

September 7, 2017

MEMORANDUM

To: Gender Equity, Safe Communities, and New Americans Committee
From: Amy Tsai, Council Staff
Subject: Public Defense Interlocal Agreement with King County (CB 119073)

Summary

Council Bill 119073 would authorize a new interlocal agreement (ILA) with King County for public defense legal services.

Background

Public defense services are mandated by the United States Constitution, the Washington State Constitution¹ and state law (Chapter 10.100 RCW).² The City has used several models to provide public defense for Seattle Municipal Court misdemeanants, starting with contracting with The Defender Association (TDA) in 1969.³ Soon after, the City contracted with King County who subcontracted with non-profit law firms including TDA. Starting in 2005, the City contracted directly with three non-profit firms. As a result of a class-action lawsuit, those non-profit entities became part of a new King County Department of Public Defense (KC-DPD) in 2013. A new ILA was entered into with KC-DPD effective September 2014. It received a two-year extension and expires on December 31, 2017.

The Executive has negotiated a new ILA that would be effective January 1, 2018 if authorized by both jurisdictions, The City of Seattle and King County. CB 119073 would authorize the City to enter into the new ILA in substantially the form attached to the bill.

Analysis

ILA Contents

The proposed public defense contract with King County consists of the following main elements:

¹ The Sixth Amendment of the United States Constitution and Article I, Section 22, of the Washington state Constitution guarantee assistance of counsel to persons accused of a matter where loss of liberty is possible.

² RCW 100.10.030 requires the adoption of public defense standards, which was done by the City in Ordinance 122602, which has been amended over time. The City may wish to consider a more comprehensive update to Ordinance 122602.

³ Of historical note, the U.S. Supreme Court decided the landmark case of *Gideon v. Wainwright* in 1963 (holding that the right to counsel in a criminal case includes those who cannot afford it). The U.S. Supreme Court later clarified in *Argersinger v. Hamlin* in 1972 that the right to counsel applied to misdemeanors as well as felonies.

(1) Staffing and Compensation

- **Attorney caseload limits** – Types of case activities are assigned a certain number of Case Credits (subsection 3.B), and attorneys are limited to 400 Case Credits as a rolling year average (subsection 4.C).
- **Compensation** – The ILA contains a salary schedule for attorneys that is updated annually, accounting for changes such as inflation and health benefit costs.
- **Supervisor and support ratios** – The ILA requires (a) 0.5 FTE professional support for each 1.0 FTE caseload attorney and (b) 1.0 FTE supervisor for every 10.0 FTE attorneys.

(2) Scope of Work

- **Public defense service responsibilities** – The ILA identifies areas of work for the County, such as staffing the in-custody and out-of-custody arraignment calendars, Seattle Mental Health Court, and the Seattle Veterans Treatment Court.
- **Conflicts** – The County is responsible for managing a Conflict Attorney Panel for conflict cases.
- **Civil legal services** – In order to implement a City Council budget action in Fall 2016 (providing funding through 2018), the current ILA was amended by the Executive in August 2017 to provide civil legal advice on plea agreements.

(3) Performance standards and oversight

- **Performance standards** – The County is responsible for establishing standards of practice and case record maintenance, ensuring appropriate use of attorney time and resources, and conducting performance evaluations.
- **Case reports and auditing** – The County provides monthly open- and closed-case reports to the City, and the City has access to records for auditing.

(4) Anti-discrimination

- **Social equity** – The County shall not discriminate against employees or applicants for employment based on protected categories.

(5) Contract implementation

- **Term of Agreement** – While previous ILAs were capped at 3-year terms, the proposed ILA is a 5-year term renewable by the Budget Director and County Public Defender for up to ten additional years (through 2032). This was done in recognition that KC-DPD has now become an established department, and future contract revisions are expected to be of a routine nature.
- **Amendments** – Amendments requiring additional appropriations require legislative authorization. Amendments relating to schedules, court calendars, attorney staffing, reporting, and other administration matters within existing appropriation authority and consistent with public defense standards may be made by the City Budget Director and County Public Defender.
- **Other contract clauses** – The ILA contains provisions for resolving disagreements, termination, indemnification, insurance, and other miscellaneous provisions.

Comparison with 2014 ILA

The proposed ILA makes the following notable changes compared to the 2014 public defense ILA (discussed further below):

- (1) The term of the contract is for five years, extendable for up to ten years;
- (2) Caseload and staffing levels are adjusted to reflect new state caseload standards; and
- (3) Cost and staffing adjustments are made as part of the annual review process.

(1) Contract term

The term is five years beginning January 1, 2018 through December 31, 2022. The ILA may be extended for up to an additional ten years by mutual agreement without further action by the legislative bodies, for a total possible extension through December 31, 2032. The proposed ILA allows extensions to be made by mutual agreement of the City Budget Director and the County Public Defender.

This term is longer than the previous ILA, which began as a 16-month contract in 2014 with an option for a two-year extension, which was exercised. The new term is significantly longer. As with the previous contract, the proposed ILA would require regular updates to and monitoring of the contract. Specifically, the funding model is to be reviewed annually by the Executive, accounting for changes such as inflation and health benefit costs. CBO would receive monthly closed case reports and open case report data, so that it can monitor DPD caseload and expenditures and make sure that the funding levels are appropriate to the number of cases the model assumes will be handled by KC-DPD for the year. The City Council would appropriate funding for this contract during the annual budget process.

(2) Caseload and staffing levels

Caseload. In 2013, the Washington State Supreme Court adopted new caseload standards that include a caseload limit of 400 misdemeanor cases per attorney per year.⁴ Caseload credit changes to the 2014 ILA, including previous Executive-implemented amendments to the 2014 ILA and new changes in the proposed 2018 ILA, include the following:

⁴ http://www.opd.wa.gov/documents/0094-2013_Standards-Report.pdf

Table 1. Caseload credit changes from 2014 ILA to Proposed 2018 ILA

Change from 2014 ILA	Source of change*
a. Caseload limit was changed from 380 credits per attorney to 400 credits. ⁵	Amendment 1 (Dec 2015)
b. Attorneys new to criminal defense have a reduced caseload of 266 credits (2/3 of 400).	Proposed 2018 ILA
c. Supplemental credit is awarded at the rate of one additional credit at 20 attorney hours, again at 40, and a final one at 60 attorney hours. ⁶	Proposed 2018 ILA
d. Probation credits changed from 0.6 to 1.0 credit.	Amendment 1 (Dec 2015)
e. RALJ Appeal changed from 4 to 6.5 credits.	Amendment 2 (Jun 2016) changed from 4 to 5.5. Proposed 2018 ILA would change from 5.5 to 6.5.
f. Writ changed from 3 to 3.5 credits.	Amendment 2 (Jun 2016)
g. Motion for Discretionary Review is 2 credits.	Amendment 3 (Aug 2017)

* The 2014 ILA and its three amendments are attached to this memo as Attachments 1 through 4, respectively.

Staffing. The proposed 2018 ILA also includes an increase of 10.63 FTE. These increases reflect (a) FTEs that were not in the original 2014 budget but for which KC-DPD was performing work and (b) FTE changes to meet new Court Rules. The new ILA includes the following FTE increases in the table below:

Table 2. FTE Increases due to the proposed 2018 ILA

Position	FTE Increase
Changes to Reflect KC-DPD Work Performed	
Veterans Treatment Court Attorney	0.5 FTE
Conflict Attorney Panel Staffing	0.75 FTE
Caseload Flexibility	0.6 FTE
FMLA Coverage	0.74 FTE
On-Call Attorney	0.54 FTE
Changes to Reflect New Court Standards	
Increase Clerical to King County Level	1.9 FTE
Increase mitigation specialist/investigator/paralegal to meet standard of 5:1 attorney	5.6 FTE
Total FTE Increase	10.63 FTE

⁵ A case credit in the 2017 KC-DPD Seattle budget equals \$430.99.

⁶ Under the 2014 ILA, the City could award extraordinary case credits at its discretion based on factors such as case complexity and workload. The numeric cut-offs in the proposed 2018 ILA were determined based on CBO's review of case hours worked. From 2014 to 2016, the average amount of extra credits awarded amounted to \$43,650 per year.

(3) Annual cost adjustments

Annual cost adjustments occur based on projected caseload, CPI-W, and KC-DPD personnel cost increases. In 2018, the ILA includes the following annual adjustments:

- a. King County wage increase = 2.1%
- b. King County healthcare = 4%
- c. King County retirement = 10%
- d. Projected caseload assumption = 7,500

The table below from CBO details the history of credits paid, budget and expenditures, and staffing from 2014 through this proposed ILA.

Table 3. Historical Public Defense Data 2014 ILA through the 2018 Proposed ILA

Year	Credits paid	Budget	Actuals	DPD Staffing			
				Atty FTE	Support Staff FTE	Total FTE	Overhead %
2014	6,380	\$6,102,544	\$5,653,791	30.82	12.5	43.32	12%
2015	6,474	\$6,257,476	\$5,895,115	30.82	12.5	43.32	12%
2016	6,048	\$7,414,283	\$7,232,478	31.18	20.5	51.68	12%
2017*	6,128	\$7,953,007	\$7,346,000	32.66	20.5	53.16	12%
2018		\$8,325,548		33.15	20.5	53.65	13%

* Through May assuming straight-line expenditure.

Next Steps

The ILA must be approved by both the City Council and County Council. If passed, CB 119073 would authorize the City to enter into the ILA substantially in the form attached to the bill.

cc: Kirstan Arestad, Director, Central Staff
Dan Eder, Deputy Director, Central Staff

Attachments:

- 1. 2014 ILA
- 2. Amendment 1 to 2014 ILA (Dec 2015)
- 3. Amendment 2 to 2014 ILA (Jun 2016)
- 4. Amendment 3 to 2014 ILA (Aug 2017)

ATTACHMENT A

King County and the City of Seattle

**Interlocal Agreement for
Public Defense Services
September 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 or SMC).

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 that are subsequently assigned to counsel from the Conflict Attorney Panel, duplicate case assignments, or cases in which 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.
 - a. The Court will make provisional assignments directly to KC-DPD. If KC-DPD determines that there is a conflict with all of the KC-DPD divisions, the division managing the Conflict Attorney Panel will refer the case to a private attorney who shall provide legal representation at the sole cost of the City as provided in Section 8.C.7 herein (CAP attorney).
 - b. To decline a provisional assignment, a KC-DPD division must forward the case to the next division or CAP 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 CAP attorney no later than two working days after initial receipt of the referral.

- c. 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 a CAP attorney, 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 cases involving more than 2 hours of attorney work but that are subsequently assigned to a CAP attorney.
 - a. 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.
 - b. A case which was closed and submitted to the City 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 if that warrant is quashed or served and a new hearing date is 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.
 - a. In the event that one probationary hearing addresses 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 shall 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 credits.
 4. One misdemeanor writ is equivalent to three case credits; a writ that is subsequently withdrawn is equivalent to two credits.
 5. Extraordinary case credits will be allowed in 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, the number of separate incidents underlying 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 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 Criminal Case includes 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 Complete Case description.
- H. City Agreement Administrator: City of Seattle Public Defense Agreement Administrator in the City Budget Office (CBO), who is the authorized City representative for the purposes of administering this Agreement.
- I. County Public Defender: Director of the King County Department of Public Defense (KC-DPD), who is the authorized County representative for the purposes of administering this Agreement.
- J. Court: The Municipal Court of Seattle (SMC).
- 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-Tacoma-Bremerton SMSA.
- 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 is entitled to 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. Disposition: Disposition shall mean the dismissal of all charges arising out of an incident, the entry 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 to the defense on a continuing basis

under the City or State code and court rules and pursuant to State and Federal Constitutional requirements.

- O. Legal Service: Legal Service is legal representation provided by licensed attorneys 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 a probationary hearing subsequent to the Disposition of the case.
 3. Misdemeanor Appeal: A misdemeanor appeal includes 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 County/City holiday.

Section 4: PUBLIC DEFENSE STANDARDS

The County agrees to provide Legal 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 KC-DPD attorneys 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. The City will not fund step increases for Supervisors above Step 3 of the "Senior Deputy Prosecuting Attorney III".

- C. Duties and Responsibilities of Counsel: The duties and responsibilities of KC-DPD attorneys 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 (1 FTE 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 amend this Agreement with 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 the City. 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 and included in the calculation found on Attachment 2 to this Agreement.
- 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 FTE attorneys.

Section 5: TERM OF AGREEMENT

So long as an authorized representative of both parties has signed the Agreement, the term of this Agreement shall begin on September 1, 2014, regardless of the date of full execution. The term of the Agreement shall continue 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 County Public Defender up to an additional 24 months.

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Section 6: SCOPE OF WORK

The Legal Services work shall, at all times, be subject to the City's general review to determine the adequacy of the Legal Services provided and the County's compliance with this Agreement. The County shall confer with the City periodically, and at the City's request, the County shall prepare and present such information and materials as reasonably requested by the City and deemed necessary by the City for this general review. 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, King County, 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 by judicial order. 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, subject to the Rules of Professional Conduct the County will so inform the Court.
- 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 City 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

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expense or through a request to the Court; and cases involving other extraordinary circumstances for which payment is approved by the City including, but not limited to, cases in which the conflict is based on 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 provisionally assigned by the Court in accordance with Section 3(A) 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, unless completed representation is made impossible because of by a client's failure to;
7. Provide legal advice twenty-four (24) hours each day, seven days per week via cell phone (or comparable technology) access for critical stage advice, as defined by law, to defendants during the course of police investigations and/or arrests;
8. 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. Staff the In-custody arraignment calendars. Services provided at this calendar shall include representation of all otherwise unrepresented defendants who appear;
10. Staff the Out-of-custody intake (arraignment) calendars including DUI and Domestic Violence arraignments for all otherwise unrepresented defendants who appear;
11. Staff the Seattle Mental Health Court (MHC) calendar.
 - a. The MHC model uses an individualized, defendant-based, long-term, problem-solving approach in which the assigned public defender remains the Attorney of Record for so long as the defendant participates in MHC. This commitment

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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 handle 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" defined as 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. Staff the Seattle Veterans Treatment Court (VTC) 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. Under the direction and oversight of the Court, manage 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.

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- e. Work with the Court and the Oversight Committee to develop a performance assessment mechanism of CAP 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 CAP 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 City Agreement Administrator, the Court or any other City criminal justice agency.
- F. **Duties and Responsibilities of KC-DPD Attorneys:** In order to perform their duties under this Agreement, KC-DPD 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. KC-DPD 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. KC-DPD 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 City Agreement Administrator.
- 2. Upon closing a case, all KC-DPD attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the City 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 City 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 KC-DPD 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 of the County's acceptance of the case assignment and the in-custody status of the client. The assigned attorney, or another KC-DPD 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 KC-DPD 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 County may meet the requirements of this subsection through the assignment letter or phone calls. These contacts may occur before the case is assigned by SMC and all documentation of compliance with this subsection 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 compliance with this subsection 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 on any case. The County shall obtain discovery at arraignment if available. Documentation of compliance with this subsection 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 compliance with this subsection shall be noted in the client case file.

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10. KC-DPD attorneys and support staff shall demonstrate an understanding of all Seattle Municipal Court Local Rules (SMCLR). Nothing in this subsection requires an attorney to violate the Rules of Professional Conduct, to fail to provide effective assistance of counsel, or to violate the local court rules or 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 City 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 Public Defender or his/her designee. Written complaints include e-mail communications.

The County shall provide a substantive response to client complaints within one week after receipt of the complaint. Each supervisor shall keep a complaint file will be kept by each supervisor documenting the complaints. Subject to the Rules of Professional Conduct the County will provide the City Agreement Administrator with a summary of each complaint and its substantive response, as well as an explanation of how each complaint was resolved. Subject to the Rules of Professional Conduct the County will also provide the City Agreement Administrator with a summary of cases transferred to the Conflict Attorney Panel because of a 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. Minimum Attorney Qualifications:

1. Every KC-DPD 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 KC-DPD 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 KC-DPD 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 KC-DPD 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 Agreement.

C. Evaluations:

The County's Division Directors of the Department of Public Defense, or their designees, shall evaluate the professional performance of KC-DPD 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 category based on the 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 City 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 City 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 shall 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 last 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 City 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.

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- b. Completed cases shall be closed and submitted to the City Agreement Administrator for payment within sixty (60) days of the date of final action. If a client fails to appear, the case may be closed and submitted to the City Agreement Administrator for payment.
 - i. A case which was closed and submitted to the City 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 date of initial assignment, 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 in cases involving other extraordinary circumstances in which payment is approved by the City including, but not limited to cases in which the conflict is based on information or evidence which the KC-DPD attorney could not have reasonably known or discovered at the time of the initial conflicts check. Under these circumstances, payment will be made 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.
3. 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.
 4. 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.

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 City Agreement Administrator the reports described below.

Report Title	Due Date
Closed Case Reports including attorney assignment	Monthly (by 20 th 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 City 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 City 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.

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The Payment by the City to the County pursuant to the terms of this Agreement is 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 18 below. If the County receives any revenue from any other source for work within the scope of this Agreement, 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 the County has failed to comply with the obligations in this Agreement or has failed to provide the Legal Services in a manner consistent with this Agreement (a breach), 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 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 achieving compliance with the Agreement, 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 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 if good cause (as defined below) exists;

5. In addition, the City may withhold any payment owed the County or direct the County to stop 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, and except where the City has directed the County to stop incurring obligations as provided in Section 5 (A)(5), 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 City Agreement Administrator will review the response and issue a determination to the County within ten (10) working days after receipt of the County's response. If the County does not concur with the determination, the County may request a review of the determination by the Mayor by written appeal filed within ten (10) days of the City Agreement Administrator's determination 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 Subsection A (1) or (2), the County shall be liable for damages, including the reasonable costs of the procurement of similar services from another source.

- B. If for any reason, expected or actual funding from any source for all or part of this Agreement, other than 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 the Legal Services under this Agreement which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds. The City will promptly notify the County in writing that the specific funding is no longer available, and upon receipt of such notice, the County will be released from performing the Legal Services required for those terminated or suspended portions of this Agreement which

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were dependent upon such funding. The City shall promptly inform the Court of the suspended or terminated service and request the Court to refrain from provisionally assigning cases to the County. The City will be released from liability to the County for cases not yet assigned pursuant to those portions of this Agreement for which funds are not available. If any such termination is required, it shall be limited to only those services that directly relied on the unavailable 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 Agreement to the extent that funding has been withdrawn, reduced or limited. 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 Legal Services as are affected by termination.

- D. If this Agreement is terminated, the City Agreement Administrator may request the County to attempt to withdraw from any case assigned and not completed. If the County's attempt to withdraw is denied by the court and the County provides the City Agreement Administrator with proof of the court's decision, the City will pay the County under Section 8 for the continued representation required by the court.

If this Agreement is terminated, the County and City shall meet and confer regarding those cases for which the County has continued responsibility after termination; for such cases the City shall remain obligated to pay the County pursuant to Section 8.

- E. The County reserves the right to terminate this Agreement for cause with thirty (30) days written notice if the City substantially breaches any of its duties, obligations or requirements applicable to Legal Services under this Agreement. If 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 City Agreement Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the County's control, fault or negligence.
- F. If termination is due to the County's misappropriation of funds, non-performance of services, or fiscal mismanagement, in addition to any other remedies available to the City, the County shall return to the City any funds that the City paid to the County that were misappropriated or were paid for services that the County did not perform.
- G. Except as otherwise provided in this Agreement, it shall terminate on the date specified in Section 5, and shall be subject to extension only by an amendment executed by both Parties in accordance with Section 24.A.
- 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 reasonable attorney fees and costs.

- 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 City 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

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- 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 to make a copy of any such books and records and any portion thereof, except that if any such data, records or materials are subject to any privilege or rules of confidentiality the County must not breach such confidentiality or privilege. The County shall ensure that such inspection, audit and copying right of the City 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 Subsection, 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 to the extent that such disclosure is 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 reports required under 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. The City's consent must be sought in writing by the County not less than fifteen (15) days prior to the date of any proposed assignment or subcontract. 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 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 for 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: PUBLIC DISCLOSURE

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 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**: The County, at no expense to the City other than the required payments pursuant to Section 8, shall comply with all applicable laws of the United States, the State of Washington and 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, condition or 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, constitutes the entire Agreement between the City and the County. No oral 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 either 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:

David Chapman, Director
King County Department of Public Defense
401 Fifth Avenue, Suite 550


ATTACHMENT A


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  8/27/14
 Signature Date
David K. Chapman
 Director,
 Department of Public Defense

By  8/26/14
 Signature Date
Ben Noble
 Director,
 City Budget Office

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

ATTACHMENT I

**2014 King County Prosecuting Attorney Salary Schedule
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 A

ATTACHMENT 2
2014 Charges for Services
King County Department of Public Defense
Term of ILA: September 1, 2014 to December 31, 2015
City of Seattle Public Defense Services

TOTAL ANNUAL COSTS

Funding Level:	7200	annual credits				
Case Load Standard:	380	annual credits per attorney				
Proposed Staffing Level:						
Total Attorneys	25.75					
		18.95	FTE for caseload			
		2.00	FTE for Mental Health and Veterans Treatment Courts			
		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					
	43.27					
SALARY					Rate	2014
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
2014 appropriation: July 1 - December 2014						\$3,051,272
Cost per credit (based on caseload work, see Variable Costs worksheet)						\$555.94

ATTACHMENT 2
2014 Charges for Services
King County Department of Public Defense
Term of ILA: September 1, 2014 to December 31, 2015
City of Seattle Public Defense Services

VARIABLE ANNUAL COSTS

Funding Level:	7200	annual credits	
Case Load Standard:	380	annual credits per attorney	
Proposed Staffing Level:			
Total Attorneys	19.00		
		19.00	FTE for caseload
Attorney Supervisors	2.02	FTE	
Social Workers	2.00	FTE	
Investigators	3.00	FTE	
Paralegal	1.40	FTE	
Legal Clerical		FTE	
Rule 9			
	27.42		

SALARY

					Rate	2014
Attorneys (40% DPA 4)	7.60	FTE	@	DPA 4	84,031	638,636
Attorneys (60% @ DPA 5-4)	11.40	FTE	@	DPA 5-4	97,293	1,109,140
Attorney Supervisors SPD - 2	2.02	FTE	@	SPD 2	128,147	258,857
Rule 9					30,000	-
Social Workers	2.00	FTE			65,389	130,778
Investigators	3.00	FTE			65,389	196,167
Paralegal	1.40	FTE			65,389	91,545
Clerical Support		FTE			46,914	-
	27.42	TOTAL				

TOTAL SALARY EXPENSE	\$2,425,122
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TAXES

FICA		185,522
State Unemployment		-
Workman's Comp		14,850

TOTAL TAX EXPENSE	\$200,372
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BENEFITS

Retirement		217,355
Health Benefits		406,500
Professional Benefits		

TOTAL BENEFIT EXPENSE	\$623,855
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TOTAL Direct	<u>\$3,249,349</u>
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Supply/Services/Overhead (12% of KC Admn)	60.00%	1,255,698	753,419
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Total Annual	<u>\$4,002,767</u>
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2014 appropriation: 2014 July 1 - December 2014	\$2,001,384
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Cost per Credit	<u>\$555.94</u>
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**ATTACHMENT 2
2014 Charges for Services
King County Department of Public Defense
Term of ILA: September 1, 2014 to December 31, 2015
City of Seattle Public Defense Services**

FIXED ANNUAL COSTS

Proposed Staffing Level:

Total Attorneys	6.80				
				FTE for caseload	
			2.00	FTE for Mental Health and Veteran Treatment Courts	
			3.60	FTE for Arraignment/Intake Calendars	
			1.20	FTE for Community Court	
Attorney Supervisors	1.00	FTE			
Social Workers	1.00	FTE			
Investigators		FTE			
Paralegal	1.00	FTE			
Legal Clerical	4.10	FTE			
Rule 9	2.00				
	15.90				

SALARY

					Rate	2014
Attorneys (40% @ DPA 4)	2.70	FTE	@	DPA 4	84,031	226,884
Attorneys (60% @ DPA 5-4)	4.10	FTE	@	DPA 5-4	97,293	398,901
Attorney Supervisors	1.00	FTE	@	SPD 2	128,147	128,147
Rule 9	2.00				30,000	60,000
Social Workers	1.00	FTE			65,389	65,389
Investigators		FTE			65,389	-
Paralegal	1.00	FTE			65,389	65,389
Clerical Support	4.10	FTE			46,914	192,347
	15.90	TOTAL				

TOTAL SALARY EXPENSE **\$1,137,057**

TAXES

FICA	86,985
State Unemployment	-
Workman's Comp	8,800

TOTAL TAX EXPENSE **\$95,785**

BENEFITS

Retirement	104,496
Health Benefits	260,160
Professional Benefits	

TOTAL BENEFIT EXPENSE **\$364,656**

TOTAL Direct		<u>\$1,597,498</u>
Supply/Services/Overhead (12% of KC Admn)	40.00%	1,255,698
		502,279

Total Annual **\$2,099,777**

2014 appropriation: July 1 - December 2014	1,049,888
	monthly
	\$174,981

**First Amendment to the
Interlocal Agreement for
Public Defense Services
Between The City of Seattle and King County**

This First Amendment to the Interlocal Agreement for Public Defense Services (First Amendment) 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.

RECITALS

This Agreement is made with reference to the following facts:

- A. The County and the City are Parties to the Interlocal Agreement for Public Defense Services which became effective on July 1, 2014 (the Agreement).
- B. The Agreement will expire on December 31, 2015; however the Parties mutually desire to extend the Interlocal Agreement and to make other amendments to the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to extend and amend the Agreement as follows:

Effective Date

This First Amendment shall be effective when signed by an authorized representative of each party

AMENDMENTS:

Definitions

Section 3: (A)(1)(a). Replace "all of the KC-DPD divisions" with "*divisions serving Seattle Municipal Court*". Replace Section "~~8.C.7~~" with 6.E.14.

Section 3: (B)(2) Case Credit is revised as follows: One review, revocation, resentencing or other hearing is equivalent to ~~0.60~~ of a one case credit.

Public Defense Standards

The first sentence of Section 4: (D)(1). Caseload Limits is revised as follows: The Caseload Limit shall be no more than ~~380~~ 400 Case Credits per attorney, calculated as a rolling year average.

Term of the Agreement

Section 5: Term of the Agreement is amended to provide that the Agreement shall continue through *June 30, 2016*, unless terminated earlier as provided for under the Agreement, or unless extended by mutual agreement of the City Budget Director and the King County Public Defender for up to an additional 18 months.

Performance and Qualifications

Section 7: (A)(4). Include the following sentence at the end of the paragraph: “KC-DPD will notify the SMC Chief Clerk of attorney reassignments and will work to minimize continuances and provide a smooth attorney transition.”

The Second Sentence of Section 7: (C) Evaluations is deleted and replaced with the following: Attorney evaluations should include monitoring of time and caseload records, review of case files (including client contact, trial and negotiation skills), quality of case preparation, as well as in-court observation and an opportunity for judicial feedback.

Payment

Section 8: (A). No later than June of each year, KC-DPD and the City will meet to discuss cost increases for the following calendar year including the application of the CPI and actuals costs, any staffing market adjustments, and staffing changes related to public defense standards.

Section 8: (B)(2)(g) is deleted and replaced with the following: 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.

Attachment 2

Attachment 2 is hereby replaced by Attachment 2 (2016) which is made a part of this Agreement.

Continued Effect of Terms not amended; Agreement includes First Amendment.

All of the terms and conditions of the Agreement shall continue in full force and effect as written except as expressly modified by this First Amendment. If there is any inconsistency or conflict between the terms of the Agreement as originally executed by the Parties and the terms of this First Amendment, this First Amendment shall govern, but only to the extent necessary to resolve the inconsistency or conflict. From and after the Effective Date of this First Amendment, all references to the Agreement shall mean the Parties’ original Interlocal Agreement for Public Defense Services as amended by this First Amendment.

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 *for Lorinda Youngcourt* *12/22/15*
Signature Date

By *[Signature]* *12/18/15*
Signature Date

Lorinda Youngcourt
Director,
Department of Public Defense

Ben Noble
Director,
City Budget Office

King County Department of Public Defense
January 1, 2016 to December 31, 2016
City of Seattle Public Defense Services
Variable COSTS

Funding Level: 7000 credits
Case Load Standard: 400 credits per attorney

Proposed Staffing Level:

Total Attorneys	17.50		
		17.50 FTE for caseload	
Attorney Supervisors	0.00 FTE		
Social Workers	0.00 FTE		
Investigators	0.00 FTE		
Paralegal	0.00 FTE		
Legal Clerical	FTE		
Rule 9			

17.50

Rate

SALARY

					2016
Attorneys (40% DPA 4)	7.00 FTE	@	DPA 4	\$87,641	613,484
Attorneys (60% @ DPA 5-4)	10.50 FTE	@	DPA 5-4	\$101,471	1,065,450
Attorney Supervisors SPD - 2	0.00 FTE	@	SPD 2	\$133,954	-
Rule 9	0.00				-
Social Workers	0.00 FTE			88,515.00	-
Investigators	0.00 FTE			74,594.00	-
Paralegal	0.00 FTE			65,879.00	-
Clerical Support	FTE			49,588.00	-
	17.50 TOTAL				

TOTAL SALARY EXPENSE**\$1,678,934****TAXES**

	FICA				\$128,438
	State Unemployment				-
	Workman's Comp				9,625

TOTAL TAX EXPENSE**\$138,063****BENEFITS**

	Retirement				\$187,705
	Health Benefits				\$307,650
	Professional Benefits				-

TOTAL BENEFIT EXPENSE**\$495,355****TOTAL Direct****\$2,312,352**

Supplies, Services and Overhead

38.89%

1,545,203

600,912

Total Annual

2,913,265

Cost per Case

416.18

**King County Department of Public Defense
January 1, 2016 to December 31, 2016
City of Seattle Public Defense Services
Fixed COSTS**

ACAD's Proposed Staffing Level:

Total Attorneys 7.00

FTE for caseload
2.00 FTE for Mental Health Court
3.60 FTE for Arraignment/Intake Calendars
1.20 FTE for Community Court
0.20 FTE for Veterans Court

Attorney Supervisors 3.00 FTE
Social Workers 4.00 FTE
Investigators 4.00 FTE
Paralegal 3.00 FTE
Legal Clerical 6.50 FTE
Rule 9 0.00

27.50

Rate

SALARY

2016

Attorneys (40% @ DPA 4)	2.80 FTE	@	DPA 4	\$87,641	245,394
Attorneys (60% @ DPA 5-4)	4.20 FTE	@	DPA 5-4	\$101,471	426,180
Attorney Supervisors	3.00 FTE	@	SPD 2	\$133,954	401,862
Rule 9	0.00				
Social Workers	4.00 FTE			88,515.00	354,060
Investigators	4.00 FTE			74,594.00	298,376
Paralegal	3.00 FTE			65,879.00	197,637
Legal Admin Spec II	6.50 FTE			49,588.00	322,322
	27.50 TOTAL				

TOTAL SALARY EXPENSE

\$2,245,830

TAXES

FICA	\$171,806
State Unemployment	\$0
Workman's Comp	15,125

TOTAL TAX EXPENSE

\$186,931

BENEFITS

Retirement	\$251,084
Health Benefits	\$483,450
Professional Benefits	

TOTAL BENEFIT EXPENSE

\$734,534

TOTAL Direct

\$3,167,295

Supplies, Services and Overhead

61.11%

1,545,203

944,291

Total Annual

4,111,586

monthly

342,632.19

**Second Amendment to the
Interlocal Agreement for
Public Defense Services
Between The City of Seattle and King County**

This Second Amendment to the Interlocal Agreement for Public Defense Services (Second Amendment) 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.

RECITALS

This Agreement is made with reference to the following facts:

- A. The County and the City are Parties to the Interlocal Agreement for Public Defense Services which became effective on July 1, 2014 (the Agreement).
- B. On or about December 22, 2015, the parties entered into the First Amendment to the Agreement to extend the term through June 30, 2016 and to make other amendments to the terms and conditions.
- C. The Parties mutually desire to further extend the Agreement and to make other amendments to the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to extend and amend the Agreement as follows:

Effective Date

This Second Amendment shall be effective when signed by an authorized representative of each party. If for any reason the Second Amendment is signed after June 30, 2016, so long as the Second Amendment is fully signed, it is the parties' intention that this Second Amendment be retroactively effective so that the Agreement remains in full force and effect through the extended term of the Agreement herein.

AMENDMENTS:

Section 5: Term of the Agreement

Section 5: Term of the Agreement is amended to provide that the Agreement shall continue through December 31, 2017.

Section 8: Payment

Section 8.C.2.e is deleted and replaced in its entirety with the following: The County will be paid ~~four (4)~~ five and one-half (5.5) credits to defend appeals in King County Superior Court and ~~three (3)~~ case credits to defend a writ. ~~Two (2)~~ Three (3) of the case credits will be paid when the case is assigned. The remaining case credits will be paid upon case closure.

The county will be paid three and one-half (3.5) case credits to defend a writ.

Clarification under First Amendment

Under the First Amendment Section titled "Payment", the reference in the second paragraph to *Section 8:(B)(2)(g)* was intended to and shall refer to Section 8.C.2.g.

Attachment 2

Prior versions of Attachment 2 are hereby replaced by Attachment 2 dated July 1, 2016 – December 31, 2016, which is made a part of this Agreement.

Continued Effect of Terms not amended; Agreement includes Amendments.

All of the terms and conditions of the Agreement, as previously amended, shall continue in full force and effect as written except as expressly modified by this Second Amendment. If there is any inconsistency or conflict between the terms of the Agreement as originally executed by the Parties (and later amended) and the terms of this Second Amendment, this Second Amendment shall govern, but only to the extent necessary to resolve the inconsistency or conflict. From and after the Effective Date of this Second Amendment, all references to the Agreement shall mean the Parties' original Interlocal Agreement for Public Defense Services as amended by the First and Second Amendment.

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  6/30/16
Signature Date

By  6/29/16
Signature Date

Lorinda Youngcourt
Director,
Department of Public Defense

Ben Noble
Director,
City Budget Office

ATTACHMENT 2
 2016 Charges for Services
 King County Department of Public Defense
 Term of ILA: July 1 2016 to December 31, 2016
 City of Seattle Public Defense Services

VARIABLE BUDGET ESTIMATE			
Caseload Funding	7250		
Caseload staffing	FTE	Annual Rate	Annual Budget
Attorneys new to criminal defense	4	\$ 62,581	\$ 250,324
Entry level attorneys	6.18	\$ 87,641	\$ 541,914
Experienced attorneys	9.275	\$ 101,471	\$ 941,144
Caseload flexibility	0.6	\$ 95,939	\$ 56,004
Total Variable FTE & Salaries	20.0		\$ 1,789,385
FIXED BUDGET ESTIMATE			
Non-caseload attorneys			
Mental Health Court	2	\$ 95,939.0	\$ 191,878
Arraignment/Intake Calendars	4	\$ 95,939.0	\$ 383,756
Community Court	1.2	\$ 95,939.0	\$ 115,127
Veterans Court	0.2	\$ 95,939.0	\$ 19,188
Total non-caseload attorney FTE & salaries	7.40		\$ 709,949
Supervising Attorneys	3	\$ 133,954	\$ 401,862
Assigned counsel	0.25	\$ 145,674.0	\$ 36,419
On Call Attorney	0.53	\$ 95,939.0	\$ 50,630
Public Defense Mitigation Specialist II	4	\$ 82,448	\$ 329,794
Public Defense Investigator	7	\$ 68,200	\$ 477,399
Public Defense Paralegal	3	\$ 63,516	\$ 190,547
Legal Administrative Specialist II	6	\$ 48,931	\$ 293,585
Public Defense Paralegal - assigned counsel	0.5	\$ 63,516	\$ 31,758
Total Fixed Staffing	24.28		\$ 1,811,993
Total Fixed FTE & Salaries	31.68		\$ 2,521,942
Total FTE & Salaries	51.72		\$ 4,311,327
TAXES, BENEFITS, AND OTHER EXPENSES			
TAXES			
FICA			\$ 329,817
State Unemployment			\$ -
Workman's Comp			\$ 28,446
BENEFITS			
Retirement			\$ 440,187
Health Benefits			\$ 909,234
Professional Benefits			
Supplies, Services and Overhead (12% of Administration)			\$ 1,395,272
Total Taxes, Benefits and other expenses			\$ 3,102,955
TOTAL REVISED ANNUAL BUDGET			\$ 7,414,283
Total Fixed Costs	Monthly	\$ 368,538.56	\$ 4,422,463
Cost per case			\$ 412.66

**Third Amendment to the
Interlocal Agreement for
Public Defense Services
Between The City of Seattle and King County**

This Third Amendment to the Interlocal Agreement for Public Defense Services (Third Amendment) 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.

RECITALS

This Agreement is made with reference to the following facts:

- A. The County and the City are Parties to the Interlocal Agreement for Public Defense Services which became effective on July 1, 2014 (the Agreement).
- B. On or about December 22, 2015, the parties entered into the First Amendment to the Agreement to extend the term through June 30, 2016 and to make other amendments to the terms and conditions.
- C. On or about June 30, 2016, the parties entered into the Second Amendment to the Agreement to extend the term through December 31, 2017 and to make other amendments to the terms and conditions.
- D. The Parties mutually desire to make other amendments to the terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to extend and amend the Agreement as follows:

AMENDMENTS:

Section 3: Definitions

The definition of "Case Credit" under Section 3 is amended by adding a new sentence to the end of Subsection 3.B.3 as follows:

B: Case Credit:

... "Petitioning for a Motion for Discretionary Review is an additional two (2) credits."

The definition of "Misdemeanor Practice Area" under Section 3.R is amended by adding a new sentence to the end of Subsection 3.R.3 as follows:

R: Misdemeanor Practice Area

3. ... Motions for Discretionary Review to the Court of Appeals or Supreme Court is part of the appeal process. If review is accepted, the State is responsible for appointment of counsel.

Section 6: SCOPE OF WORK

A new subsection is added to Section 6.E as follows:

- 16. Civil Legal Services. Provide comprehensive advocacy to SMC defendants and Seattle residents facing criminal charges in King County courts to fully advise clients regarding civil collateral consequences related to criminal plea agreements, and to assist clients in mitigation and avoidance of such consequences. KC DPD attorneys with experience in civil legal representation will work collaboratively with KC DPD criminal defense attorneys and social workers to assess client legal needs and to assist with plea negotiations. These attorneys will also be involved in community trainings, public education, and data collection and analysis. The attorneys will synthesize data collection and analysis in a report that explicates criteria for providing civil legal representation to SMC public defense clients on housing matters such as eviction proceedings.

Attachment 2

Prior versions of Attachment 2 are hereby replaced by Attachment 2A dated July 1, 2017 which is made a part of this Agreement.

Continued Effect of Terms not amended; Agreement includes Amendments.

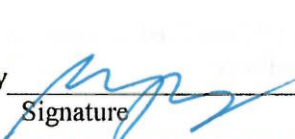
All of the terms and conditions of the Agreement, as previously amended, shall continue in full force and effect as written except as expressly modified by this Third Amendment. If there is any inconsistency or conflict between the terms of the Agreement as originally executed by the Parties (and as later amended) and the terms of this Third Amendment, this Third Amendment shall govern, but only to the extent necessary to resolve the inconsistency or conflict. From and after the Effective Date of this Third Amendment, all references to the Agreement shall mean the Parties' original Interlocal Agreement for Public Defense Services as amended by the First, Second and Third Amendments.

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  8/3/17
 Signature Date

By  8/3/17
 Signature Date

Lorinda Meier Youngcourt
Director,
Department of Public Defense

Ben Noble
Director,
City Budget Office

ATTACHMENT 2A
 2017 Charges for Services - Revised July 2017
 King County Department of Public Defense
 Term of ILA: July 1 2014 to December 31, 2017
 City of Seattle Public Defense Services

VARIABLE BUDGET ESTIMATE			
Caseload Funding	7500		
Caseload staffing	FTE	Annual Rate	Annual Budget
Attorneys new to criminal defense	4	\$ 63,990	\$ 255,958
Entry level attorneys	6.43	\$ 89,612	\$ 576,507
Experienced attorneys	9.65	\$ 103,755	\$ 1,001,232
Caseload flexibility	0.6	\$ 98,098	\$ 59,104
Total Variable FTE & Salaries	20.7		\$ 1,892,800
FIXED BUDGET ESTIMATE			
Non-caseload attorneys			
Mental Health Court	2	\$ 98,097.7	\$ 196,195
Arrestment/Intake Calendars	4	\$ 98,097.7	\$ 392,391
Veterans Court	0.2	\$ 98,097.7	\$ 19,620
Total non-caseload attorney FTE & salaries	6.20		\$ 608,206
Supervising Attorneys	3	\$ 136,968	\$ 410,904
Assigned counsel	0.25	\$ 145,674.0	\$ 36,419
On Call Attorney	0.52	\$ 98,097.7	\$ 50,720
FMLA Attorney coverage	0.73	\$ 96,920	\$ 70,752
Public Defense Mitigation Specialist II	4	\$ 84,305	\$ 337,220
Public Defense Investigator	7	\$ 69,736	\$ 488,150
Public Defense Paralegal	3	\$ 64,946	\$ 194,839
Legal Administrative Specialist II	6	\$ 48,931	\$ 293,585
Public Defense Paralegal - assigned counsel	0.5	\$ 64,946	\$ 32,473
Total Fixed Staffing	25.00		\$ 1,915,061
Total Fixed FTE & Salaries	31.20		\$ 2,523,267
Civil Pilot			
Civil Attorneys (3 FTE August 1 through December 31, 2017)	1.26	\$ 103,755	\$ 130,731
(Billing to be separate and based on monthly actuals not to exceed \$176,930 with benefits in 2017.)			
TAXES, BENEFITS, AND OTHER EXPENSES			
Total FTE & Salaries	53.14		\$ 4,546,798
TAXES			
FICA			\$ 347,830
State Unemployment			\$ -
Workman's Comp			\$ 29,229
BENEFITS			
Retirement			\$ 464,228
Health Benefits			\$ 934,252
Professional Benefits			
Supplies, Services and Overhead (12% of Administration) - revised			\$ 1,630,671
Total Taxes, Benefits and other expenses			\$ 3,406,209
TOTAL REVISED ANNUAL BUDGET			\$ 7,953,007
Total Fixed Costs	Monthly	\$ 376,904.25	\$ 4,522,851
Cost per case			\$ 429.16