

JM → passed 9-0

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October 20, 2014

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KMC

Sponsor: McDermott

Proposed No.: 2014-0367

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2014-0367, VERSION**

2 **1**

3 On page 1, beginning on line 6, strike everything through page 2, line 23, and insert:

4 "STATEMENT OF FACTS:

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

7 2. The four independent non-profit agencies, which had been providing  
8 public defense services to the county under contracts, were subsumed as  
9 divisions into the newly created department of public defense.

10 3. One of the nonprofits subsumed into the new department was the  
11 Society of Counsel Representing Accused Persons ("SCRAP"), which had  
12 been leasing space in the Jefferson Building, located at 1401 E Jefferson  
13 St., Seattle, Washington within council district two.

14 4. The intent of the department of public defense is to ultimately  
15 consolidate its divisions within county-owned buildings.

16 5. However, there is a need for space near the juvenile justice center  
17 located at 12th and Alder.

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18 6. The facilities management division determined, through consultation  
19 with the department that continued leasing in the Jefferson Building is the  
20 most cost-effective option for the county.

21 7. The facilities management division successfully negotiated with the  
22 landlord of the Jefferson Building a new ten-year lease for the space  
23 previously leased by SCRAP, effective March 24, 2014.

24 8. Subsequent to executing the lease, clarifying language was negotiated  
25 to be included in the lease. The landlord has already agreed to to amend  
26 the lease to include this new clarifying language, as set forth in a first  
27 amendment and attached as Attachment B to this ordinance.

28 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

29 SECTION 1. The King County council, having determined that leasing space in  
30 the Jefferson Building previously occupied by the Society of Counsel Representing  
31 Accused Persons is in the best interest of the public, hereby approves the lease attached  
32 as Attachment A to this ordinance, contingent upon the execution of the first lease  
33 amendment in substantially the same form as Attachment B to this ordinance. Upon  
34 execution of this first amendment, the actions taken by county officials, agents and  
35 employees consistent with the terms and purposes of the lease will be hereby ratified,  
36 confirmed and approved and the council authorizes the executive to take all actions  
37 necessary to implement these agreements."

38

39 Insert Attachment B, First Amendment of Lease.

40 **EFFECT:**

- 41 1. Revises the statement of facts to more accurately reflect transaction history;
- 42 2. Approval of Jefferson lease is made contingent upon execution of the first
- 43 amendment.

## FIRST AMENDMENT OF LEASE

THIS FIRST AMENDMENT ("Amendment") is made and entered into by and between Jefferson House LLC, a Washington limited liability corporation ("Landlord") and KING COUNTY, a municipal corporation ("Tenant") and jointly referred to as "Parties." This Amendment is to the March 26, 2014 lease ("Lease"), by which King County agreed to lease space from Jefferson House LLC on floors 1, 2, and 3 in the Jefferson Building formally occupied by the Society of Counsel Representing Accused Persons or "SCRAP."

### AMENDMENT

Pursuant to Section 34.c of the Lease, the Parties agree to amend the Lease as follows:

1. The following sentence in Section 8.a (OPERATING COSTS) of the Lease is hereby amended to correct a typographical error as follows, as indicated by the bolded and underlined text:

Operating Costs shall not include: Landlord's income tax or general corporate overhead; depreciation on the Building or equipment therein; loan payments; real estate brokers' commissions; capital improvements to or major repairs of the Building shell (that is, the Building structure, exterior walls and roof) not otherwise permitted as described above; or any other costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building.

2. The fourth paragraph of Section 8.b (OPERATING COSTS) of the Lease is hereby deleted in its entirety and replaced with the following paragraph and the change is indicated by the underlined and bolded text:

Within one-hundred twenty (120) days after receipt of the Operating Costs Statement, Tenant may give Landlord written notice (the "Review Notice") that Tenant intends to review Landlord's records of the Operating Costs for the calendar year to which the Operating Costs Statement applies. Within a reasonable time after receipt of the Review Notice, Landlord shall make all pertinent records available for inspection that are reasonably necessary for Tenant to conduct its review. If any records are maintained at a location other than at the Building, Tenant may either inspect the records at such other location or pay the reasonable cost of Landlord copying and shipping the records. If Tenant retains a third party to review Landlord's records, the third party must be a CPA licensed to do business in the State of Washington, and may not be compensated on a contingent fee or percentage of recovery basis. Tenant shall be solely responsible for all costs, expenses and fees incurred for the audit unless such audit reveals Landlord's overcharge of the Operating Costs by 5% or

more in which case all associated costs of the audit shall be paid by Landlord. **Except as required by the Washington Public Records Act, ch. 42.56 RCW, and other applicable law, any records provided by the Landlord and the information and results of any audit conducted by or on behalf of Tenant pursuant to this Section 8 shall be kept confidential by Tenant and any third party it retains.** With the exception of Tenant's auditors and legal counsel, Tenant shall not discuss the results of the audit with any third parties. Tenant shall not be entitled to inspect or audit the books and results of Landlord more than once per calendar year.

3. The following sentence in the fifth paragraph of Section 8.b (OPERATING COSTS) of the Lease is hereby amended as follows, as indicated by the bolded and underlined text:

If Tenant fails to give Landlord an Objection Notice within the 45 day period, or fails to provide Landlord with a Review Notice within the **120** day period described above, Tenant shall be deemed to have approved Landlord's Operating Costs Statement and shall be barred from raising any claims regarding the Operating Costs for the prior year.

4. The following paragraph is hereby added as the final paragraph in Section 8.b of the Lease:

If after good faith efforts, but not more than forty-five days after the submission of the Objection Notice to the Landlord, the parties are unable to reach agreement, the Tenant may submit the issue of the appropriate Operating Cost recovery to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, to be conducted by a mutually acceptable single arbitrator with not less than ten (10) years' experience as a real estate attorney, or a retired judge with experience in commercial real estate litigation and/or leases. The parties agree that the arbitration shall be by document submission only. Any overcharge or undercharge determined by the arbitrator shall be paid by the appropriate party to the other within thirty (30) days of the arbitrator's decision. The arbitrator shall also determine the prevailing party and the non-prevailing shall pay to the prevailing party its reasonable attorneys' fees and costs as provided in this Lease.

5. The first paragraph of Section 16.a (DESTRUCTION OR CONDEMNATION) of the Lease is hereby deleted in its entirety and replaced with the following paragraph:

If the Premises are partially damaged, but not rendered untenable, by fire or other insurable casualty, then Landlord shall diligently restore the Premises and this Lease shall not terminate; provided that, in the event insurance proceeds are not sufficient to pay for the entire cost to restore the Premises to their former condition, then the Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within sixty (60) days of the date of such

casualty. Notwithstanding any other provision of this Lease, upon such termination, the Tenant shall have no further obligations under this Lease. The Premises shall not be deemed untenable if less than twenty-five percent (25%) of the Premises are damaged

6. The third paragraph of Section 16.a (DESTRUCTION OR CONDEMNATION) of the Lease is hereby repealed in its entirety and replaced with the following paragraph and the change is indicated by the underlined and bolded text:

If Landlord restores the Premises under this Section 16(a), Landlord shall proceed with reasonable diligence to complete the work, and the base monthly rent shall be abated in the same proportion as the **damaged or destroyed** portion of the Premises bears to the whole Premises, provided that there shall be a rent abatement only if the damage or destruction of the Premises did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors.

7. The first sentence of Section 17 (INSURANCE) of the Lease is hereby deleted in its entirety and replaced with the following sentence and the change is indicated by the underlined and bolded text:

The Landlord acknowledges, accepts, and agrees that Tenant, a charter county government under the constitution of the State of Washington, hereinafter referred to as "Tenant," maintains a fully funded self-insurance program **as permitted by King County Code 2.21** for the protection and handling of the Tenant's liabilities including injuries to persons and damage to property.

8. Section 21.d is hereby deleted in its entirety and replaced with the following and the change is indicated by the underlined and bolded text:

Other Non-Monetary Defaults. Tenant breaches any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section, and the breach continues for a period of thirty (30) days after notice by Landlord to Tenant of the breach, **provided, however, that if the nature of Tenant's obligation is such that a longer period of time is required for its performance, then Tenant shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.**

9. The paragraph that follows Section 21.e is hereby deleted in its entirety and replaced with the following and the change is indicated by the underlined and bolded text:

Landlord shall in no event be in default in the performance of any of Landlord's obligations under this Lease unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or in the event of an emergency situation which materially affects the use and occupancy of the Premises by Tenant, within five (5) days after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligations and specifying if Tenant believes it to be an emergency condition, provided, however, that if the nature of Landlord's obligation is such that a longer period of time is required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period, or such five (5) day period, as applicable, and thereafter diligently prosecute the same to completion. Notwithstanding the foregoing, in the event of an emergency, if a Landlord default results in a risk to the health or safety of persons in the Building, or poses an eminent risk of significant damage to the Building, the Tenant shall be permitted to take reasonable measures to protect such health and safety or prevent damage to the Building **and shall be entitled to payments from the Landlord for such costs upon presentation of reasonable supporting documentation.** Tenant shall use reasonable good faith efforts to notify Landlord or its property manager by telephone as soon as possible of any emergency affecting the Building or its occupants. In the event that any such default is not cured within the applicable cure period, Tenant may, without any obligation to do so, make such payments and do such work or otherwise perform Landlord's covenants all on behalf of and at the expense of Landlord. The Landlord agrees to pay to Tenant forthwith the amount of the payment so made and the costs and expenses incurred upon presentation of reasonable supporting documentation thereof.

All other terms, conditions, specifications and requirements of the Lease shall remain unchanged and in full effect, except as specifically amended herein.

This First Amendment shall be effective upon the date of the last signature to this Amendment.

REST OF THIS PAGE INTENTIONALLY BLANK; SIGNATURES ON NEXT PAGE

**LANDLORD:**  
**JEFFERSON HOUSE LLC**  
a Washington Limited Liability Company

**TENANT:**  
**KING COUNTY**, a political subdivision of  
the State of Washington

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



JM → passed 9-0

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October 20, 2014

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Sponsor: McDermott

Proposed No.: 2014-0367

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2014-0367, VERSION 1**

2 On page 1, beginning on line 1, strike lines 1 through 4, and insert:

3 "AN ORDINANCE approving the execution of a lease and  
4 first lease amendment for space in the Jefferson Building,  
5 to support the operations and services of the department of  
6 public defense."

7 **EFFECT: *Amends the title to conform to the changes made by Striking Amendment***

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