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CBO Indigent Defense ILA ORD
April 10, 2014
Version #3

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118078

AN ORDINANCE related to indigent public defense legal services; authorizing an alternative to the method under Ordinance 122602 for selecting providers of public defense legal services; authorizing an interlocal agreement with King County for public defense legal services; and superseding the provisions of Ordinance 122602, as amended, to the extent it is inconsistent with the provisions of this ordinance.

WHEREAS, before 2005, the City contracted with King County for the provision of public defense services; beginning January 1, 2005, the City contracted for those services through non-profit legal corporations; and

WHEREAS, the City Council passed Ordinance 122602 in December 2007, establishing a framework for contracting for indigent public defense; and

WHEREAS, Ordinance 122602 has subsequently been amended by Ordinances 123454 and 123634; and

WHEREAS, through June 30, 2013 the City contracted for public defense services with the Associated Counsel for the Accused (ACA), Northwest Defenders Association (NDA) and The Defender Association (TDA) (collectively the "Public Defense Contracts"); and

WHEREAS, the ACA, NDA and TDA attorneys and staff performing work under the Public Defense Contracts became employees of King County on July 1, 2013; and

WHEREAS, with the City's approval, effective July 1, 2013, ACA, NDA and TDA assigned their Public Defense Contracts to King County; and, the City entered an Memorandum of Understanding with the County for the County to provide the City with public defense legal services under the assigned contracts through June 30, 2014; and

WHEREAS, the City and King County have negotiated a new interlocal agreement for public defense legal services for a period beginning July 1, 2014; and

WHEREAS, the framework established under Ordinances 122602, as amended, for selecting not-for-profit legal corporations to provide public defense legal services was well regarded and resulted in quality services to the community; and such framework and process should remain available should the City determine in the future to return to that model; and

WHEREAS, this Ordinance provides the City with a further alternative to contract for public defense services; and, the City Council and Mayor have decided to maintain the flexibility to contract with non-profit legal corporations or with King County to maintain the traditional quality of public defense legal services in the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Government Interlocal Agreements Authorized.**

In addition to the process authorized by Ordinance 122602, as amended, for selecting providers of public defense legal services, the City of Seattle (the "City") may directly negotiate an interlocal agreement, without a request for proposal process, with King County to provide public defense legal services to the City. The resulting interlocal agreement shall be subject to City Council authorization by ordinance.

Section 2. **Controlling Ordinances; Approval By Ordinance Required.**

Other City procurement procedures, including but not limited to Seattle Municipal Code Chapter 20.50, shall have no application to the process for procuring public defense legal services. Ordinance 122602, as amended, and this Ordinance provide the exclusive processes for City contracts for public defense legal services. Nothing in this Ordinance precludes the City from any alternative approach to providing indigent defense legal services that the City Council may authorize in the future. No agreement to provide indigent public defense services shall be executed or become effective unless and until approved by the City Council by ordinance.

Section 3. **Interlocal Agreement with King County Authorized.**

The City Budget Director or his designee is authorized to execute, for and on behalf of the City, an agreement substantially in the form of the King County and City of Seattle Interlocal Agreement for Public Defense Services attached hereto as Exhibit 1 ("Interlocal Agreement").

Additionally, the City Budget Director is authorized to extend the term of the Interlocal Agreement for up to an additional twenty-four months, to negotiate amendments to the Interlocal Agreement consistent with Section 24 of the Interlocal Agreement, and to negotiate changes to caseload limits in order to comply with Washington State Supreme Court standards that will take effect in 2015 as provided under Section 4 of the Interlocal Agreement.

Section 4. **Prior Ordinances Superseded to the Extent Inconsistent.**

If there is any inconsistency or conflict between this ordinance, including the Interlocal Agreement authorized herein, and any provision of Ordinance 122602, as amended by Ordinances 123454 and 123634, this ordinance shall control. Ordinance 122602, as amended, is superseded to the extent necessary to achieve the purposes of this ordinance.

Section 5. **Effective Date.**

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 _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____of the City Council

Approved by me this _____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit 1: King County and the City of Seattle Interlocal Agreement for Public Defense Services July 2014

ATT 1 to EXH 1: 2014 King County Prosecuting Attorney Salary Grid
ATT 2 to EXH 1: 2014 Charges for Services, July 1, 2014 – December 31, 2015

King County and the City of Seattle

Interlocal Agreement for Public Defense Services July 2014

Section 1: AGREEMENT. This Interlocal Agreement for Public Defense Services ("Agreement") is entered by and between The City of Seattle, a Washington municipal corporation ("City") and King County, a Washington municipal corporation and legal subdivision of the State of Washington ("County"). The City and County are each a "Party" and together the "Parties" to this Agreement. The Parties agree as follows.

Section 2: RECITALS

A. The City desires to have legal services performed for indigent persons legally entitled to appointed representation in the City. The County operates and maintains a Department of Public Defense (KC-DPD), and is available to provide such legal services.

B. This Agreement provides authority for County management of defense services for the City. Funds provided pursuant to this Agreement are provided for the sole purpose of provision of legal services to indigent persons charged with crimes in Seattle Municipal Court ("Court").

Section 3: DEFINITIONS

A. Case Assignment: A case assignment is that particular case assigned by the City or the Court to the County.

1. Provisional case assignment will include all cases initially referred to KC-DPD and may include cases subsequently assigned to conflict counsel, 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.

i. The Court will make provisional assignments directly to KC-DPD. If there is a conflict with all of the KC-DPD divisions, the division managing the Conflicts Attorney Panel (CAP) will refer the case to a private attorney.

ii. To decline a provisional assignment, a KC-DPD division must forward the case to the next division or 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 division, the division's staff must notify the next division's Court 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 division or panel attorney no later than two working days after initial receipt of the referral.

iii. If the case is declined within one working day due to a conflict of interest, and timely sent on for assignment to the next division or to assigned counsel, the division 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 division shall not be obligated to contact the defendant.

2. Final Case Assignment includes all cases the division accepts, and conflict cases involving more than 2 hours of attorney work.

   i. 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.

   ii. A case which was closed and submitted to the Agreement 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 case assignment.

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

   i. In the event that one probationary hearing handles probationary matters related to more than one case, the County 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 and may be modified according to changes in State Law or Court Rule to meet caseload standards.

1. One Final Case Assignment 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.

5. Extraordinary case credits will be allowed at the discretion of the City, upon consultation with the County, on cases determined to be "extraordinary" based on consideration of factors which include: seriousness of the charges, the number of counts or offenses charged and joined for disposition, then number of separate incidents comprising the charged offenses, the potential direct and collateral consequences of a conviction, the amount and complexity of the evidence, number of witnesses, unusual or unique legal issues, number of defendants, whether there is a plea, bench trial or jury trial, number of pretrial motions or hearings needed, actual length of trial, and the extent to which the workload is accounted for adequately by the existing case weighting methodologies. The County can request extraordinary case determination, and specify the number of credits sought, and must specify the amount and nature of the work performed, including hourly billing statement on the case, and a statement of the factors supporting the County's request for extraordinary case determination and credits.

C. Caseload Limits: The maximum number of Case Credits as defined in Agreement Section 3 (A), and Section 3 (B), which may be assigned to an individual attorney, calculated as a rolling year average. Caseload limits may be modified according to changes in State Law or Court Rule to meet caseload standards.

D. City: The City of Seattle.

E. County: King County through its Department of Public Defense.

F. Client: An Indigent Defendant who has been assigned to the County by the City or the Court.

G. 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.

H. City Agreement Administrator: City of Seattle Public Defense Agreement Administrator in the City Budget Office (CBO).

I. County Agreement Administrator: King County Public Defender in the Department of Public Defense.

J. Court: The Municipal Court of Seattle

K. CPI-W: 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 using data from the Seattle area.

L. 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 County 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.

M. 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.

N. 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 State and Federal Constitutional requirements.

O. 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.

P. Indigent Defendant: A person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.

Q. Mayor: The Mayor of Seattle or designee.

R. 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), 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.

S. Paraprofessional Staff: Investigators, social workers and paralegals performing services under County supervision.

T. Conflict Attorney Panel: A panel of private attorneys assigned to defend cases where the County has a conflict of interest.

U. Working Day: Any day other than (a) a Saturday or Sunday, or (b) an official City holiday.

Section 4: PUBLIC DEFENSE STANDARDS

The County agrees to provide services consistent with the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

A. Compensation: Compensation to King County for the services of counsel shall be in accordance with the schedule set forth in Attachment 1 – the "2014 King County Prosecuting Attorney Salary Schedule" as updated annually. The City will fund forty percent (40%) of the attorneys at "Deputy Prosecuting Attorney IV", and sixty percent (60%) of the attorneys at "Deputy Prosecuting Attorney V", Step 4.

B. Supervising attorneys will be funded at "Senior Deputy Prosecuting Attorney III", Step 3 of the "County Prosecuting Attorney" salary schedule, as updated annually. If ACA Supervisor staff change, ACA will adjust and bill accordingly. Supervisors will not receive step increases beyond Step 3 of the "Senior Deputy Prosecuting Attorney III".

C. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 6 (F) as well as the practice standards required by Section 7 (A).

D. Caseload Limits:

1. The Caseload Limit shall be no more than 380 Case Credits per attorney, calculated as a rolling year average. Should the caseload standard be amended by statute, ordinance, or Washington Supreme Court standard 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 Agreement).

E. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by the Court.

F. Responsibility for Appeal, Writ, and/or New Trial Transcription Costs: County 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.

G. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the County as described in Section 8.

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

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

Section 5: TERM OF AGREEMENT

The term of this Agreement begins July 1, 2014, and shall end on December 31, 2015, unless terminated earlier pursuant to the provisions hereof, or unless extended by mutual agreement of the City Budget Director and the King County Public Defender up to an additional 24 months.

Section 6: SCOPE OF WORK

The Work shall, at all times, be subject to the City's general review and approval. The County 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 County's progress. The Scope of Work of this Agreement is as follows:

A. Purpose: The purpose of this Agreement is to provide a legal representation plan and legal services through effective assistance of counsel to Indigent Defendants. Legal Services shall be statutorily and constitutionally based, within an efficient and fiscally responsible framework.

B. Professional Conduct:

1. The County shall provide the legal services of attorneys and staff in compliance with all of the applicable laws and administrative regulations and or governing standards of the United States, State of Washington, City of Seattle, and the Washington State Supreme Court Rules of Professional Conduct (RPC) and Standards for Indigent Defense.

2. Nothing in this Agreement shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the County with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Agreement.

3. Nothing in this Agreement 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 County or any such confidential communications made to

agents or employees of the County 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 Agreement 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 County shall not solicit or accept any compensation, gifts, gratuities or services from any client.

C. Eligible Population: The population served shall be Indigent Defendants as assigned by the Court Indigent Screening staff pursuant to RCW 10.101.010 and 10.101.020, or as a determination of the Bench. The Court will be responsible for the costs and operation of the screening process. Should the County determine that a defendant is not eligible for assigned counsel, the County will so inform the Court subject to the Rules of Professional Conduct.

D. Conflicts: The County reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest, following application of the County's internal case assignment process and exhaustion of opportunity for County-assigned representation. The County shall be responsible for checking for conflicts and identifying if a conflict exists. The County shall have a written policy which explains how they define conflict cases which they will provide to the Agreement Administrator. The County shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.

E. Duties and Responsibilities of the County: In order to perform its responsibilities under the Agreement, the County shall have the power and duty to:

1. Hire all personnel required to provide public defense services in Seattle Municipal Court;
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 County 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 Agreement is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the Agreement is in effect for the compensation received or receivable under the terms of the Agreement; provided that completed representation is not made impossible by a client's failure to appear;
7. The County shall provide legal advice twenty-four (24) hours each day, seven days per week via cell phone (or comparable technology) access for critical stage advice to defendants during the course of police investigations and/or arrests.
8. The County will provide caseload attorneys as well as attorneys and staff to handle the calendars set forth in Sections 6. (E).10 –13 below and consistent with Attachment 2. Calendar and calendar schedules are subject to change during the duration of the Agreement. Increases or decreases in service levels will be subject to further negotiations between the City and the County.
9. The County will staff the <u>In-custody arraignment calendars.</u> Services provided at this calendar shall include representation of all otherwise unrepresented defendants who appear.
10. The County will staff the <u>Out-of-custody intake (arraignment) calendars</u> including DUI and Domestic Violence arraignments for defendants who appear.
11. The County will staff the <u>Seattle Mental Health Court ("MHC") calendar.</u>

    a. The MHC model uses an individualized, defendant-based, long-term, problem-solving approach in which the assigned public defender remains the Attorney of Record for as long as the defendant participates in MHC. This commitment includes keeping abreast of the defendant's participation in and compliance with the MHC Conditions of Release or Sentence, appearing with the defendant at scheduled reviews or other hearings, and being assigned to the defendant for any new cases in the MHC filed with Seattle Municipal Court.

    b. The County and the attorneys assigned to MHC shall embrace the MHC goals, philosophy and principles, including working collaboratively with the MHC team, provided that such collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.

    c. The County shall assign specific attorneys who are experienced in working with mentally ill misdemeanants to the MHC for a period of two (2) years to assure consistency of experienced staff. The attorneys

assigned to MHC shall continue the assignment on cases of MHC defendants through the length of jurisdiction (up to 2 years) and appear for all hearings, including review hearings, status hearings, etc.

d. The County and the attorneys assigned to MHC shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the MHC *prior to* arraignment and without undue delay in the schedule for arraignment. This shall include MHC referrals from the weekend calendar.

e. The County and the attorneys assigned to MHC shall address all hearings as defined in Chapter 10.77 RCW for MHC defendants.

f. The County and the attorneys assigned to MHC shall participate as required by SMC for future and on-going evaluation efforts and in MHC program development processes as scheduled.

12. The County will staff the Seattle Community Court calendar. The Seattle Community Court serves "chronic public system users" – offenders who repeatedly commit low-level crimes, fail to comply with sanctions, fail to appear for Court, and who use jail days when they could be more effectively rehabilitated through alternative strategies.

a. The County and the attorneys assigned to Community Court shall embrace the Community Court goals, philosophy and principles, including working collaboratively with the Community Court team, provided that such collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.

b. The County shall assign specific attorneys who are experienced in working with chronic homeless, alcoholic and mentally ill misdemeanants who voluntarily opt-in to the Community Court for a period of, usually, up to ninety (90) days. The attorneys assigned to Community Court shall continue the assignment on cases of Community Court defendants through the length of jurisdiction and appear for all hearings, including but not limited to review hearings and status hearings.

c. The County will provide defense services at in-custody and out-of-custody arraignment (intake) hearings and will be available to talk and meet with Community Court defendants who are in-custody in the King County Jail Facilities.

d. The County and the attorneys assigned to Community Court shall assure (through established protocols) expeditious integration of referral and assessment and appropriate referrals to the Community Court at arraignment and without undue delay in the schedule for arraignment. This shall include Community Court referrals from the weekend calendar.

e. The County and the attorneys assigned to Community Court shall participate as required by SMC for future and on-going evaluation efforts and in Community Court program development processes as scheduled.

13. The County will staff the Seattle Veterans Treatment Court calendar. The VTC is a voluntary court-monitored long-term therapeutic treatment program that addresses the mental health and and/or substance abuse issues of the veteran defendant. SMC VTC is a collaboration between the Seattle Municipal Court, the Seattle City Attorney's Office, King County Department of Public Defense, the Washington State Department of Veterans Affairs, and the U.S. Department of Veterans Affairs. The combination of structured support provided by the court, and health care and other social service resources provided by the Federal and State Departments of Veterans Affairs, is a path to reduce recidivism and increase veterans accessing needed services from the VA and community-based providers.

14. Conflict Attorney Panel. The County, under the direction and oversight of the Court, will be responsible for managing the Conflict Attorney Panel (CAP) for conflict cases. The County will make the referral to private counsel when the County divisions have a conflict. The County will work with the Conflict Attorney Panel Oversight Committee (Oversight Committee), which will consist of representatives or designees from the Court, the County, the King County Bar Association, and the Federal Defender.

    The County will be responsible for recruitment and training of CAP attorneys. The CAP Oversight Committee will be responsible for the selection of CAP attorneys. The CBO will continue to review the CAP billings and approve payment. When requested by CBO, the Oversight Committee may review CAP billings which appear to exceed the usual or customary limits.

    The County will:

    a. In coordination with the Oversight Committee and the Court, implement and review CAP Protocols as needed.
    b. Advertise and recruit CAP attorneys subject to the protocols noted above.
    c. Provide an orientation to SMC for the CAP members.
    d. Assign cases on a rotational basis to the CAP.
    e. Work with the Court and the Oversight Committee to develop a performance assessment mechanism of panel attorneys.
    f. Coordinate with SMC and the Oversight Committee to follow the complaint process in the 'Conflict Attorney Panel Policy' to resolve and document complaints against panel attorneys.
    g. Provide regular reports on assignments to SMC and CBO.

15. Participation on any City criminal justice committee or workgroups as requested by the Agreement Administrator, the Court or any other City criminal justice agency.

F. Duties and Responsibilities of County Attorneys: In order to perform their duties under this Agreement, staff attorneys of the County shall:

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

Section 7: PERFORMANCE AND QUALIFICATIONS

A. Practice Standards and Records

1. The County 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 Agreement 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 Agreement Administrator.
3. The County shall establish practice standards to address the following substantive areas of Agreement compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the County shall include a procedure for monitoring compliance with the standard. Written practice standards are to be filed with the Agreement Administrator by August 1, 2014. 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 the County.

      ii. Attorney use of paraprofessionals and expert service.

b. Paraprofessional practice.

c. Supervision of attorneys and paraprofessionals.

4. The County agrees that, within available resources, reasonable efforts will be made by the County to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The County is not prohibited from rotating attorneys through various County 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 County 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 County of the assignment of the case and the in-custody status of the client. The assigned attorney, or another County 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: The County shall send out-of-custody clients an assignment letter notifying them of their assigned attorney upon assignment of the case. The County 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 County is unable to locate the client, or the client is unwilling to meet, the Agency may meet this Agreement 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 providing discovery to the County. The County 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 County shall obtain 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. County attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this provision require an attorney to violate the Rules of Professional Conduct or to fail to provide effective assistance of counsel in or to comply with the local court rules and this Agreement.

11. The County shall establish and enforce policies and procedures to ensure that attorney time and other resources funded by this Agreement shall only be used for work which is authorized by this Agreement.

12. The County shall ensure that a preliminary written response to any written or oral complaints received from the Agreement Administrator concerning services provided by the employees of the County or the County itself shall be made within three (3) working days of the date the complaint is received by the County Director of the Department of Public Defense or the Director's designee. Written complaints include e-mail communications.

    The County 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 County will provide the Agreement Administrator with a summary of this documentation and explain how each complaint was resolved. Subject to the Rules of Professional Conduct the County will also provide the Agreement 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 County shall establish policies and procedures for pro-bono work provided by staff of the County. 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 Agreement.

B. <u>Minimum Attorney Qualifications</u>:

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 County 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 County provides legal services to clients under the terms of this Agreement. The County will maintain for inspection on its premises records of compliance with this provision.

3. The County may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the County may be assigned to Rule 9 interns.

4. Supervisory County attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.

5. The County shall notify the City in the event that any attorney providing services under this agreement has been sanctioned or disciplined by the WSBA or the

Washington Supreme Court. The county shall notify the City in the event that any attorney providing services under this agreement has been found to have provided ineffective assistance of counsel, whether by a WSBA ethics panel, or upon appellate review. In the event of such notification, the city and the County will confer regarding the appropriate course of action with regard to further services by the attorney in question, for cases covered by this contract.

C. Evaluations:

The County's Division Directors of the Department of Public Defense, or his/her designee, shall evaluate the professional performance of County 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 County shall submit to the City a summary report of the annual attorney performance evaluations. The summary will note the number of attorneys evaluated, and an aggregate of the scoring in each evaluation criteria. The County shall make available to the City its evaluation criteria and evidence that evaluations were conducted, although the substance of any specific evaluation will not be shared with the City.

Section 8: PAYMENT

A. For July 1 through December 2014, the City shall pay the County for the services as specified in Section 4, Scope of Work, in the amount estimated to be $3,051,272. This amount is based on the 2014 King County Prosecuting Attorney Salary Schedule. The specific costs are shown in Attachment 2 – 2014 Charges for Public Defense Services. This attachment will be updated by mutual written agreement by the CBO Agreement Administrator and the County Public Defender to show the 2015 charges (and subsequent years if the parties extend the agreement).

Payment for 2015 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the King County Prosecuting Attorney salary schedule as specified in Section 4 (A) Compensation. The County shall use actual costs associated with the average of FICA, Unemployment, Medicare, Workers Comp, healthcare and retirement. 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 Agreement Administrator and the County Public Defender.

B. Payment shall be made by the City to the County 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 County shall provide the City with the invoice and documentation twenty (20) days after the close of each calendar month. The City will pay the County by the thirtieth (30) day of the following month.

C. The Payment identified in Section 8 (A) includes the following and will be updated annually as described in Section 8 (A) and as shown in Attachment 2:

1. A fixed amount to staff the arraignment, intake, Community Court, and Seattle Mental Health Court, and Veteran's Treatment Court calendars.

2. Caseload payment shall be based on:

   a. Completed Case Credits with an estimate of 3,610 Case Credits in the second half of 2014. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Agreement Administrator. The cost per case and estimated number of cases will be updated annually as described in Section 8 (A) and as shown in Attachment 2.

   b. Completed cases shall be closed and submitted to the Administrator for payment within sixty (60) days of the date of final action. If a client absconds, the case may be closed and submitted to the Administrator for payment.

      i. A case which was closed and submitted to the Agreement Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within twelve (12) months of the date of assignment.

      ii. If the warrant is quashed or served and new hearing dates are set more than twelve (12) months after the issuance of the bench warrant, it will be treated as a new case and may be submitted for payment upon case completion.

   c. The County will receive no additional payment for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.

   d. No payment shall be made for work on cases which are ***subsequently identified as conflicts*** with the exception of cases in which the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be considered if a minimum of two (2) hours of attorney work has been performed.

   e. The County will be paid four (4) case credits to defend appeals in King County Superior Court and three (3) case credits to defend a writ. Two (2) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.

f. In the event the appeal or writ is withdrawn, the City will not pay the remaining case credits.

g. In the event that one probationary hearing handles probationary matters related to more than one case, only one probationary credit (.6 credit) will be paid to the County if the matters are handled at one hearing.

D. The City will additionally reimburse the County for the actual cost of medical record copies and cost of transcripts associated with RALJ and WRIT appeals as itemized on the monthly invoice from the County.

E. The City will review and pay CAP invoices. The processing of CAP invoices is a matter for future negotiations and may transfer to the County if mutually agreeable to the Parties.

F. In the event of failure to comply with any items and conditions of this Agreement 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 Agreement Section 12.

Section 9: REPORTING REQUIREMENTS

The County 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
- Bench Trial, Jury Trial, Plea or Dismissal
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

The County must provide the Agreement Administrator the reports described below.

Report Title	Due Date
Closed Case Reports including attorney assignment	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

Year-end Attorney Case Assignment Report	January following fiscal year
Remaining Open Case Report at Year End	January following fiscal year
Additional summaries, reports or documents as requested by the Agreement Administrator with reasonable notice	Varies

The City, 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 County will immediately notify the Agreement 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 Agreement.

Section 10: OPERATING BUDGET

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

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

The Payment by the City to the County pursuant to the terms of this Agreement are solely for the services and expenses that are directly and legitimately related to the performance of the provisions of this Agreement. In the event the City determines that Payment pursuant to this Agreement were expended by County for any purposes other than those set forth in this Agreement, such expenditure shall constitute a material breach of this Agreement. 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 Section 17 below. If the County 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 11: CORRECTIVE ACTION

If the City believes that a breach of this Agreement 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 Agreement concerning the County's performance shall first be resolved through negotiations, if possible, between the County Public Defender or delegate and the City's Agreement 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 County Public Defender in writing of the nature of the breach;

2. The County 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 Agreement into compliance, which date shall not be more than ten (10) working days from the date of the County's response;

3. The City will notify the County in writing of the City's determination as to the sufficiency of the County's corrective action plan. The determination of the sufficiency of the County's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the County'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 County to implement the plan;

4. In the event that the County does not respond within the appropriate time with the corrective action plan, or the County's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Agreement in whole or in part pursuant to Section 12 (A) Termination;

5. In addition, the City may withhold any payment owed the County or prohibit the County 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 12 Termination.

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

Section 12: TERMINATION

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

1. The County substantially breaches any duty, obligation, or service required pursuant to this Agreement.

2. The County 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 Agreement under this Section, the City shall provide the County written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The County 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 County elects to submit a written response, the Agreement Administrator will review the response and make a determination within ten (10) working days after receipt of the County's response. In the event the County does not concur with the determination, the County may request a review of the decision by the Mayor by written appeal filed within ten (10) days of the Agreement Administrator's decision, to the Office of the Mayor. The Agreement shall remain in full force and effect until a decision is made and communicated to the County by the Mayor. In the event the Mayor reaffirms termination, the Agreement 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 Agreement is terminated in whole or in part pursuant to this Section, the County shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Agreement Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the County'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 Agreement which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds. The City will notify the County in writing that the specific funding is no longer available for all or part of this Agreement, and upon receipt of such notice, the County will be released from performing the services required under the terms of this Agreement which relied upon such funding. The City will be released from Agreement liability with the County for cases not yet assigned pursuant to portions of this Agreement 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 Agreement shall be limited to such services that directly rely on such funding; the balance of this Agreement shall remain in full force and effect.

C. Funding or obligation under this Agreement beyond the current appropriation year is conditional upon appropriation by the City Council of sufficient funds to support the activities described in the Agreement. Should such appropriation not be approved, this Agreement will terminate at the close of the current appropriation year.

If City funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section 5, the City may, upon written notification to the County, terminate

this Contract in whole or in part. If the Agreement is terminated as provided in this Subsection B, the City will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and the County shall be released from any obligation to provide further Agreement services as are affected by the termination.

D. In the event of termination of this Agreement, the Agreement Administrator may request the County to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the County has attempted to withdraw, the appearance of counsel from the County for any client previously represented by the County where such representation is no longer the obligation of the County under this Agreement, the City will pay the County under Agreement Section 8 upon judicial verification that continued representation is required and case completed.

In the event of termination of this Agreement, the County and City shall meet and confer regarding those cases for which the County should have continued responsibility after termination; for such cases the city shall remain obligated for Payment under Agreement Section 8.

E. The County reserves the right to terminate this Agreement with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Agreement. In the event that the County terminates this Agreement for reasons other than cause resulting from substantial breach of this Agreement by the City, the County shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Agreement Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the County's control, fault or negligence.

F. 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 County shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the County by the City.

G. Otherwise, this Agreement shall terminate on the date specified herein, and shall be subject to extension only by mutual, written agreement of the parties.

H. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination of the Agreement. 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 fees.

I. In the event of termination or non-renewal of this Agreement, all cases not required to be completed by the County shall be returned to the Agreement Administrator for reassignment.

Section 13: SOCIAL EQUITY REQUIREMENTS. The County 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 County 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.

Section 14: OTHER LEGAL REQUIREMENTS

Licenses and Similar Authorizations: The County, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

Section 15: INDEMNIFICATION

The County does hereby release and shall defend, indemnify, and hold the City and its officers, 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 County's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the County, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its officers, employees and agents, the County 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 County 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 Agreement.

Section 16: INSURANCE

King County maintains a fully funded Self-Insurance program as defined in King County Code 4.12 for the protection and handling of the County's liabilities including injuries to persons and damage to property.

The City acknowledges, agrees and understands that the County is self-funded for all of its liability exposures. The County agrees, at its own expense, to maintain, through its self-funded program or otherwise, coverage for all of its liability exposures for this Agreement.

Section 17: ESTABLISHMENT AND MAINTENANCE OF RECORDS

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

B. The County 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 Agreements. Said records shall include, but not be limited to, documentation of any funds expended by the County 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 subcontract or personal service contract or rendering service pursuant to the subcontract or personal service Agreement.

C. Records shall be maintained for a period of not less than six (6) years after termination, in an accessible location and condition, unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14. RCW and the City.

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 County and the County shall respond in writing. The time for notification and response shall be the same as set forth in Section 12 (A).

If the County's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a jointly 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 County by the City.

Section 18: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS

A. Upon request, the County shall permit the City, and any other governmental agency involved in the funding of the Agreement, to inspect and audit all pertinent books and records of the County, or any other person or entity that performed work in connection with or related to the Agreement services, at any and all times deemed necessary by the City or County, including up to six (6) years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as the City or County selects. The County shall supply the City with, or shall permit the City and/or County 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 County must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege. The County shall ensure that such inspection, audit and

copying right of the City and County is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

The County agrees to cooperate with the City or its agent in the evaluation of the County's performance under this Agreement 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 Defendant are not waived; and, 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. King County and the City of Seattle shall be governed by applicable law, including Chapter 43.09 RCW, addressing annual auditing, accountability and reporting requirements for local governments. This Agreement may be included in County annual audits by the state auditor including the annual accountability audit and the annual financial statement audit.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The County's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Agreement Term.

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

Section 19: ASSIGNMENT AND SUBCONTRACTING

The County shall not assign or subcontract any of its obligations under this Agreement 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 County not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the County shall incorporate by reference all the terms of this Agreement. The County 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 County from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.

Section 20: CONTRACTUAL RELATIONSHIP

The relationship of the County to the City by reason of this Agreement shall be that of an independent contractor. The County 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. The County shall perform services under this Agreement according to the County's own means and methods of work and professional standards applicable to public defense services, and shall be in the exclusive charge and control of the County and not subject to control or supervision by the City, except such requirements for performance and compliance with standards as are specified in this Agreement.

Section 21: ERRORS & OMISSIONS; CORRECTION

The County shall be responsible for the professional legal services furnished by or on the behalf of the County under this Agreement. The County, without additional Payment, shall correct or revise any errors or omissions in the County 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 Agreement shall survive any termination or expiration of this Agreement.

Section 22: CONFIDENTIALITY

The County and the City, as public agencies, mutually agree to provide notification of public disclosure requests involving services under this Agreement and will work cooperatively within the standard protocols of each to ensure compliance with respective statutory duties regarding public disclosure.

Section 23: EXTRA WORK

The City may desire to have the County perform work or render services in connection with this project other than that expressly provided for in Agreement Section 4. This will be considered extra work, supplemental to this Agreement, 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 Agreement or an amendment.

Section 24: MISCELLANEOUS PROVISIONS

A. Amendments: Amendments shall not be effective unless in writing and signed by an authorized representative of each of the parties hereto. Agreement amendments relating to schedules and court calendars; attorney assignments and staffing; reporting and records; and such other matters regarding the administration of the Agreement 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 and the County Public Defender or his designee. Unless to comply with law or court rule, Agreement amendments requiring additional appropriations to the Indigent Defense Services Budget not authorized in the scope of work or otherwise provided by the Agreement shall require appropriate legislative authorization.

B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.

C. General Requirement: KC-DPD, 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 County shall specifically comply with the requirements of this Section.

D. Applicable Law/Venue: This Agreement 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 Agreement 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 Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement 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 County after the time the same shall have become due nor payment to the County 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 Agreement: This document, along with any exhibits and attachments, and subsequently issued addenda, constitutes the entire Agreement between the City and the County. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, associate, or employee of the County prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

J. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement 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 Agreement shall be used for any political activity, including but not limited to 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 Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

M. No Third Party Beneficiaries: There are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a Party hereto, except as may be authorized under Section 19.

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

If to the City:
Linda Taylor-Manning, Fiscal and Policy Analyst
City Budget Office, P.O. Box 94747
Seattle, WA 98124-4747

If to the County:
Dave Chapman
King County Public Defender
Chinook Building
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 Agreement by having their representatives affix their signatures below.

KING COUNTY	**THE CITY OF SEATTLE**
By _____	By _____
Signature Date	Signature Date
Dave Chapman	Ben Noble
Director,	Director,
Department of Public Defense	City Budget Office

Attachment 1: 2014 King County Prosecuting Attorney Salary Schedule
Attachment 2: 2014 Charges for Services

ATTACHMENT 1: 2014 King County Prosecuting Attorney Salary Grid

*2014 COLA= **1.67%***

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Deputy Pros Atty I 100	**$ 60,004**						
Bi-Weekly Amount	$ 2,307.86						
Hourly:	$ 32.9694						
Deputy Pros Atty II 101	**$ 63,550**						
Bi-Weekly Amount	$ 2,444.22						
Hourly:	$ 34.9174						
Deputy Pros Atty III 102	**$ 73,397**						
Bi-Weekly Amount	$ 2,822.95						
Hourly:	$ 40.3279						
Deputy Pros Atty IV 103	**$ 84,031**						
Bi-Weekly Amount	$ 3,231.98						
Hourly:	$ 46.1711						
Deputy Pros Atty V 104	**$ 90,466**	**$ 92,829**	**$ 95,193**	**$ 97,293**	**$ 99,919**	**$ 102,676**	**$ 105,302**
Bi-Weekly Amount	$ 3,479.45	$ 3,570.33	$ 3,661.25	$ 3,742.03	$ 3,843.05	$ 3,949.06	$ 4,050.08
Hourly:	$ 49.7065	$ 51.0047	$ 52.3036	$ 53.4575	$ 54.9007	$ 56.4152	$ 57.8583
Sr Deputy Pros Atty I 105	**$ 107,935**	**$ 109,285**	**$ 110,650**	**$ 112,033**	**$ 113,434**	**$ 114,852**	**$ 116,287**
Bi-Weekly Amount	$ 4,151.35	$ 4,203.27	$ 4,255.79	$ 4,308.94	$ 4,362.84	$ 4,417.39	$ 4,472.57
Hourly:	$ 59.3050	$ 60.0467	$ 60.7969	$ 61.5563	$ 62.3263	$ 63.1055	$ 63.8939
Sr Deputy Pros Atty II 106	**$ 117,740**	**$ 119,212**	**$ 120,702**	**$ 122,210**	**$ 123,739**		
Bi-Weekly Amount	$ 4,528.45	$ 4,585.08	$ 4,642.39	$ 4,700.40	$ 4,759.20		
Hourly:	$ 64.6922	$ 65.5011	$ 66.3199	$ 67.1486	$ 67.9886		
Sr Deputy Pros Atty III 107	**$ 125,286**	**$ 126,852**	**$ 128,438**	**$ 130,044**	**$ 131,669**		
Bi-Weekly Amount	$ 4,818.69	$ 4,878.93	$ 4,939.91	$ 5,001.68	$ 5,064.19		
Hourly:	$ 68.8385	$ 69.6990	$ 70.5701	$ 71.4525	$ 72.3455		
Sr Deputy Pros Atty IV 108	**$ 133,315**	**$ 134,981**	**$ 136,668**	**$ 138,376**	**$ 140,106**		
Bi-Weekly Amount	$ 5,127.49	$ 5,191.59	$ 5,256.48	$ 5,322.16	$ 5,388.68		
Hourly:	$ 73.2499	$ 74.1656	$ 75.0925	$ 76.0308	$ 76.9811		
Sr Deputy Pros Atty V 109	**$ 147,111**	**$ 148,950**	**$ 150,812**	**$ 152,698**	**$ 154,606**		
Bi-Weekly Amount	$ 5,658.13	$ 5,728.86	$ 5,800.48	$ 5,872.99	$ 5,946.39		
Hourly:	$ 80.8304	$ 81.8408	$ 82.8640	$ 83.8998	$ 84.9484		

ATTACHMENT 2: 2014 CHARGES FOR SERVICES
King County Department of Public Defense
July 1, 2014 to December 31, 2015
City of Seattle Public Defense Services

TOTAL COSTS

Funding Level: 7220 credits
Case Load Standard: 380 credits per attorney

ACA's Proposed Staffing Level:

Total Attorneys	25.80	
		19.00 FTE for caseload
		2.00 FTE for Mental Health Court
		3.60 FTE for Arraignment/Intake Calendars
		1.20 FTE for Community Court
Attorney Supervisors	3.02 FTE	
Social Workers	3.00 FTE	
Investigators	3.00 FTE	
Paralegal	2.40 FTE	
Legal Clerical	4.10 FTE	
Rule 9	2.00	
	43.32	

				Rate	2014
SALARY					
Attorneys (40% @ Step 5)	10.30 FTE	@	DPA 4	84,031	865,519
Attorneys (60% @ Step 8)	15.50 FTE	@	DPA 5-4	97,293	1,508,042
Attorney Supervisors	3.02 FTE	@	SPD 2	128,147	387,004
Rule 9	2.00			30,000	60,000
Social Workers	3.00 FTE			65,389	196,167
Investigators	3.00 FTE			65,389	196,167
Paralegal	2.40 FTE			65,389	156,934
Clerical Support	4.10 FTE			46,914	192,347
	43.32 TOTAL				
TOTAL SALARY EXPENSE					**$3,562,180**
TAXES					
FICA					$272,507
State Unemployment					$0
Workman's Comp					23,650
TOTAL TAX EXPENSE					**$296,157**
BENEFITS					
Retirement					$321,850
Health Benefits					$666,660
Professional Benefits					
TOTAL BENEFIT EXPENSE					**$988,510**
TOTAL Direct					**$4,846,847**
Supply/Services/Overhead (12% of KC Admn)			11.55%	10,871,873	1,255,698
TOTAL ANNUAL					6,102,544
July 1 - December 2014					**$3,051,272**

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office (CBO)	Linda Taylor-Manning 4-8376	Linda Taylor-Manning 4-8376

Legislation Title:

AN ORDINANCE related to indigent public defense legal services; authorizing an alternative to the method under Ordinance 122602 for selecting providers of public defense legal services; authorizing an interlocal agreement with King County for public defense legal services; and superseding the provisions of Ordinance 122602, as amended, to the extent it is inconsistent with the provisions of this ordinance.

Summary of the Legislation:
This legislation will authorize the Director of the City Budget Office to execute an 18 month Interlocal Agreement (with an option to extend up to an additional 24 months) with the King County Department of Public Defense for the provision of indigent defense legal services in Seattle Municipal Court. Previous legislation related to indigent public defense required the City to only contract with non-profit law firms. This legislation adds to the previous ordinance (122602, as amended) that the City could, alternatively, negotiate a contract without an RFP process with King County to provide public defense legal service to the City, subject to City Council approval of the resulting contract.

Background:
The City first began providing public defense of indigent defendants charged with crimes in Seattle Municipal Court in 1969. Since then, the City has used several models including contracting with King County, which in turn contracted with non-profit law firms. Starting in 2005, the City has contracted directly with three non-profit firms: Associated Counsel for the Accused (ACA); Northwest Defender Association (NDA); and The Defender Association (TDA). King County has also contracted with these agencies and a fourth, Society of Counsel Representing Accused Persons (SCRAP).

In 2006, Kevin Dolan of ACA filed a class action suit against King County seeking membership in the state retirement system (PERS). In August 2011, the Washington Supreme Court ruled in Dolan's favor that the "...employees of the agencies are also county employees for the purposes of PERS." The King County Executive implemented the settlement by creating an in-house Department of Public Defense (DPD). Effective July 1, 2013, all staff of the four agencies became King County employees. This included those employees representing defendants in Seattle Municipal Court (SMC).

As a short-term solution, CBO allowed the agencies to assign their contracts to King County. This agreement between the agencies and King County took effect on July 1, 2013. The same

attorneys who staffed the SMC courtrooms continue to work there, and the transition has been very smooth. The agency contracts, which have been assigned to King County, end on June 30, 2014.

The non-profit law firms the City and County contracted with in the past no longer have staff, equipment or facilities. To continue indigent defense services in SMC, a new agreement with King County is recommended. The proposed Interlocal Agreement with the County is similar in form to the contracts between the City and the former agencies. The Agreement cost for July 1, 2014 through December 31, 2014 is estimated to be $3,051,272 with a cost per credit of $555.94 as detailed on Attachment 1 of the Agreement.

Both the Council Bill and the Agreement allow the CBO Director and KC Public Defender to amend the Agreement. In particular, CBO and the County DPD will be authorized to negotiate caseload to meet the Washington Supreme Court Order of June 2012. The Supreme Court set a maximum of 400 new cases annually per attorney. Alternatively, the City could adopt a maximum of 300 *weighted* credits per year. The Supreme Court asked the State Office of Public Defense to establish a model misdemeanor case weighting policy. This policy was just released in March and is under analysis. The Supreme Court has delayed compliance with this standard to January 2015 to allow jurisdictions to review the model.

In accordance with State law, the agreement 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 legal advice by the City's Law Department as set forth in RCW 10.101.040. The Law Department was consulted to review the legislation and agreement as to form.

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Appropriations:

Appropriations Notes:
Funds to pay this contract are included in the 2014 Adopted Criminal Justice Contracted Services Department Budget through the Indigent Defense Services Budget Control Level (BCL).

Revenue/Reimbursement Notes: Not applicable.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Notes: Not applicable.

Do positions sunset in the future? Not applicable.

Spending/Cash Flow:

Spending/Cash Flow Notes: Not applicable.

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?**
Indigent public defense services are a constitutional requirement and a requirement of RCW 10.101. The current contracts expire June 30, 2014. Not implementing this legislation will mean the City is unable to provide the legally required public defense services to indigent defendants.

c) **Does this legislation affect any departments besides the originating department?**
This legislation impacts proceedings at Seattle Municipal Court when an accused person must be provided with effective legal representation in order to ensure equal justice under law without regard to his or her ability to pay.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

1. Establish an Office of Public Defense within City government: The City could bring public defense services in-house (similar to King County's current model). This option would require a transition period to identify and build out space, purchase and setup equipment and hire staff. There are significant upfront costs to accommodate approximately 40-45 FTEs. Further, with only misdemeanor cases, the in-house model may not attract the quality staffing needed to provide rigorous defense.

2. Contract with either non-profit or for-profit law firms in the community: Current Seattle ordinance #122602 dictates that law firms providing public defense services be non-profits chosen through a Request for Proposal (RFP) process. In previous RFP's, a minimum qualification was five years of criminal defense practice in Washington State. The non-profit law firms the City and County contracted with in the past no longer have staff, equipment or facilities. Likely, there are no other existing non-profit law firms in Seattle meeting these criteria.

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: Not applicable.

List attachments to the fiscal note below: Not applicable.

City of Seattle
Edward B. Murray
Mayor

April 15, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that authorizes the Director of the City Budget Office (CBO) to enter into an Interlocal Agreement with the King County Department of Public Defense to provide indigent defense in the Seattle Municipal Court. Previous legislation related to indigent public defense required the City to only contract with non-profit law firms. This legislation adds to the previous ordinance that the City could, alternatively, contract with King County to provide public defense legal service to the City.

The City first began providing public defense of indigent defendants charged with crimes in Seattle Municipal Court in 1969. Since then, the City has used several models including contracting with King County, which in turn contracted with non-profit law firms. Starting in 2005, the City has contracted directly with three non-profit firms.

In 2006, Kevin Dolan of ACA filed a class action suit against King County seeking membership in the state retirement system (PERS). In August 2011, the Washington Supreme Court ruled in Dolan's favor that the "...employees of the agencies are also county employees for the purposes of PERS." The King County Executive implemented the settlement by creating an in-house Department of Public Defense (DPD). Effective July 1, 2013, all staff of the four agencies became King County employees. This included those employees representing defendants in Seattle Municipal Court (SMC).

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The non-profit law firms the City and County contracted with in the past no longer have staff, equipment or facilities. To continue indigent defense services in SMC, a new agreement with the County DPD is recommended. The proposed Interlocal Agreement with King County is very similar in form to the contracts between the City and the former agencies. The Agreement cost for July 1, 2014 through December 31, 2014 is estimated to be $3,040,000 as detailed on Attachment 1 of the Agreement.

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In accordance with State law, the agreement 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 legal advice by the City's Law Department as set forth in RCW 10.101.040. The Law Department was consulted to review the legislation and agreement as to form.

Approval of this legislation 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. Indigent public defense in Seattle Municipal Court has a stellar reputation for compassionate and zealous defense. The King County Department of Public Defense will continue this tradition. Thank you for your consideration of this legislation. Should you have questions, please contact Linda Taylor-Manning at 684-8376.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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