D	\$678		\$339
Disability Insurance	\$5,541		\$2,770
Licenses/Certificates	\$4,746		\$2,373
Professional Insurance	\$8,273		\$4,137
Memberships/Dues	\$1,499		\$749
Employee Relations	\$619		\$310
<b>TOTAL BENEFIT EXPENSE</b>		<b>\$300,785</b>	<b>\$150,392</b>
<b>TRAINING</b>		<b>\$4,767</b>	<b>\$2,384</b>
<b>OPERATING</b>		<b>\$36,214</b>	<b>\$18,107</b>
<b>OVERHEAD</b>			
Space Rental/Insurance	\$81,757		
<b>TOTAL OVERHEAD EXPENSE</b>		<b>\$81,757</b>	<b>\$40,878</b>
<b>CAPITAL</b>			
Capital Purchases & Leases	\$7,619		
<b>TOTAL CAPITAL EXPENSE</b>		<b>\$7,619</b>	<b>\$3,809</b>
<b>CASE RELATED</b>		<b>\$1,251</b>	<b>\$626</b>
<b>TRAVEL</b>			
Mileage/Parking/Transportation	\$10,293		
<b>TOTAL TRAVEL EXPENSE</b>		<b>\$10,293</b>	<b>\$5,146</b>
<b>OTHER EXPENSE</b>		<b>\$5,754</b>	<b>\$2,877</b>
<b>TOTAL</b>		<b><u>\$1,570,109</u></b>	<b><u>\$785,055</u></b>
<b>Cost per Month</b>		<b>\$130,842</b>	



**ATTACHMENT 2**

**Associated Counsel for the Accused  
PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

**COST PER CASE (Variable costs as a part of total costs.)**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Proposed Staffing Level:**

<b>Total Attorneys</b>	11.00	
		11.00 FTE for caseload FTE for Mental Health Court FTE for In-Custody Arraignment FTE for Out of Custody Intake FTE for Community Court
<b>Attorney Supervisors</b>	1.00 FTE	
<b>Social Workers</b>	FTE	
<b>Investigators</b>	3.00 FTE	
<b>Paralegal</b>	FTE	
<b>Word Processor</b>	1.00 FTE	
<b>Receptionist</b>	FTE	
<b>Docket Clerk</b>	FTE	
<b>Office Tech I</b>	FTE	
<b>Director</b>	FTE	
<b>Assistant Director</b>	FTE	
<b>Office Manager</b>	FTE	
<b>Controller</b>	FTE	
<b>HR Manager</b>	FTE	
<b>Staff Accountant</b>	FTE	
<b>IT Manager</b>	FTE	

*This percentage represents the portion that SMC would comprise of the FTE Attorney workforce*

**16.00**

**SALARY**

**Attorneys:**

			<b>Annual Salaries</b>	<b>Jul-Dec 2008 Costs</b>
	5.50 FTE @ PD2-2		\$353,859	\$176,930
	5.50 FTE @ PD4-1		\$447,546	\$223,773
<b>Attorney Supervisors</b>	1.00 FTE @ SPD2-4		\$108,467	\$54,234
<b>Social Workers</b>	0.00 FTE @ SCW-05		\$0	\$0
<b>Investigators</b>	3.00 FTE @ INV-05		\$176,397	\$88,199
<b>Paralegal</b>	0.00 FTE @ PLG-05		\$0	\$0
<b>Word Processor</b>	1.00 FTE @ WPT-05		\$36,894	\$18,447
<b>Receptionist</b>	0.00 FTE @ OA2-05		\$0	\$0
<b>Docket Clerk</b>	0.00 FTE @ OT1-09		\$0	\$0
<b>Office Tech I</b>	0.00 FTE @ OT1-04		\$0	\$0
<b>Director</b>	0.00 FTE @ SPD4-1		\$0	\$0
<b>Assistant Director</b>	0.00 FTE @ SPD3-7		\$0	\$0
<b>Office Manager</b>	0.00 FTE @ LSM-10		\$0	\$0
<b>Controller</b>	0.00 FTE @ CTR-09		\$0	\$0
<b>HR Manager</b>	0.00 FTE @ HRM-04		\$0	\$0
<b>Staff Accountant</b>	0.00 FTE @ ACT-06		\$0	\$0
<b>IT Manager</b>	0.00 FTE @ ITM-02		\$0	\$0
<b>Beeper Service</b>				
	<b>16.00 TOTAL</b>			

**TOTAL SALARY EXPENSE**

**\$1,123,163**

**\$561,582**



**ATTACHMENT 2**

**Associated Counsel for the Accused  
PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

**COST PER CASE (Variable costs as a part of total costs.)**

		Annual Salaries	Jul-Dec 2008 Costs
<b>TAXES</b>			
	FICA	\$85,922	\$42,961
	State Unemployment	\$3,567	\$1,784
	Workman's Comp	\$5,698	\$2,849
<b>TOTAL TAX EXPENSE</b>		<b>\$95,187</b>	<b>\$47,593</b>
<b>BENEFITS</b>			
	Retirement	\$22,463	\$11,232
	Medical Insurance	\$228,052	\$114,026
	Dental Insurance	\$37,248	\$18,624
	Vision Insurance	\$5,827	\$2,914
	Life/AD&D	\$710	\$355
	Disability Insurance	\$6,020	\$3,010
	Licenses/Certificates	\$7,405	\$3,702
	Professional Insurance	\$12,908	\$6,454
	Memberships/Dues	\$2,339	\$1,169
	Employee Relations	\$966	\$483
<b>TOTAL BENEFIT EXPENSE</b>		<b>\$323,939</b>	<b>\$161,969</b>
<b>TRAINING</b>		<b>\$7,439</b>	<b>\$3,719</b>
<b>OPERATING</b>		<b>\$56,504</b>	<b>\$28,252</b>
<b>OVERHEAD</b>			
	Space Rental/Insurance	\$127,564	
<b>TOTAL OVERHEAD EXPENSE</b>		<b>\$127,564</b>	<b>\$63,782</b>
<b>CAPITAL</b>			
	Capital Purchases & Leases	\$11,887	
<b>TOTAL CAPITAL EXPENSE</b>		<b>\$11,887</b>	<b>\$5,944</b>
<b>CASE RELATED</b>		<b>\$1,952</b>	<b>\$976</b>
<b>TRAVEL</b>			
	Mileage/Parking/Transportation	\$16,060	
<b>TOTAL TRAVEL EXPENSE</b>		<b>\$16,060</b>	<b>\$8,030</b>
<b>OTHER EXPENSE</b>		<b>\$8,979</b>	<b>\$4,489</b>
<b>TOTAL</b>		<b>\$1,772,673</b>	<b>\$886,336</b>
Estimated Number of Case Credits		4,180	2,090
Costs per Case Credit		\$424.08	\$424.08



**City of Seattle**

**Public Defense Services**  
*Secondary Defender*  
*The Defender Association*

**2008 – 2011 Contract for Services**

**July 1, 2008**  
**Version 6.0**  
**Exhibit 2**



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**2008 - 2011 CONTRACT FOR**

**CITY OF SEATTLE PUBLIC DEFENSE SERVICES – SECONDARY DEFENDER**

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and The Defender Association (the "Agency"), an independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

**Section 1: DEFINITIONS**

- A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the Agency.
1. Provisional case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. Final case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. Case Credit: Case credit is a unit of work. Credit per case is awarded as follows.
1. One case is equivalent to one case credit



2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A) (2) of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.



2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. Indigent Defendant: An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. Mayor: Mayor is the Mayor of Seattle or designee.
- P. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.



- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender and the Agency under this Contract is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- U. Working Day: Any day other than (a) Saturday or Sunday, or (b) an official City holiday.

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan. The City will fund half of the attorneys at salary of “Public Defense Attorney, “ Range 2, Step 2, and half of the attorneys at salary of “Public Defense Attorney,” Range 4, Step 1.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 G as well as the practice standards required by Section 5 A.
- C. Caseload Limits:
  1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.



G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants. The Agency shall provide a .5 FTE paraprofessional staff person for every 1.0 FTE caseload attorney. Paraprofessional staff include social workers, investigators, and paralegals.

H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as follows:

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.



4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.
- D. Case Assignment: In each year of the contract, the City will guarantee funding for seven (7) attorneys for a total of 2,660 credits. If the Agency's actual workload exceeds the estimated 2,660 credits by more than 5%, the City will pay for additional staffing based on the 380 case credit standard. All numbers are on an annual basis. The Agency will represent defendants in cases where the Primary Defender has a conflict and is unable to provide representation. The Agency will also handle other cases.
- E. Immediate Case Assignment: The Agency shall accept case assignments from the Court if there is an immediate need for representation at a hearing and the Primary Defender is unable to represent the client due to a conflict. Immediate case assignments include situations where the Agency must report to a bench warrant or arraignment hearing because the Primary Defender is unable to represent the client due to a conflict.
- F. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- G. Duties and Responsibilities of the Agency: In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:
  1. Hire all Agency personnel;
  2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
  3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
  4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;



5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
  6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;
  7. Participate on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup.
- H. Duties and Responsibilities of Agency Attorneys: In order to perform their duties under this Contract, staff attorneys of the Agency shall:
1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.
  2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court and related infractions, writs and RALJ appeals. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
  3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

## **Section 5: PERFORMANCE AND QUALIFICATIONS**

### **A. Practice Standards and Records**

1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.



3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.
5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.
6. The Agency attorney of record shall attempt to make contact in person with all assigned clients within five (5) working days from a case assignment and meet them in person no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) working days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.



8. Discovery shall be reviewed within five (5) working days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.
9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by each supervisor documenting the complaints. Subject to the Rules of Professional Conduct, the Agency will provide the Contract Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct, the Agency will also provide the Contract Administrator with a summary of cases transferred to another agency or assigned counsel for conflict that was due to the breakdown in attorney-client communications.

12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.

**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.



4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

C. Evaluations:

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

**Section 6: PAYMENT**

- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$639,298. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated by OPM yearly to show the 2009, 2010 and 2011 charges.

The amount of payment to the Agency ("Payment") for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payment as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor's Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.



- B. Payment shall be made by the City to the Agency upon the City's receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The Agency shall provide the City with the invoice and documentation twenty (20) days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) day of the following month.
- C. The total Payment under this Contract shall be based on the completed case credits with an estimate of 1,330 case credits in the second half of 2008. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Contract Administrator. The cost per case and estimated number of cases will be updated annually as described in Section 6 A and as shown in Attachment 2.
- D. Completed cases shall be closed and submitted to the Administrator for payment within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator for payment.
1. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within twelve (12) months of the case closure.
  2. If the warrant is quashed or served and new hearing dates are set more than twelve (12) months after the case was closed, it will be treated as a new case and may be submitted for payment upon case completion.
- E. The Agency will receive no additional payment for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.
- F. No payment shall be made for work on cases which are subsequently identified as conflicts with the exception of cases in which the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be considered if a minimum of two (2) hours of attorney work has been performed.
- G. The Agency will be paid four (4) case credits to defend appeals in King County Superior Court and three (3) case credits to defend a writ. Two (2) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.
- H. In the event the appeal or writ is withdrawn, the City will not pay the remaining case credits.
- I. In the event that one probationary hearing handles probationary matters related to more than one case, only one probationary credit (.6 credit) will be paid to the Agency.
- J. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or



completed. This option is in addition to and not in lieu of the City's right to termination as provided in Contract Section 11.

**Section 7: REPORTING REQUIREMENTS**

The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case.

These reports must contain:

- Defendant's name
- Cause number(s)
- Most serious criminal charge filed
- Number of charges filed in each case
- If it was a probation review hearing
- Disposition of most serious charge
- Defendant's jail custody status at assignment
- Bench Trial, Jury Trial, Plea or Dismissal
- Whether an appeal was filed
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

The Agency must provide the Contract Administrator the reports described below.

<b>Report Title</b>	<b>Due Date</b>
Open and Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.



The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Contract.

### **Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment provided by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

### **Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

### **Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.

1. The City will notify the Agency and the Board President in writing of the nature of the breach;



2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;
3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;
4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.

B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

### **Section 11: TERMINATION**

- A. The City may terminate this Contract in whole or in part upon ten (10) working days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:
1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
  2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
  3. The duties, obligations, or services herein become impossible, illegal, or not feasible.



Before the City terminates the Contract under this Section, , the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) working days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor by written appeal filed within ten (10) days of the Contract Administrator's decision, to the Office of the Mayor. The Contract shall remain in full force and effect until a decision is made and communicated to the Agency by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate following the tenth (10) working day from the date of the final decision of and notice by the Mayor, unless a later termination date is specified in the Mayor's notice.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.

- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.



- D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, in addition to such other remedies available to the City, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual, written agreement of the parties.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

**Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's



records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.

- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.



### **Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency's used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
1. Terminate the Contract;
  2. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; and
  3. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

### **Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. General: The City encourages the use of Women and Minority Business Enterprises ("WMBEs") as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.



- C. Non-Discrimination: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.

### **Section 16: OTHER LEGAL REQUIREMENTS**

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.



- B. Licenses and Similar Authorizations: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. Fair Contracting Practices Ordinance: The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

### **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

### **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:

- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.



- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 17 constitutes the Agency's waiver of immunity under Title 51 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

**Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11.A.

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.

**Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.

Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or



related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract



audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

### **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

### **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.



### **Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

### **Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance. As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

### **Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

### **Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.



All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

#### **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.

#### **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.



### **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

### **Section 31: MISCELLANEOUS PROVISIONS**

- A. **Amendments:** Modifications shall not be effective unless in writing and signed by an authorized representative of each of the parties hereto. Contract modifications relating to indigent defense services; schedules and court calendars; attorney assignments and staffing; reporting and records; and, such other matters regarding the administration of the Contract which can be made within existing appropriation authority and consistent with public defense standards is delegated to the Office of Policy and Management through the Department of Executive Administration. Contract modification requiring additional appropriations to the Indigent Defense Services Budget not authorized in the scope of work or otherwise provided by the Contract shall require appropriate legislative authorization.



- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby; and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.



K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745

If to the Agency:

Floris Mikkelsen, Director  
The Defender Association  
810 Third Avenue, Suite 800  
Seattle, WA 98104

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**SECONDARY DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
  
Floris Mikkelsen  
Director,  
The Defender Association

By \_\_\_\_\_  
Signature Date  
  
Fred Podesta  
Director,  
Department of Executive Administration

**SECONDARY DEFENDER AGENCY**

By \_\_\_\_\_  
Signature Date  
  
Bruce Erickson  
Board Chair,  
The Defender Association

**City of Seattle Business License Number: 164483**  
**Washington State Unified Business Identifier Number (UBI): 601 141 397**  
**Federal Tax ID Number: 91-0852323**



**ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN**

**2008 Kenny Salary Table  
(2008 COLA RATE - 2.38%)**

<b>RANGE</b>	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>	<b>STEP 6</b>	<b>STEP 7</b>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280



**ATTACHMENT 2**  
**The Defender Association**  
**SECONDARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

<b>PERSONNEL</b>	<b>(FTE)</b>	<b>TOTAL SALARIES</b>	<b>TOTAL BENEFITS</b>	<b>TOTAL ANNUAL COSTS</b>	<b>JULY - DEC 2008 COSTS</b>
Attorney to cover cases	7.00	522,032	112,065	634,097	317,049
Attorney for immediate case assignment	0.30	25,095	5,046	30,141	15,070
Paralegal	1.00	58,096	12,989	71,085	35,543
Investigator(s)	2.50	128,691	29,653	158,344	79,172
Social Worker(s)	0.60	33,230	7,673	40,903	20,452
Office Assistant	0.50	17,250	5,349	22,599	11,299
Docket Clerk	0.75	33,039	8,714	41,753	20,877
Word Processor	0.30	9,945	3,161	13,106	6,553
Direct Legal Admin	0.10	11,358	1,879	13,236	6,618
Direct Supervision	0.75	80,545	14,510	95,055	47,527
<b>TOTAL PERSONNEL COSTS</b>	<b>13.80</b>	<b>919,281</b>	<b>201,038</b>	<b>1,120,319</b>	<b>560,160</b>

**OPERATIONS & MAINTENANCE**

TELEPHONE				1,400	700
DOCKETING				1,500	750
GEN SUPPLIES				6,000	3,000
R & M EQMT				2,355	1,177
COMP SUPP				963	482
POSTAGE				1,066	533
PHOTOCOP				856	428
LIBRARY				3,871	1,936
SUBSCRIP				300	150
BANK CHARGES				64	32
EQMT RENTAL				1,070	535
MINOR EQ PURC				1,607	804
MILEAGE				1,100	550
PARKING & FLEXCAR				5,459	2,730
CASE PREP				700	350
CLIENT EXP				400	200
<b>TOTAL OFFICE</b>				<b>28,712</b>	<b>14,356</b>

**OTHER COSTS**

ADMINISTRATION	0.2	18,475	3,345	21,820	10,910
BOARD EXP				107	54
PROF SVC-LEG				535	268
PROF SVC-ACCTG				4,174	2,087
RECRUITING				500	250
DEPRECIATION				3,750	1,875
<b>TOTAL OTHER COSTS</b>				<b>30,887</b>	<b>15,443</b>

**OVERHEAD COSTS**

SPACE RENTAL				82,355	41,178
BDG REP/MAINT				910	455
OFFICE INSU				1,070	535
UNEMPLOYMENT INSURANCE				3,746	1,873
PROF INS				4,923	2,462
MEMB & DUES				4,388	2,194
TRAINING				1,284	642
<b>TOTAL OVERHEAD COSTS</b>				<b>98,677</b>	<b>49,338</b>

**TOTAL BUDGET PROPOSAL**

**1,278,595      639,297**

Estimated Number of Case Credits  
Costs per Case Credit

2660      1,330  
\$480.67      \$480.67



**City of Seattle**

**Public Defense Services**

*Third Defender*

*Northwest Defenders Association*

**2008 – 2011 Contract for Services**

**July 1, 2008**

**Version 6.0**

**Exhibit 3**



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**2008 - 2011 CONTRACT FOR**  
**CITY OF SEATTLE PUBLIC DEFENSE SERVICES – THIRD DEFENDER**

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and Northwest Defenders Association (the "Agency"), and independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

**Section 1: DEFINITIONS**

- A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the Agency.
1. Provisional case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. Final case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. Case Credit: Case credit is a unit of work. Credit per case is awarded as follows.
1. One case is equivalent to one case credit



2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A) (2) of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.



2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review is set at sentencing and occurs within forty-five (45) days of disposition, and a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence, dispositional continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. Indigent Defendant: An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. Mayor: Mayor is the Mayor of Seattle or designee.
- P. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.



- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender and the Agency under this Contract is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- U. Working Day: Any day other than (a) a Saturday or Sunday, or (b) an official City holiday.

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 G as well as the practice standards required by Section 5 A.
- C. Caseload Limits:
  - 1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  - 2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.
- G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants.



H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as follows:

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
  - 1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States; State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  - 2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  - 3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.
  - 4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent



Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.

- D. Case Assignment: In each year of the contract, the City will guarantee funding equivalent to one (1) attorney to represent defendants where both the Primary and Secondary Defenders have conflicts; and to administer the assignment of cases to assigned counsel. The caseload in 2008 is estimated to be up to 130 cases or approximately one-third of an FTE. The Agency will have approximately two-thirds of an FTE for the administration of assigned counsel cases. The staffing levels will be reviewed annually. The Third Defender funding includes administrative, overhead and supply costs. All numbers are on an annual basis.
- E. Case Management of Assigned Counsel: The Agency, under the direction and oversight of Municipal Court, will be responsible for the Assigned Counsel program for conflict cases. SMC and the Agency will collaborate on developing Assigned Counsel protocols. The Agency will make the referral to private counsel when all three contracted defender agencies have a conflict.

The Court will retain the lead in the selection of Assigned Counsel attorneys, conferring with representatives of public defense agencies, King County Bar and others with criminal justice experience. The City's Office of Policy and Management (OPM) will continue to review the Assigned Counsel billings and approve payment. The Third Defender will:

1. In coordination with SMC, establish an Oversight Panel composed of representatives or designates from SMC, the Agency, the King County Bar, and the federal defender.
  2. In coordination with SMC and the Oversight Panel, develop Assigned Counsel protocols.
  3. Advertise and recruit assigned counsel attorneys subject to the protocols noted above.
  4. Provide an orientation to SMC for attorneys on the Assigned Counsel panel.
  5. Assign cases to Assigned Counsel panel attorneys.
  6. Develop a performance review system and work with SMC and the Oversight Panel to assess the performance of panel attorneys.
  7. Provide regular reports on assignments to SMC and OPM.
- F. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the



City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.

G. Duties and Responsibilities of the Agency: In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:

1. Hire all Agency personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;
5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;
7. Participate on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup. This paragraph does not apply to the Agency oversight of Assigned Counsel.

H. Duties and Responsibilities of Agency Attorneys: In order to perform their duties under this Contract, staff attorneys of the Agency shall:

1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.



2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court and related infractions, writs, and RALJ appeals. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

## **Section 5: PERFORMANCE AND QUALIFICATIONS**

### **A. Practice Standards and Records**

1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.
3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.
5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing



within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.

6. The Agency attorney of record shall attempt to make contact with all assigned clients within five (5) working days from a case assignment and meet them in person no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) working days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.
8. Discovery shall be reviewed within five (5) working days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.
9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by the supervisor documenting complaints. Subject to the Rules of Professional Conduct, the Agency will provide the Contract Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct, the Agency will also provide the Contract Administrator with a summary of cases transferred to another agency or assigned counsel for conflict that was due to the breakdown in attorney-client communications.

12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro



bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.

**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.
4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

**C. Evaluations:**

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

**Section 6: PAYMENT**

- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$90,423. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated by OPM yearly to show the 2009, 2010 and 2011 charges.



The amount of payment to the Agency ("Payment") for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payments as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor's Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. Payment shall be made by the City to the Agency upon the City's receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The Agency shall provide the City with the invoice and documentation twenty (20) days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) day of the following month.
- C. The City will pay the Agency as described in Section 6 A and as shown in Attachment 2. The costs described in Attachment 2 will be pro-rated in a fixed monthly Payment.
- D. Completed cases shall be closed and submitted to the Administrator within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator.
- E. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Section 11 of this Contract.

## **Section 7: REPORTING REQUIREMENTS**

### **A. Agency Case Reporting:**

- 1. The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case. These reports must contain:
  - Defendant's name
  - Cause number(s)
  - Most serious criminal charge filed



- Number of charges filed in each case
- If it was a probation review hearing
- Disposition of most serious charge
- Defendant's jail custody status at assignment
- Bench Trial, Jury Trial, Plea or Dismissal
- Whether an appeal was filed
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

2. The Agency must provide the Contract Administrator the reports described below for Agency cases.

<b>Agency Report Title</b>	<b>Due Date</b>
Open and Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an Agency attorney providing services under this Contract.

**B. Assigned Counsel Reporting:**

1. The Agency will provide the City with monthly electronic reports in spreadsheet format on all Assigned cases. These reports must contain:

- Cause number(s)
- Defendant's name



- Defendant's date of birth
- Most serious criminal charge filed
- Number of charges filed in each case
- Defendant's jail custody status at assignment
- Date received by Agency
- Date assigned
- Next hearing date
- Reason for Conflict
- Assigned Attorney
- (Comments)

Assigned Counsel Report Title	Due Date
Assigned Counsel Case Reports including attorney assignment	Monthly (or as requested by OPM)
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

**Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment provided by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

**Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.



## **Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.
1. The City will notify the Agency and the Board President in writing of the nature of the breach;
  2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;
  3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;
  4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
  5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
  6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.
- B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.



## **Section 11: TERMINATION**

A. The City may terminate this Contract in whole or in part upon ten (10) working days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:

1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates the Contract under this section, the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) working days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor by written appeal filed within ten (10) days of the Contract Administrator's decision, to the Office of the Mayor. The Contract shall remain in full force and effect until a decision is made and communicated to the Agency by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate following the tenth (10) working day from the date of the final decision of and notice by the Mayor, unless a later termination date is specified in the Mayor's notice.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.



- In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.
- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.
  - D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
  - E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, in addition to such other remedies available to the City, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.
  - F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual, written agreement of the parties.
  - G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
  - H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

## **Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory,



mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.

- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.

- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.



- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

**Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits (“equal benefits”) available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City’s request, the Agency shall provide complete information and verification of the Agency’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency’s used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
  - 1. Terminate the Contract;
  - 2. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; and
  - 3. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

**Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. General: The City encourages the use of Women and Minority Business Enterprises (“WMBEs”) as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of a Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or



quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- C. Non-Discrimination: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.



## **Section 16: OTHER LEGAL REQUIREMENTS**

- A. **General Requirement**: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.
- B. **Licenses and Similar Authorizations**: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. **Use of Recycled Content Paper**: Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. **Americans with Disabilities Act**: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. **Fair Contracting Practices Ordinance**: The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

## **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.



## **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:

- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 17 constitutes the Agency's waiver of immunity under Title 51 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

## **Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11.A.

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent



Certified Public Accountant, in a manner consistent with generally accepted auditing standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.

**Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.

Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public



Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

#### **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

#### **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by



reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

**Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

**Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance. As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

**Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

**Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created



or produced separate from this Contract or was preëxisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preëxisting prior to commencement of the Work. To the extent that preëxisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preëxisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

#### **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.



## **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

## **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

## **Section 31: MISCELLANEOUS PROVISIONS**

- A. **Amendments:** Modifications shall not be effective unless in writing and signed by an authorized representative of each of the parties hereto. Contract modifications relating to indigent defense services; schedules and court calendars; attorney assignments and staffing; reporting and records; and, such other matters regarding the administration of the Contract which can be made within existing appropriation authority and consistent



with public defense standards is delegated to the Office of Policy and Management through the Department of Executive Administration. Contract modification requiring additional appropriations to the Indigent Defense Services Budget not authorized in the scope of work or otherwise provided by the Contract shall require appropriate legislative authorization.

- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.



J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.

K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745

If to the Agency:

Eileen Farley, Executive Director  
Northwest Defenders Association  
1111 Third Avenue, Suite 200  
Seattle, WA 98101

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**THIRD DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
  
Eileen Farley  
Executive Director,  
Northwest Defenders Association

By \_\_\_\_\_  
Signature Date  
  
Fred Podesta  
Director,  
Department of Executive Administration

**THIRD DEFENDER AGENCY**

By \_\_\_\_\_  
Signature Date  
  
Jeffrey P. Robinson  
President, Board of Directors,  
Northwest Defenders Association

**City of Seattle Business License Number: 91678**  
**Washington State Unified Business Identifier Number (UBI): 601 041 479 000**  
**Federal Tax ID Number: 91-1392873**



**ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN**

<i>2008 Kenny Salary Table</i> (2008 COLA RATE - 2.38%)							
<i>RANGE</i>	<i>STEP 1</i>	<i>STEP 2</i>	<i>STEP 3</i>	<i>STEP 4</i>	<i>STEP 5</i>	<i>STEP 6</i>	<i>STEP 7</i>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280



**ATTACHMENT 2**  
**Northwest Defenders Association**  
**THIRD DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

Personnel	Number (FTE)	Total Salaries	Total Benefits*	Total Cost	July - Dec 2008 Costs
Senior Attorney (assume 100 credits & oversight)	1	92,615.00	13,030.00	105,645.00	52,822.50
Paralegals	0.5	23,162.00	4,756.00	27,918.00	13,959.00
Investigators	0.065	3,388.00	698.00	4,086.00	2,043.00
Social Workers	0.065	3,449.00	704.00	4,153.00	2,076.50
Clerical Staff	0.1	2,619.00	762.00	3,381.00	1,690.50
Direct Supervision	0.1	9,442.00	1,413.00	10,855.00	5,427.50
Other Personnel Costs		-	-	-	-
<b>Sub-Total Personnel Costs</b>	<b>1.83</b>	<b>134,675.00</b>	<b>21,363.00</b>	<b>156,038.00</b>	<b>78,019.00</b>

**O&M Costs**

7510 · Space Rental				7,814.77	3,907.39
9501 · Prof Services (IT & Acctg)				1,530.00	765.00
6500 · Prof Dues & Insurance (WDA, NLADA, Malpractice)				2,035.03	1,017.52
7050 · Library				1,011.57	505.79
7000 · Supplies				1,995.61	997.81
8020 · Copier Lease				1,137.87	568.94
7012 · Telecommunications				592.16	296.08
8500 · Zipcar				456.65	228.33
7021 · File Storage Rental				571.46	285.73
6999 · Continuing Education/Training				815.97	407.99
7085 · Messenger				1,260.00	630.00
9000 · Case Expense				233.66	116.83
9500 · Other				20.00	10.00
<b>Sub-Total O&amp;M Costs</b>				<b>19,474.75</b>	<b>9,737.38</b>

**Other Costs**

Contract close out				3,670.25	1,835.13
<b>Sub-Total Other Costs</b>				<b>3,670.25</b>	<b>1,835.13</b>

**Overhead**

Administration @9%				1,662.35	831.18
<b>Sub-Total Overhead Costs</b>				<b>1,662.35</b>	<b>831.18</b>

**Total All Costs**

**180,845.35    90,422.68**

\*Benefits includes FICA, L&I, Unemployment taxes, Health Benefits, Metro Flexpass, and WSBA License fees.



## FISCAL NOTE FOR NON-CAPITAL PROJECTS

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Office of Policy & Management	Linda Taylor-Manning 684-8376	Julien Loh 615-0870

**Legislation Title:**

AN ORDINANCE concerning indigent public defense services; authorizing the Director of the Department of Executive Administration to execute indigent public defense contracts with the Associated Counsel for the Accused (ACA), The Defender Association (TDA), and Northwest Defenders Association (NDA) for a period of three years; and ratifying and confirming certain prior acts.

- **Summary of the Legislation:** *This legislation will authorize the Director of the Department of Executive Administration to execute three-year public defense contracts with three non-profit indigent public defender agencies.*
- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable): With the passage of Ordinance 122602, the Office of Policy and Management (OPM) began a new process to solicit proposals for indigent public defense services for contracts which expire June 30, 2008. In February 2008, the Office of Policy and Management (OPM) released a request for proposals (RFP) that was reviewed by a RFP Review Panel as called for in Ordinance 122602. The panel considered four proposals and selected three defender agencies at the end of March. The primary agency is the Associated Counsel for the Accused (ACA); the secondary agency is The Defender Association (TDA); and the tertiary agency is Northwest Defenders Association (NDA). OPM negotiated the contracts attached to the ordinance with each agency. The final contracts were reviewed by the law firm of Foster Pepper PLLC and Office of the City Auditor.*
- *Please check one of the following:*

**This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

**This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

**Appropriations:** *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*



Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
<b>TOTAL</b>				

\*See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:** \$5,085,509 is included in the Adopted 2008 Criminal Justice Contract Services Department budget through the Indigent Defense Services Budget Control Level (BCL) to pay for these contracts as well as fund private attorneys when the contracted defender agencies have a conflict of interest and cannot accept the case.

The appropriation for Indigent Defense Services in the 2007 Adopted Budget was \$4,849,113. The increase for the 2008 Adopted Budget reflects an inflationary cost of approximately 5%. The 2009 anticipated appropriation also assumes an inflationary cost of approximately 5%. The 5% increase each year is to cover increased costs for attorney salaries (which are based on the King County Kenny Salary Plan) as well as non-salary costs which are tied to CPI-W. We follow the Kenny Plan to maintain salary parity among prosecutors and the defender agencies. In adding a third defender agency, no budget add was needed. The current budget is allocated among the three agencies. It is anticipated that current appropriations will cover the costs of the three contracts and be fully expended.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table. **Not applicable.**

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
<b>TOTAL</b>				

Notes: N/A

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:** This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
<b>TOTAL</b>							



\* 2009 positions and FTE are total 2009 position changes resulting from this legislation, not incremental changes. Therefore, under 2009, please be sure to include any continuing positions from 2008.

**Notes:** It is not anticipated that the addition of a third agency will impact Public Defense Contract Management to warrant additional position authority.

- **Do positions sunset in the future?** (If yes, identify sunset date):

**Spending/Cash Flow:** This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:**

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.) **Indigent public defense services are a constitutional requirement and a requirement of Chapter 10.101 RCW. The current contracts expire June 30, 2008. Not implementing this legislation will mean a conflict with the regulatory requirements noted.**
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.) **Indigent public defense services are a constitutional requirement and a requirement of Chapter 10.101 RCW. The current contracts expire June 30, 2008. There are no alternatives to this legislation.**
- **Is the legislation subject to public hearing requirements:** (If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.) **No.**
- **Other Issues** (including long-term implications of the legislation):

**Please list attachments to the fiscal note below:** N/A.





1 WHEREAS, an August 2007 City of Seattle audit found that the Office of Policy and  
2 Management's (OPM's) method of determining attorney caseload could conflict with the  
3 City's caseload standard; and further found that in 2005 and 2006, the current primary  
4 public defense agency's caseload exceeded the standard established in Ordinance 121501;  
and

5 WHEREAS, overall, this 2007 City Audit contained 36 recommendations for improving the  
6 City's public defense program; and

7 WHEREAS, in September 2007, the City Council passed Ordinance 122493, specifically stating  
8 that public defense contracts shall require caseloads that not exceed 380 total "assigned"  
cases per-attorney per-year; and

9 WHEREAS, the City Council adopted Ordinance 122602 on December 17, 2007, establishing a  
10 process for selecting indigent public defense providers; creating a Request for Proposal  
11 (RFP) review panel; setting out standards for those indigent public defense services;  
12 establishing contractual requirements for agreements between the City and public defense  
service providers; requesting that the Seattle City Auditor audit compliance; and  
13 repealing Ordinance 122493 and Ordinance 121501; and

14 WHEREAS, the Executive has complied with the directives established in Ordinance 122602;  
and

15 WHEREAS, in accordance with RCW 10.101.040 the City had outside counsel, Foster Pepper  
16 PLLC, review these contracts;

17  
18 **NOW, THEREFORE,**

19  
20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21 Section 1. The Director of the Department of Executive Administration is hereby  
22 authorized to execute the contract substantially in the form of Exhibit 1 for primary public  
23 defense services negotiated with the Associated Counsel for the Accused (ACA) for the period of  
24 July 1, 2008 through June 30, 2011.  
25

1           Section 2. The Director of the Department of Executive Administration is hereby  
2 authorized to execute the contract substantially in the form of Exhibit 2 for secondary public  
3 defense services negotiated with The Defender Association (TDA) for the period of July 1, 2008  
4 through June 30, 2011.

5           Section 3. The Director of the Department of Executive Administration is hereby  
6 authorized to execute the contract substantially in the form of Exhibit 3 for tertiary public  
7 defense services negotiated with the Northwest Defenders Association (NDA) for the period of  
8 July 1, 2008 through June 30, 2011.

9           Section 4. Any act consistent with the authority and prior to the effective date of this  
10 ordinance is hereby ratified and confirmed.  
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1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2008, and  
5 signed by me in open session in authentication of its passage this  
6 \_\_\_\_ day of \_\_\_\_\_, 2008.  
7

8  
9  
10 \_\_\_\_\_  
11 President \_\_\_\_\_ of the City Council

12 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2008.

13  
14 \_\_\_\_\_  
15 Gregory J. Nickels, Mayor

16 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2008.

17  
18  
19 \_\_\_\_\_  
20 City Clerk

21 (Seal)

22 **ATTACHMENTS:**

- 23 Exhibit 1: Contract with ACA  
24 Exhibit 2: Contract with TDA  
25 Exhibit 3: Contract with NDA



**City of Seattle**

**Public Defense Services: *Primary  
Defender***

**2008 – 2011 Contract for Services**

**July 1, 2008  
Version 7.0  
Exhibit 1**





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## 2008 - 2011 CONTRACT FOR

### CITY OF SEATTLE PUBLIC DEFENSE SERVICES – PRIMARY DEFENDER

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and Associated Counsel for the Accused (the "Agency"), an independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

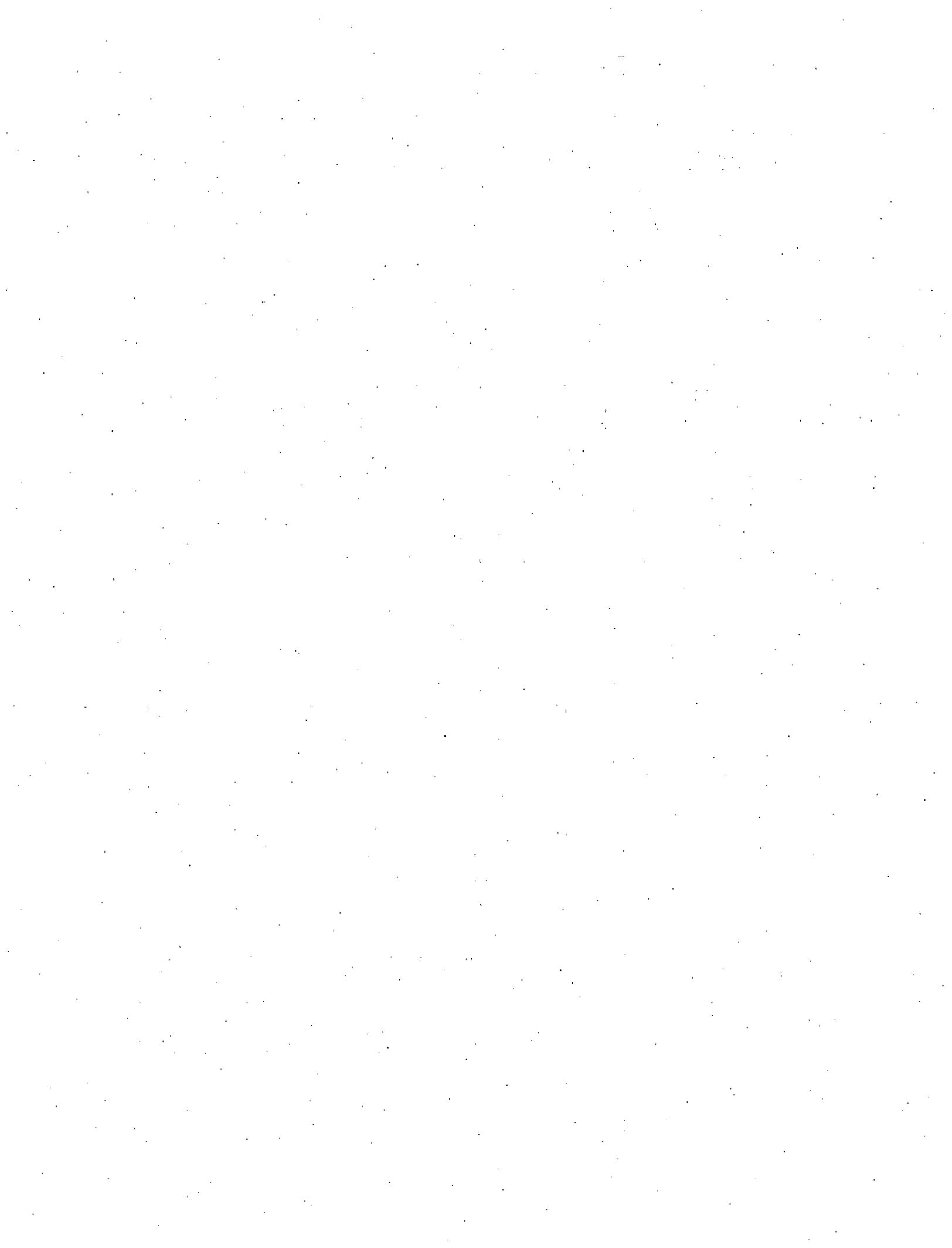
WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

#### Section 1: DEFINITIONS

- A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the Agency.
1. Provisional case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. Final case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. Case Credit: Case credit is a unit of work. Credit per case is awarded as follows.
1. One case is equivalent to one case credit





2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A), 2 of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.





2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. **Criminal Case Disposition:** Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- L. **Discovery:** Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. **Legal Service:** Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. **Indigent Defendant:** An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. **Mayor:** Mayor is the Mayor of Seattle or designee.
- P. **Misdemeanor Practice Area:**
1. **Misdemeanor Case:** Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. **Misdemeanor Appeal:** A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. **Misdemeanor Writ:** A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.

- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender and the Agency under this Contract is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan. The City will fund half of the attorneys at salary of “Public Defense Attorney”, Range 2, Step 2, and half of the attorneys at salary of “Public Defense Attorney”, Range 4, Step 1.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 (F) as well as the practice standards required by Section 5 (A).
- C. Caseload Limits:
  - 1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  - 2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.



G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants. The Agency shall provide a .5 FTE paraprofessional staff person for every 1.0 FTE caseload attorney. Paraprofessional staff include social workers, investigators, and paralegals.

H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as described in the RFP and the Response to the RFP which are attached to and made a part of this Contract.

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney





to a client; or any other statements and materials privileged from disclosure in a court of law.

4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.
- D. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- E. Duties and Responsibilities of the Agency: In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:
1. Hire all Agency personnel;
  2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
  3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
  4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;
  5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
  6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the



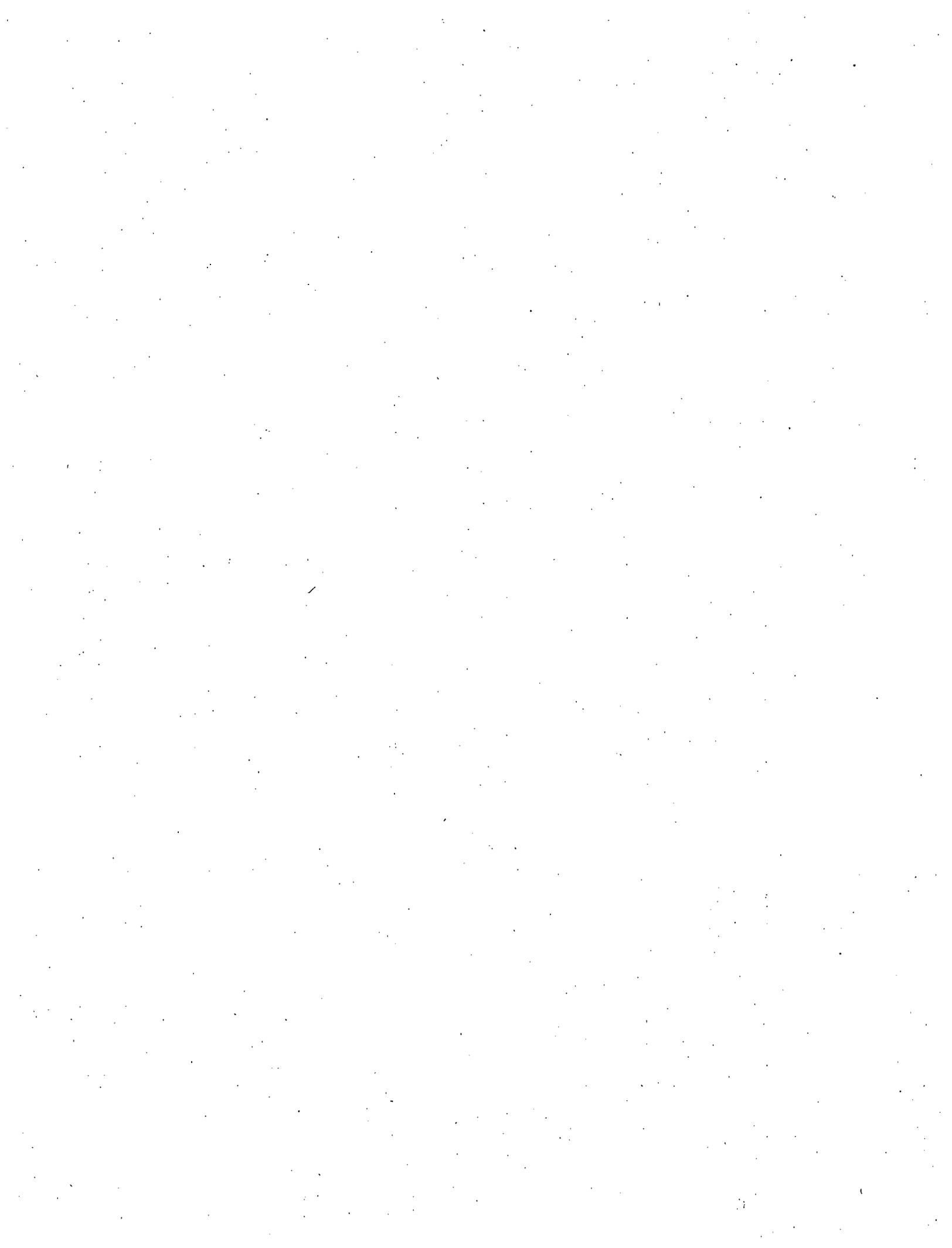


terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;

7. The Agency shall provide legal advice twenty-four (24) hours each day, seven days per week via pager (or comparable technology) access for critical stage advice to defendants during the course of police investigations and/or arrests.
8. The Agency will provide caseload attorneys as well as attorneys and staff to handle the calendars set forth in Sections 9 – 12 below and consistent with Attachment 2. Calendar and calendar schedules are subject to change during the duration of the Contract. Increases or decreases in service levels will be subject to further negotiations between the City and the Agency.
9. The Agency will staff the In-custody arraignment calendar. Services provided at this calendar shall include representation of all otherwise unrepresented defendants.
10. The Agency will staff the Out-of-custody intake (arraignment) calendar including Driving with License Suspended 3 (DWLS3) cases, and Domestic Violence arraignments.
11. The Agency will staff the Seattle Mental Health Court ("MHC") calendar.
  - a. The MHC model uses an individualized, defendant-based, long-term, problem-solving approach in which the assigned public defender remains the Attorney of Record for as long as the defendant participates in MHC. This commitment includes keeping abreast of the defendant's participation in and compliance with the MHC Conditions of Release or Sentence, appearing with the defendant at scheduled reviews or other hearings, and being assigned to the defendant for any new cases in the MHC filed with Seattle Municipal Court.
  - b. The Agency and the attorneys assigned to MHC shall embrace the MHC goals, philosophy and principles, including working collaboratively with the MHC team, provided that such collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.
  - c. The Agency shall assign specific attorneys who are experienced in working with mentally ill misdemeanants to the MHC for a period of two (2) years to assure consistency of experienced staff. The attorneys assigned to MHC shall continue the assignment on cases of MHC defendants through the length of jurisdiction (up to 2 years) and appear for all hearings, including review hearings, status hearings, etc.
  - d. The Agency and the attorneys assigned to MHC shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the MHC *prior to* arraignment and without



- undue delay in the schedule for arraignment. This shall include MHC referrals from the weekend calendar.
- e. The Agency and the attorneys assigned to MHC shall address all hearings as defined in RCW 10.77 for MHC defendants.
  - f. The Agency and the attorneys assigned to MHC shall participate as required by SMC for future and on-going evaluation efforts and in MHC program development processes as scheduled.
12. The Agency will staff the Seattle Community Court calendar. The Seattle Community Court serves "chronic public system users" – offenders who repeatedly commit low-level crimes, fail to comply with sanctions, fail to appear for Court, and who use jail days when they could be more effectively rehabilitated through alternative strategies.
- a. The Agency and the attorneys assigned to Community Court shall embrace the Community Court goals, philosophy and principles, including working collaboratively with the Community Court team, provided that such collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.
  - b. The Agency shall assign specific attorneys who are experienced in working with chronic homeless, alcoholic and mentally ill misdemeanants who voluntarily opt-in to the Community Court for a period of, usually, up to 90 days. The attorneys assigned to Community Court shall continue the assignment on cases of Community Court defendants through the length of jurisdiction and appear for all hearings, including but not limited to review hearings and status hearings.
  - c. The Agency will provide defense services at in-custody and out-of-custody arraignment (intake) hearings and will be available to talk and meet with Community Court defendants who are in-custody in the King County Jail Facilities.
  - d. The Agency and the attorneys assigned to Community Court shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the Community Court at arraignment and without undue delay in the schedule for arraignment. This shall include Community Court referrals from the weekend calendar.
  - e. The Agency and the attorneys assigned to Community Court shall participate as required by SMC for future and on-going evaluation efforts and in Community Court program development processes as scheduled.
13. Provide for representation on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and



Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup.

- F. Duties and Responsibilities of Agency Attorneys: In order to perform their duties under this Contract, staff attorneys of the Agency shall:
1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.
  2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
  3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

## **Section 5: PERFORMANCE AND QUALIFICATIONS**

### **A. Practice Standards and Records**

1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.
3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.



- ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.
  5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.
  6. The Agency attorney of record shall make contact with all assigned clients within five (5) working days from a case assignment and no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
  7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) business days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.
  8. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.
  9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
  10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
  11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3)





working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by each supervisor documenting the complaints. Subject to the Rules of Professional Conduct the Agency will provide the Contract Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct the Agency will also provide the Contract Administrator with a summary of cases transferred to the Secondary Agency for conflict that was due to the breakdown in attorney-client communications.

12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.

**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.
4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

**C. Evaluations:**

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently

comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

## **Section 6: PAYMENT**

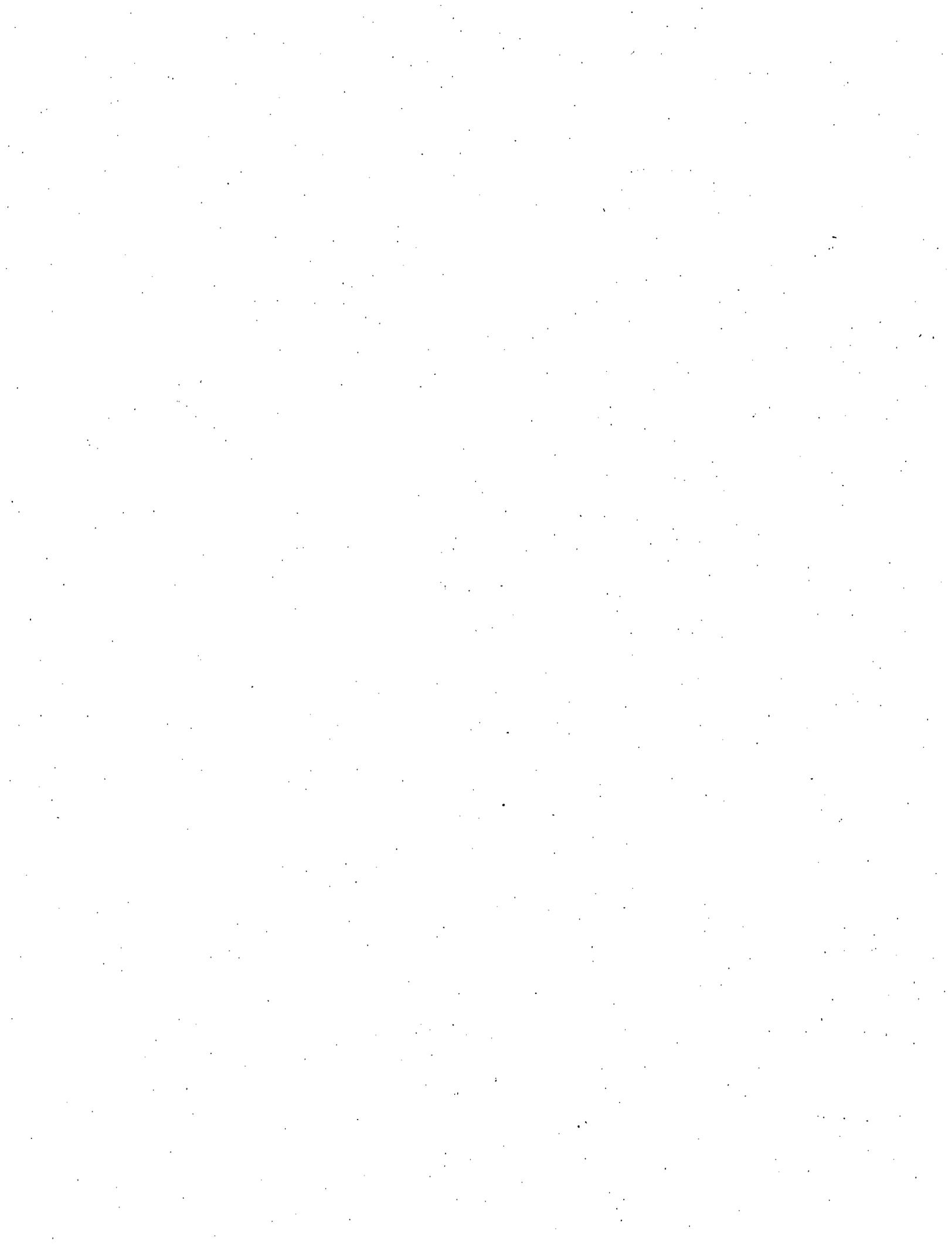
- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$1,672,000. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated yearly to show the 2009, 2010 and 2011 charges.

The amount of payment to the Agency ("Payment") for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payments as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor's Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. Payment shall be made by the City to the Agency upon the City's receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The Agency shall provide the City with the invoice and documentation twenty (20) working days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) working day of the following month.
- C. The Contract Payment identified in Section 6 (A) includes amount to staff the arraignment, intake, Community Court, and Seattle Mental Health Court calendars. This cost will be updated annually as described in Section 6 (A) and as shown in Attachment 2.
- D. The total Payment under this Contract shall be based on the completed case credits with an estimate of 2,090 case credits in the second half of 2008. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Contract



Administrator. The cost per case and estimated number of cases will be updated annually as described in Section 6 A and as shown in Attachment 2.

- E. Contract Payment includes the Agency's provision of legal advice 24 hours a day 7 days a week via pager (or comparable technology) access and response by phone promptly to any accused adult who is in the investigation phase or recently charged with a misdemeanor offense within the jurisdiction of the City. This cost will be updated annually as described in Section 6 (A) and as shown in Attachment 2.
- F. Completed cases shall be closed and submitted to the Administrator for payment within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator for payment.
  - 1. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within twelve (12) months of the case closure.
  - 2. If the warrant is quashed or served and new hearing dates are set more than twelve (12) months after the case was closed, it will be treated as a new case and may be submitted for payment upon case completion.
- G. The Agency will receive no additional payment for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.
- H. No payment shall be made for work on cases which are subsequently identified as conflicts with the exception of cases in which the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be considered if a minimum of two (2) hours of attorney work has been performed.
- I. The Agency will be paid four (4) case credits to defend appeals in King County Superior Court and three (3) case credits to defend a writ. Two (2) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.
- J. In the event the appeal or writ is withdrawn, the City will not pay the remaining case credits.
- K. In the event that one probationary hearing handles probationary matters related to more than one case, only one probationary credit (.6 credit) will be paid to the Agency.
- L. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Contract Section 11.





**Section 7: REPORTING REQUIREMENTS**

The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case.

These reports must contain:

- Defendant's name
- Cause number(s)
- Most serious criminal charge filed
- Number of charges filed in each case
- If it was a probation review hearing
- Disposition of most serious charge
- Bench Trial, Jury Trial, Plea or Dismissal
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

The Agency must provide the Contract Administrator the reports described below.

<b>Report Title</b>	<b>Due Date</b>
Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports, including calendar coverage	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Contract.





### **Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved annual budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

### **Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

### **Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.
  1. The City will notify the Agency and the Board President in writing of the nature of the breach;
  2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into



compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;

3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;
  4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
  5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
  6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.
- B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

### **Section 11: TERMINATION**

- A. The City may terminate this Contract in whole or in part upon ten (10) days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:
1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
  2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
  3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates the Contract under this Section, the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the

response and make a determination within ten (10) days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate in ten (10) days from the date of the final decision of the Mayor. If the Mayor does not make a final determination within twenty (20) days provided herein, the Contract shall remain in full force and effect until such decision is made and communicated to the Agency. Once a final determination is made by the Mayor, and if such determination sustains the decision of termination, said decision shall become effective ten (10) days from the date the final determination is made and communicated to the Agency.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.

- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.



- D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

## **Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's



records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.

- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.





### **Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency's used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
1. Require the Agency to pay liquidated damages for each day that the Agency is in violation of SMC Ch. 20.45 during the term of the Contract; or
  2. Terminate the Contract; or
  3. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; or
  4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

### **Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. General: The City encourages the use of Women and Minority Business Enterprises ("WMBEs") as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory



conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- C. Non-Discrimination: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.

### **Section 16: OTHER LEGAL REQUIREMENTS**

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this



paragraph, the Agency shall specifically comply with the following requirements of this section.

- B. Licenses and Similar Authorizations: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. Fair Contracting Practices Ordinance: The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

### **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

### **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:





- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 19 constitutes the Agency's waiver of immunity under Title 52 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

### **Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14. RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11 (A).

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.



**Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.

Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract





Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

### **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

### **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply





with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

### **Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

### **Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance. As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

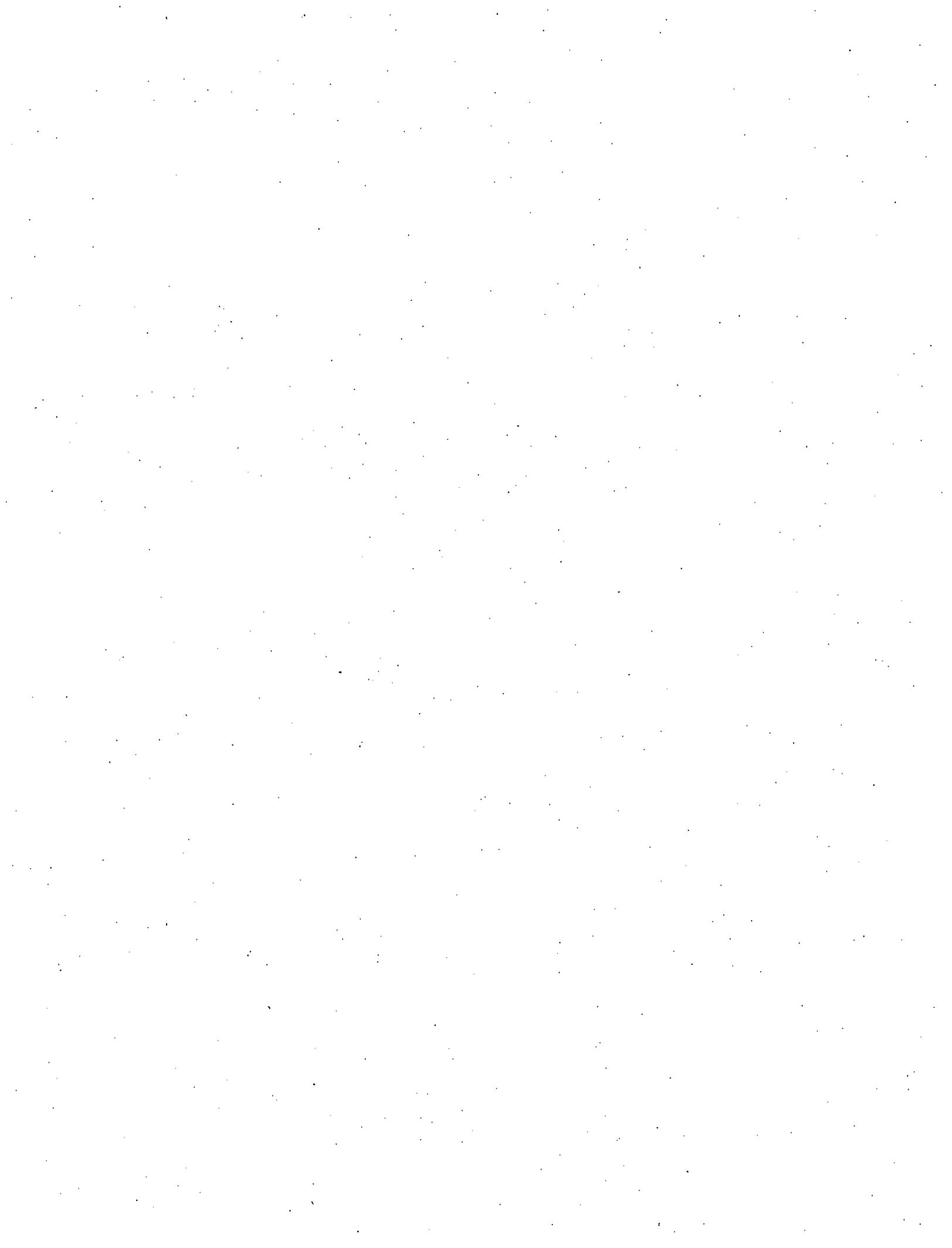
### **Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

### **Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created





or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

#### **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.





### **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

### **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

### **Section 31: MISCELLANEOUS PROVISIONS**

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.





K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745

If to the Agency:

Dave Chapman, Managing Director  
Associated Counsel for the Accused  
110 Prefontaine Place S. Suite 200  
Seattle, WA 98104

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**PRIMARY DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
David K. Chapman  
Managing Director,  
Associated Counsel for the Accused

By \_\_\_\_\_  
Signature Date  
Fred Podesta  
Director,  
Department of Executive Administration

**City of Seattle Business License Number: 29393001**  
**Washington State Unified Business Identifier Number (UBI): 600 144 320**  
**Federal Tax ID Number: 91-1431100**





**ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN**

<i>2008 Kenny Salary Table (2008 COLA RATE - 2.38%)</i>							
<i>RANGE</i>	<i>STEP 1</i>	<i>STEP 2</i>	<i>STEP 3</i>	<i>STEP 4</i>	<i>STEP 5</i>	<i>STEP 6</i>	<i>STEP 7</i>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280





**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**  
**PUBLIC DEFENSE SERVICES**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Staffing Level:**

<b>Total Attorneys</b>	<b>18.05</b>	
		11.00 FTE for caseload
		2.00 FTE for Mental Health Court
		3.35 FTE for In-Custody Arraignment
		1.10 FTE for Out of Custody Intake
		0.60 FTE for Community Court
<b>Attorney Supervisors</b>	<b>2.00 FTE</b>	
<b>Social Workers</b>	<b>2.00 FTE</b>	
<b>Investigators</b>	<b>3.00 FTE</b>	
<b>Paralegal</b>	<b>1.00 FTE</b>	
<b>Word Processor</b>	<b>1.00 FTE</b>	
<b>Receptionist</b>	<b>1.00 FTE</b>	
<b>Docket Clerk</b>	<b>1.00 FTE</b>	
<b>Office Tech I</b>	<b>0.28 FTE</b>	
<b>Director</b>	<b>0.28 FTE</b>	
<b>Assistant Director</b>	<b>0.28 FTE</b>	
<b>Office Manager</b>	<b>0.28 FTE</b>	
<b>Controller</b>	<b>0.28 FTE</b>	
<b>HR Manager</b>	<b>0.28 FTE</b>	
<b>Staff Accountant</b>	<b>0.28 FTE</b>	
<b>IT Manager</b>	<b>0.28 FTE</b>	

*This percentage represents the portion that SMC would comprise of the FTE Attorney workforce*

**31.27**

**SALARY**

Attorneys:

			<b>Annual Salaries</b>	<b>Jul-Dec 2008 Costs</b>
	9.03 FTE @ PD2-2		\$580,650	\$290,325
	9.03 FTE @ PD4-1		\$734,382	\$367,191
<b>Attorney Supervisors</b>	2.00 FTE @ SPD2-4		\$216,934	\$108,467
<b>Social Workers</b>	2.00 FTE @ SCW-05		\$117,598	\$58,799
<b>Investigators</b>	3.00 FTE @ INV-05		\$176,397	\$88,199
<b>Paralegal</b>	1.00 FTE @ PLG-05		\$44,151	\$22,076
<b>Word Processor</b>	1.00 FTE @ WPT-05		\$36,894	\$18,447
<b>Receptionist</b>	1.00 FTE @ OA2-05		\$31,863	\$15,932
<b>Docket Clerk</b>	1.00 FTE @ OT1-09		\$36,894	\$18,447
<b>Office Tech I</b>	0.28 FTE @ OT1-04		\$9,074	\$4,537
<b>Director</b>	0.28 FTE @ SPD4-1		\$33,225	\$16,613
<b>Assistant Director</b>	0.28 FTE @ SPD3-7		\$32,026	\$16,013
<b>Office Manager</b>	0.28 FTE @ LSM-10		\$15,540	\$7,770
<b>Controller</b>	0.28 FTE @ CTR-09		\$25,613	\$12,806
<b>HR Manager</b>	0.28 FTE @ HRM-04		\$28,154	\$11,577
<b>Staff Accountant</b>	0.28 FTE @ ACT-06		\$12,787	\$6,394
<b>IT Manager</b>	0.28 FTE @ ITM-02		\$18,775	\$9,388
<b>Beeper Service</b>			\$10,950	\$5,475
	<b>31.27 TOTAL</b>			

**TOTAL SALARY EXPENSE**

**\$2,156,908**

**\$1,078,454**

**TAXES**

	<b>FICA</b>	<b>\$165,003</b>	<b>\$82,501.75</b>
	<b>State Unemployment</b>	<b>\$6,971</b>	<b>\$3,485.65</b>
	<b>Workman's Comp</b>	<b>\$11,135</b>	<b>\$5,567.53</b>

**TOTAL TAX EXPENSE**

**\$183,110**

**\$91,554.93**





**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

	Annual Costs	Jul-Dec 2008 Costs
<b>BENEFITS</b>		
Retirement	\$43,138	\$21,569.08
Medical Insurance	\$445,696	\$222,848.20
Dental Insurance	\$72,796	\$36,398.08
Vision Insurance	\$11,388	\$5,694.24
Life/AD&D	\$1,388	\$694.19
Disability Insurance	\$11,561	\$5,780.51
Licenses/Certificates	\$12,150	\$6,075.18
Professional Insurance	\$21,181	\$10,590.66
Memberships/Dues	\$3,838	\$1,918.90
Employee Relations	\$1,586	\$792.85
<b>TOTAL BENEFIT EXPENSE</b>	<b>\$624,724</b>	<b>\$312,361.89</b>
<b>TRAINING</b>	<b>\$12,206</b>	<b>\$6,103.07</b>
<b>OPERATING</b>	<b>\$92,719</b>	<b>\$46,359.35</b>
<b>OVERHEAD</b>		
Space Rental/Insurance	\$209,320	
<b>TOTAL OVERHEAD EXPENSE</b>	<b>\$209,320</b>	<b>\$104,660.24</b>
<b>CAPITAL</b>		
Capital Purchases & Leases	\$19,506	
<b>TOTAL CAPITAL EXPENSE</b>	<b>\$19,506</b>	<b>\$9,753.05</b>
<b>CASE RELATED</b>	<b>\$3,203</b>	<b>\$1,601.58</b>
<b>TRAVEL</b>		
Mileage/Parking/Transportation	\$26,352	
<b>TOTAL TRAVEL EXPENSE</b>	<b>\$26,352</b>	<b>\$13,176.14</b>
<b>OTHER EXPENSE</b>	<b>\$14,733</b>	<b>\$7,366.48</b>
<b>TOTAL</b>	<b>\$3,342,782</b>	<b>\$1,671,390.94</b>



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**  
**FIXED COSTS**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Proposed Staffing Level:**

<b>Total Attorneys</b>	7.05	
		FTE for caseload
		2.00 FTE for Mental Health Court
		3.35 FTE for In-Custody Arraignment
		1.10 FTE for Out of Custody Intake
		0.60 FTE for Community Court
<b>Attorney Supervisors</b>	1.00 FTE	
<b>Social Workers</b>	2.00 FTE	
<b>Investigators</b>	FTE	
<b>Paralegal</b>	1.00 FTE	
<b>Word Processor</b>	FTE	
<b>Receptionist</b>	1.00 FTE	
<b>Docket Clerk</b>	1.00 FTE	
<b>Office Tech I</b>	0.28 FTE	
<b>Director</b>	0.28 FTE	
<b>Assistant Director</b>	0.28 FTE	
<b>Office Manager</b>	0.28 FTE	
<b>Controller</b>	0.28 FTE	
<b>HR Manager</b>	0.28 FTE	
<b>Staff Accountant</b>	0.28 FTE	
<b>IT Manager</b>	0.28 FTE	

*This percentage represents the portion that SMC would comprise of the FTE Attorney workforce*

**15.27**

**SALARY**

**Attorneys:**

			<b>Annual Salaries</b>	<b>Jul-Dec 2008 Costs</b>
	3.53 FTE	@ PD2-2	\$226,791	\$113,396
	3.53 FTE	@ PD4-1	\$286,836	\$143,418
<b>Attorney Supervisors</b>	1.00 FTE	@ SPD2-4	\$108,467	\$54,234
<b>Social Workers</b>	2.00 FTE	@ SCW-05	\$117,598	\$58,799
<b>Investigators</b>	0.00 FTE	@ INV-05	\$0	\$0
<b>Paralegal</b>	1.00 FTE	@ PLG-05	\$44,151	\$22,076
<b>Word Processor</b>	0.00 FTE	@ WPT-05	\$0	\$0
<b>Receptionist</b>	1.00 FTE	@ OA2-05	\$31,863	\$15,932
<b>Docket Clerk</b>	1.00 FTE	@ OT1-09	\$36,894	\$18,447
<b>Office Tech I</b>	0.28 FTE	@ OT1-04	\$9,074	\$4,537
<b>Director</b>	0.28 FTE	@ SPD4-1	\$33,225	\$16,613
<b>Assistant Director</b>	0.28 FTE	@ SPD3-7	\$32,026	\$16,013
<b>Office Manager</b>	0.28 FTE	@ LSM-10	\$15,540	\$7,770
<b>Controller</b>	0.28 FTE	@ CTR-09	\$25,613	\$12,806
<b>HR Manager</b>	0.28 FTE	@ HRM-04	\$23,154	\$11,577
<b>Staff Accountant</b>	0.28 FTE	@ ACT-06	\$12,787	\$6,394
<b>IT Manager</b>	0.28 FTE	@ ITM-02	\$18,775	\$9,388
<b>Beeper Service</b>			\$10,950	\$5,475

**15.27 TOTAL**

**TOTAL SALARY EXPENSE**

**\$1,033,745**

**\$516,873**





**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**  
**FIXED COSTS**

		Annual Salaries	Jul-Dec 2008 Costs
<b>TAXES</b>			
	FICA	\$79,082	\$39,541
	State Unemployment	\$3,404	\$1,702
	Workman's Comp	\$5,438	\$2,719
<b>TOTAL TAX EXPENSE</b>		<b>\$87,923</b>	<b>\$43,962</b>
<b>BENEFITS</b>			
	Retirement	\$20,675	\$10,337
	Medical Insurance	\$217,645	\$108,822
	Dental Insurance	\$35,548	\$17,774
	Vision Insurance	\$5,561	\$2,781
	Life/AD&D	\$678	\$339
	Disability Insurance	\$5,541	\$2,770
	Licenses/Certificates	\$4,746	\$2,373
	Professional Insurance	\$8,273	\$4,137
	Memberships/Dues	\$1,499	\$749
	Employee Relations	\$619	\$310
<b>TOTAL BENEFIT EXPENSE</b>		<b>\$300,785</b>	<b>\$150,392</b>
<b>TRAINING</b>		<b>\$4,767</b>	<b>\$2,384</b>
<b>OPERATING</b>		<b>\$36,214</b>	<b>\$18,107</b>
<b>OVERHEAD</b>			
	Space Rental/Insurance	\$81,757	
<b>TOTAL OVERHEAD EXPENSE</b>		<b>\$81,757</b>	<b>\$40,878</b>
<b>CAPITAL</b>			
	Capital Purchases & Leases	\$7,619	
<b>TOTAL CAPITAL EXPENSE</b>		<b>\$7,619</b>	<b>\$3,809</b>
<b>CASE RELATED</b>		<b>\$1,251</b>	<b>\$626</b>
<b>TRAVEL</b>			
	Mileage/Parking/Transportation	\$10,293	
<b>TOTAL TRAVEL EXPENSE</b>		<b>\$10,293</b>	<b>\$5,146</b>
<b>OTHER EXPENSE</b>		<b>\$5,754</b>	<b>\$2,877</b>
<b>TOTAL</b>		<b><u>\$1,570,109</u></b>	<b><u>\$785,055</u></b>
<b>Cost per Month</b>		<b>\$130,842</b>	





**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**  
**COST PER CASE (VARIABLE COSTS)**

Funding Level: 4180 credits  
Case Load Standard: 380 credits per attorney

**ACA's Proposed Staffing Level:**

<b>Total Attorneys</b>	11.00		
		11.00 FTE for caseload	
		FTE for Mental Health Court	
		FTE for In-Custody Arraignment	
		FTE for Out of Custody Intake	
		FTE for Community Court	
<b>Attorney Supervisors</b>	1.00	FTE	
<b>Social Workers</b>		FTE	
<b>Investigators</b>	3.00	FTE	
<b>Paralegal</b>		FTE	
<b>Word Processor</b>	1.00	FTE	
<b>Receptionist</b>		FTE	
<b>Docket Clerk</b>		FTE	
<b>Office Tech I</b>		FTE	
<b>Director</b>		FTE	
<b>Assistant Director</b>		FTE	
<b>Office Manager</b>		FTE	
<b>Controller</b>		FTE	
<b>HR Manager</b>		FTE	
<b>Staff Accountant</b>		FTE	
<b>IT Manager</b>		FTE	
	<b>16.00</b>		

*This percentage represents the portion that SMC would comprise of the FTE Attorney workforce*

<b>SALARY</b>		<b>Annual</b>	<b>Jul-Dec 2008</b>
<b>Attorneys:</b>		<b>Salaries</b>	<b>Costs</b>
	5.50 FTE @ PD2-2	\$353,859	\$176,930
	5.50 FTE @ PD4-1	\$447,546	\$223,773
<b>Attorney Supervisors</b>	1.00 FTE @ SPD2-4	\$108,467	\$54,234
<b>Social Workers</b>	0.00 FTE @ SCW-05	\$0	\$0
<b>Investigators</b>	3.00 FTE @ INV-05	\$176,397	\$88,199
<b>Paralegal</b>	0.00 FTE @ PLG-05	\$0	\$0
<b>Word Processor</b>	1.00 FTE @ WPT-05	\$36,894	\$18,447
<b>Receptionist</b>	0.00 FTE @ OA2-05	\$0	\$0
<b>Docket Clerk</b>	0.00 FTE @ OT1-09	\$0	\$0
<b>Office Tech I</b>	0.00 FTE @ OT1-04	\$0	\$0
<b>Director</b>	0.00 FTE @ SPD4-1	\$0	\$0
<b>Assistant Director</b>	0.00 FTE @ SPD3-7	\$0	\$0
<b>Office Manager</b>	0.00 FTE @ LSM-10	\$0	\$0
<b>Controller</b>	0.00 FTE @ CTR-09	\$0	\$0
<b>HR Manager</b>	0.00 FTE @ HRM-04	\$0	\$0
<b>Staff Accountant</b>	0.00 FTE @ ACT-06	\$0	\$0
<b>IT Manager</b>	0.00 FTE @ ITM-02	\$0	\$0
<b>Beeper Service</b>			
	<b>16.00 TOTAL</b>		
<b>TOTAL SALARY EXPENSE</b>		<b>\$1,123,163</b>	<b>\$561,582</b>



**ATTACHMENT 2**  
**Associated Counsel for the Accused**  
**PRIMARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**  
**COST PER CASE (VARIABLE COSTS)**

		Annual Salaries	Jul-Dec 2008 Costs
<b>TAXES</b>			
	FICA	\$85,922	\$42,961
	State Unemployment	\$3,567	\$1,784
	Workman's Comp	\$5,698	\$2,849
<b>TOTAL TAX EXPENSE</b>		<b>\$95,187</b>	<b>\$47,593</b>
<b>BENEFITS</b>			
	Retirement	\$22,463	\$11,232
	Medical Insurance	\$228,052	\$114,026
	Dental Insurance	\$37,248	\$18,624
	Vision Insurance	\$5,827	\$2,914
	Life/AD&D	\$710	\$355
	Disability Insurance	\$6,020	\$3,010
	Licenses/Certificates	\$7,405	\$3,702
	Professional Insurance	\$12,908	\$6,454
	Memberships/Dues	\$2,339	\$1,169
	Employee Relations	\$966	\$483
<b>TOTAL BENEFIT EXPENSE</b>		<b>\$323,939</b>	<b>\$161,969</b>
<b>TRAINING</b>		<b>\$7,439</b>	<b>\$3,719</b>
<b>OPERATING</b>		<b>\$56,504</b>	<b>\$28,252</b>
<b>OVERHEAD</b>			
	Space Rental/Insurance	\$127,564	
<b>TOTAL OVERHEAD EXPENSE</b>		<b>\$127,564</b>	<b>\$63,782</b>
<b>CAPITAL</b>			
	Capital Purchases & Leases	\$11,887	
<b>TOTAL CAPITAL EXPENSE</b>		<b>\$11,887</b>	<b>\$5,944</b>
<b>CASE RELATED</b>		<b>\$1,952</b>	<b>\$976</b>
<b>TRAVEL</b>			
	Mileage/Parking/Transportation	\$16,060	
<b>TOTAL TRAVEL EXPENSE</b>		<b>\$16,060</b>	<b>\$8,030</b>
<b>OTHER EXPENSE</b>		<b>\$8,979</b>	<b>\$4,489</b>
<b>TOTAL</b>		<b>\$1,772,673</b>	<b>\$886,336</b>
<b>Costs per Case Credit</b>		<b>\$424.08</b>	



**City of Seattle**

**Public Defense Services: *Secondary Defender***

**2008 – 2011 Contract for Services**

**July 1, 2008**

**Version 5.0**

**Exhibit 2**



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**2008 - 2011 CONTRACT FOR**

**CITY OF SEATTLE PUBLIC DEFENSE SERVICES – SECONDARY DEFENDER**

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and The Defender Association (the "Agency"), an independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

**Section 1: DEFINITIONS**

- A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the Agency.
1. Provisional case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. Final case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. Case Credit: Case credit is a unit of work. Credit per case is awarded as follows.
1. One case is equivalent to one case credit

2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A) (2) of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.

2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. Indigent Defendant: An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. Mayor: Mayor is the Mayor of Seattle or designee.
- P. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.

- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender and the Agency under this Contract is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan. The City will fund half of the attorneys at salary of “Public Defense Attorney, “ Range 2, Step 2, and half of the attorneys at salary of “Public Defense Attorney,” Range 4, Step 1.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 G as well as the practice standards required by Section 5 A.
- C. Caseload Limits:
  - 1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  - 2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.
- G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants. The Agency shall

provide a .5 FTE paraprofessional staff person for every 1.0 FTE caseload attorney. Paraprofessional staff include social workers, investigators, and paralegals.

- H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as described in the RFP and the Response to the RFP which are attached to and made a part of this Contract.

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.

4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.
- D. Case Assignment: In each year of the contract, the City will guarantee funding for seven (7) attorneys for a total of 2,660 credits. If the Agency's actual workload exceeds the estimated 2,660 credits by more than 5%, the City will pay for additional staffing based on the 380 case credit standard. All numbers are on an annual basis. The Agency will represent defendants in cases where the Primary Defender has a conflict and is unable to provide representation. The Agency will also handle other cases.
- E. Immediate Case Assignment: The Agency shall accept case assignments from the Court if there is an immediate need for representation at a hearing and the Primary Defender is unable to represent the client due to a conflict. Immediate case assignments include situations where the Agency must report to a bench warrant or arraignment hearing because the Primary Defender is unable to represent the client due to a conflict.
- F. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- G. Duties and Responsibilities of the Agency: In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:
1. Hire all Agency personnel;
  2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
  3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
  4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;

5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;
7. Participate on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup.

H. Duties and Responsibilities of Agency Attorneys: In order to perform their duties under this Contract, staff attorneys of the Agency shall:

1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.
2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

**Section 5: PERFORMANCE AND QUALIFICATIONS**

A. Practice Standards and Records

1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.



3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.
5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.
6. The Agency attorney of record shall make contact in person with all assigned clients within five (5) working days from a case assignment and no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) business days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.
8. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.

9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by each supervisor documenting the complaints. Subject to the Rules of Professional Conduct, the Agency will provide the Contract Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct, the Agency will also provide the Contract Administrator with a summary of cases transferred to another agency or assigned counsel for conflict that was due to the breakdown in attorney-client communications.

12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.

**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.
4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.

5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

C. Evaluations:

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

**Section 6: PAYMENT**

- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$639,298. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated yearly to show the 2009, 2010 and 2011 charges.

The amount of payment to the Agency (“Payment”) for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payment as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor’s Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. Payment shall be made by the City to the Agency upon the City’s receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The

Agency shall provide the City with the invoice and documentation twenty (20) working days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) working day of the following month.

- C. The total Payment under this Contract shall be based on the completed case credits with an estimate of 1,330 case credits in the second half of 2008. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Contract Administrator. The cost per case and estimated number of cases will be updated annually as described in Section 6 A and as shown in Attachment 2.
- D. Completed cases shall be closed and submitted to the Administrator for payment within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator for payment.
  - 1. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within twelve (12) months of the case closure.
  - 2. If the warrant is quashed or served and new hearing dates are set more than twelve (12) months after the case was closed, it will be treated as a new case and may be submitted for payment upon case completion.
- E. The Agency will receive no additional payment for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.
- F. No payment shall be made for work on cases which are subsequently identified as conflicts with the exception of cases in which the client obtains a new attorney at his own expense or through a request to the Court, or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be considered if a minimum of two (2) hours of attorney work has been performed.
- G. The Agency will be paid four (4) case credits to defend appeals in King County Superior Court and three (3) case credits to defend a writ. Two (2) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.
- H. In the event the appeal or writ is withdrawn, the City will not pay the remaining case credits.
- I. In the event that one probationary hearing handles probationary matters related to more than one case, only one probationary credit (.6 credit) will be paid to the Agency.
- J. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Contract Section 11.

## **Section 7: REPORTING REQUIREMENTS**

The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case.

These reports must contain:

- Defendant's name
- Cause number(s)
- Most serious criminal charge filed
- Number of charges filed in each case
- If it was a probation review hearing
- Disposition of most serious charge
- Defendant's jail custody status at assignment
- Bench Trial, Jury Trial, Plea or Dismissal
- Whether an appeal was filed
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

The Agency must provide the Contract Administrator the reports described below.

<b>Report Title</b>	<b>Due Date</b>
Open and Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Contract.

### **Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved annual budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment provided by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

### **Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

### **Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.
  1. The City will notify the Agency and the Board President in writing of the nature of the breach;
  2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract

into compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;

3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;
4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.

B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

### **Section 11: TERMINATION**

- A. The City may terminate this Contract in whole or in part upon ten (10) days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:
1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
  2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
  3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates the Contract under this Section, , the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the

response and make a determination within ten (10) days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate in ten (10) days from the date of the final decision of the Mayor. If the Mayor does not make a final determination within twenty (20) days provided herein, the Contract shall remain in full force and effect until such decision is made and communicated to the Agency. Once a final determination is made by the Mayor, and if such determination sustains the decision of termination, said decision shall become effective ten (10) days from the date the final determination is made and communicated to the Agency.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.

- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.
- D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant

to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

## **Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.



If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.

- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

**Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits (“equal benefits”) available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City’s request, the Agency shall provide complete information and verification of the Agency’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency’s used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
  - 1. Require the Agency to pay liquidated damages for each day that the Agency is in violation of SMC Ch. 20.45 during the term of the Contract; or
  - 2. Terminate the Contract; or
  - 3. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; or
  - 4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

**Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. General: The City encourages the use of Women and Minority Business Enterprises (“WMBEs”) as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory



conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- C. Non-Discrimination: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.

### **Section 16: OTHER LEGAL REQUIREMENTS**

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this



paragraph, the Agency shall specifically comply with the following requirements of this section.

- B. Licenses and Similar Authorizations: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. Fair Contracting Practices Ordinance: The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

### **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

### **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:

- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.



- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 17 constitutes the Agency's waiver of immunity under Title 52 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

**Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11.A.

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.

**Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.



Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

### **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

### **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.



### **Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

### **Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance. As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

### **Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

### **Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

#### **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.

#### **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.



### **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

### **Section 31: MISCELLANEOUS PROVISIONS**

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.



- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.
- K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745



If to the Agency:

Floris Mikkelsen, Director  
The Defender Association  
810 Third Avenue, Suite 800  
Seattle, WA 98104

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**SECONDARY DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
  
Floris Mikkelsen  
Director,  
The Defender Association

By \_\_\_\_\_  
Signature Date  
  
Fred Podesta  
Director,  
Department of Executive Administration

**SECONDARY DEFENDER AGENCY**

By \_\_\_\_\_  
Signature Date  
  
Bruce Erickson  
Board Chair,  
The Defender Association

**City of Seattle Business License Number: 164483**  
**Washington State Unified Business Identifier Number (UBI): 601 141 397**  
**Federal Tax ID Number: 91-0852323**



**ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN**

<b>RANGE</b>	<b>2008 Kenny Salary Table (2008 COLA RATE - 2.38%)</b>						
	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>	<b>STEP 6</b>	<b>STEP 7</b>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280



**ATTACHMENT 2**  
**The Defender Association**  
**SECONDARY DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

<b>PERSONNEL</b>	<b>(FTE)</b>	<b>TOTAL SALARIES</b>	<b>TOTAL BENEFITS</b>	<b>TOTAL ANNUAL COSTS</b>	<b>JULY - DEC 2008 COSTS</b>
Attorney to cover cases	7.00	522,032	112,065	634,097	317,049
Attorney for immediate case assignment	0.30	25,095	5,046	30,141	15,070
Paralegal	1.00	58,096	12,989	71,085	35,543
Investigator(s)	2.50	128,691	29,653	158,344	79,172
Social Worker(s)	0.60	33,230	7,673	40,903	20,452
Office Assistant	0.50	17,250	5,349	22,599	11,299
Docket Clerk	0.75	33,039	8,714	41,753	20,877
Word Processor	0.30	9,945	3,161	13,106	6,553
Direct Legal Admin	0.10	11,358	1,879	13,236	6,618
Direct Supervision	0.75	80,545	14,510	95,055	47,527
<b>TOTAL PERSONNEL COSTS</b>	<b>13.80</b>	<b>919,281</b>	<b>201,038</b>	<b>1,120,319</b>	<b>560,160</b>

**OPERATIONS & MAINTENANCE**

TELEPHONE				1,400	700
DOCKETING				1,500	750
GEN SUPPLIES				6,000	3,000
R & M EQMT				2,355	1,177
COMP SUPP				963	482
POSTAGE				1,066	533
PHOTOCOP				856	428
LIBRARY				3,871	1,936
SUBSCRIP				300	150
BANK CHARGES				64	32
EQMT RENTAL				1,070	535
MINOR EQ PURC				1,607	804
MILEAGE				1,100	550
PARKING & FLEXCAR				5,459	2,730
CASE PREP				700	350
CLIENT EXP				400	200
<b>TOTAL OFFICE</b>				<b>28,712</b>	<b>14,356</b>

**OTHER COSTS**

ADMINISTRATION	0.2	18,475	3,345	21,820	10,910
BOARD EXP				107	54
PROF SVC-LEG				535	268
PROF SVC-ACCTG				4,174	2,087
RECRUITING				500	250
DEPRECIATION				3,750	1,875
<b>TOTAL OTHER COSTS</b>				<b>30,887</b>	<b>15,443</b>

**OVERHEAD COSTS**

SPACE RENTAL				82,355	41,178
BDG REP/MAINT				910	455
OFFICE INSU				1,070	535
UNEMPLOYMENT INSURANCE				3,746	1,873
PROF INS				4,923	2,462
MEMB & DUES				4,388	2,194
TRAINING				1,284	642
<b>TOTAL OVERHEAD COSTS</b>				<b>98,677</b>	<b>49,338</b>

**TOTAL BUDGET PROPOSAL**

**1,278,595      639,297**

**City of Seattle**

**Public Defense Services: *Third Defender***

**2008 – 2011 Contract for Services**

**July 1, 2008  
Version 5.0  
Exhibit 3**



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**2008 - 2011 CONTRACT FOR**

**CITY OF SEATTLE PUBLIC DEFENSE SERVICES – THIRD DEFENDER**

WHEREAS, the City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City of Seattle; and

WHEREAS, this Contract is made and entered into by and between The City of Seattle (the "City"), a Washington municipal corporation and Northwest Defenders Association (the "Agency"), and independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 122602; and,

WHEREAS, the City and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court (the "Court").

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

**Section 1: DEFINITIONS**

- A. **Case Assignment:** A case assignment is that particular case assigned by the City or the Court to the Agency.
1. **Provisional** case assignment will include all cases initially referred to the Agency and may include cases subsequently assigned to other agencies, conflict cases, duplicate assignments, or cases where the defendant sought private counsel.
  2. **Final** case assignment will not include conflict cases where attorney work is 2 hours or less; duplicate case assignment; or, cases where defendant sought private counsel and the attorney work is 2 hours or less.
  3. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
  4. In the event that one probationary hearing handles probationary matters related to more than one case, the Agency will count the work as one case and be awarded one probationary credit.
- B. **Case Credit:** Case credit is a unit of work. Credit per case is awarded as follows.
1. **One case is equivalent to one case credit**



2. One review, revocation, resentencing or other hearing is equivalent to 0.60 of a case credit
  3. One misdemeanor appeal is equivalent to four case credits; an appeal that is subsequently withdrawn is equivalent to two (2) credits.
  4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two (2) credits.
- C. Caseload Limits: The maximum number of Final Case Assignments, as defined in Section 1 (A) (2) of this contract, which may be assigned to an individual agency attorney during any calendar year.
- D. City: City is the City of Seattle.
- E. Client: An indigent person who has been assigned to the Agency by the City or the Court.
- F. Completed Case: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client's request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- H. Court: Court is the Municipal Court of Seattle
- I. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- J. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case which is severed from the consolidated case.



2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- K. Criminal Case Disposition: Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- M. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
- N. Indigent Defendant: An indigent defendant is a person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- O. Mayor: Mayor is the Mayor of Seattle or designee.
- P. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
  2. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  3. Misdemeanor Writ: A writ involves filing notice, perfecting the record, preparing such briefs and memoranda as required, arguing the case in Superior Court and handling such paperwork as the Superior Court's decision and orders direct.



- Q. Paraprofessional Staff: Investigators, social workers and paralegals performing services under Agency supervision.
- R. Primary Defender: The Primary Defender is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- S. Secondary Defender: The Secondary Defender is The Defender Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- T. Third Defender: The Third Defender and the Agency under this Contract is Northwest Defenders Association – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

## **Section 2: PUBLIC DEFENSE STANDARDS**

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 G as well as the practice standards required by Section 5 A.
- C. Caseload Limits:
  - 1. The Caseload Limit shall be no more than 380 Final Case Assignments per agency attorney per calendar year.
  - 2. In addition, the caseloads of supervising attorneys shall be further reduced in an amount that is proportional to the time that they dedicate to supervision (according to the ratio of 0.1 FTE supervisor per attorney working under this contract).
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by Seattle Municipal Court.
- E. Responsibility for Appeal and Writ Transcription Costs: Agency costs will be reimbursed by OPM. Partial transcripts will be requested when appropriate. If an appeal or writ is withdrawn early, all efforts to immediately stop transcription work will be taken.
- F. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Agency as described in Contract Section 6.
- G. Support Services: The Agency shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants.
- H. Supervision: The Agency shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.





### **Section 3: DURATION OF CONTRACT**

The term of this Contract shall begin when fully executed by all parties, and shall end on June 30, 2011, unless terminated earlier pursuant to the provisions hereof.

The Agency shall begin the work outlined in the "Scope of Work" section ("the Work") upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Agency is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Agency's control.

### **Section 4: SCOPE OF WORK**

The Scope of Work of this Contract is as described in the RFP and the Response to the RFP which are attached to and made a part of this Contract.

- A. Purpose: The purpose of this Contract is to provide a legal representation plan and legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
1. The Agency shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC).
  2. Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Agency with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
  3. Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Agency or any such confidential communications made to agents or employees of the Agency for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.
  4. Attorneys and staff employed by the Agency shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020. The Court will be

responsible for the costs and operation of the screening process. Should the Agency determine that a defendant is not eligible for assigned counsel, the firm will so inform the Court subject to the Rules of Professional Conduct.

- D. Case Assignment: In each year of the contract, the City will guarantee funding equivalent to one (1) attorney to represent defendants where both the Primary and Secondary Defenders have conflicts, and to administer the assignment of cases to assigned counsel. The caseload in 2008 is estimated to be up to 130 cases or approximately one-third of an FTE. The Agency will have approximately two-thirds of an FTE for the administration of assigned counsel cases. The staffing levels will be reviewed annually. The Third Defender funding includes administrative, overhead and supply costs. All numbers are on an annual basis.
- E. Case Management of Assigned Counsel: The Agency, under the direction and oversight of Municipal Court, will be responsible for the Assigned Counsel program for conflict cases. SMC and the Agency will collaborate on developing Assigned Counsel protocols. The Agency will make the referral to private counsel when all three contracted defender agencies have a conflict.

The Court will retain the lead in the selection of Assigned Counsel attorneys, conferring with representatives of public defense agencies, King County Bar and others with criminal justice experience. The City's Office of Policy and Management (OPM) will continue to review the Assigned Counsel billings and approve payment. The Third Defender will:

1. In coordination with SMC, establish an Oversight Panel composed of representatives or designates from SMC, the Agency, the King County Bar, and the federal defender.
  2. In coordination with SMC and the Oversight Panel, develop Assigned Counsel protocols.
  3. Advertise and recruit assigned counsel attorneys subject to the protocols noted above.
  4. Provide an orientation to SMC for attorneys on the Assigned Counsel panel.
  5. Assign cases to the Assigned Counsel panel.
  6. Develop a performance review system and work with SMC and the Oversight Panel to assess the performance of panel attorneys.
  7. Provide regular reports on assignments to SMC and OPM.
- F. Conflicts: The Agency reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Agency shall be responsible for checking for conflicts and identifying if a conflict exists. The Agency shall have a written policy which explains how they define conflict cases which they will send to the Contract Administrator. The Agency shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.

**G. Duties and Responsibilities of the Agency:** In order to perform its responsibilities under the Contract, the Agency shall have the power and duty to:

1. Hire all Agency personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend, remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Agency program;
5. Accept and represent all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with provisions as stated above;
6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear;
7. Participate on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of the three defender agencies at these meetings. The Primary Defender shall keep the Secondary and Third Defenders informed of the issues presented at these meetings. Should a difference of opinion arise among the defender agencies as to the position the Defense should take on an issue, the Secondary and Third Defenders may give their opinion in writing to the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup. This paragraph does not apply to the Agency oversight of Assigned Counsel.

**H. Duties and Responsibilities of Agency Attorneys:** In order to perform their duties under this Contract, staff attorneys of the Agency shall:

1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will make efforts to call or e-mail out-of-custody clients to remind them of upcoming court dates.
2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.

3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

## **Section 5: PERFORMANCE AND QUALIFICATIONS**

### **A. Practice Standards and Records**

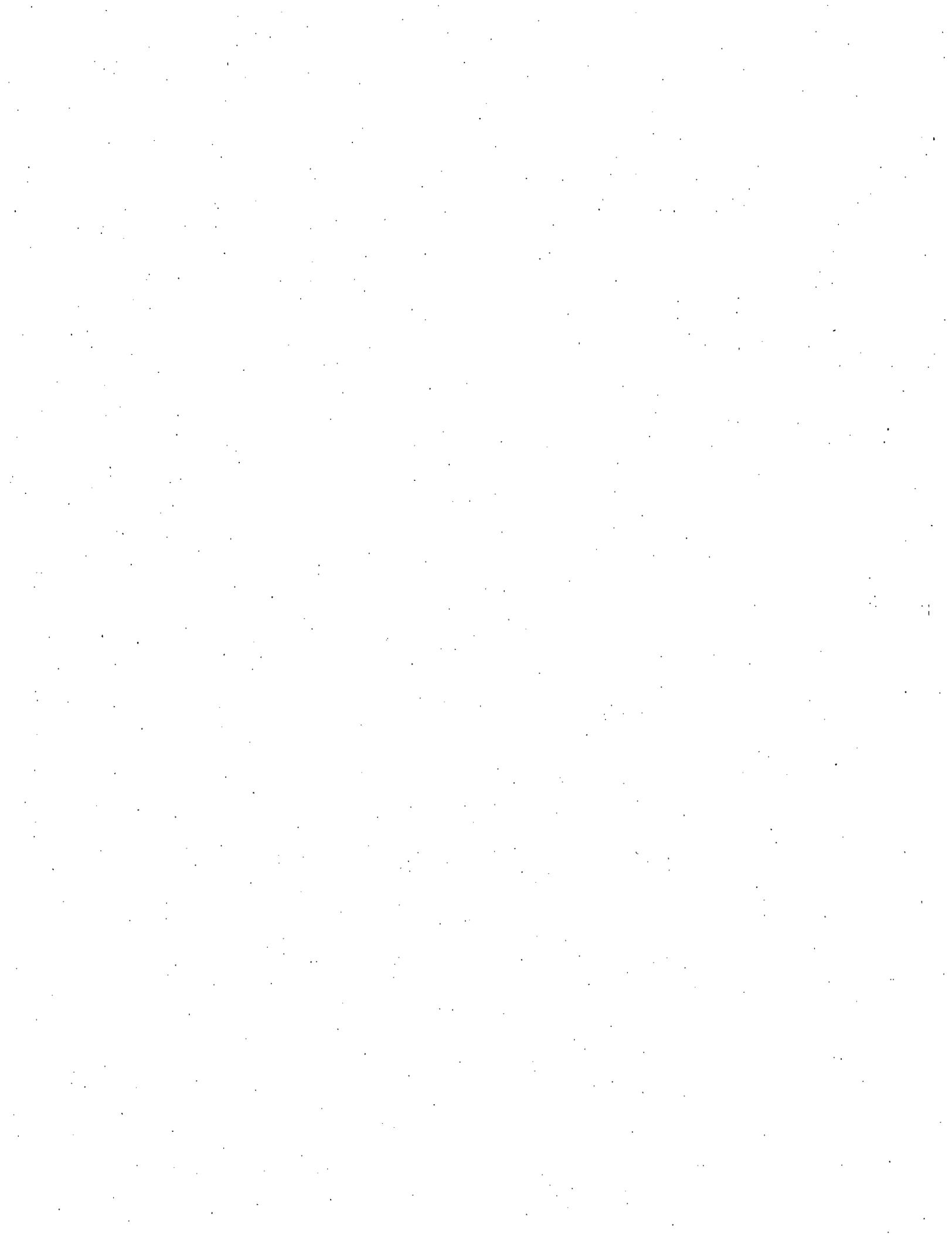
1. The Agency shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.
3. The Agency shall establish practice standards to address the following substantive areas of Contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Agency shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Contract Administrator by January 1, 2009. Practice standards should address the following areas:
  - a. Attorney practice, including but not limited to;
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of paraprofessionals and expert service.
  - b. Paraprofessional practice.
  - c. Supervision of attorneys and paraprofessionals.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.
5. A member of the Agency staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Agency of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County. Documentation of this provision shall be noted in the client case file.



6. The Agency attorney of record shall make contact with all assigned clients within five (5) working days from a case assignment and no later than the day prior to the first pretrial hearing. If the Agency is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Contract requirement through phone calls or letters. Documentation of this provision shall be noted in the client case file.
7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall obtain discovery as soon as possible after case assignment but no later than three (3) business days of the assignment, whether initial or subsequent, on any case. The Agency shall obtain a copy of discovery at arraignment if available. Documentation of this provision shall be noted in the client case file.
8. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. Documentation of this provision shall be noted in the client case file.
9. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Contract.
10. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
11. The Agency shall ensure that a preliminary written response to any written or oral complaints concerning services provided by the employees of the Agency or the Agency itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include e-mail communications. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Agency.

The Agency shall respond to client complaints within one week. A complaint file will be kept by the supervisor documenting complaints. Subject to the Rules of Professional Conduct, the Agency will provide the Contract Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct, the Agency will also provide the Contract Administrator with a summary of cases transferred to another agency or assigned counsel for conflict that was due to the breakdown in attorney-client communications.
12. The Agency shall establish policies and procedures for pro-bono work provided by staff of the Agency. These policies and procedures shall assure that any such pro bono work is not provided to the exclusion or detriment of legal services that are the subject of this Contract.





**B. Minimum Attorney Qualifications:**

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Agency attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; including but not limited to seven (7) hours of each year's required continuing legal education credits shall be courses relating to criminal law practice or other areas of law in which the Agency provides legal services to clients under the terms of this Contract. The Agency will maintain for inspection on its premises records of compliance with this provision.
3. The Agency may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Agency may be assigned to Rule 9 interns.
4. The Agency attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this Contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

**C. Evaluations:**

The Agency director, or his/her designee, shall evaluate the professional performance of Agency attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Agency shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The Agency shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Agency's director and the Agency attorney.

**Section 6: PAYMENT**

- A. For July through December 2008, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be \$90,423. This amount assumes use of the 2008 Kenny Salary Schedule used by King County. The specific costs are shown in Attachment 2 – 2008 Charges for Public Defense Services. This attachment will be updated yearly to show the 2009, 2010 and 2011 charges.

The amount of payment to the Agency ("Payment") for the period for January 1, 2009 through June 31, 2011, will be determined based on the 2009, 2010, and 2011 budgets passed by the Seattle City Council.



Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and Contract Payments as currently described shall be renegotiated to reflect total funds available.

Payment for 2009, 2010 and 2011 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor's Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. Payment shall be made by the City to the Agency upon the City's receipt of an invoice itemizing the Work elements performed for the period covered by the invoice and include an electronic spreadsheet itemizing the completed cases corresponding to the invoice. The Agency shall provide the City with the invoice and documentation twenty (20) working days after the close of each calendar month. The City will pay the Agency by the thirtieth (30) working day of the following month.
- C. The City will pay the Agency as described in Section 6 A and as shown in Attachment 2. The costs described in Attachment 2 will be pro-rated in a fixed monthly Payment.
- D. Completed cases shall be closed and submitted to the Administrator within sixty (60) days of the date of final action. If a client absconds the case may be closed and submitted to the Administrator.
- E. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Section 11 of this Contract.

## **Section 7: REPORTING REQUIREMENTS**

### **A. Agency Case Reporting:**

- 1. The Agency will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within sixty (60) days after the last hearing on the case. These reports must contain:
  - Defendant's name
  - Cause number(s)
  - Most serious criminal charge filed
  - Number of charges filed in each case
  - If it was a probation review hearing
  - Disposition of most serious charge
  - Defendant's jail custody status at assignment

- Bench Trial, Jury Trial, Plea or Dismissal
- Whether an appeal was filed
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

2. The Agency must provide the Contract Administrator the reports described below for Agency cases.

<b>Agency Report Title</b>	<b>Due Date</b>
Open and Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Salary and Staff Position Reports	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year
Year-end Attorney Case Assignment Report	January following fiscal year
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20<sup>th</sup>) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Agency will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment of an Agency attorney providing services under this Contract.

**B. Assigned Counsel Reporting:**

1. The Agency will provide the City with monthly electronic reports in spreadsheet format on all Assigned cases. These reports must contain:

- Cause number(s)
- Defendant's name
- Defendant's date of birth
- Most serious criminal charge filed
- Number of charges filed in each case
- Defendant's jail custody status at assignment





- Date received by Agency
- Date assigned
- Next hearing date
- Reason for Conflict
- Assigned Attorney
- (Comments)

<b>Assigned Counsel Report Title</b>	<b>Due Date</b>
Assigned Counsel Case Reports including attorney assignment	Monthly (or as requested by OPM)
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

**Section 8: OPERATING BUDGET**

The Agency shall apply Payment received from the City under this Contract in accordance with the approved annual budget as shown in Attachment 2.

The City makes no commitments to support and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

The Payment provided by the City to the Agency pursuant to the terms of this Contract are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Contract. In the event the City determines that Payment pursuant to this Contract were expended by Agency for any purposes other than those set forth in this Contract, such expenditure shall constitute a material breach of this Contract. Income and expenses, including prorated overhead costs, for the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards in Contract Section 20 below. If the Agency receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

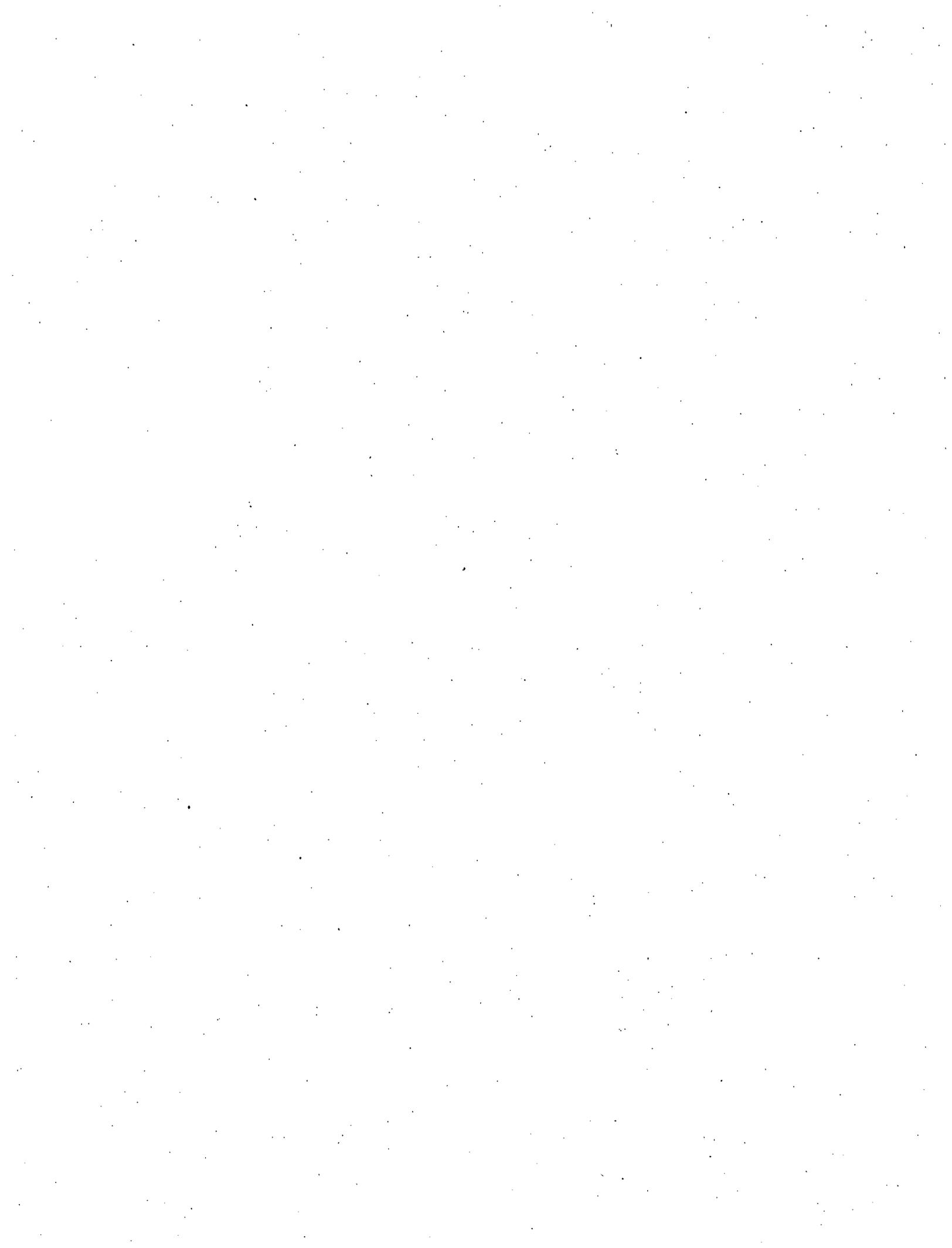
**Section 9: OTHER EMPLOYMENT**

The Agency agrees that its legal staff shall have as its primary employment representation of indigent clients. The Agency further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

**Section 10: CORRECTIVE ACTION**

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:





- A. Any dispute or misunderstanding that may arise under this Contract concerning the Agency's performance shall first be resolved through negotiations, if possible, between the Agency's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of the Department of Executive Administration (**or delegated representative**). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes. In absence of an agreed alternative, the following process shall be employed.
1. The City will notify the Agency and the Board President in writing of the nature of the breach;
  2. The Agency shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the Agency's response;
  3. The City will notify the Agency in writing of the City's determination as to the sufficiency of the Agency's corrective action plan. The determination of the sufficiency of the Agency's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Agency's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Agency to implement the plan;
  4. In the event that the Agency does not respond within the appropriate time with the corrective action plan, or the Agency's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 11 (A) Termination;
  5. In addition, the City may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
  6. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 11 Termination.
- B. Pending final decision of a dispute hereunder, the Agency shall proceed diligently with the performance of the Contract and in accordance with the direction of the City.

### **Section 11: TERMINATION**

- A. The City may terminate this Contract in whole or in part upon ten (10) days' written notice to the Agency of good cause. The following constitute good cause for Contract termination:



1. The Agency substantially breaches any duty, obligation, or service required pursuant to this Contract.
2. The Agency engages in misappropriation of funds or fraudulent disbursement of funds.
3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates the Contract under this section, the City shall provide the Agency written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Agency shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Agency elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) days after receipt of the Agency's response. In the event the Agency does not concur with the determination, the Agency may request a review of the decision by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate in ten (10) days from the date of the final decision of the Mayor. If the Mayor does not make a final determination within twenty (20) days provided herein, the Contract shall remain in full force and effect until such decision is made and communicated to the Agency. Once a final determination is made by the Mayor, and if such determination sustains the decision of termination, said decision shall become effective ten (10) days from the date the final determination is made and communicated to the Agency.

In the event this Contract is terminated in whole or in part pursuant to this Section, the Agency shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Agency in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Agency will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Agency for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination is required, the termination of services required to be performed under the terms of this Contract shall be limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.



- C. In the event of the termination of this Contract, the Agency shall remit any unexpended balance of Payment for cases assigned and not completed, less the amount the City and the Agency agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Agency to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Agency has attempted to withdraw, the appearance of counsel from the Agency for any client previously represented by the Agency where such representation is no longer the obligation of the Agency pursuant to the terms of this Contract, the City will honor payment to the Agency upon judicial verification that continued representation is required. The amount to be paid to the Agency shall be on the same basis as assigned counsel payments.
- D. The Agency reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Agency terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Agency shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Agency's control, fault or negligence.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Agency shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Agency by the City.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Contract. In the event that legal remedies are pursued for wrongful termination or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination or non-renewal of this Contract, all cases not required to be completed by the Agency shall be returned to the Contract Administrator for reassignment.

## **Section 12: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH**

- A. The Agency shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual

orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Agency shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.

- B. The Agency shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Agency in implementing the requirements of this section, and will permit access to the Agency's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.

If the Agency and the City agrees in writing that the Agency will subcontract out any portion of this work, then the Agency shall maintain, for at least twenty-four (24) months after the expiration or earlier termination of this Contract and permit access to the Agency's records of employment, employment advertisements, application forms and other pertinent data and records requested for the purposes of investigation to determine compliance with the requirements of this section. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.

- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Agency has failed to comply with any of the requirements of this section, the Agency shall be so notified in writing. The Contract Administrator shall give the Agency an opportunity to be heard, after ten calendar days' notice. If, after the Agency's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Agency, pending compliance by the Agency with the requirements of this section.
- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Agency's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Agency shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Agency.
- F. The Agency, by executing this Contract, is affirming that the Agency complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements



of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of the provisions of this section noted in paragraph A, B, and C above shall be a material breach of Contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 13: EQUAL BENEFITS**

- A. The Agency shall comply with the requirements of SMC Ch. 20.45 that obligate the Agency to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Agency makes available to its employees with spouses. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Agency's used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of and good cause for termination of the Contract for which the City may:
1. Require the Agency to pay liquidated damages for each day that the Agency is in violation of SMC Ch. 20.45 during the term of the Contract; or
  2. Terminate the Contract; or
  3. Disqualify the Agency from bidding on or being awarded a City contract for a period of up to five (5) years; or
  4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Contract.

### **Section 14: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES**

- A. General: The City encourages the use of Women and Minority Business Enterprises ("WMBEs") as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities. If Agency is authorized under Contract Section 22 to subcontract out any part of a Contract instead of performing the work itself, then the following requirement applies. Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Agency agrees to make such efforts as a condition of the Contract.
- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public



organizations to perform outreach. Affirmative efforts shall include those that have been agreed upon between the City and the Agency.

The Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- C. Non-Discrimination: The Agency shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- D. Record-Keeping: The Agency shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Agency affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to monitor the affirmative efforts of the Agency and to inspect and copy such records of the Agency as are necessary to ensure compliance with the requirements of this Section.
- E. Agency shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Contract and by applicable law. Agencies found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

### **Section 15: LABOR HARMONY**

The Agency is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid picketing and/or other economic action at the firm that might adversely affect the interests of the City.



## **Section 16: OTHER LEGAL REQUIREMENTS**

- A. **General Requirement:** The Agency, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.
- B. **Licenses and Similar Authorizations:** The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. **Use of Recycled Content Paper:** Whenever practicable, Agency shall use reusable products including recycled content paper on all documents submitted to the City. Agency is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. The Agency is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the Contract with and for the City.
- D. **Americans with Disabilities Act:** The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) as amended in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. **Fair Contracting Practices Ordinance:** The Agency shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

## **Section 17: INDEMNIFICATION**

The Agency does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Agency's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Agency, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Agency waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Agency acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.



## **Section 18: INSURANCE**

**Insurance certification required.** The Agency must carry the following coverages and limits of liability:

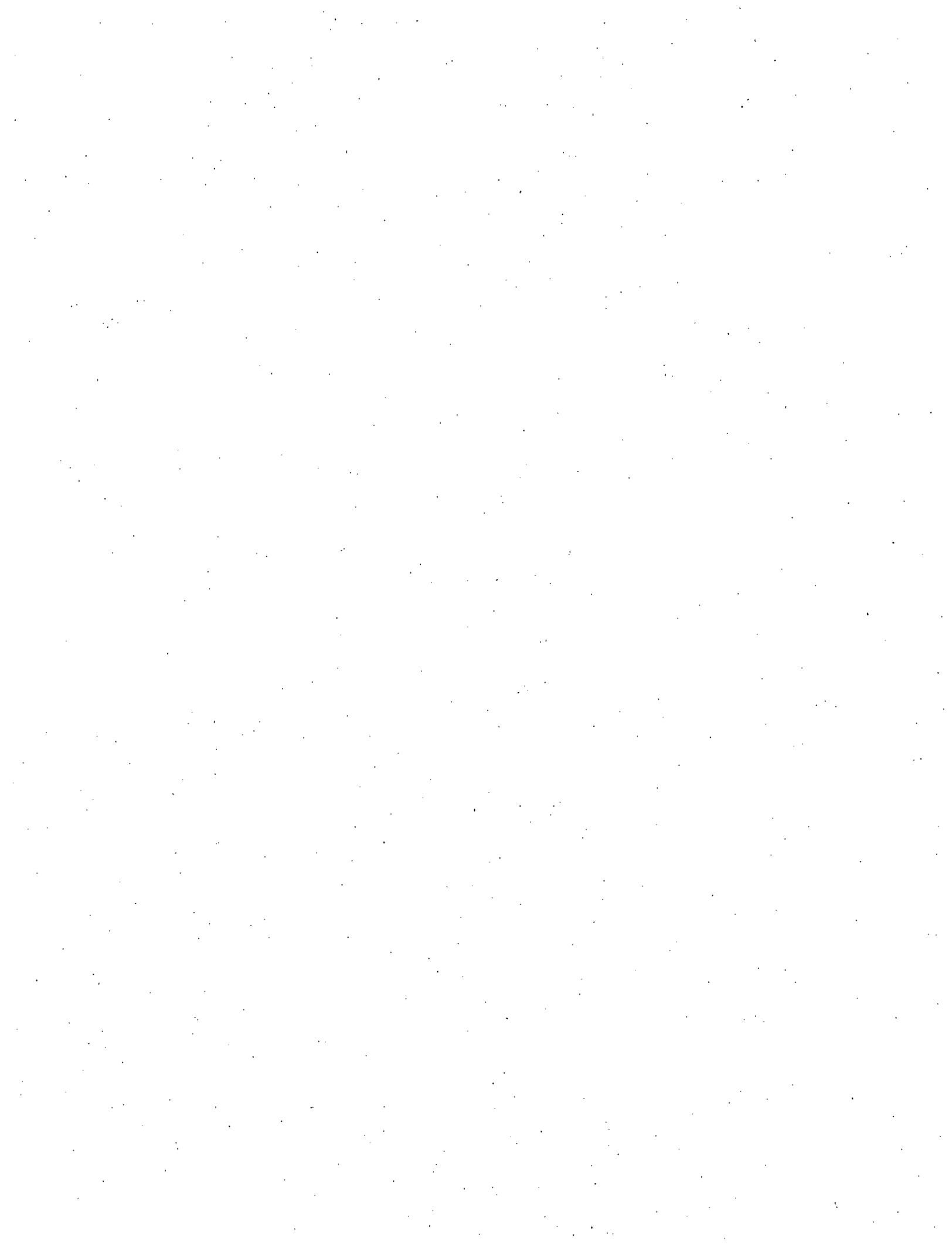
- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance Title 51 RCW. It is further specifically and expressly understood that the indemnification provided under Contract Section 19 constitutes the Agency's waiver of immunity under Title 52 RCW solely for the purposes of the indemnification. This waiver has been mutually negotiated by the parties.

## **Section 19: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Agency further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Agency for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Agency and the Agency shall respond in writing. The time for notification and response shall be the same as set forth in Section 11.A.

If the Agency's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing





standards and accounting principles. Disallowed costs may be recovered from the Agency by the City.

**Section 20: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. The Agency shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the Agency on each case.

Upon request, the Agency shall permit the City, and any other governmental agency involved in the funding of the Contract, to inspect and audit all pertinent books and records of the Agency, or any other person or entity that performed work in connection with or related to the Contract services, at any and all times deemed necessary by the city or Agency, including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or Agency selects. The Agency shall supply the city with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Agency must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The Agency shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

The Agency shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Agency agrees to cooperate with the City or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with Chapter 42.56 RCW.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The Agency shall cause to be performed an annual audit by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants, and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control





weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Agency shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Agency's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

- C. All such reports as are required under the terms of this Contract shall be submitted to the City via electronic media (e-mail attachment or diskette) within the time limits required for each report.

### **Section 21: CONTRACTUAL RELATIONSHIP**

The relationship of the Agency to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Agency to act as the agent or legal representative of the City for any purpose whatsoever and neither the Agency nor its employees shall be deemed employees of the City. The Agency is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Agency and the Agency's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Agency shall complete this Contract according to the Agency's own means and methods of work and professional standards applicable to public defense services, which shall be in the exclusive charge and control of the Agency and which shall not be subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Contract.

The Agency agrees that it has secured or will secure at the Agency's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Agency further agrees that any equipment or materials acquired with Payment under this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

### **Section 22: ASSIGNMENT AND SUBCONTRACTING**

The Agency shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Agency not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Agency shall incorporate by reference all the terms of this Contract. The Agency shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment

or subcontract shall not release the Agency from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

### **Section 23: INVOLVEMENT OF FORMER CITY EMPLOYEES**

- A. The Agency shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this Contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Agency shall ensure that no Work or matter related to the Work funded by this Contract is performed by any person (employee, subcontractor, or otherwise) who:
  - (1) was a City officer or employee within the past twelve (12) months; and
  - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

### **Section 24: NO CONFLICT OF INTEREST**

The Agency confirms that the Agency does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Agency selection, negotiation, drafting, signing, administration, or evaluating the Agency's performance. As used in this section, the term "Agency" shall include any employee of the Agency who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

### **Section 25: ERRORS & OMISSIONS; CORRECTION**

The Agency shall be responsible for the professional legal services furnished by or on the behalf of the Agency under this Contract. The Agency, without additional Payment, shall correct or revise any errors or omissions in the Agency services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

### **Section 26: INTELLECTUAL PROPERTY RIGHTS**

The Agency hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Agency does not convey to the City, nor does the City obtain, any right to any document or material utilized by Agency that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Agency has clearly identified in writing such material as preexisting

prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Agency grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Agency in connection with the Work are instruments of service and the Agency shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Agency does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

#### **Section 27: CONFIDENTIALITY**

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

#### **Section 28: EXTRA WORK**

The City may desire to have the Agency perform work or render services in connection with this project other than that expressly provided for in Contract Section 4. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.





### **Section 29: BOARD OF DIRECTORS**

The Agency shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

### **Section 30: DEBARMENT**

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- A. The Agency has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- B. The Agency has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- C. The Agency has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- D. The Agency has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- E. The Agency has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- F. The Agency has colluded with another firm to restrain competition.
- G. The Agency has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- H. The Agency has failed to cooperate in a City debarment investigation.
- I. The Agency has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

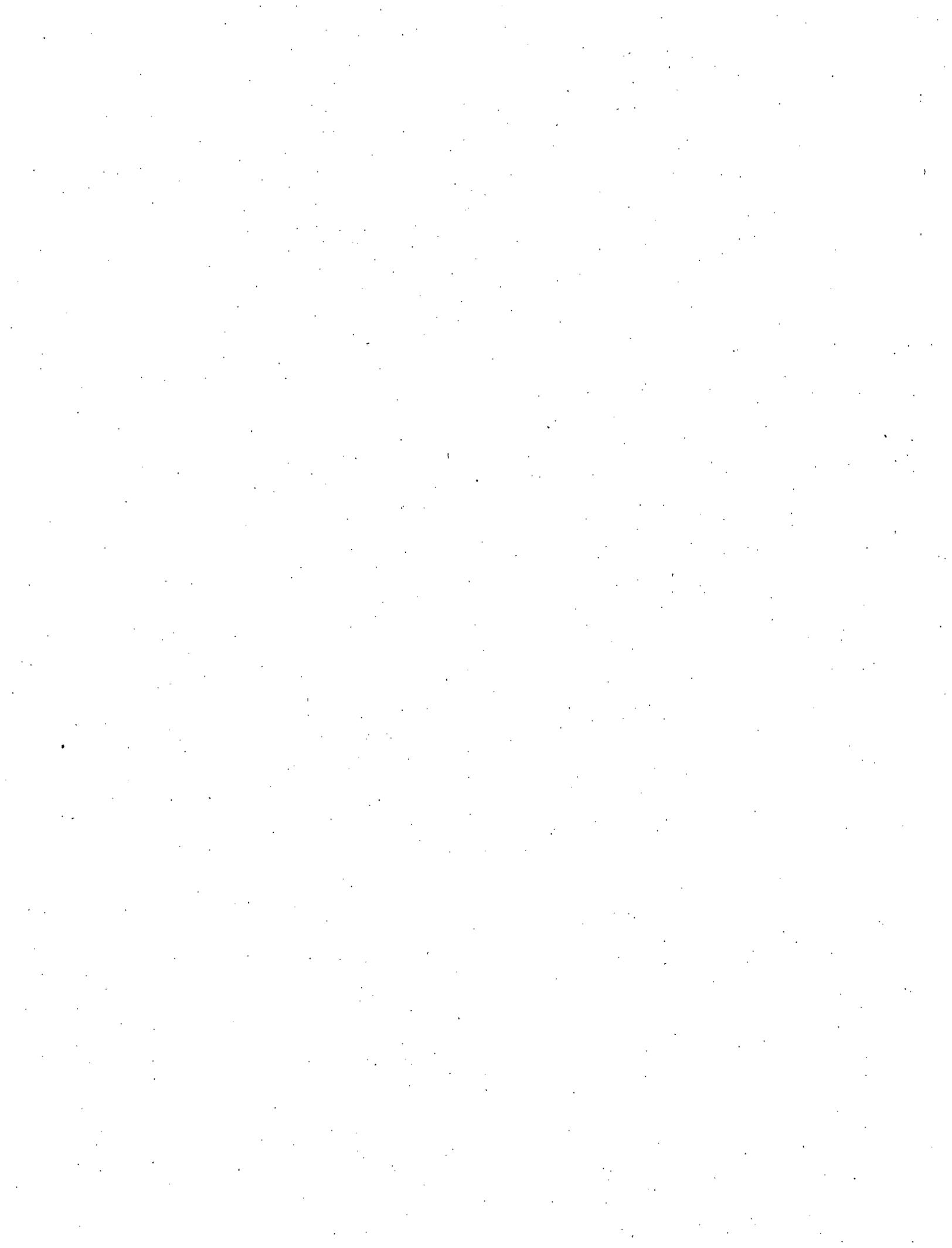
The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

### **Section 31: MISCELLANEOUS PROVISIONS**

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Agency after the time the same shall have become due nor payment to the Agency for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.





K. Addresses for Notices and Deliverable Materials: All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst  
Office of Policy and Management, P.O. Box 94745  
Seattle, WA 98124-4745

If to the Agency:

Eileen Farley, Executive Director  
Northwest Defenders Association  
1111 Third Avenue, Suite 200  
Seattle, WA 98101

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

**THIRD DEFENDER AGENCY**

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Signature Date  
  
Eileen Farley  
Executive Director,  
Northwest Defenders Association

By \_\_\_\_\_  
Signature Date  
  
Fred Podesta  
Director,  
Department of Executive Administration

**THIRD DEFENDER AGENCY**

By \_\_\_\_\_  
Signature Date  
  
Jeffrey P. Robinson  
President, Board of Directors,  
Northwest Defenders Association

**City of Seattle Business License Number: 91678**  
**Washington State Unified Business Identifier Number (UBI): 601 041 479 000**  
**Federal Tax ID Number: 91-1392873**



**ATTACHMENT 1 - KING COUNTY KENNY SALARY PLAN**

<b>RANGE</b>	<b>2008 Kenny Salary Table (2008 COLA RATE - 2.38%)</b>						
	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>	<b>STEP 6</b>	<b>STEP 7</b>
Public Defense Attorney 1	\$50,528	\$52,601					
Public Defense Attorney 2	\$55,709	\$64,341					
Public Defense Attorney 3	\$73,663	\$79,304					
Public Defense Attorney 4	\$81,375	\$83,447	\$85,288	\$87,591	\$90,007	\$92,310	
Senior Public Defense Attorney 1	\$93,681	\$94,852	\$96,038	\$97,237	\$98,453	\$99,684	\$100,930
Senior Public Defense Attorney 2	\$102,191	\$103,468	\$104,762	\$106,071	\$107,398	\$107,398	\$107,398
Senior Public Defense Attorney 3	\$108,740	\$110,100	\$111,476	\$112,870	\$114,280	\$114,280	\$114,280

**ATTACHMENT 2**  
**Northwest Defenders Association**  
**THIRD DEFENDER JULY 1 - DECEMBER 31, 2008 COSTS**

Personnel	Number (FTE)	Total Salaries	Total Benefits*	Total Cost	July - Dec 2008 Costs
Senior Attorney (assume 100 credits & oversight)	1	92,615.00	13,030.00	105,645.00	52,822.50
Paralegals	0.5	23,162.00	4,756.00	27,918.00	13,959.00
Investigators	0.065	3,388.00	698.00	4,086.00	2,043.00
Social Workers	0.065	3,449.00	704.00	4,153.00	2,076.50
Clerical Staff	0.1	2,619.00	762.00	3,381.00	1,690.50
Direct Supervision	0.1	9,442.00	1,413.00	10,855.00	5,427.50
Other Personnel Costs		-	-	-	-
<b>Sub-Total Personnel Costs</b>	<b>1.83</b>	<b>134,675.00</b>	<b>21,363.00</b>	<b>156,038.00</b>	<b>78,019.00</b>

**O&M Costs**

7510 · Space Rental				7,814.77	3,907.39
9501 · Prof Services (IT & Acctg)				1,530.00	765.00
6500 · Prof Dues & Insurance (WDA, NLADA, Malpractice)				2,035.03	1,017.52
7050 · Library				1,011.57	505.79
7000 · Supplies				1,995.61	997.81
8020 · Copier Lease				1,137.87	568.94
7012 · Telecommunications				592.16	296.08
8500 · Zipcar				456.65	228.33
7021 · File Storage Rental				571.46	285.73
6999 · Continuing Education/Training				815.97	407.99
7085 · Messenger				1,260.00	630.00
9000 · Case Expense				233.66	116.83
9500 · Other				20.00	10.00
<b>Sub-Total O&amp;M Costs</b>				<b>19,474.75</b>	<b>9,737.38</b>

**Other Costs**

Contract close out				3,670.25	1,835.13
<b>Sub-Total Other Costs</b>				<b>3,670.25</b>	<b>1,835.13</b>

**Overhead**

Administration @9%				1,662.35	831.18
<b>Sub-Total Overhead Costs</b>				<b>1,662.35</b>	<b>831.18</b>

**Total All Costs**

**180,845.35    90,422.68**

\*Benefits includes FICA, L&I, Unemployment taxes, Health Benefits, Metro Flexpass, and WSBA License fees.



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Office of Policy & Management	Linda Taylor-Manning 684-8376	Julien Loh 615-0870

**Legislation Title:**

AN ORDINANCE concerning indigent public defense services; authorizing the Director of the Department of Executive Administration to execute indigent public defense contracts with the Associated Counsel for the Accused (ACA), The Defender Association (TDA), and Northwest Defenders Association (NDA) for a period of three years; and ratifying and confirming certain prior acts.

- **Summary of the Legislation:**
- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*
- *Please check one of the following:*

**This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

**This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

**\$4,809,000 is included in the 2008 Criminal justice budget to pay for these contracts.**



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STATE OF WASHINGTON – KING COUNTY

--SS.

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226262  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

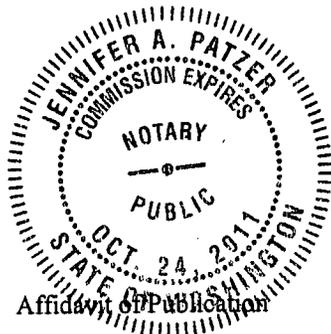
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

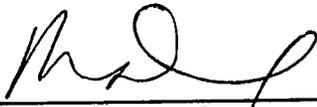
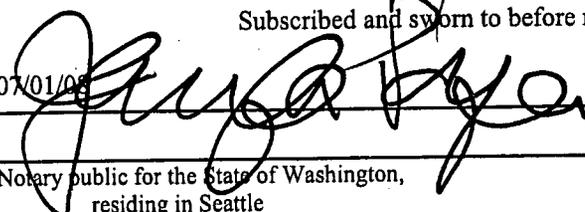
CT:122724 & 122726

was published on

07/01/08

The amount of the fee charged for the foregoing publication is the sum of \$ 42.15, which amount has been paid in full.



  
\_\_\_\_\_  
Subscribed and sworn to before me on  
07/01/08   
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle.

State of Washington, King County

**City of Seattle**

**TITLE-ONLY PUBLICATION**

The full text of the following ordinance, passed by the City Council on June 29, 2008, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

**ORDINANCE NO. 122726**

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

**ORDINANCE NO. 122724**

AN ORDINANCE concerning indigent public defense services; authorizing the Director of the Department of Executive Administration to execute indigent public defense contracts with the Associated Counsel for the Accused (ACA), The Defender Association (TDA), and Northwest Defenders Association (NDA) for a period of three years; and ratifying and confirming certain prior acts.

Publication ordered by JUDITH PIPPIN, City Clerk.

(Date of publication in the Seattle Daily Journal of Commerce, July 1, 2008.)

71(226262)