

King County Contract No. D37409D  
Federal Taxpayer ID No. 91-0852323

**2007-189**

Department/Division Community and Human Services/Office of the Public Defender  
Agency The Defender Association  
Project Title Public Defense Legal Services  
Contract Amount \$8,031,047 Fund Code 00000010  
Contract Period From: January 1, 2007 To December 31, 2007

**KING COUNTY AGENCY SERVICES CONTRACT – 2007**

THIS CONTRACT is entered into by KING COUNTY (the "County"), and The Defender Association, whose address is 810 Third Avenue, Suite 800, Seattle, WA 98104, (the "Agency").

WHEREAS, the County desires to have legal services, as described in the Contract, performed for indigent persons legally entitled to appointed counsel in King County courts and as authorized by Ordinance No. 15652; and

WHEREAS, the Agency is a nonprofit law firm, incorporated under the Washington Nonprofit Corporation Code, within the meaning of Section 501(c)(3) of the Internal Revenue Code, organized and operated exclusively for the purpose of providing court-appointed legal services to indigent persons; and

WHEREAS, the County and the Agency agree that these legal services are provided by an independent contractor non-profit corporation, possessing all of the rights, duties and obligations that are possessed under Washington State law and applicable Federal laws for an independent contractor service provider; and

WHEREAS, the County and the Agency agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of legal services to indigent persons assigned to the Agency by the County Office of The Public Defender (OPD) or the courts of King County.

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

**I. SCOPE OF SERVICES**

The Agency shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

**This form is available in alternate formats for people with disabilities upon request.**

- |                                     |  |                                |
|-------------------------------------|--|--------------------------------|
| <input checked="" type="checkbox"/> | <u>Certificate of Insurance/Endorsements</u> | Attached hereto as Exhibit I   |
| <input checked="" type="checkbox"/> | <u>Personnel Inventory Report</u>            | Attached hereto as Exhibit II  |
| <input checked="" type="checkbox"/> | <u>Affidavit of Compliance</u>               | Attached hereto as Exhibit III |
| <input checked="" type="checkbox"/> | <u>504/ADA Assurance of Compliance</u>       | Attached hereto as Exhibit IV  |
| <input checked="" type="checkbox"/> | <u>Public Defense Legal Services</u>         | Attached hereto as Exhibit V   |

**II. DURATION OF CONTRACT**

This Contract shall commence on the 1<sup>st</sup> day of January 2007, and shall terminate on the 31<sup>st</sup> day of December 2007 ("Contract Term"), unless terminated earlier, pursuant to the terms and conditions of the Contract. This Contract may be extended by agreement of the parties for a period of up to three months in order to complete negotiations and/or receive necessary approval of a subsequent year contract. An amendment to extend the contract duration may reflect adjustments to payment and casework schedule reflective of planned changes for subsequent year.

**III. COMPENSATION AND METHOD OF PAYMENT**

- A. The County shall pay the Agency for satisfactory performance of the services and requirements specified in this Contract, payable in the following manner:
- As defined in Exhibit V, Section IV, for Public Defense Legal Services.
- B. The Agency shall submit all outstanding reports within 20 days of the date this Contract terminates. If any of the Agency's reports which are due to the County are not submitted by the day specified in this subsection, the County may withhold payment to the Agency until such time as reports are submitted and approved.

**IV. OPERATING BUDGET**

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

**V. INTERNAL CONTROL AND ACCOUNTING SYSTEM**

The Agency shall establish and maintain a system of accounting and internal controls that comply with generally accepted accounting principles and financial reporting standards applicable to publicly supported not-for-profit corporations as prescribed by the Financial Accounting Standards Board.

## **VI. MAINTENANCE OF RECORDS**

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Contract funds and compliance with this Contract.
- B. These records shall be maintained for a period of six years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- C. The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents and shall notify the County in writing of any changes in location within ten working days of any such relocation.

## **VII. AUDITS**

- A. The Agency shall have an independent audit, conducted by a certified public accountant, of its financial statement and condition, which shall comply with generally accepted auditing standards for not-for-profit organizations as prescribed by the American Institute of Certified Public Accountants. The independent auditor's report shall include a management letter listing any reportable conditions or internal control weaknesses, or stating that no reportable conditions or control weaknesses were noted. The auditor's report shall include a copy of the Agency's management representation letter. Any independent auditor hired by the Agency to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the County.
- B. The Agency shall provide a copy of the audit report to each County division providing financial assistance to the Agency no later than the last business day of August. The Agency fiscal year shall be the same as a calendar year. The Agency shall provide to the County its response and corrective action plan for all findings and reportable conditions contained in its audit. The Agency shall provide the County with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.
- C. The Agency's annual financial statements shall be prepared recognizing all Agency fund accounts at the end of the Contract Term.
- D. Any and all accounts must be invested in a fiscally prudent fashion under the non-profit corporation law of Washington and applicable Federal laws. Prepayments, as noted in Exhibit V, Section IV, J shall be invested in a cash equivalent account, defined as a highly liquid, short term investment with little risk of loss in value.
- E. Additional federal and/or state audit or review requirements may be imposed on the County from time to time, and to the extent that such requirements relate to funding that is passed on to the Agency, the Agency shall be required to comply with any such requirements, and at the time such requirements become applicable, this Contract shall be amended by the parties to incorporate such requirements.

## **VIII. EVALUATIONS AND INSPECTIONS**

- A. Upon reasonable notice, the Agency shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies

or officials at all reasonable times for the purpose of monitoring and evaluating the services provided under this Contract. The County shall give advance notice to the Agency in the case of fiscal audits to be conducted by the County.

- B. The records and documents with respect to all matters covered by this Contract, not including entire individual personnel files but may include specific requested documentation, shall be subject to inspection, review, or audit by the County (and to the extent Contract funds paid by the County are derived from federal and/or state sources, also by federal and/or state officials so authorized by law) during the Contract Term and six years thereafter, unless a longer record retention period is required by law and in such case, the right of inspection shall extend until the end of the applicable retention period.
- C. The Agency agrees to cooperate with the County or its agent in the evaluation of the Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process or ongoing reporting requirements established by the County. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with RCW Chapter 42.17.

#### **IX. CORRECTIVE ACTION**

The County and Agency agree that when operational or performance issues arise in the course of providing the services of this Contract, a resolution of an issue or concern will be attempted at the lowest administrative level possible, although generally contact with the Agency shall include the managing director.

If the County determines that a performance concern has not been rectified at a less formal level and/or that a breach of contract has occurred, that is, the Agency has failed to comply with any terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant written corrective action, the following sequential procedure shall apply:

- A. The County shall notify the Agency in writing of the nature of the breach;  
  
The Agency shall respond in writing within three working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Agency into Contract compliance, which date shall not be more than 30 days from the date of the County's approval of the Agency's plan, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- B. The County shall notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan within ten days of receipt, or longer with written notification to the Agency. The determination of sufficiency of the Agency's corrective action plan shall be at the sole discretion of the County, provided that the County shall take into consideration the reasonableness of the proposed corrective action in light of the breach;
- C. In the event that the Agency does not respond within the appropriate time with a corrective action plan, or the Agency's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section XI.A. if the breach is material;

- D. In addition to and not in lieu of any of its other contractual or legal rights or remedies, the County, in its sole discretion, may withhold any payment owed the Agency hereunder or prohibit the Agency from incurring additional financial obligations, except to the extent such obligations are required by court order or deemed by the County as necessary for the competent and adequate representation of indigent persons assigned to the Agency, until the County is satisfied that corrective action has been taken or completed; and
- E. The County may choose to use corrective action in response to any type of breach by the Agency. The choice of corrective action or termination under Section XI for a material breach is within the County's sole discretion. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Nor shall the exercise of any right within this section be deemed to be a breach of this Contract by the County.

**X. ASSIGNMENT/SUBCONTRACTING**

- A. The Agency shall not assign or subcontract any portion of the Legal Services, as defined in Exhibit V, supervision or training which is provided under this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent must be sought in writing by the Agency not less than 15 days prior to the date of any proposed assignment. The definition of training, within this subsection only, does not include CLE's. The Agency may contract for training services up to a cumulative amount of \$10,000.00 in a contract year, without seeking consent of the County. These excluded contracts and CLE costs must be reported to the County, as noted in Paragraph X. B. of this Section.
- B. The Agency shall keep all records of any contracts or purchases of goods or services related to this Contract. The Agency shall be required to report these expenditures to the County and the original records may be subject to audit at the County's request.

**XI. TERMINATION**

- A. The County may terminate this Contract, in whole or in part, upon seven days advance written notice in the event: (1) the Agency breaches any material duty, obligation, or service required pursuant to this Contract, (2) the Agency or any of its officers, directors, employees, subcontractors, agents or representatives engages in the misappropriation or mismanagement of Contract funds or the fraudulent disbursement of Contract funds, (3) the Agency or any of its officers, directors, agents, representatives or designees makes a material misrepresentation regarding the Agency, its finances and/or scope of activities to its independent accountant, auditor, the County, and/or any other agencies or instrumentalities of the federal, state or local government or commits any act or omission that jeopardizes the Agency's tax-exempt status under Code section 501(c)(3) or (4) the duties, obligations, or services required herein become impossible, illegal, or not feasible. The County's termination notice does not bar the Agency from seeking injunctive relief or any other equitable relief available under current Washington State law.

If the Contract is terminated by the County pursuant to (1), (2), or (3) in the first paragraph of XI. A., the Agency shall be liable for damages, including any additional reasonable costs of procurement of similar services from another source.

In the event the County terminates the Contract due to (1), (2), or (3) in the first paragraph of XI. A., or any act or omission which jeopardizes the Agency's tax-exempt

status under IRS Code Section 501(c)(3), then subject to the provisions of this Section, the Agency shall return to the County any funds misappropriated and paid to the Agency by the County under the current Contract and from any available source, including funds from a prior contract. In addition, the Agency shall return such funds determined by the County to be reasonable and necessary to provide legal services, as defined in Exhibit V, for the balance of the Contract term, or until the County is able to obtain a successor agency to provide such services, whichever period is less. This provision and the obligations contained herein shall survive the termination or expiration of this Contract.

The Agency may terminate this Contract, in whole or in part, prior to the end of the Contract Term, by providing the County seven days advance written notice, in the event the County commits any material breach of this Contract caused by non-payment or partial termination of caseload area or geographic location of services by the County without a negotiated amendment.

- B. In the event of the termination of this Contract the Agency shall remit any unexpended balance of funds paid, including prepaid funds for cases assigned and not completed, less the amount the County and the Agency agree shall be necessary to enable the Agency to deliver services in those cases notwithstanding the termination. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms, and conditions set forth in this Contract are breached by the other party.
- C. If County expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Section II, the County may, upon 15 days written notification to the Agency, terminate this Contract in whole or in part.

If the Contract is terminated as provided in this Subsection: (1) the County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) the Agency shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination.

- D. This Contract may be terminated for convenience by either party, prior to the date specified in Section II, by providing 60 days advance written notice of the termination.

## **XII. DISPUTE RESOLUTION**

Agency disputes pertaining to County decisions regarding Contract compliance issues shall be made in writing to The Public Defender. The written dispute shall include the decision being questioned and the point on which the dispute is made. This is a non-exclusive remedy.

The Public Defender shall make a determination decision and respond in writing to the Agency within 15 days of receipt. If the Agency wishes to appeal The Public Defender decision, an additional letter indicating all points of the dispute resolution process to date shall be sent to the Director of the Department of Community and Human Services. The Department Director shall make a final determination and respond in writing to the Agency within 30 days of the Department Director's Office receipt of the appeal notice from the Agency.

Nothing herein shall impair the procedure of Section IX above nor the ability of either party to terminate this Contract as set forth in Section XI above.

### **XIII. FUTURE SUPPORT**

- A. The County makes no assurance or commitment to the Agency for a subsequent contract or extension of the effective dates of the Contract for the services contracted for herein.
- B. Should the County or Agency terminate this Contract or not renew this Contract for services in a subsequent period, the County shall work with the Agency to provide appropriate transition planning for assigned Agency clients to ensure their defense is not jeopardized by actions of the Agency or the County.

### **XIV. HOLD HARMLESS AND INDEMNIFICATION**

- A. In providing services under this Contract, the Agency is an independent contractor, and neither it nor any of its officers, directors, employees, subcontractors, agents, or representatives are employees of the County for any purpose. The Agency shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Agency, its employees, and/or others by reason of this Contract. The Agency shall protect, indemnify, and save harmless the County, its officers, officials, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Agency's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Agency of work, services, materials, or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.

- B. The Agency further agrees that it is financially responsible for and shall repay the County all amounts determined by a fiscal audit exception which occur due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, directors, employees, subcontractors, agents, and/or representatives.
- C. Should it become necessary to institute legal action in order to recoup any funds due and owing to the County or the Agency pursuant to any of the terms of this Contract, the non-prevailing party agrees it is financially responsible and liable for the prevailing attorneys' fees and costs. Each party's duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to any provision hereof.
- D. The Agency shall protect, defend, indemnify, and save harmless the County, its officers, officials, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Agency, its officers, directors, employees, subcontractors, agents, and/or representatives in performance and/or non-performance of its obligations under this Contract. The Agency agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Agency, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award, and/or cost arising

therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Agency.

- E. The County shall protect, defend, indemnify, and hold harmless the Agency, its officers, directors, employees, agents, and representatives from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, officials, employees, or agents. The County agrees that its obligations under this subparagraph extends to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the County, by mutual negotiation, hereby waives, as respects the Agency only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Agency incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.

Claims shall include, but not be limited to, assertions that the use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

## **XV. INSURANCE REQUIREMENTS**

- A. By the date of execution of this Contract, the Agency shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or is in connection with, the performance of work hereunder by the Agency, its agents, representatives, employees, and/or subcontractors. The costs of such insurance shall be paid by the Agency or subcontractor. The Agency must furnish separate certificates of insurance and policy endorsements for each subcontractor as evidence of compliance with the insurance requirements of this Contract. The Agency is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Agency, its agents, employees, officers, and or subcontractors, to comply with the insurance requirements stated herein shall constitute a material breach of this Contract.

**For All Coverages:** Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval.

If coverage is approved and purchased on a "claims made" basis, the Agency warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Contract termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Agency under this Contract. The Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage shall apply to each insured to the full extent provided by the terms and



conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering **COMMERCIAL GENERAL LIABILITY**.

2. Professional Liability:

Professional Liability, Errors, and Omissions coverage. In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided. "Professional Services", for the purpose of this Contract section, shall mean any services provided by a licensed professional or those services that require a professional standard of care.

3. Automobile Liability:

In the event that services delivered pursuant to this Contract require the use of a vehicle or involve the transportation of clients by Agency personnel in Agency-owned vehicles or non-owned vehicles, the Agency shall provide evidence of the appropriate automobile coverage.

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9.

4. Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law.

5. Stop Gap/Employers Liability:

Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

C. Minimum Limits of Insurance

The Agency shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

2. Professional Liability, Errors, and Omissions: \$2,000,000 per claim and in the aggregate.
3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Except if the transport of clients by Agency personnel is involved, then Risk Management shall review the appropriate amount of coverage.
4. Workers' Compensation: Statutory requirements of the state of residency.
5. Stop Gap/Employers Liability: \$1,000,000.

D. Deductibles and/or Self-insured Retentions

Any deductibles or self-insured retentions greater than \$10,000 must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Agency's liability to the County and shall be the sole responsibility of the Agency.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain, the following provisions:

1. Liability Policies Except Professional and Workers Compensation

- a. The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Agency in connection with this Contract.
- b. The Agency's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its offices, officials, employees, or agents shall not contribute with the Agency's insurance or benefit the Agency in any way.
- c. The Agency's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County.

F. Acceptability of Insurers

Unless otherwise approved by the County,

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County.

If, at any time, the foregoing policies shall fail to meet the above minimum requirements the Agency shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

G. Verification of Coverage

The Agency shall furnish the County certificates of insurance and endorsements required by this Contract. Such certificates and endorsements, and renewals thereof, shall be attached as exhibits to the Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

H. Subcontractors

The Agency shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

**XVI. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

A. Nondiscrimination in Employment Provision of Services

During the Contract Term, neither the Agency nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.

B. Domestic Partner Benefits (Non-discrimination in Benefits)

King County's Domestic Partner Benefits Ordinance 14823 prohibits the award of contracts valued at \$25,000 or more to firms that discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners. To be eligible for award, contractors shall comply fully with the ordinance's provisions. As a condition of the execution of this contract, the Agency shall provide a worksheet and Declaration form as provided by the County. The compliance forms and Ordinance 14823 are available online at:  
<http://www.metrokc.gov/procurment/services/eb.aspx>

C. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Agency shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment,

construction and services. In considering offers from and doing business with subcontractors and suppliers, the Agency shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

D. Compliance with Laws and Regulations

The Agency shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Restoration Act of 1987. The Agency shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract.

E. Small Business and Minority and Women Business Enterprise Opportunities

The County encourages the Agency to utilize small businesses, including Minority-owned and Women-owned Business Enterprises ("M/WBEs") in County contracts. The County encourages the Agency to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs:

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform small businesses and other firms of contracting and subcontracting opportunities.
2. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to these firms capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
4. Establishing delivery schedules, where the requirements of this Contract permit, that encourage participation by small businesses, including M/WBEs.
5. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Contract.
6. Using the services of available community organizations, contractor groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. Contact OMWBE office at 360-753-9693 or on-line through the web site at [www.wsdot.wa.gov/omwbe/](http://www.wsdot.wa.gov/omwbe/).

F. Equal Employment Opportunity

The Agency shall implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.

G. Fair Employment Practices

King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:

1. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
2. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
3. Employers, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupational qualification;
4. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
5. Employer, employment agency or a labor organization to retaliate against any person because that person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
6. Publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC Chapter 12.18.030.C., or to segregate and separately designate advertisements as applying only to men or women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification;
7. Employer to prohibit any person from speaking in a language other than English in the workplace unless:
  - a. The employer can show that requiring that employees speak English at certain times is justified by business necessity, and

- b. The employer informs employees of the requirement and the consequences of violating the rule.

H. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six years after completion of all work under this Contract, the following:

1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, and solicited applications for employment; and
2. Records, including written quotes, bids, estimates or proposals submitted to the Agency by all businesses responding to Agency solicitation, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit upon reasonable notice, at any reasonable time, the site of the work and the Agency's office to review the foregoing records. The Agency shall provide every assistance requested by the County during such visits. In all other respects, the Agency shall make the foregoing records available to the County for inspection and copying any reasonable volume of documents upon request. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in this Contract and the Exhibits attached.

I. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of this Contract for which the Agency may be subject to damages, withhold of payment and any other sanctions provided for by this Contract and by applicable law.

J. Reporting

1. The Agency shall submit with this Contract a total Personnel Inventory Report providing employment data for minorities, females, and persons with disabilities.

Subject to the provisions of KCC Chapter 12.16.060, the Agency's Personnel Inventory Report shall be effective for two years after the date on which the report was submitted.

2. The Agency also shall submit an Affidavit of Compliance in the form provided by the County, demonstrating commitment to comply with the provisions of KCC Chapter 12.16 in accordance with Paragraph A of this Section.

The Agency shall complete the Affidavit of Compliance provided by the County and attach the original, notarized, completed form to this Contract. Subject to the provisions of KCC Chapter 12.16.060, the Agency's Affidavit of Compliance shall be effective for two years after the date on which the report was submitted.

If the Agency engages in unfair employment practices as defined above, remedies as set forth in KCC Chapter 12.18 shall be applied as well as any other remedies by law.

The Agency shall complete all reports and forms (including Department of Social and Health Services non-discrimination forms, where applicable) provided by the County and shall otherwise cooperate fully with the County in monitoring and assisting the Agency in providing nondiscriminatory programs.

**XVII. SECTION 504 AND AMERICANS WITH DISABILITIES ACT**

The Agency shall complete a 504/ADA Self-Evaluation Questionnaire for all service locations of the Agency (including any services not subject to this Contract) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504") and the Americans with Disabilities Act of 1990 ("ADA"). The Agency shall complete a 504/ADA Assurance of Compliance, and corrective action plan as needed for structural, programmatic, and/or service changes necessary at each of its premises within the State of Washington to comply with 504 and the ADA, and this Assurance is attached as an Exhibit to this Contract and incorporated herein by reference.

**XVIII. SUBCONTRACTS AND PURCHASES**

- A. The Agency shall include the above Sections IV, V, VI, VII, VIII, XV, XVI, XXVIII, and XXX in every subcontract or purchase agreement for services which relate to the subject matter of this Contract.
- B. The Agency agrees to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services which are the subject matter of this Contract:

"[Subcontractor] shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

**XIX. CONFLICT OF INTEREST**

KCC Chapter 3.04 is incorporated by reference as if fully set forth hence, and the Agency agrees to abide by all conditions of said chapter. Failure by the Agency to comply with any requirement of said KCC Chapter shall be a material breach of Contract.

- A. The Agency covenants that no officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this Contract. The Agency shall take appropriate steps to assure compliance with this provision.
- B. If the Agency violates the provisions of Section XIX, or does not disclose other interest required to be disclosed pursuant to KCC Chapter 3.04, the County shall not be liable

for payment of services rendered pursuant to this Contract. Violation of this Section shall constitute a material breach of this Contract and grounds for termination pursuant to Section XI above, as well as any other right or remedy provided in this Contract or law.

**XX. BOARD OF DIRECTORS**

The Agency shall qualify at all times as a non-profit corporation under U.S.C., Subtitle A., Chapter 1, Subchapter F, Part 1, and Section 501(c)(3).

The Agency shall have a Board of Directors that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency, except as approved by the County under this Section. The Director may be an ex officio member of the Board of Directors. For the purposes of this Section, a relative is defined as a husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, child, child of domestic partner, and domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this Section, as if the employee and domestic partner were married. The Board of Directors shall meet regularly and fulfill all of the duties under applicable Washington State law and federal law.

The Board of Directors shall maintain a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code 501(c)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

The Contract shall be reviewed and approved for Agency signature by the Agency's Board of Directors.

Each amendment to this Contract must be approved by the Agency's Board of Directors.

**A. Interests of Agency Management and Agency Board:**

The following shall be disallowed and shall be considered a conflict of interest without prior disclosure and approval of the County:

1. The Agency shall not employ an individual who is related to a director or assistant director of the Agency or an Agency Board member, either as an employee, contractor or through a corporation. This provision shall not apply when the total compensation paid to the individual is less than \$500 per annum.
2. The Agency shall not acquire or rent real and/or personal property owned or rented by either:
  - a. an employee or Board member of the Agency;
  - b. a relative of an employee or Board member of the Agency; or
  - c. a corporation in which an employee or Board member of the Agency, or a relative of such a person, has ownership.

**B. Failure to comply with any provision of this Section XX shall constitute a material breach of this Contract.**



**XXI. MANAGING DIRECTOR OF AGENCY**

The managing director of the Agency shall be an attorney licensed to practice law in the State of Washington. The managing director shall be a salaried employee of the Agency, subject to the authority and control of the Board of Directors of the Agency. The managing director of the Agency shall be responsible for receiving funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs provided pursuant to this Contract.

**XXII. POLITICAL ACTIVITY PROHIBITED**

No funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

**XXIII. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP**

- A. The Agency agrees that any equipment purchased with Contract funds at a cost of \$5,000 per item or more, and identified in an exhibit as reimbursable, is upon its purchase or receipt the property of the County, and/or federal, and/or state government as specified in the exhibit.
- B. The Agency shall be responsible for all such equipment, including the proper care and maintenance.
- C. The Agency shall ensure that all such equipment will be returned to the appropriate government agency, whether federal, state or County, upon written request of the County.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such equipment with appropriate government property tags.
- E. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

**XXIV. NOTICES**

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

- A. In writing; and
- B. Directed to the managing director of the Agency, the President of the Board of Directors of the Agency, The Office of the Public Defender, and the director of the Department of Community and Human Services.
- C. Any due date within which a party must take some action shall be computed according to CR 6(a). If notice is provided by US Post, CR 5(b)(2)(A) shall apply to determine the date of service.

**XXV. PROPRIETARY RIGHTS**

The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article is the product of work performed for the County as described herein, all rights accruing from such material or article shall be the sole property of the Agency. The Agency agrees to and does hereby grant to the County, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Contract.

The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency which are used in the performance of this Contract.

**XXVI. CONTRACT AMENDMENTS**

Either party may request changes to this Contract. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Contract.

**XXVII. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY**

The Agency shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper. All Court document production shall be covered by Court rules.

If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Agency may notify the Contract Administrator, who may waive the recycled paper requirement.

The Agency shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical in the fulfillment of this Contract.

**XXVIII. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION**

The Agency and any subcontractor agree to abide by all of the laws of the State of Washington that are applicable to their business and the substance of the legal services that are the subject of this Contract. The Agency and any subcontractors also agree to abide by all Rules of Professional Conduct governing attorney conduct and to abide by the requirements of the attorney-client privilege, as defined by Washington statutory law and common law.

In the event that there is a conflict between any of the language contained in any exhibit or attachment to this Contract, the language in the Contract shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

**XXIX. CONFIDENTIALITY**

The Agency agrees that information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable common law, state and federal law, including but not limited to attorney-client privilege. The County agrees that the King County Office of The Public Defender shall protect any information received from the Agency from unauthorized disclosure in accordance with applicable common law, state and federal law, including but not limited to attorney-client privilege.

The County, through the Office of The Public Defender, shall abide by any applicable law of privilege in monitoring the Agency's performance under this Contract.

**XXX. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996**

Terms used in this Section shall have the same meaning as those terms in the Privacy Rule, 45 CFR Parts 160 and 164.

**A. Obligations and Activities of the Agency**

1. The Agency agrees not to acquire, use, or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity as required by CFR Title 45, Section 164, Subpart C.
3. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract.
4. The Agency agrees to report to King County any use or disclosure of protected health information not allowed under this Contract. This is a security incident and shall be reported within two days of the Agency's knowledge of such event.
5. The Agency agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Agency on behalf of King County, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
6. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
7. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164-526.
8. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of King County, available to the Secretary, in a reasonable time and manner for purposes of the Secretary determining King County's compliance with the Privacy Rule.
9. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR 164 § 528.

B. Permitted Uses and Disclosures by Business Associate

The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by King County or the minimum necessary policies and procedures of King County.

C. Effect of Termination

1. Except as provided in Paragraph C.2. of this Section, upon termination of this Contract, for any reason, the Agency shall return or destroy all protected health information received from King County, or created or received by the Agency on behalf of King County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Agency. The Agency shall retain no copies of the protected health information.
2. In the event the Agency determines that returning or destroying the protected health information is infeasible, the Agency shall provide to King County notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Agency shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Agency maintains such protected health information.

**XXXI. NO THIRD PARTY BENEFICIARIES**

Except for the Parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a Party hereto.

**XXXII. ENTIRE CONTRACT/WAIVER OF DEFAULT**

The parties agree that this Contract is the complete understanding of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, a copy of which shall be attached to the original copy of this Contract.

**XXXIII. GOVERNING LAW/SEVERABILITY/CONSTRUCTION**

This Contract shall be governed by Washington law. If any one or more provisions of this Contract shall be held by any court to be invalid or unenforceable, such invalidity or unenforceability shall not adversely affect the validity or enforceability of any other part of this Contract. This Contract shall not be construed for nor against any party, regardless of its drafter.

KING COUNTY

THE DEFENDER ASSOCIATION

FOR

\_\_\_\_\_  
King County Executive

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
NAME (Please type or print)

\_\_\_\_\_  
Date

Approved as to Form:

OFFICE OF THE KING COUNTY  
SPECIAL DEPUTY PROSECUTOR

Date: November 20, 2006

## EXHIBIT V

### PUBLIC DEFENSE LEGAL SERVICES

#### I. WORK STATEMENT

The Agency shall provide the services of attorneys and staff members in compliance with all of the applicable laws and administrative regulations of the State of Washington, the United States, King County Code (KCC), Washington State Rules for Professional Conduct (RPC).

#### II. PROGRAM DESCRIPTION

##### A. Goal

To provide legal services through effective assistance of counsel to indigent persons, that is statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Agency.

##### B. Eligible Population

The population served shall be indigent persons legally entitled to appointed legal services in King County courts as assigned by the Office of The Public Defender (OPD) or as appointed from the bench.

##### C. Definitions

###### 1. Case Categories:

a. Calendars: The Agency shall provide coverage for calendars if indicated in Attachment B, Calendar Attorney and Staff List. The calendars are defined as follows:

- i. Dependency Calendar: All initial 72-hour shelter care calendars in Seattle or RJC shall include the presence of an attorney.
- ii. General AOD: The Agency will in good faith attempt to provide legal advice 24 hours a day seven days a week via beeper access and respond promptly to any accused adult or juvenile who is in the investigation phase or recently charged with a crime or detained on a civil matter within the jurisdiction of OPD. Attorney of the Day (AOD) for legal advice may occur both in RJC and Seattle. AOD includes a request from a defendant for substantial legal advice or a police agency to respond for line-up presentations. A call to the 24 hour beeper is calendar work not a case assignment.

Individual substantial advice assignments may be appointed by the court or assigned by OPD, where the scope of work exceeds that described in the General AOD paragraph above.

- iii. Felony Arraignment Calendar.

- iv. Felony Sentence Modification Calendar: The Superior Court Probation Modification Calendar.
  - v. Juvenile AOD: The Agency shall provide Juvenile Special Services which include making "morning rounds" in juvenile detention; lineups, detention reviews and arraignments; diversion counseling per RCW 13.40.080; and representing offenders as counsel until an attorney is formally appointed.
  - vi. Juvenile First Appearance Calendar: Each Agency representing juveniles shall provide representation on the Juvenile First Appearance Calendar. Representation of juveniles on this daily Juvenile Court Calendar shall include prior clients and/or unrepresented juveniles. Time spent on this calendar shall include preparatory work done concerning the juveniles listed on the calendar who do not appear because of expedited filing by the Prosecuting Attorney, release from detention prior to hearing, or other reasons for non-appearance.
  - vii. King County Court Misdemeanor calendars include: District Court Felony Investigation Calendar, Bench Warrant Return Calendar, and initial detention hearings for new misdemeanor charges.
- b. Civil Contempt of Court practice area: A civil contempt case shall include legal representation up to a maximum of three hearings, related solely to a contempt citation and shall be limited to cases where the factual likelihood of loss of liberty arises from an act of King County or the State of Washington or a judicial act.
- c. Dependency practice area: Coverage for all dependency, termination, and guardianship cases.
- i. Dependency Case: A dependency case credit is given for the legal representation of a client from the:
    - 1) The 30-day shelter care hearing or through the dependency fact-finding hearing and dispositional hearing. Should an agreed order of dependency be entered on or before the date of the 30-day shelter care review, it shall be considered part of the dependency case. Additional shelter care hearings will be given the same credit as a dependency review. If the case is assigned to the Agency after the establishment of dependency and entry of the dispositional order, an initial case credit shall be given at the time of assignment; and
    - 2) The filing of a termination or guardianship petition to the setting of a termination or guardianship trial date. Should an agreed order of termination or guardianship be entered on or before the preliminary hearing, it shall be considered part of the termination or guardianship case.

- ii. **Post-Dispositional Hearing:** A dependency review shall include legal representation at any post-dispositional hearing or hearings related to the original dependency filing, excluding the initial 72 hour shelter care review, the 30-day shelter care review, and the dispositional hearing. Reviews included within this category shall include, but not be limited to: the initial progress review, 6 month review hearings, permanency planning hearings, or other reviews or hearings set by the parties or by the court. If a review hearing is continued, additional credit shall not be allocated for the review unless the substantive issues within the review hearing change or substantial work is done. In the event that a court consolidates a family court matter with proceedings under a dependency case, pursuant to LJuCR 3.13, the Agency shall receive additional dependency review credit under this section for representation involving hearings in the consolidated matter.
- iii. **Dependency Trial/Termination or Guardianship Trial**
  - 1) A dependency trial shall include:
    - a) A fact finding for a dependency and the preparation for said fact finding or the entry of an agreed order of dependency and agreed dispositional order at the time of the scheduled dependency fact finding; or
    - b) Entry of an agreed order of dependency and any contested hearing or hearings related to the dispositional order pursuant to the agreed order, as described in RCW 13.34.110 (1) and (2). This does not include post-dispositional review hearings.
  - 2) A termination trial shall include:
    - a) A fact-finding on a termination petition or guardianship petition and the preparation for said fact finding; or
    - b) Entry of an agreed order regarding termination or guardianship petition at the time of the scheduled fact-finding.
- d. **Felony practice area:**
  - i. **Felony Case:** All legal representation related to a case filed in the Criminal Division of King County Superior Court by the King County Prosecutor's Office, alleging a violation of criminal law and having a maximum sentence of more than one year, through sentencing and any restitution hearing and as listed in Attachment A.
  - ii. **Felony/Probation Review:** A felony/probation review shall include legal representation at any hearing or hearings arising



from a single notice of hearing subsequent to disposition of the case. Areas within this category shall include, but not be limited to: probation reviews, revocations, early release, conditional release, safe-to-be-at-large, temporary release, medical release, and material witness hearings. A restitution hearing will be a review only if it is assigned to an agency other than the agency which represented the client at sentencing.

iii. Persistent Offender (I 593 C 1 L 94; RCW 9.94A.030(33); RCW 9.94A.570): Persistent offender is a defendant as defined by RCW 9.94A.030(33) and subject to sentencing pursuant to RCW 9.94A.570. The Agency shall provide documentation to OPD to verify a persistent offender case status. Upon OPD confirmation of status, the Agency director or the director's designee will review the status of all pending persistent offender cases assigned to the Agency at least monthly and will discuss the cases with the attorneys representing the clients. Such review will include the legal status of the case to determine if the defendant continues to meet the definition of persistent offender status stated above. The Agency shall notify OPD when there is a change in case type status.

iv. Complex Litigation: All death penalty homicide cases and all aggravated homicide cases. Aggravated homicide cases are considered death penalty cases until such time as decision is made by the Prosecuting Attorney not to file a notice of intention to seek death.

1) Complex litigation cases are "pending" until completion of the guilt phase and penalty phase/sentencing.

2) Aggravated homicide cases, in which the death penalty is not sought, shall occupy the portion of a full time attorney up to a maximum of one FTE qualified at Senior Public Defense I level or above. Up to (0.5) FTE professional support staff will be assigned to each such case. Active Supervision will be assigned at up to (0.1) FTE.

3) Aggravated homicide cases, in which the death penalty is sought, shall occupy the portion of two full time attorneys, up to a maximum of two FTE attorneys, deemed necessary by the Agency to provide effective assistance of counsel. The attorney component shall comply with SPRC 2, Superior Court Special Proceedings Rules – Criminal, as well as one FTE qualified at Senior Public Defender I, or above. A professional support staff will be assigned up to one FTE. Active Supervision will be assigned at up to 0.2 FTE.

4) The Agency and the County understand that the portion of attorney(s) and professional support staff assigned to each complex litigation case may change from time to time as the case moves through the adjudication process.

- e. Involuntary Commitment practice area:
  - i. Initial Petition: An involuntary commitment case shall include any hearing on a petition for involuntary commitment under one cause number including a hearing for probable cause, or any petition for additional commitment under the same cause number pursuant to RCW 71.05.280, except such hearings defined in (ii) and (iii) below.
  - ii. 180-Day Petition: Any involuntary commitment case that went to a 180-day hearing following a petition filed pursuant to RCW 71.05.320 shall be considered a separate case and shall be billed by client name and shown separately. When a new docket number is assigned and the first court appearance is a 180-day hearing, the Agency will receive case credit and payment for either the assignment of the new docket number or the 180-day hearing, but not both.
  - iii. Involuntary Medication Hearing: A hearing held pursuant to a petition for involuntary administration of medications or ECT therapy shall be considered a separate case.
  - iv. An alcohol involuntary commitment proceeding filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
  - v. A drug-related involuntary commitment filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
- f. Juvenile Offender practice area: Coverage for all juvenile cases filed in juvenile court, including Diversion Calls.
  - i. Juvenile Offender Case: A juvenile offender case includes any criminal charge filed by the King County Prosecutor's Office in King County Juvenile Court. A restitution hearing is included within the initial case credit.
  - ii. Juvenile Offender Modification/Review: A juvenile offender modification/review shall include a hearing or hearings related to the allegations contained in the notice of the modification/review. In the event that the juvenile respondent has several notices of modification/review because of different cause numbers and all such modifications/reviews are heard at a single hearing, then such hearing shall constitute one completed juvenile offender modification/review.
  - iii. Juvenile Offender Restitution Review Hearing: A juvenile offender restitution review hearing consists of a hearing or hearings related to the subsequent modification of restitution schedules set by the court for the particular juvenile offender. In the event that the juvenile has several pending restitution hearings and such hearings are all heard at the same hearing,

then such completed hearing shall constitute one completed restitution review hearing.

- g. Misdemeanor practice area:
  - i. Misdemeanor Case: Any criminal case, including traffic misdemeanors, filed by the King County Prosecutor in the District Courts.
  - ii. Misdemeanor Appeal: A misdemeanor appeal involves filing the notice of appeal, if necessary, perfecting the record following the filing of the notice of appeal, preparation of the transcript pursuant to Rule 6.3a RALJ, preparing such briefs and memoranda as are required, arguing the case in Superior Court, and handling such paperwork as the Superior Court's decision and orders direct.
  - iii. 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.
- h. Sexual Predator practice area: Legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, civil commitment petitions filed by the King County Prosecuting Attorney or the Attorney General's Office, subject to such conditions stated in the current Program Agreement, and General Terms Agreement between the County and the State of Washington Department of Social and Health Services (DSHS) from the effective date of these agreements, and directly invoice to and be reimbursed by DSHS at a rate determined by DSHS or as ordered by the Court.
- i. Specialty Court practice area:
  - i. Specialty Court/Drug Court: Any criminal case filed into King County Superior Court Drug Court. Staffing is determined by a separate agreement, which is incorporated by reference herein.
  - ii. Specialty Court/District Mental Health Court includes: Any case filed into King County District Mental Health Court. Staffing is determined by a separate agreement, which is incorporated by reference herein.

- 2. Case Credit: Case credit is a unit of work. The total number of units that an attorney is expected to perform is listed in the case credit workloads of Section III. Program Requirements, of this Exhibit. Attachment A of this Exhibit defines the Case Credit Application and parameters for additional credit in extraordinary cases.

Extraordinary Case Credit: Extraordinary case types including Juvenile Felony Offender, Dependency, Termination of Parental rights, Murder, Persistent Offender, and all Adult Felony cases shall be given extra credits if the nature of the case requires such extra credits, based upon a written application from the Agency. Other case types may be approved for extraordinary credit at the

discretion of OPD. Factors entering into the awarding of extra credits include, but are not limited to: amount and complexity of evidence; complexity of legal issues; number of defendants; and actual length of a case. The Agency application must be specific about the work to be done, the estimated length of time to perform the work, and the personnel that will be assigned to perform the work. OPD shall make its determination for additional credit in writing to the Agency, and as per OPD policy. Initial OPD response to the Agency, including requests for additional information, shall be made within five business days from OPD receipt of Agency application.

3. **Criminal Case:** A case is any one charge or series of related charges filed against one defendant/respondent in a single charging document or in the case of misdemeanors a series of charges under several charging documents, set for one court hearing that will ultimately lead to one disposition.
  - a. If a related series of charges is defined herein as a single case is subsequently set for separate disposition hearings or trials, the Agency may request additional credit for each case, which is severed from the consolidated case.
  - b. If a new case is filed on a separate incident after case has been assigned, and a new count is charged but not a new court case number, the Agency may request additional credit for each case similarly filed. An incident is defined as a criminal charge alleged to have occurred on or about a specific calendar day. A maximum of three credits shall be allowed, if requested by the Agency, per charging document regardless of the number of incidents alleged. Agency may apply for Extraordinary Case Credit if appropriate.
  - c. Criminal charges alleged to have occurred on indeterminate dates or during a specified range of dates (e.g. on or between specific dates) are considered one incident. The Agency may present documentation to OPD to demonstrate that separate and discreet dates of incident were intended. Documentation should include such portions of pre-trial discovery to justify claim for separate incidents. In the event that such separate incidents are determined, a maximum of three credits shall be allowed, if requested by the Agency, per charging document.
  - d. A completed case involves all necessary legal action from arraignment through disposition. 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.
4. **Criminal Case Disposition:** Case disposition shall mean the dismissal of charges, the entering of an order of deferred prosecution, an order or result requiring a new trial, imposition of sentence or deferral of same, or dispositional continuance and any other hearing on that cause number that occurs within 45 days of sentence, entry of an order for deferral of sentence, or dispositional continuance by District Court.

A restitution hearing ordered at the time of original disposition shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a felony

or misdemeanor probation review unless such review occurs within 45 days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within 45 days of sentencing.

5. Indigent: An indigent defendant is a person determined indigent by OPD or the Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101, 13.34.090, and OPD policy. Defendants may be considered assigned until a screening for indigency is completed, pursuant to RCW 10.101.020(4). Defendants may be required to be re-screened if their financial situation changes or at each 180 days of Agency representation. If a defendant is found to be not indigent, OPD will inform the Agency and court. In the event the court removes the Agency from assignment or orders the Agency to withdraw as appointed counsel, credit for such representation by the Agency is determined by the terms of this Contract, including the relevant sections of Attachment A.
6. Legal Services: Legal service is legal representation provided by an individual licensed attorney, and associated professional support staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Agency to satisfy the Code of Professional Responsibility, the law of the State of Washington and the United States in the full discharge of the duties to each individual client under this Contract.
7. Professional support staff: Investigators, social workers and paralegals.
8. Supervision: An attorney with significant experience who is capable of actively monitoring an attorney's work product, caseload management, and relationship with clients and is capable of providing legal advice and guidance in other areas relevant to assuring high quality staff attorney performance. The Agency will provide active supervision for each staff attorney, in the ratio of one supervisor per ten staff attorneys.

### III. PROGRAM REQUIREMENTS

#### A. Services

1. Case Credit Allocation and Case Assignment:
  - a. OPD shall make reasonable efforts to maintain the Agency at the total case credit allocation and case assignment as shown on Attachment B of this Exhibit, for each quarter of the year. The quarterly case credit amounts in Attachment B are provided for planning purposes. OPD shall make reasonable efforts to distribute cases beyond variance consistent with the case credit allocation in Attachment B of this Exhibit and paragraph b. below. The variance in case distribution does not include complex felony cases.
  - b. The Agency shall accept case assignments within contracted subject areas, including case assignments above the projected variance levels. Agency refusal to accept an individual case assignment within contractual subject areas shall not in and of itself be considered a material breach of this Contract, however the County may determine such refusal requires Agency corrective action. The County shall pay

the Agency for work in excess of the variance levels according to Section IV of this Exhibit.

- c. The Agency shall accept all complex litigation cases as determined by OPD, after consultation with the Agency concerning capacity.
  - d. If the Agency has begun delivery of legal services and the defendant/respondent absconds for a period of 180 days or more, upon re-apprehension, the allocation of a new case credit shall be determined by OPD.
  - e. If the Agency is assigned to a case prior to arraignment, has not provided legal services, and the defendant fails to appear for arraignment, the case shall be returned to OPD within 30 days or as agreed with OPD, and the Agency shall be debited.
  - f. If, after initial assignment, additional charges are filed under the same cause number against the same defendant/respondent, and said charges arise out of a different allegation or series of allegations unrelated by transaction to the first charges, then additional case credit shall be granted according to paragraphs II.C.2, 3, and 4 above.
  - g. The Agency may be appointed by the court as standby counsel in pro se cases. If such appointment is made, the Agency shall receive one case credit, less previous credit assigned for case. The Agency is not necessarily expected to utilize its professional support staff for pro se case work. If professional support staff work is requested by the pro se defendant, the Agency may opt to reduce its credit allocation by 0.1 per case credit allocated by not utilizing Agency professional support staff. In the event that the Agency elects to not provide professional support staff services, then it is the responsibility of the pro se defendant to comply with OPD Expert Services protocols regarding requests for any such services as may be necessary. Standby counsel shall provide such assistance and advice as may be ordered by the court and otherwise as consistent by case law and other legal requirements, and applicable standards of attorney representation and attorney conduct, including pro se requests for expert services.
  - h. The Agency shall electronically file a Closed Case Report (Attachment D) each month with OPD which shall include all information requested in the report for the month indicated and be submitted to OPD no later than 20 days following the last day of the previous month. A case is considered closed for further credit for attorney time expended after 30 days past sentencing, or a dispositional order is filed, or upon filing of a Notice of Appeal, unless an additional court order appoints counsel.
2. Funds for payment for expert services are not included in this Exhibit. Requests for appointment for expert service shall be made following OPD procedure for allocation of expert services. The Agency must assure that its staff follows the OPD expert procedures, as agreed with OPD.
  3. The Agency shall fully participate as requested by the County in Superior Court and OPD planning and responsibilities for providing services in the event of a

natural disaster, a major disruption to court processes, or a pandemic. The Agency shall develop and maintain disaster plan protocols which shall include a provision for daily contact with OPD and the Courts to verify court calendars requiring counsel presence. The parties acknowledge that all such plans presume the continued ability to communicate between the Agency and OPD. OPD shall assist the Agency in coordination with the courts and general implementation of the disaster plan.

**B. Practice Standards and Records**

1. The Agency shall require that all attorneys, professional support staff and supervisors 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 OPD.
2. Upon closing a case, all attorney, professional support staff and supervisor files associated with the case shall be cross referenced and accessible as a whole for OPD monitoring.
3. The Agency shall maintain professional practice standards in providing a level of legal service that does not fall below the minimum professional standards and RPCs of the Washington State Supreme Court, the Washington State Bar, the National Legal Aid & Defender Association, and any applicable case law and court rules that define the duties of counsel to their clients. The Agency shall formally adopt the internal Agency practice standards as submitted to OPD February 1, 2006, and shall include a procedure for monitoring compliance with the standard. Case credit workload standards shall be according to paragraph III.B.14. below.
  - a. Attorney practice standards, include but are not limited to:
    - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Agency management or Board.
    - ii. Attorney use of professional support staff services and expert services.
  - b. Professional support staff service practice standards.
  - c. Practice standards for supervision of attorneys and professional support staff services.
4. The Agency agrees that, within available resources, reasonable efforts will be made by the Agency to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Agency is not prohibited from rotating attorneys through various Agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.

5. The Agency agrees that a member of the Agency staff shall visit any assigned in-custody criminal defendant, in-custody civil commitment, or dependency clients, and obtain basic contact and other fundamental intake information for a bond hearing within one business day from notification to the Agency of the assignment of the case and the in-custody status of the client, and/or within one business day upon notification of transport to a local detention facility. This provision applies to clients in custody at any facility within the King County jail. If a client is in custody within King County in a non-County jail, the Agency shall make contact within three business days of receiving the assignment.
6. The Agency agrees that an attorney shall make contact with all assigned persons other than those in paragraph (5.) above within five working days from a case assignment.
7. The Agency agrees that a preliminary written response to any written complaints from OPD concerning services provided by the employees of the Agency or the Agency itself shall be submitted to OPD within three working days of the date the complaint is received by the Agency Director or the Director's designee. Written complaints include email communications from OPD; email response date will be provided.
8. Upon assignment of any client charged with a criminal case to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within five business days of the assignment, whether initial or subsequent, on any case. In all cases, discovery shall be reviewed as soon as possible and in no event later than five business days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD immediately, and no later than 14 calendar days from assignment without good cause shown, of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Agency shall state the basis when possible, as court determines, for the conflict in its written notification.
9. The Agency shall establish and enforce policies and procedures to ensure that attorney time and other Agency resources funded by this Contract shall be for work, which is the subject of this Contract.

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

10. Attorney Professional Support Staff

The Agency shall provide sufficient professional support staff, including investigators, social workers and paralegals to provide for effective assistance of counsel.

11. Minimum Attorney Qualifications

- a. Each staff attorney assigned as primary counsel, representing a client accused of a Murder 2 or Murder 1, must have at least three years experience as a criminal attorney, either defense attorney or prosecutor, one year as a Class A qualified felony attorney, or having tried at least three Class A or felony sex offender or sex offender commitment cases



which have been submitted to a jury or which have reached a verdict in a bench trial.

- b. Each staff attorney representing a client accused of a Class A felony must have served two years as a prosecutor or as a public defender or have been trial counsel and handled a significant portion of the trial in five felony cases that have been submitted to a jury.
- c. Each staff attorney representing a juvenile respondent in a Class A felony shall meet the qualifications in (a) above or been a prosecutor or public defender for one year assigned to the prosecution or defense of accused persons and handled at least five felony cases through fact finding and disposition in juvenile court.
- d. Each staff attorney representing a defendant accused of a Class B or C felony, or a felony probation must have served one year as a prosecutor or as a public defender, or been trial counsel of record alone in five misdemeanor cases brought to final resolution, or been trial counsel alone or of record with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury.
- e. Each staff attorney representing any client assigned by OPD shall work under the supervision of a supervising attorney employed by the Agency. Such supervision shall provide the staff attorney with sufficient resources so the attorney will be able to handle cases on his/her own. The employees of the Agency are not employees of the County and the County will not provide supervision to any of the Agency's employees.
- f. The Agency may choose to use Rule 9 Interns or Rule 8 attorneys, as allowed by Washington State Bar Association regulations.

12. Attorney/Professional Support Staff Evaluation

The Agency director, or his/her designee, shall evaluate the professional performance of each individual Agency attorney and professional support staff member annually. Attorney evaluations shall include: quality of case preparation, compliance with the requirements of this Contract, monitoring of time and caseload records, review of case files, and in-court observation.

Professional support staff evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed.

The Agency shall keep a written record of all required performance evaluations.

13. Attorney/Professional Support Staff Training

The Agency shall provide access to sufficient training to support attorney and professional support staff performance of duties under this Contract. The Agency shall maintain all necessary records to assess the adequacy of the training. A CLE approved by the Washington State Bar Association is presumptively adequate.

At a minimum, the Agency shall require each attorney to attend at least seven WSBA approved credits worth of CLE in a practice area under this Contract. Each Agency attorney must attend training approved by WA State OPD, pursuant to RCW 10.101.050 and as posted on WA State OPD website, at least once per calendar year. Each Agency attorney also shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington Supreme Court.

14. Case Credit Workload Guidelines

The County shall review Agency case credit workloads, case assignments, standards, and support staff/attorney ratios for each area of cases to assess compliance with the requirements of this Contract.

The total amount of reimbursement included in this Contract resulted from the application of the Public Defense Payment Model approved by the King County Council by Motion 12160 on July 18, 2005. Pursuant to the policies stated in Motion 12160, the allocation for each case area was calculated to provide funding for public defenders at parity with similarly situated attorneys in the Office of the Prosecuting Attorney. The Agency's staffing plan may be reviewed by OPD to verify that an attorney's experience level meets or exceeds required experience for case practice area, and placement within the salary schedule is reasonable. The Agency agrees to comply with the following average annual case credit work loads per attorney per case type:

Supervisors	0
Felony	150
Complex	150
593	150
King County Misdemeanor	450
Juvenile	330
Dependency	180
Contempt of Court	225
ITA	410

A supervisor, including a managing director or assistant director, may provide minimal representation to clients under this Exhibit solely for the purpose of addressing management issues, emergencies or caseload overflow beyond the projections. OPD shall be notified of primary representation by supervisory staff constituting a caseload that exceeds available one to ten ratio of supervisory availability.

15. The Agency agrees to abide by the OPD Withdrawal form (Attachment E.) when declining a case or withdrawing from a case because of a conflict of interest. Credits shall be applied according to the terms of this Exhibit, including Attachment A.

16. The Agency shall report all extraordinary occurrences to OPD in accordance with the Extraordinary Occurrences Policy and Procedure, and cooperate with any OPD extraordinary occurrence review. The Agency shall adopt an Agency

specific extraordinary occurrence policy. The requirement to report to OPD does not replace reporting requirements by other entities.

17. The Agency shall have a process for the filing and review of complaints that are brought to the Agency's attention by clients, OPD, or other criminal justice system staff. The Agency shall establish an internal complaint procedure that is accessible to all clients, in accordance with RCW 34.05, 49.60, RPCs, and the OPD Client Complaint Services Policy and Procedure. The Agency shall maintain a file system for reliable report backup of each complaint.
18. The Agency agrees to abide by the terms of the OPD Attorney Supervision Policy and Procedures.
19. The Agency shall have an Information System (IS) that can report accurate data to OPD, and shall comply with the OPD IS Policy and Procedure. The Agency shall have functional personal computers using a Windows Operating System version 2000 or above and shall be connected to the Internet with the following supports:
  - a. The Agency shall have at least one trained primary and one trained backup on-site IT support person who has training on Basic Administration of Windows 2000, and other basic software training.
  - b. The Agency shall notify OPD, in writing, of staffing changes (i.e. new hires, transfers, and terminations) for those staff directly responsible for data reporting and IS maintenance.
  - c. If a virus attacks an Agency computer, Agency response must be immediate (i.e. within 15 minutes) to take the computer off line and other appropriate action.

#### **IV. COMPENSATION AND METHOD OF PAYMENT**

- A. The Agency shall be paid monthly as provided in Attachment C of this Exhibit except as paragraph IV B. applies. The Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2007 through December 31, 2007. The Agency shall submit reports in a format approved by the County, as stated in Section V. Reporting Requirements of this Exhibit. The reports are due within ten days after Agency receipt of the OPD Case Credit Certification Report.
- B. Payment shall be made monthly, subject to performance requirements being met and upon completion of scheduled corrective action requirements noted in the OPD 2006 site visit review and the Agency plan for corrective action. For each corrective action due date missed by the established due date, one percent of the subsequent month's payment will be withheld until action is completed or report is received and accepted by the County.
- C. Payments may be made for extraordinary expenses that are in addition to those payments shown in Attachment C, Payment Schedule. Extraordinary expenses shall be approved in writing in advance of the expenditure by OPD.
- D. In the event that workload demand exceeds the projected levels, the Agency shall accept case assignments and case credits above the variance levels on a monthly

basis. OPD will monitor the distribution on a cumulative monthly basis to ensure that a reasonable distribution of cases has been maintained.

- E. For quarterly and annual payment purposes, the variance shall be no more than five percent, for all case areas except felony and other complex case litigation cases, which shall have a variance of no more than two-and-one-half percent. These variance percentages will be applied to the projected caseload to establish the variance range.
- F. Quarterly reconciliation: At the end of each quarter, OPD will evaluate the case credit accumulation for each Agency for each case type. Action taken will be as follows:
  - 1. The actual quarterly caseload for each type of case area, as shown in the quarterly Certified Statistics will be compared to the actual variance range, for each practice area. Variance does not apply to calendars, specialty court agreements, Becca cases, or Sexually Violent Predator cases.
  - 2. If the Agency's actual quarterly caseload falls within the high and low values of the variance, an adjustment to the reimbursement will not be made.
  - 3. If the Agency's actual quarterly caseload falls outside of either the high or low values of the projected variance range, an adjustment to the payment may be made.
  - 4. If a quarterly reconciliation results in payment due to the Agency from the County, the Agency may, at the Agency's option, defer such payment to a later month in the Contract year.
  - 5. If the quarterly reconciliation results in payment due to the County from the Agency, the County may, at the County option, defer such payment to a later month in the Contract year.
- G. Year end reconciliation: The final payment will be the result of a reconciliation of actual performance to Contract specifications. The reconciliation will be conducted as follows:
  - 1. The annual variance percentages outlined in Section III. Program Requirements will be applied to the projected caseload to establish the variance range.
  - 2. The actual annual caseload for each type of case, as shown in the December Certified Statistics will be compared to the actual variance range, for each type of case, except for Becca cases, or Sexually Violent Predator cases.
  - 3. If the Agency's actual annual caseload falls within the high and low values of the variance, an adjustment to December reimbursement will not be made.
  - 4. If the Agency's actual annual caseload falls outside of either the high or low values of the projected variance range, an adjustment to the final payment will be made.
- H. Sexual Predator cases: The Agency shall be paid by the State of Washington for cases filed under RCW 71.09 and assigned to the Agency by OPD at a rate determined by DSHS or as ordered by the Court. Agency reimbursement shall be based on submission of expenditure reports and an invoice to DSHS in a format approved by DSHS. OPD shall apply its policies and procedures, as amended and

posted on its website, to review and approve or deny requests from Agency counsel for use of Expert Services in 71.09 cases. Such authorization for Expert Services shall be made at the sole discretion of OPD. Upon approval or denial of counsel's request for Expert Services, OPD shall notify counsel. Per OPD policy, defense counsel may appeal an expert service denial to the court. Expert service reimbursement shall be invoiced to and provided directly by DSHS.

I. Prepayments

1. The Agency shall ensure that it has sufficient funds to complete prepaid cases assigned but not completed at the end of the Contract period. The Agency must report its calculated prepayment retention amount and cost estimate, include the method of calculation, and provide a conclusion about whether the funds available would cover all costs associated with completing the cases assigned and prepaid. Not having an adequate reserve shall not be cause for a material breach of contract, but may require Agency corrective action.

2. In the absence of a precise calculation of prepayments by the Agency, the County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, initial dependency assignments, and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75 percent completed, November cases are 50 percent completed, and December cases are 25 percent completed. For dependency cases it is assumed October cases are 15 percent completed, November cases are ten percent completed, and December cases are five percent completed.

The estimation shall be the result of calculating the number of open cases for each month by the corresponding percentage of uncompleted work, and then determining the sum of the uncompleted case count by the per case revenue amount to determine the sufficiency of funds.

V. **REPORTING REQUIREMENTS**

Compliance with the terms of this Exhibit requires the following reports, in a format approved by the County, to be submitted at the times indicated in the chart below.

Report Title	2007 Due Date
Closed Case Reports Certification of Case Credits (Certs) Additional Credit forms Monthly Expenditure Reports Complex Litigation time sheets Extraordinary Case Credit requests	Monthly, or more frequently if necessary
Year-end Attorney Case Assignment Report	January
Annual Financial Statements, IRS Form 990, Audit Report including management letters.	August
Additional summaries, reports or documents, corrective actions directly related to Contract performance, as requested by OPD with reasonable notice.	Varies

## ATTACHMENT A

### Case Credit Application Schedule

Type of Case	
<b>Felony</b>	
One completed case	One case credit
Atty/Day or substantial advice	.10 case credit
Atty/Day or substantial advice in the King County Detention Facility	.20 case credit
Probation, other reviews, or sentencing only	.33 case credit
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	One case credit
Murder 1	Two case credits upon assignment
Murder 2	Two case credits upon assignment
Persistent Offender (593)	One case credit upon assignment, less previously assigned felony credit. The Agency is eligible for additional case credit for each additional 12.1 hours or portion thereof of attorney time on the case according to the Extraordinary Cases section of this Attachment A. The Agency shall report monthly to OPD the total attorney time in each persistent offender case. It is understood that the Agency director or the director's designee will review the status of all pending persistent offender cases in the Agency at least monthly and will discuss the cases with the attorneys representing the clients. Such review will include the status of investigation, preparation and presentation of mitigation packages, legal and factual issues in the case, the client's physical and mental status, and any plea bargaining offers.
Bench Warrant during case or case transferred to another Agency, assigned counsel, or retained counsel	One case credit if more than ten hours of work has been done and/or case is transferred to drug court. No case credit if ten or less hours of work has been done.
<b>Complex Litigation</b>	
Capital cases	Two FTE attorneys; 25 complex litigation case credits per month maximum plus support staff as approved.
Aggravated Homicide	One FTE attorney; 12.5 complex litigation case credits per month maximum.

Type of Case	
<b>King County Misdemeanor</b>	
One completed case, King County District Court	One case credit
District Court review, revocation, re-sentencing or other hearing	One case credit
One District Court expedited felony	One case credit
Misdemeanor Appeal	Four case credits
Misdemeanor Writ	Three case credits
Atty/Day or substantial advice; excludes misdemeanor beeper calendar matters listed in Attachment B and other calendar representation.	0.10 case credit
Atty/Day or substantial advice for In-custody clients; excludes misdemeanor beeper calendar matters listed in Attachment B and other calendar representation.	0.20 case credit
<b>Juvenile Offender</b>	
One completed case	One case credit
Decline hearing	One case credit
Reviews	0.33 case credit
Atty/Day or substantial advice	0.10 case credit
<b>Juvenile Dependency</b>	
A dependency case	One case credit
Post Disposition Review Hearing	0.40 case credit
Dependency trial	0.50 case credit
Termination trial	One case credit
Atty/Day for substantial advice	0.10 case credit

Type of Case	
<b>Civil Contempt</b>	
From show cause initial assignment hearing up to and including two contempt reviews	One case credit
Subsequent reviews	0.33 case credit
<b>Becca: Child in Need of Services, At-Risk Youth, Truancy</b>	One case credit for one completed case – petition through closure.
<b>ITA</b>	One case credit
<b>Drug Diversion Court</b>	Calendar funding
<b>District Mental Health Court</b>	Calendar funding
<b>Other Circumstances</b>	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2007 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Extraordinary Cases	Extraordinary case types including Juvenile Felony Offender, Dependency, Termination of Parental rights, Murder, Persistent Offender, and all Adult Felony cases shall be given extra credits if the nature of the case requires such extra credits, based upon a written application from the Agency. Other case types may be approved for extraordinary credit at the discretion of OPD. Factors entering into the awarding of extra credits include, but are not limited to: amount and complexity of evidence; complexity of legal issues; number of defendants; and actual length of a case. The Agency application must be specific about the work to be done, the estimated length of time to perform the work, and the personnel that will be assigned to perform the work. OPD shall make its determination for additional credit in writing to the Agency, and as per OPD policy.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery and reported to OPD its withdrawal for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit, including the reason given for withdrawal and may grant appropriate credit.



<b>Type of Case</b>	
	Should such credit be denied, OPD shall inform the Agency of the basis for denial.
Pro Se/Standby Counsel	One case credit if professional support staff work is performed by the Agency and requests for appointment of professional support staff at public expense outside of the Agency are not submitted to OPD. If professional support staff work is requested by the pro se defendant, the Agency may inform OPD that it is opting to reduce its credit allocation by 0.1 per attorney credits assigned in the case by not utilizing its professional support staff.

**ATTACHMENT B**

**Agency Case Credit Allocation and Cases Assigned Estimate for January - December 2007**

Case Category	Total Agency Case Credit Allocation	Agency's % of Total OPD Case Credits	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<i>Felony &amp; 593s</i>	3,414.2	32%	854.0	853.0	854.0	853.2
<i>Complex</i>	112.5	N/A	37.5	37.5	37.5	N/A
Total Felony	3,526.7	33%	891.0	890.5	891.5	853.2
KC Misd	1,234.2	14%	309.0	308.0	308.0	309.2
Juv Off	1,312.5	31%	328.0	328.0	328.0	328.5
Dependency (Jan-Jun 07)	468.7	31%	234.4	234.3	N/A	N/A
ITA	2,150.0	100%	537.0	538.0	537.0	538.0
TOTAL	8,692.1	29%	2,299.9	2,298.8	2,064.5	2,028.9

**2007 Calendar Attorney and Staff List**

Case Area	KCCF	RJC	CALENDAR	AGENCY	DAY	TIME	ATTY FTE	SUPV	STAFF
FELONY	x		In-of-Custody SRA calendar	TDA	Th-Fri		0.25	0.50	0.03
	x		Arrestment calendar	TDA	Mon- Fri		0.50	0.25	0.05
	x		Felony Investigation calendar	TDA	Mon- Sat		0.60	0.25	0.06
KC MISDEAMEANOR		x	Domestic Violence Court calendar	TDA	Mon- Fri	8-5:00	1.00	0.25	0.10
			District Court Consolidation	TDA			0.20	0.20	0.02
JUVENILE	x		1st appearance & diversion calls	TDA			0.20		0.02
DEPENDENCY		x	Attorney of the Day (AOD) 72-hour Shelter Care	TDA	Mon- Thur	8-noon	0.40		0.04
	x		Attorney of the Day (AOD) 72-hour Shelter Care	TDA	Mon- Fri	8-noon	0.50		0.05
<b>SUB-TOTAL TDA</b>							<b>3.65</b>	<b>1.45</b>	<b>0.37</b>

Beeper Duty \$11,169  
 (\$30/day \* 365 days)+ 2007 COLA

## ATTACHMENT C

### Payment Schedule

This Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2007 to December 31, 2007. In 2007, the Agency shall be paid the following monthly amounts for cases and special services:

<u>Program Area</u>	<u>MONTHLY Total Amount</u>	<u>ANNUAL GRAND TOTAL</u>
<i>Administration</i>	\$43,921	\$527,056
<i>Indirect Overhead</i>	\$25,624	\$307,494
<i>Rent</i>	\$55,692	\$668,301
<b>Current Expense Administrative and Overhead Cost</b>	<b>\$125,238</b>	<b>\$1,502,851</b>
Regular Felony and 593s	\$304,352	\$3,652,227
Complex Felony, current caseload	a	\$120,342 <sup>b</sup>
King County Misdemeanor	\$35,803	\$429,631
Juvenile	\$52,290	\$627,477
Dependency (Jan - Jun 2007 only)	\$69,568	\$417,410
Calendar Staffing	\$38,910	\$466,923
Involuntary Treatment Act	\$67,849	\$814,186
<b>GRAND TOTAL</b>	<b>\$694,010</b>	<b>\$8,031,047</b>

<sup>a</sup> Payment is made on a per credit basis for cases open during the month.

<sup>b</sup> This total amount is estimated in consideration of cases open at the beginning of the contract. The actual annual amount may be greater or lesser depending upon new case assignments and the timing of case closing for existing cases.

**ATTACHMENT D**

**Closed Case Report**

**The Defender Association**

**Period Covered:** \_\_\_\_\_

Case Number	Client		Primary Attorney*		Date of last hearing/transfer	Disposition	File Close Date	Charge/Case Type		Hours													
	Last Name	First Name	Last Name	First Name				At Filing	At Disposition	Total Attorney	Invest.	Social Worker	Paralegal	Other Staff									

\*Primary Attorney indicates the agency-assigned attorney who performed primary case management.

ATTACHMENT E

NOTIFICATION OF WITHDRAWAL

PLEASE PRINT OR TYPE

Date: \_\_\_\_\_

Client Name: \_\_\_\_\_ AKA: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

DOB: \_\_\_\_\_ JCN: \_\_\_\_\_ CCN: \_\_\_\_\_

Cause Number: \_\_\_\_\_ Charge: \_\_\_\_\_

Case Type:  Felony  Seattle Municipal  Juvenile
 Dependency  Civil Contempt  KC Misdemeanor
 ITA  Other \_\_\_\_\_

REASON FOR WITHDRAWAL:

Conflict of Interest  Other \_\_\_\_\_

Defendant Retained Private Counsel: (Name of Attorney) \_\_\_\_\_

CONFLICT INFORMATION:

This Agency's conflict is with: Name \_\_\_\_\_ DOB: \_\_\_\_\_

Cause Number: \_\_\_\_\_ Co-Defendant in Current Case?  Yes  No

Victim/Client  Suspect/Client  Witness/Client  Other \_\_\_\_\_

OTHER NAMES IN DISCOVERY:

Table with 4 columns: NAMES, DOB, STATUS IN CASE, REPRESENTATION HISTORY. Contains 4 empty rows.

SEE ATTACHED SHEET FOR ADDITIONAL LISTINGS

In-Custody  Out-of-Custody Received Conflict From: \_\_\_\_\_

HEARING SCHEDULE:

Trial Date: \_\_\_\_\_ Next Hearing: \_\_\_\_\_ Type of Hearing: \_\_\_\_\_

\*Withdrawal Hearing Date: \_\_\_\_\_

\*(MUST BE TWO FULL WORKING DAYS FROM IDENTIFICATION OF CONFLICT IF TRIAL DATE HAS BEEN SET. AGENCY MUST NOTIFY PA AND CO-DEFENDANT COUNSEL.)

LOCATION OF DISCOVERY:

PA's Office  Agency will forward to new counsel  Other \_\_\_\_\_

Request for credit/debit: \_\_\_\_\_

This form filled out by: \_\_\_\_\_ Date: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ Date: \_\_\_\_\_

OPD USE ONLY

OPD REASSIGNED TO: \_\_\_\_\_ INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_

FAX  Interoffice Mail