#16
CB 117344

Linda Taylor-Manning / Martha Lester
CBO Approve TDA Indigent Defense Contract ORD
November 18, 2011
Version #2

ORDINANCE _____

AN ORDINANCE relating to indigent public defense services; authorizing the City Budget Director to execute a contract for services with a third public defense agency.

WHEREAS, the City of Seattle, consistent with its constitutional requirements, Chapter 10.101 RCW, and sound public policy has provided 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 a person's ability to pay; and

WHEREAS, the City is guided by standards for providing indigent public defense services from recommendations of the American Bar Association's 10 Principles of a Public Defense Delivery System and Chapter 10.101 RCW; 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, pursuant to Ordinance 122602 as amended, the City set out standards for Indigent Public Defense Services and established contractual requirements for agreements between the City and public defense service providers; and

WHEREAS, to select providers for the period from July 2011 through June 2014, and consistent with Ordinance 122602, the City Budget Office issued its request for proposals (RFP) for indigent public defense services on February 16, 2011; and

WHEREAS, responses were received from Associated Counsel for the Accused (ACA) and from Society of Counsel Representing Accused Persons (SCRAP) for primary or secondary services; and responses were received from The Defender Association (TDA) and from Northwest Defenders Association (NDA) to provide secondary services only; and no responses were received for the tertiary agency; and

WHEREAS, after receiving the recommendations of the Indigent Public Defense Services RFP Review Panel, the Executive selected the primary and secondary providers for indigent public defense services and negotiated contracts with ACA (primary) and NDA (secondary); and

WHEREAS, Ordinance 123634, passed on June 27, 2011, authorized a primary defender contract with ACA, and provided that, on an interim basis only, ACA would refer conflict cases to TDA and NDA on an alternating basis, and if those entities also had conflicts, to the Conflict Attorney Panel, and also directed reissuance of an RFP with a minimum of no more than 1 FTE attorney for tertiary defender services; and

WHEREAS, on September 7, 2011, the City Budget Office reissued the RFP for a third agency (with a minimum of 1 FTE attorney) to provide public defense services; and

WHEREAS, responses were received from SCRAP and TDA; and

WHEREAS, SCRAP and TDA are both Washington nonprofit corporations; and

WHEREAS, the City provided for an Indigent Public Defense Services Proposal Review Panel, consistent with Ordinance 122602, to review the responses to the RFP; and

WHEREAS, the Review Panel recommended to the director of the City Budget Office (CBO) the selection by the City of TDA as the tertiary provider; and

WHEREAS, after receiving the Review Panel's recommendations, the director of CBO selected TDA as the tertiary agency for indigent public defense services and negotiated a contract with TDA; and

WHEREAS, in accordance with RCW 10.101.040 the City had outside counsel, Foster Pepper PLLC, review the contract for tertiary public defense services; and

WHEREAS, there is a present and ongoing need to provide indigent public defense services through multiple contract providers; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Third Public Defense Contract. The City Budget Director is authorized to execute the contract substantially in the form of Exhibit 1 for tertiary public defense services negotiated with The Defender Association (TDA) through June 30, 2014.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____
Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Exhibit 1: Public Defense Services, Third Defender, The Defender Association

City of Seattle

Public Defense Services
Third Defender
The Defender Association

2012 – 2014 Contract for Services

January 1, 2012

Table of Contents

Section 1: DEFINITIONS 2
Section 2: PUBLIC DEFENSE STANDARDS 6
Section 3: TERM OF CONTRACT 7
Section 4: SCOPE OF WORK 7
Section 5: PERFORMANCE AND QUALIFICATIONS 9
Section 6: PAYMENT 13
Section 7: REPORTING REQUIREMENTS 14
Section 8: OPERATING BUDGET 15
Section 9: OTHER EMPLOYMENT 16
Section 10: CORRECTIVE ACTION 16
Section 11: TERMINATION 17
Section 12: SOCIAL EQUITY REQUIREMENTS 19
Section 13: EQUAL BENEFITS 19
Section 14: LABOR HARMONY 20
Section 15: OTHER LEGAL REQUIREMENTS 20
Section 16: INDEMNIFICATION 20
Section 17: INSURANCE 20
Section 18: ESTABLISHMENT AND MAINTENANCE OF RECORDS 21
Section 19: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS 21
Section 20: CONTRACTUAL RELATIONSHIP 23
Section 21: ASSIGNMENT AND SUBCONTRACTING 23
Section 22: CITY ETHICS CODE (Seattle Municipal Code 4.16.010 TO 4.16.105) 24
Section 23: NO CONFLICT OF INTEREST 24
Section 24: ERRORS & OMISSIONS; CORRECTION 25
Section 25: INTELLECTUAL PROPERTY RIGHTS 25
Section 26: CONFIDENTIALITY 26
Section 27: EXTRA WORK 27
Section 28: BOARD OF DIRECTORS 27
Section 29: DEBARMENT 27
Section 30: MISCELLANEOUS PROVISIONS 28
ATTACHMENT 1 – CITY OF SEATTLE ASSISTANT CITY ATTORNEY SALARY SCHEDULE 31
ATTACHMENT 2 – 2012 CHARGES FOR SERVICES 32

2012 – 2014 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 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, as amended; and,

WHEREAS, the Agency was selected through an Request for Proposal (RFP) issued by the City on February 16, 2011 and amended on September 7, 2011; 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. Provisional case assignment may also include post-adjudication cases requiring additional attorney time after the case has been completed or closed.

   2. The Seattle Municipal Court (SMC) will make provisional assignments directly to the defender agencies. The Primary Defender will refer cases in which they find a conflict of interest to the Secondary Defender. The Secondary Defender will refer cases in which they find a conflict of interest to the Primary Defender, unless the Primary Defender has already declared a conflict, in which case the Secondary Defender will refer such cases to the Third Defender. The Third Defender will refer cases in which they find a conflict of interest back to the Secondary Defender who will assign the cases to a member of the Conflicts Attorney Panel.

3. To decline a provisional assignment, the agency must forward the case to the next agency/panel attorney no later than one working day after it received the provisional assignment. If the conflict is identified too late in the day for the hard copy of the assignment and discovery (if any) to be transmitted to the next agency, the agency's SMC division staff must notify the next agency's SMC supervisors(s) and docket clerk by email that the case will be sent the following working day. The email shall specify the client's name, case number, custody status and date of next hearing. To decline a case, the hard copy, PDF, or email of assignment and discovery (if any) must be transmitted to the next agency/panel attorney no later than two working days after initial receipt of the referral.

4. If the case is declined within one working day due to a conflict of interest, and timely sent on for assignment to the next defender agency or to assigned counsel, the agency will not be deemed to have been "assigned" the case. The case need not be reported in open case reports or close case reports. The agency shall not be obligated to contact the defendant.

5. 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.

6. 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 issuance of the bench warrant.

7. Probation Review: A hearing arising from a single notice of hearing subsequent to the disposition of the case.

8. 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 Assignment credits, as defined in Section 1 (A), 5 and Section 1 (B) of this contract, which may be assigned to an

individual agency attorney during any calendar year. An attorney's open cases from previous years will be taken into consideration when making case assignments in the current year. The previous year's open caseload credits are not added to the caseload standard for the current 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.

G. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the City Budget Office (CBO).

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 an order entering a dispositional continuance.

L. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports, and other materials 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 Probation Review: A hearing arising from a single notice of hearing subsequent to the disposition of the case.

3. 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 Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) 6.3.1, 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.

4. 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 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).

T. Third Defender: The Third 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).

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 "Assistant City Attorney" salary schedule as updated annually.

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 Assignment credits per agency attorney per calendar year. Should the caseload standard be amended by statute, ordinance, or court rule, the parties will negotiate a caseload standard and funding consistent with those changes.

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, Writ, and/or New Trial Transcription Costs: Agency costs will be reimbursed by CBO. 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 annually. 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: TERM OF CONTRACT

The term of this Contract shall begin after the City Budget Office has received authorization from the City Council to execute the contract, and execution of the Contract by the City Budget Director and Agency. The Contract shall end on June 30, 2014, unless terminated earlier pursuant to the provisions hereof, or unless extended by mutual agreement of the City Budget Director and the Agency.

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 Work shall, at all times, be subject to the City's general review and approval. The Agency shall confer with the City periodically during the progress of the Work, and shall prepare and present such information and materials as requested by the City to determine the adequacy of the Work or the Agency's progress. 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. Nothing in this contract shall require or permit, without the consent of the client, access to or disclosure of any information protected or governed by the Rules of Professional Conduct and/or attorney-client privilege pursuant to RPC 1.6.

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, or as appointed by the Bench. 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. Assignment of Cases: In each year of the contract, the City will guarantee funding equivalent to one (1.0) full-time equivalent (FTE) attorney to represent defendants where the Primary and Secondary Defenders have a conflict, and other cases as assigned. The annual caseload is estimated to be up to 380 case credits. 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. 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 and/or Secondary 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 and/or Secondary 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.

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 Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) appeals. Attorneys shall not use City funding to represent clients in any matter which is civil in nature other than infractions and writs arising out of, or relating to a criminal Case.

   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 June 1, 2012. 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. In-custody Defendants: 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. The assigned attorney, or another Agency attorney if the assigned attorney is unavailable for this purpose, shall visit the in-custody client within five (5) working days from assignment and notification of the in-custody status of the client. This provision applies to clients in custody on the assigned case at any King County adult detention

facility. These contacts may occur before the case is assigned by SMC. Documentation of this provision shall be noted in the client case file.

6. Out- of-Custody Defendants: Agencies shall send out-of-custody clients an assignment letter notifying them of their assigned attorney upon assignment of the case. The Agency attorney of record or a temporarily assigned attorney for the client shall make an initial contact through an in person meeting or phone call with out-of-custody 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 the assignment letter or phone calls. These contacts may occur before the case is assigned by SMC and all documentation of this provision shall be noted in the client case file.
7. Post-Adjudicated Cases: Attorney contact prior to the provisional assignment will be recognized as meeting the attorney contact requirements related to in-custody and out-of-custody defendants. Documentation of this provision shall be noted in the client case file.
8. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Agency. The Agency shall request 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.
9. 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.
10. Agency attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision requires an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in order to comply with the local court rules and this Contract.
11. 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.
12. The Agency shall ensure that a preliminary written response to any written or oral complaints received from the Contract Administrator concerning services provided by the employees of the Agency or the Agency itself shall be made 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 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 Conflict Attorney Panel for conflict that was due to the breakdown in attorney-client communications.

13. 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 how many attorneys met the evaluation criteria in each category. 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 January 1, 2012 through December 2012, the City shall pay the Agency for the services as specified in Section 4, Scope of Work, in the amount estimated to be $184,000. This amount is based on the 2011 City of Seattle Assistant City Attorney salary schedule. The specific costs are shown in Attachment 2 – 2012 Charges for Public Defense Services. This attachment will be updated and amended by CBO and the Agency upon execution to pro rate the payments based on the actual start date. The attachment will also be updated and amended yearly to show the 2013 and 2014 charges.

   The amount of payment to the Agency ("Payment") for the period for January 1, 2013, through June 31, 2014, will be determined based on the 2013 and 2014 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 2013 and 2014 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the City of Seattle Assistant City Attorney Salary Schedule as specified in Section 2(A) – Compensation of Counsel. The Agency shall use actual costs instead of COLA for FICA, Unemployment, Medicare, and Workers Comp. Agencies will receive the same healthcare adjustment as the City, identified during the CBO budget process. All other costs will include inflationary adjustments but will not increase more than the July to June annual average of the CPI-W identified by CBO during the budget process. Increased or decreased costs due to changes in level of service must be negotiated and approved by the Contract Administrator and the Agency.

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 as amended. The costs described in Attachment 2 as amended 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
- 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.

Report Title	Due Date
Closed Case Reports including attorney assignment	Monthly (by 20th day of the following month)
Closed Case Summary of Dispositions	Monthly (by 20th day of the following month)
Salary and Staff Position Reports, including calendar coverage	Quarterly
Report showing attorney caseloads	Quarterly
Report showing supervisor to attorney ratio	Quarterly
Preliminary Year-end Report of Reserve Accounts and Operating Accounts	January following fiscal year

Report Title	Due Date
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 closed case report is due on or before the twentieth (20th) day of the following month for services of the prior month. Other reports are due as provided above. 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 as amended.

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 19 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 Director or delegate and the City's Contract Administrator or delegate, or if necessary shall be referred to the Director of the City Budget Office **(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 non-prevailing 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: SOCIAL EQUITY REQUIREMENTS

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 make affirmative efforts 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 disability. Such efforts 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.

B. Agency shall promote and seek inclusion of woman and minority businesses on subcontracting opportunities within the contract Scope of Work. Agency agrees to make such efforts as a condition of the Contract. A woman or minority business is one that self-identifies to be at least 51% owned. Such firms may be, but do not have to be, certified by the State of Washington.

Section 13: EQUAL BENEFITS

A. Compliance with Seattle Municipal Code Chapter 20.45: The Agency shall comply with the requirements of Seattle Municipal Code Chapter 20.45 and Equal Benefit Program Rules implementing such requirements under which the Agency is obligated to provide the same or equivalent benefits ("equal benefits") to the domestic partner of employees as the Agency provides to spouses of employees. At the City's request, the Agency shall provide complete information and verification of the Agency's compliance.

B. Any violation of this Section shall be a material breach, for which the City may (1) require the Agency to pay liquidated damages for each day that the Agency is in violation

of Seattle Municipal Code Chapter 20.45 during the term of the Contract; or (2) terminate the Contract; or (3) proceed with Debarment as stated in the Debarment Section of this Contract; or (4) impose other remedies as provided for in Seattle Municipal Code Chapter 20.45.

Section 14: 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 15: OTHER LEGAL REQUIREMENTS

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.

Section 16: 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 17: 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 16 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 18: 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 19: 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 20: 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 21: 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 22: CITY ETHICS CODE (Seattle Municipal Code 4.16.010 TO 4.16.105)

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 Seattle Municipal Code 4.16.075.

C. No Gifts of Gratuities: Agency shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended or may appear to a reasonable person to be intended, to obtain or give special consideration to the Agency. Promotional items worth less than $25 may be distributed by the Agency to City employees if the Agency uses the items as routine and standard promotional materials. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

Section 23: 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 24: 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 25: INTELLECTUAL PROPERTY RIGHTS

A. Copyrights. The Agency shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Agency in connection with the Work, whether or not the Work is completed. The Agency grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Agency for the City under this Contract. If requested by the City, a copy of all drawings, 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 program 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.

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

C. 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 26: CONFIDENTIALITY

A. The Agency understands that any records (including but not limited to proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by the City even if the Agency possesses the records, are public records under Washington State law, RCW Chapter 42.56. The City must promptly disclose public records upon a request to the City, unless a statute exempts them from disclosure. The Agency also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

B. If the City receives a public disclosure request made pursuant to RCW Chapter 42.56, the City will not assert an exemption from disclosure on behalf of the Agency. For materials that the Agency has properly and clearly marked to be confidential, the City may notify the Agency of the request and postpone the release of documents for ten business days to allow the Agency to file a lawsuit seeking an injunction preventing the release of the documents pursuant to RCW 42.546.540. Any notification by the City to the Agency is provided as a courtesy and not a City obligation. Unless the Agency obtains and serves an injunction upon the City before the close of business on the tenth working day after the date of the notification, the City may release the documents. It is the Agency's discretionary decision whether to file the lawsuit.

C. In order to request that material not be disclosed until receipt of notification of a public disclosure request, the Agency must identify the specific materials and citations very clearly, following the instructions given by the City. The City will not withhold material for notification if the Agency simply marked "confidential" on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited to the City will be temporarily withheld until the City provides notification of a public disclosure request.

D. If the Agency does not submit a request following the instructions and forms that the City requires for such purpose, the Agency is deemed to have authorized releasing any and all information submitted to the City.

E. Notwithstanding the above, the Agency must not take any action that would affect the City's ability to use services provided under this Contract, or the Agency's obligations under this Contract.

F. The Agency will fully cooperate with the City in identifying and assembling records that may be in the possession of the Agency in case of any public disclosure request.

G. The Agency will possess, or have access to, information (both materials and information provided by the City or prepared for the City, as a result of the Work). This information is likewise to be treated by the Agency as confidential. The Agency will not permit the duplication or disclosure of such information to any persons (other than its own

employee, agent or representative who requires such information for the direct performance of the Agency obligations hereunder), unless such duplication, use or disclosure is specifically authorized in writing by the City. Such 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, information does not include that which has been independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 27: 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 28: 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 its by-laws. The Agency shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

Section 29: DEBARMENT

In accordance with Seattle Municipal Code Chapter 20.70, the Director of the Department of Finance and Administrative Services or his/her designee may debar an agency and prevent the agency from entering into a contract with the City or from acting as a sub-consultant 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 women and minority business utilization, discrimination, or equal benefits or other state, local or federal non-discrimination laws.

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.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in Seattle Municipal Code 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.

Federal or Other Debarment: The Agency shall immediately notify the City of any suspension or debarment or other action that excludes the Agency or any sub-consultant from participation in Federal contracts. The Agency shall verify all sub-consultants that are intended and/or used by the Agency for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at https://www.epls.gov/epls/search/do The Agency shall keep proof of such verification within the Agency records.

Section 30: MISCELLANEOUS PROVISIONS

A. Amendments: Amendments shall not be effective unless in writing and signed by an authorized representative of each of the parties hereto. Contract amendments relating to schedules and court calendars; attorney assignments and staffing; reporting and records; and such other matters regarding the administration of the Contract that can be made within existing appropriation authority and consistent with public defense standards may be agreed to on behalf of the City by the City Budget Office. Contract amendment 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. 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 requirements of this Section.

D. 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.

E. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.

F. Captions: The titles of sections are for convenience only and do not define or limit the contents.

G. 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.

H. 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.

I. Entire Contract: This document, along with any exhibits and attachments, and subsequently issued addenda, constitutes the entire Contract between the City and the Agency. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, associate or employee of the Agency prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

J. 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.

K. 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.

L. No Personal Liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

M. 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 the City:
Catherine Cornwall, Senior Policy Analyst
City Budget Office, P.O. Box 94747
Seattle, WA 98124-4747

If to the Agency:
Floris J. Mikkelsen, Director
The Defender Association
810 Third Avenue, 8th Floor
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.

THIRD DEFENDER AGENCY	**THE CITY OF SEATTLE**
By _____	By _____
Signature Date	Signature Date
Floris J. Mikkelsen	Beth Goldberg
Director, The Defender Association	Director, City Budget Office

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 – CITY OF SEATTLE ASSISTANT CITY ATTORNEY SALARY SCHEDULE

	ANNUAL	Monthly	Hourly	
Step 1:	$65,579	$5,465	$31.408	ACA
Step 2:	$68,014	$5,668	$32.574	ACA
Step 3:	$70,665	$5,889	$33.843	ACA
Step 4:	$74,376	$6,198	$35.621	ACA
Step 5:	$78,281	$6,523	$37.491	ACA
Step 6:	$82,281	$6,857	$39.407	ACA
Step 7:	$86,668	$7,222	$41.508	ACA
Step 8:	$91,247	$7,604	$43.701	ACA
Step 9:	$93,645	$7,804	$44.849	ACA
Step 10:	$96,044	$8,004	$45.998	ACA
Step11:	$98,573	$8,214	$47.209	ACA
Step 12:	$101,104	$8,425	$48.422	ACA

Step 1:	$86,668	$7,222	$41.508	ACA SR.
Step 2:	$91,247	$7,604	$43.701	ACA SR.
Step 3:	$96,043	$8,004	$45.998	ACA SR.
Step 4:	$101,104	$8,425	$48.422	ACA SR.
Step 5:	$106,142	$8,845	$50.834	ACA SR.
Step 6:	$111,435	$9,286	$53.369	ACA SR.
Step 7:	$117,011	$9,751	$56.040	ACA SR.
Step 8:	$122,940	$10,245	$58.879	ACA SR.
Step 9	$125,768	$10,481	$60.234	ACA SR.
Step 10	$128,706	$10,726	$61.641	ACA SR.
Step 11	$131,280	$10,940	$62.874	ACA SR.
Step 12	$133,848	$11,154	$64.103	ACA SR.

Step 1:	$91,247	$7,604	$43.701	ACA SUPV
Step 2:	$96,043	$8,004	$45.998	ACA SUPV
Step 3:	$101,104	$8,425	$48.422	ACA SUPV
Step 4:	$106,142	$8,845	$50.834	ACA SUPV
Step 5:	$113,179	$9,432	$54.205	ACA SUPV
Step 6:	$117,011	$9,751	$56.040	ACA SUPV
Step 7:	$122,940	$10,245	$58.879	ACA SUPV
Step 8:	$128,706	$10,726	$61.641	ACA SUPV
Step 9	$131,280	$10,940	$62.874	ACA SUPV
Step 10	$133,849	$11,154	$64.104	ACA SUPV
Step 11	$136,527	$11,377	$65.386	ACA SUPV
Step 12	$139,202	$11,600	$66.668	ACA SUPV

ATTACHMENT 2 – 2012 CHARGES FOR SERVICES

	FTE	Total Salaries	Total Benefits	TOTAL COSTS
PERSONNEL				
Senior Attorney	0.50	55,263	6,690	61,953
Staff Attorney	0.50	33,900	6,690	40,590
Paralegal	0.10	5,850	1,043	6,893
Investigator	0.25	12,876	2,295	15,171
Social Worker	0.15	8,206	1,463	9,669
Office Assistant	0.05	1,880	335	2,215
Docket Clerk	0.10	3,682	442	4,124
Direct Supervision	0.10	11,473	2,005	13,478
TOTAL PERSONNEL COSTS	**1.75**	**133,130**	**20,963**	**154,093**
OPERATIONS & MAINTENANCE				
RENT PAYMENTS				13,356
DOCUMENT STORAGE				795
BLDG REP/MAINT				102
TELEPHONE				493
DOCKETING				211
GENERAL SUPPLIES				868
R & M EQMT				376
COMPUTER SUPPLIES				448
POSTAGE				153
PRINTING				58
LIBRARY				766
EQMT RENTAL & INTEREST ON LEASES				137

MINOR EQMT PURCHASES			313
MILEAGE			349
PARKING & ZIPCAR			882
BUS PASSES			275
PROF INS			416
MEMB & DUES			592
TRAINING & CONFERENCES			387
CASE COSTS			161
TOTAL OPERATIONS & MAINTENANCE			**21,138**
OVERHEAD COSTS			
DIRECT LEGAL ADMIN			1,436
ACCOUNTING, IT, OFC MGMT			4,760
CONTRACT CFO			470
BANK CHARGES			12
BOARD EXP			17
PROF SVC-LEGAL			289
PROF SVC-ACCTG,PAYROLL, BENEFITS			724
EMPLOYEE RELATIONS			97
RECRUITING			14
OFFICE INSURANCE			87
LICENSES AND BUSINESS TAXES			2
DEPRECIATION			843
TOTAL OVERHEAD COSTS	-	-	**8,751**
Total All Costs	**133,130**	**20,963**	**183,982**

Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office	Linda Taylor-Manning 684-8376	Linda Taylor-Manning 684-8376

Legislation Title: AN ORDINANCE relating to indigent public defense services; authorizing the City Budget Director to execute a contract for services with a third public defense agency.

Summary of the Legislation:
This legislation will authorize the Director of the City Budget Office to execute a public defense contract beginning in 2012 and going through June 30, 2014 with The Defender Association (TDA), a non-profit indigent public defender agency.

Background:
The City Budget Office (CBO) began a process in January 2011 to solicit proposals for indigent public defense services for contracts which expired on June 30, 2011. In February 2011, CBO 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 for the Primary and Secondary positions and recommended defender agencies at the end of April. No proposals were received for the third public defense agency.

CBO reissued the RFP for the third public defense agency on September 7, 2011, consistent with the City Council's direction in Ordinance 123634 (June 27, 2011). The revised RFP provided for the commitment of the equivalent of attorney or attorneys constituting a full time attorney (1 FTE) to represent defendants where both the Primary and Secondary agencies have a conflict of interest or are unable to perform. Two agencies submitted proposals: TDA and The Society of Counsel Representing Accused Persons (SCRAP). The RFP Review Panel considered both proposals and recommended TDA.

The final contract was reviewed by the law firm of Foster Pepper PLLC.

__X__ This legislation has financial implications.

Appropriations Notes:
$6,170,000 is included in the 2012 Proposed Budget for Indigent Defense Services (in the Criminal Justice Contract Services Department) to pay for this contract, as well as fund the Primary and Secondary agencies, and also private attorneys when the contracted defender agencies have a conflict of interest and cannot accept the case.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
There is no financial cost of not implementing the legislation. However, indigent public defense services are a constitutional requirement and a requirement of Chapter 10.101 RCW. Council Ordinance 122602 established the City requirement to contract with three not for profit agencies to provide public defense services. Not implementing this legislation will mean a conflict with the regulatory requirements noted.

c) **Does this legislation affect any departments besides the originating department?**
This legislation will have an operational impact on the Seattle Municipal Court (SMC) which is responsible for assigning cases to the public defense agencies. The SMC Presiding Judge and Chief Clerk have reviewed and commented on the agency contracts. Current monthly meetings of the Case Assignment Workgroup will work out operational protocols.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** The City could contract with only two agencies but would then be out of compliance with Council Ordinance 122602.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**
None.

List attachments to the fiscal note below: None.

City of Seattle
Office of the Mayor

November 15, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Director of the City Budget Office to execute a contract with The Defender Association (TDA) to provide indigent public defense services in Seattle Municipal Court starting in 2012 and going through June of 2014.

Consistent with the Council's direction in Ordinance 123634 (June 27, 2011), the City Budget Office (CBO) released in September 2011 a request for proposals (RFP) for the third public defense agency. The third agency handles cases in which both the primary and secondary agencies have conflicts and are unable to represent the defendant. Two agencies submitted responses. The responses were reviewed and evaluated by the RFP Review Panel as called for in Ordinance 122602. The Panel considered the proposals and recommends awarding the contract for the third agency to TDA.

In accordance with State law, the 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 contract with TDA 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,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council
Beth Goldberg, Director, City Budget Office
Steve DiJulio, Foster Pepper, PLLC

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov