



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**October 10, 2017**

**Ordinance 18578**

**Proposed No. 2017-0374.1**

**Sponsors Gossett**

1 AN ORDINANCE authorizing the execution of an interlocal  
2 agreement for public defense services between King County  
3 and the city of Seattle.

4 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. On May 20, 2013, the King County council adopted Ordinance 17588 creating  
7 a department of public defense within the executive branch.

8 B. Ordinance 17588 authorizes the department to provide public defense services  
9 to the state of Washington, tribal governments and municipalities in King County on a  
10 full cost recovery basis and to negotiate appropriate contractual agreements, subject to  
11 council approval by ordinance when required by law.

12 C. King County and the city of Seattle value the expertise of public defenders  
13 providing services to the city of Seattle and recognize the need to maintain the continuity  
14 of services and to ensure that current and future clients have access to public defense  
15 services without disruption.

16 D. The attached Interlocal Agreement for Public Defense Services secures the  
17 city of Seattle's ability to continue to receive public defender services and provides King  
18 County financial assurances.

19 **SECTION 2.** The executive is hereby authorized to execute an interlocal

20 agreement for public defense services with the city of Seattle substantially in the form of  
21 Attachment A to this ordinance.  
22

Ordinance 18578 was introduced on 9/18/2017 and passed by the Metropolitan King County Council on 10/9/2017, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,  
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles  
and Ms. Balducci  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON



Joseph McDermott, Chair

ATTEST:



Melani Pedroza, Clerk of the Council



RECEIVED  
2017 OCT 19 PM 3:46  
CLERK  
KING COUNTY COUNCIL

APPROVED this 19<sup>th</sup> day of OCTOBER, 2017.



DOW CONSTANTINE FOR

Dow Constantine, County Executive

**Attachments:** A. King County and the City of Seattle Interlocal Agreement for Public Defense Services

**King County and The City of Seattle**

**Interlocal Agreement for  
Public Defense Services  
January 1, 2018**

**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.

**Section 2: RECITALS**

WHEREAS, the City desires to have Legal Services performed for indigent persons legally entitled to appointed representation in the City; and

WHEREAS, the County operates and maintains a Department of Public Defense (KC-DPD), and is available to continue to provide such Legal Services to the City; and

WHEREAS, the County and the City are currently Parties to the Interlocal Agreement for Public Defense Services which became effective on July 1, 2014, and will be effective through December 31, 2017; and

WHEREAS, the Parties are desirous of a new Agreement to continue these Legal Services; and

WHEREAS, this Agreement provides authority for County management of defense services for the City; and

WHEREAS, funds provided pursuant to this Agreement are provided for the purpose of provision of Legal Services to indigent persons charged with crimes in Seattle Municipal Court (Court or SMC) and other services as described in this 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 as follows:

**Section 3: DEFINITIONS**

- A. **Case Assignment**: A Case Assignment is any particular Case found eligible for indigent defense by the City or the Court and sent to the County for assignment.
1. **Provisional**: A Provisional Case Assignment will include all Cases initially referred by KC-DPD to its divisions serving SMC 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

## ATTACHMENT A

also include post-adjudication Cases requiring additional attorney time after the Case has been completed or closed. See Section 6.E for additional requirements for Provisional Case Assignment.

2. Final: Final Case Assignment means any Case the division accepts, and any Case that involves more than 2 hours of attorney work but that is subsequently assigned to a CAP attorney.
  - a. If conflict is discovered or defendant sought private counsel and the attorney worked less than 2 hours, the City will pay .2 Case Credit.
  - b. A Case which was closed and submitted to the City Agreement Administrator for full payment because the Court issued a bench warrant for the Client and struck all further court dates shall not be considered a new Case Assignment 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.

B. Case Credit: Case Credit is a unit of work. Case Credit is awarded as follows:

1. One Final Case Assignment is equivalent to one Case Credit.
2. A review, revocation, resentencing or other hearing is equivalent to one Case Credit. 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 Case Credit.
3. One Misdemeanor (RALJ) Appeal is equivalent to up to six and one-half (6.5) Case Credits, at the rate of one credit at assignment, four credits the month the brief is filed, and an additional 1.5 credits at closure if briefed and argued.
  - a. If a Client does not want to appeal and the attorney worked less than 8 hours, a maximum of one credit will be awarded.
  - b. Prorated credits will be awarded for up to 5 hours worked after the 8 hours when an appeal is withdrawn before the brief is filed.
  - c. Supplemental credit in extraordinary Cases upon approval of the City Agreement Administrator.
4. Petitioning for a Motion for Discretionary Review is equivalent to two Case Credits.
5. One Misdemeanor Writ is equivalent to three and one-half (3.5) Case Credits.
6. Supplemental Case Credits shall be awarded at the rate of one additional credit at 20 hours, one additional credit at 40 hours and a final additional credit at 60 hours.
7. If a related series of charges, defined herein as a single Case, is subsequently set for separate Disposition hearings or trials, one additional Case Credit is awarded for each Case which is severed from the consolidated Case.
8. If additional charges are filed against a Client while the initial Case Assignment remains pending, the additional charges shall be counted as a new Case Credit only if the charges arise out of a separate incident.

## ATTACHMENT A

9. A restitution hearing ordered at the time of original Disposition receives no new Case Credit if held within 90 days, and shall be included in the Case Credit for applicable to a Completed Case, as defined below.
- C. Case or Criminal Case: A Case is any one charge or series of related charges filed against one defendant/respondent set for court hearing(s) that will ultimately lead to one Disposition.
- D. Caseload Limits: A Caseload Limit is the maximum number of Case Credits, as defined in Section 3.B, which may be assigned to an individual attorney, and shall be calculated as a rolling year average. Caseload Limits are further addressed in Section 4.
- E. City: The City of Seattle.
- F. City Agreement Administrator: City of Seattle Public Defense Agreement Administrator in the City Budget Office (CBO), or designated department, who is the authorized City representative for the purposes of administering this Agreement.
- G. Client: A defendant screened by the City and referred to KC-DPD for representation.
- H. CLIENTS: Any Client except those represented by a CAP attorney and any indigent Seattle resident represented by a KC-DPD attorney in a matter pending in a King County court.
- I. 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, stipulated order of continuance, or deferred prosecution unless such hearing occurs within forty-five (45) days of sentencing.
- J. Conflict Attorney Panel or CAP: A panel of private attorneys assigned to defend cases where the County has a conflict of interest.
- K. County: King County through its Department of Public Defense.
- L. 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.
- M. Court: The Municipal Court of Seattle (SMC).
- N. 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.
- O. 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.
- P. 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

## ATTACHMENT A

sentence or deferral of same, stipulated order of continuance, or an order entering a dispositional continuance.

- Q. Indigent Defendant: A person determined indigent by the Court or City as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
- R. Legal Services: Legal Services means legal representation provided by licensed attorneys, attorneys approved and permitted under Washington State Court Rules: Admission and Practice Rule 8 (APR Rule 8), or licensed legal interns under Washington State Court Rules: Admission and Practice Rule 9 (APR Rule 9) under supervision of an attorney, and associated Professional Support Staff to an individual Client, pursuant to a Case Assignment or court appointment.
- S. Mayor: The Mayor of Seattle or designee.
- T. Misdemeanor Definitions:
  - 1. Misdemeanor Case: Any Criminal Case filed by the Seattle City Attorney in SMC 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. Misdemeanor Appeal means and includes Motions for Discretionary Review to the Court of Appeals or Supreme Court. If review is accepted, the State is responsible for appointment of counsel.
  - 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.
- U. Professional Support Staff: Investigators, mitigation specialists and paralegals performing services under County supervision.
- V. 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: For the purposes of ensuring compliance with the American Bar Association's Ten Principles for a Public Defense Delivery System, KC-DPD attorneys shall be compensated in accordance with the current "King County Public Defense Attorney Salary Schedule (SEIU)" as updated annually. Supervising attorneys shall be compensated in accordance with the current "Attorney Supervisor (Teamsters)" schedule as updated annually.

## ATTACHMENT A

- B. 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.
- C. Caseload Limits:
1. The Caseload Limit shall be no more than 400 Case Credits per attorney (1 FTE attorney), calculated as a rolling year average. Caseload Limits for new criminal attorneys, as defined in the Supreme Court caseload standards, shall equal 2/3 of the 400-caseload standard for the first 6 months. In addition, the Caseload Limit of supervising attorneys shall be reduced based on the number of attorneys supervised at a ratio of 0.1 of the Caseload Limit per FTE attorney supervised.
  2. Should the standard for Caseload Limits be amended by statute, City 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.
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by the Court, and reimbursed from the City Indigent Defense Budget Control Level.
- E. 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.
- F. 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 Exhibit 1 to this Agreement.
- G. Professional Support Services: The County shall provide investigative, paralegal, mitigation specialist and clerical services necessary for representation of Indigent Defendants. The County shall provide a .5 FTE Professional Support Staff person for every 1.0 FTE caseload attorney annually. Professional Support Staff includes mitigation specialists, investigators, and paralegals.
- H. Supervision: The County shall provide supervising attorneys at the following standards: one supervisor for every ten FTE attorneys.
- I. Certification: The County will collect and maintain quarterly certification from attorneys assigned under this Agreement that such attorneys meet approved Supreme Court standards for indigent defense services.

### **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 January 1, 2018, regardless of the date of full execution. The term of the Agreement shall continue through December 31, 2022, unless terminated earlier as provided for under the Agreement, or unless extended by mutual agreement of the City Budget Director and the County Public Defender for up to a total of ten additional years (through December 2032).

### **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

## ATTACHMENT A

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 legal representation and Legal Services through effective, quality 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 licensed attorneys, attorneys approved and permitted under APR Rule 8, or APR Rule 9 licensed legal interns under supervision of an attorney, and associated Professional Support 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 Legal Services provided by the County under 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 to the County for work done on Cases which are subsequently identified as conflicts with the exception of Cases in which (after work has been performed) the Client obtains a new attorney at his own expense or through a request to the Court; and Cases involving other extraordinary circumstances for which payment is approved by the City including, but not limited to, Cases in



## ATTACHMENT A

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 SMC;
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 all Case Assignments and represent all Clients assigned by the Court in accordance with Section 3.A.
  - a. KC- DPD will make Provisional Case Assignments directly to KC-DPD divisions. If KC-DPD determines that there is a conflict with all the KC-DPD divisions, the Director of Assigned Counsel, or his/her designee, will refer the Case to a private attorney who shall provide legal representation at the sole cost of the City as provided in Section 6.E.13 herein (CAP attorney).
  - b. If the Case is declined due to a conflict of interest, and 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 shall not be reported in open Case reports or closed Case reports. The division shall not be obligated to contact the defendant.
6. In the event 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 a Client's failure to appear) as per Section 12.D;
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 Subsections E.9 through E.12 of Section 6 and consistent with Exhibit 1. 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;

## ATTACHMENT A

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 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 SMC.
  - 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 ensure (through established protocols) expeditious referral and assessment to MHC.
  - e. 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. 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 SMC, 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 (VA), is a path to reduce recidivism and increase veterans accessing needed services from the VA and community-based providers.
13. 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

## ATTACHMENT A

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. Generally assign Cases on a rotational basis to the CAP.
  - e. Work with the Court and the Oversight Committee to develop a performance assessment mechanism of 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 assignment of attorneys to City Agreement Administrator.
  - h. The County will collect and maintain quarterly certification from attorneys assigned under this Agreement that such attorneys meet approved Supreme Court standards for indigent defense services.
14. Civil Legal Services. Provide comprehensive advocacy to CLIENTS 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 CLIENTS' legal needs and to assist with plea negotiations. These attorneys will also be involved in community trainings, public education, and data collection and analysis.
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 sentencing and at review hearings. 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.

## ATTACHMENT A

2. Use City funding to represent Clients in criminal matters in SMC 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 and civil legal services relating to plea agreements as provided under Section 6.E.14.
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, Professional Support 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 attorneys, professional 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 January 1, 2018, and thereafter shall be filed when updated. 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 professionals and expert service.
  - b. Professional Support Staff practices.
  - c. Supervision of attorneys and Professional Support Staff.
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. KC-DPD will notify the SMC Chief Clerk of attorney reassignments and will work to minimize continuances and provide a smooth attorney transition.

## ATTACHMENT A

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 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.
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.

## ATTACHMENT A

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 (or as approved permitted APR Rule 8 lawyer) 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 utilize APR Rule 9 licensed legal interns to perform Legal Services. However, no more than 7% of the Cases handled for each calendar year by the County may be assigned to APR Rule 9 licensed legal 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 Professional Support Staff annually. 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. Professional support staff 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

## ATTACHMENT A

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 January through December 2018, the City shall pay the County for the services specified in Section 6, in the amount estimated to be \$8,325,133. The specific costs are shown in Exhibit 1 – 2018 Charges for Public Defense Services. This exhibit will be updated at least annually by mutual written agreement by the City Agreement Administrator and the County Public Defender to show the following years' charges. Payment includes the following factors and assumptions:
1. Attorney compensation is based on the forty percent (40%) at Step 4 and sixty percent (60%) at Step 8 of the “King County Public Defense Attorney Salary Schedule (SEIU)”. One supervising attorney for every ten FTE attorneys will be funded based on actuals, however, not higher than Step 15 of the “Attorney Supervisor (Teamsters)”. Both salary schedules are provided as Appendix 1.
  2. A fixed amount to staff the arraignment, intake, Seattle Mental Health Court, and Veteran’s Treatment Court calendars, overhead, support staffing, and supervising attorneys based on a caseload assumption of 7,500. The fixed amount will be billed monthly.
  3. Payment for Completed Cases shall be based on:
    - a. Case Credits with a caseload estimate of 7,500 in 2018. 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 Exhibit 1.
    - 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. Payment is based on the cost per Case of the year the Case was opened. 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

## ATTACHMENT A

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, if the attorney worked less than two (2) hours the City will pay .2 Case Credit.

- e. The County will be paid six and one half (6.5) Case Credits to defend appeals in King County Superior Court and three and one-half (3.5) Case Credits to defend a writ. Credits are paid as stipulated in Subsections B.4 and B.5 of Section 3. . . Petitioning for a Motion for Discretionary Review is two (2) Case Credits.
  - f. In the event that one probationary hearing handles probationary matters related to more than one Case, only one probationary credit will be paid to the County if the matters are handled at one hearing.
4. The County will be paid three and one-half (3.5) Case Credits when a Misdemeanor Writ is opened.
  5. Civil Legal Services provided by attorneys are billed separately based on monthly actuals. This pilot program began in 2017 with funding through 2018. Future funding will be determined in subsequent City budget processes.
  6. 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.
  7. 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.
- B. Payment for each year beyond 2018 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the KC-DPD Attorney and Attorney Supervisor Salary Schedules as specified in Section 4.A. 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. By no later than June 1 of each year, KC-DPD will finalize proposed cost increases for the following calendar year including the application of the CPI and actual costs, any staffing market adjustments, and staffing changes related to public defense standards.
- C. 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 within 45 days of receipt of the invoice.



## ATTACHMENT A

### **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

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

<b>Report Title</b>	<b>Due Date</b>
Closed Case Reports including attorney assignment	Monthly (by 20 <sup>th</sup> day of the following month)
Aggregated Open Case Report by Case type (case versus review or probation.)	Monthly
Staff Position Reports, including calendar coverage	Update when attorney transfers occur
Year-end Attorney Case Assignment Report	January following fiscal year
Remaining Open Case Report at Year End	January following fiscal year
Report of aggregate closed Case hours spent by attorney and each support staff type by Case without Case or Client identifying information	Quarterly
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 (20<sup>th</sup>) 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 Exhibit 1.

## ATTACHMENT A

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

The Payment by the City to the County pursuant to the terms of this Agreement 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 SMC 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

## ATTACHMENT A

be insufficient, the City may commence termination of this Agreement in whole or in part pursuant to Section 12.A 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.
- 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 11.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 Section 12.A.1 or Section 12.A.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 in any annual budget adopted by Seattle City Council, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or

## ATTACHMENT A

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 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 sending screened Client 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. In addition to all other termination rights herein, the City reserves the right to terminate this Agreement for convenience upon 90 days written notice before the close of the then-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 C, 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, and jointly determine the fixed costs to wind down the caseload.

- 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.

## ATTACHMENT A

- 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 attorney's 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 officers, 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.

## ATTACHMENT A

### **Section 16: INSURANCE**

The County maintains a fully funded Self-Insurance program for the protection and handling of the County's liabilities including injuries to persons and damage to property.

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

### **Section 17: ESTABLISHMENT AND MAINTENANCE OF RECORDS**

- A. The County shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement. The County shall maintain records and accounts in accordance with accepted accounting practices, including records of the time spent by the County on each Case.
- B. The County further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service Agreements. Said records shall include, but not be limited to, documentation of any funds expended by the County for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontract or personal service contract or rendering service pursuant to the subcontract or personal service Agreement.
- C. Records shall be maintained for a period of not less than six (6) years after termination, in an accessible location and condition, unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14. RCW and the City.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the County and the County shall respond in writing. The time for notification and response shall be the same as set forth in Section 12.A.

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

### **Section 18: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS**

- A. Upon request, the County shall permit the City, and any other governmental agency involved in the funding of the Agreement, to inspect and audit all pertinent books and records of the County, or any other person or entity that performed work in connection with or related to the Agreement services, at any and all times deemed necessary by the City or County, including up to six (6) years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in Seattle, Washington or other such reasonable location as

## ATTACHMENT A

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 Agreement shall require the disclosure of the name of any CLIENT to the extent that such disclosure is consistent with Chapters 13.34, 71.02, or 71.05 RCW.

- B. The County and the City 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

## ATTACHMENT A

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 6. 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 Director and the County Public Defender, or their designees. Unless to comply with law or court rule, Agreement amendments requiring additional appropriations to the Indigent Defense Services Budget Control Level 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 ; and rules, regulations, orders and directives of their administrative



## ATTACHMENT A

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.

**ATTACHMENT A**

N. Addresses for Notices and Deliverable Materials: All official notices under this Agreement shall be delivered to the following addresses and addressees (or such other address or addresses, and addressee or addressees, 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:

Lorinda Meier Youngcourt, Director  
King County Department of Public Defense  
710 Second Avenue, Suite 1000  
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 \_\_\_\_\_  
Signature Date  
  
Lorinda Meier Youngcourt  
Director,  
Department of Public Defense

By \_\_\_\_\_  
Signature Date  
  
Ben Noble  
Director,  
City Budget Office

Appendix 1: 2018 King County Department of Public Defense Attorney Salary Schedules  
Exhibit 1: 2018 Charges for Services

# ATTACHMENT A

## APPENDIX 1

### 2017 King County DPD Attorney and Supervisor Attorney Salary Schedules

2017 A&A (SEIU) Attorney Salary Grid					
Sal Plan	Grade	Step	1/1/17 Hry Rate		1/1/17 Annual
A&A	200	1	30.7642		63,989.54
A&A	200	2	32.5819		67,770.35
A&A	200	3	37.6305		78,271.44
A&A	200	4	43.0829		89,612.43
A&A	200	5	46.3818		96,474.14
A&A	200	6	47.5932		98,993.86
A&A	200	7	48.8052		101,514.82
A&A	200	8	49.8820		103,754.56
A&A	200	9	51.2286		106,555.49
A&A	200	10	52.6418		109,494.94
A&A	200	11	53.9884		112,295.87
A&A	200	12	55.3384		115,103.87
A&A	200	13	56.0305		116,543.44
A&A	200	14	56.7305		117,999.44
A&A	200	15	57.4391		119,473.33
A&A	200	16	58.1576		120,967.81
A&A	200	17	58.8847		122,480.18
A&A	200	18	59.6203		124,010.22
A&A	200	19	60.3652		125,559.62
A&A	200	20	61.1200		127,129.60
A&A	200	21	61.8840		128,718.72
A&A	200	22	62.6573		130,327.18
A&A	200	23	63.4411		131,957.49
A&A	200	24	64.2342		133,607.14
A&A	200	25	65.0371		135,277.17
A&A	200	26	65.8500		136,968.00
A&A	200	27	66.6734		138,680.67
A&A	200	28	67.5067		140,413.94
A&A	200	29	68.3505		142,169.04
A&A	200	30	69.2049		143,946.19
A&A	200	31	70.0699		145,745.39
A&A	200	32	70.9454		147,566.43
A&A	200	33	71.8322		149,410.98
A&A	200	34	75.4240		156,881.92
A&A	200	35	76.3668		158,842.94
A&A	200	36	77.3215		160,828.72
A&A	200	37	75.2881		156,599.25
A&A	200	38	79.2666		164,874.53

**ATTACHMENT A**

2017 AD2 (GUILD) Attorney Supervisor Grid					
Sal Plan	Grade	Step	1/1/17 Hrly Rate		1/1/17 Annual
AD2	200	1	55.3384		115,103.87
AD2	200	2	56.0305		116,543.44
AD2	200	3	56.7305		117,999.44
AD2	200	4	57.4391		119,473.33
AD2	200	5	58.1576		120,967.81
AD2	200	6	58.8847		122,480.18
AD2	200	7	59.6203		124,010.22
AD2	200	8	60.3652		125,559.62
AD2	200	9	61.1200		127,129.60
AD2	200	10	61.8840		128,718.72
AD2	200	11	62.6573		130,327.18
AD2	200	12	63.4411		131,957.49
AD2	200	13	64.2342		133,607.14
AD2	200	14	65.0371		135,277.17
AD2	200	15	65.8500		136,968.00
AD2	200	16	66.6734		138,680.67
AD2	200	17	67.5067		140,413.94
AD2	200	18	68.3505		142,169.04
AD2	200	19	69.2049		143,946.19
AD2	200	20	70.0699		145,745.39
AD2	200	21	70.9454		147,566.43
AD2	200	22	71.8322		149,410.98
AD2	200	23	75.4240		156,881.92
AD2	200	24	76.3668		158,842.94
AD2	200	25	77.3215		160,828.72
AD2	200	26	75.2881		156,599.25
AD2	200	27	79.2666		164,874.53

**ATTACHMENT A**

**EXHIBIT 1**  
**2018 Charges for Services: City of Seattle Public Defense Services**  
**Budget Term: January 1, 2018 to December 31, 2018**

<b>VARIABLE BUDGET ESTIMATE</b>			
<b>Caseload Funding</b>	<b>7500</b>		
<b>Caseload staffing</b>	<b>FTE</b>	<b>Annual Rate</b>	<b>Annual Budget</b>
Attorneys new to criminal defense	6.00	\$ 67,949	\$ 407,697
Entry level attorneys	5.90	\$ 93,416	\$ 551,152
Experienced attorneys	8.85	\$ 108,794	\$ 962,823
Caseload flexibility	0.62	\$ 102,642	\$ 63,638
<b>Total Variable FTE &amp; Salaries</b>	<b>21.37</b>		<b>\$ 1,985,311</b>
<b>FIXED BUDGET ESTIMATE</b>			
<b>Non-caseload attorneys</b>			
Mental Health Court	2	\$ 102,642	\$ 205,285
Arrestment/Intake Calendars	4	\$ 102,642	\$ 410,570
Veterans Court	0.5	\$ 102,642	\$ 51,321
<b>Total non-caseload attorney FTE &amp; salaries</b>	<b>6.50</b>		<b>\$ 667,176</b>
Supervising Attorneys	3	\$ 142,781	\$ 428,343
Assigned counsel	0.25	\$ 152,080	\$ 38,020
On Call Attorney	0.54	\$ 102,642	\$ 55,427
Public Defense Mitigation Specialist I	0		\$ -
FMLA Attorney coverage	0.74	\$ 108,794	\$ 80,507
Public Defense Mitigation Specialist II	4	\$ 87,883	\$ 351,532
Public Defense Investigator	7	\$ 72,695	\$ 508,868
Public Defense Paralegal	3	\$ 67,703	\$ 203,108
Legal Administrative Specialist II	5	\$ 52,157	\$ 260,784
Public Defense Paralegal - assigned counsel	0.5	\$ 67,703	\$ 33,851
Public Defense Coordinator	1	\$ 76,451	\$ 76,451
<b>Total Fixed Staffing</b>	<b>25.03</b>		<b>\$ 2,036,892</b>
<b>Total Fixed FTE &amp; Salaries</b>	<b>31.53</b>		<b>\$ 2,704,068</b>
<b>Civil Pilot</b>			
Civil Attorneys (3 FTE through March 31, 2018)	0.75	\$ 108,794	\$ 81,595
<b>TAXES, BENEFITS, AND OTHER EXPENSES</b>			
<b>Total FTE &amp; Salaries</b>	<b>53.65</b>		<b>\$ 4,689,378</b>
<b>TAXES</b>			
FICA @7.65%			\$ 358,737
State Unemployment			\$ -
Workman's Comp			\$ 30,157
<b>BENEFITS</b>			
Retirement			\$ 468,938
Health Benefits			\$ 981,151
Professional Benefits			\$ -
<b>Supplies, Services and Overhead (13% of</b>			<b>\$ 1,797,187</b>
<b>Total Taxes, Benefits and other expenses</b>			<b>\$ 3,636,170</b>
<b>TOTAL REVISED ANNUAL BUDGET</b>			<b>\$ 8,325,548</b>
<b>Total Fixed Costs</b>	<b>Monthly</b>	<b>\$ 403,419.79</b>	<b>\$ 4,841,037</b>
<b>Cost per case</b>			<b>\$ 457.82</b>