

City of Seattle

Public Defense Services: Primary Defender

2005 – 2007 Contract for Services

November 15, 2004

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2005 - 2007 CONTRACT FOR

CITY OF SEATTLE PUBLIC DEFENSE SERVICES – PRIMARY DEFENDER

WHEREAS, this Contract is made and entered into by and between The City of Seattle (“the City”), a Washington municipal corporation and Associated Counsel for the Accused, whose address is 110 Prefontaine Place South, Suite 200, Seattle, WA, 98104, and which is a private, non-profit law firm incorporated under the Washington State Non-Profit Corporation Act and authorized to do business in the State of Washington.

WHEREAS, the City desires to have legal services, as described in the Contract, performed for indigent persons legally entitled to appointed representation in the City of Seattle, by the Associated Counsel for the Accused, a nonprofit public defender law firm, as an independent contractor incorporated under the Washington Nonprofit Corporation Code and organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as authorized by Ordinance No. 121501; and,

WHEREAS, the City and the Primary Defender 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 charged with crimes in Seattle Municipal Court.

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the promises and covenants contained herein, and other good and valuable consideration, the parties CONTRACT AND AGREE as follows:

Section 1: DEFINITIONS

- A. **Case Assignment**: A case assignment is that particular case assigned by the City, the King County Office of Public Defense, or the Court to the Primary Defender.
- B. **Case Credit**: Case credit is a unit of work. The total number of units that each attorney is expected to perform is listed in the case credit workload standards.
- C. **City**: City is the City of Seattle.
- D. **Client**: An indigent person who has been assigned to the Primary Defender by the City, the King County Office of Public Defense, or the Court.
- E. **Completed Case**: A completed case involves all necessary legal action from arraignment through disposition or the necessary withdrawal of counsel after the substantial delivery of legal services. This includes the filing of a notice of appeal upon the client’s request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.

- F. Contract Administrator: Contract Administrator is the City of Seattle Public Defense Contract Administrator in the Office of Policy and Management.
- G. Court: Court is the Municipal Court of Seattle
- H. CPI-W: CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers, an index of prices of goods and services typically purchased by urban wage earners and clerical workers.
- I. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent set for one court hearing that will ultimately lead to one disposition.
1. If a related series of charges, defined herein as a single case, is subsequently set for separate disposition hearings or trials, the Primary Defender may request additional credit for each case which is severed from the consolidated case.
 2. If additional charges are filed against a defendant/respondent while the initial assignment remains pending, the additional charges shall be counted as a new case credit only if the charges arise out of a separate incident.
- J. 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 forty-five (45) days of sentence, entry of an order for deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.
1. A restitution hearing ordered at the time of original disposition, whether it is held within forty-five (45) days or subsequently, shall be included as part of the case credit as defined by this disposition description. It shall include the filing of a notice of appeal, if applicable. It shall not include a misdemeanor probation review unless such review occurs within forty-five (45) days of disposition, or a review set at the time of sentencing. Additionally, it shall not include any hearing ordered at the conclusion of a deferred sentence unless such hearing occurs within forty-five (45) days of sentencing.
- K. Discovery: Discovery consists of those reports, letters, memorandums, after-action reports, incidents reports, witness statements, officers' statements, expert witness reports which the City Prosecutor is obligated to provide on a continuing basis under the City or State code and pursuant to the State and Federal Constitutional requirements.
- L. Legal Service: Legal service is legal representation provided by an individual licensed attorney and associated paraprofessional staff to an individual client, pursuant to a case assignment or court appointment. The attorney will be required by the Primary Defender 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.
- M. Indigent Defendant: An indigent defendant is a person determined indigent by the Court, City or King County Office of Public Defense as being eligible for a court-appointed attorney, pursuant to RCW 10.101.

- N. Mayor: Mayor is the Mayor of Seattle or designee.
- O. Misdemeanor Practice Area:
1. Misdemeanor Case: Any criminal case filed by the Seattle City Attorney in Seattle Municipal Court whether a misdemeanor or a gross misdemeanor.
 2. Misdemeanor 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.
 3. 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.
- P. Paraprofessional Staff: Investigators, social workers and paralegals.
- Q. Primary Defender: The Primary Defender is the Associated Counsel for the Accused – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).
- R. Secondary Defender: The Secondary Defender is the [name of law firm] – a private non-profit corporation incorporated under the Articles of Incorporation pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

Section 2: PUBLIC DEFENSE STANDARDS

The City adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030:

- A. Compensation of Counsel: Compensation of counsel shall be in accordance with the schedule set forth in Attachment 1 – the King County Kenny Salary Plan. The City will fund half of the attorneys at salary range P.D. 2.2 and half of the attorneys at salary range P.D. 4. 1.
- B. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be in accordance with Section 4 G as well as the practice standards required by Section 5 A.
- C. Caseload Limits: Primary Defender caseloads for Seattle misdemeanor cases shall be no higher than 380 case credits per-attorney per-year. The supervising attorneys shall not carry a caseload.
- D. Responsibility for Expert Witness Costs: After approval by the Court, expert witness fees will be paid by the City.
- E. Administrative Expenses: Administrative expenses shall be paid out of compensation provided to the Primary Defender as described in Attachment 2 - 2005 Charges for Services.
- F. Support Services: The Primary Defender shall provide investigative, paralegal, social worker and clerical services necessary for representation of indigent defendants at the following standards: one investigator for every five caseload attorneys; one social worker

for Mental Health Court and one social worker for all other cases; and four additional support staff.

- G. Supervision: The Primary Defender shall provide supervising attorneys at the following standards: one supervisor for every ten attorneys.

Section 3: DURATION OF CONTRACT

This Contract shall commence on the first (1st) day of January 2005 and terminate the thirty-first (31st) day of December 2007 unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

Section 4: SCOPE OF WORK

The Scope of Work of this Contract is as described in the RFP and the Response to the RFP which are attached to and made a part of this Contract.

- A. Purpose: The purpose of this agreement is to provide legal services through effective assistance of counsel to indigent persons. Legal Services shall be statutorily and constitutionally based, within the framework of an efficient and fiscally responsible independent non-profit Defender agency.
- B. Professional Conduct:
1. The Primary Defender 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, Seattle Municipal Code, and the Washington State Rules for Professional Conduct (RPC).
 2. Nothing in this contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Primary Defender with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract.
 3. Nothing in this contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Primary Defender or any such confidential communications made to agents or employees of the Primary Defender for such attorney; the advice given by an attorney to a client; or any other statements and materials privileged from disclosure in a court of law.
 4. Attorneys and staff employed by the Primary Defender shall not solicit or accept any compensation, gifts, gratuities or services from any client.
- C. Eligible Population: The population served shall be indigent persons legally entitled to appointed legal services in Seattle Municipal Court, as assigned by the Court or by the King County Office of Public Defense on behalf of the Court.
- D. Case Assignment: The Primary Defender shall accept case assignments, including case assignments above the projected variance levels. The City shall pay the Primary Defender for work in excess of the variance levels of this Contract.

- E. Conflicts: The Primary Defender reserves the right to decline to advise or represent any client on the basis of actual legal, ethical, or professional conflict of interest. The Primary Defender shall be responsible for checking for conflicts and identifying if a conflict exists. The Primary Defender shall have a written policy which explains how they define conflict cases. This policy must be approved by the Contract Administrator. The Primary Defender shall perform a conflicts check before any substantial work is done on the case. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- F. Duties and Responsibilities of the Primary Defender: In order to perform its responsibilities under the Contract, the Primary Defender shall have the power and duty to:
1. Hire all Primary Defender personnel;
 2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
 3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
 4. Suspend remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Primary Defender program;
 5. Accept and represent all cases and clients officially referred by the Court (or by the King County Office of Public Defense on behalf of the Court) unless withdrawal from such representation is allowed in accordance with provisions as stated above;
 6. In the event that this contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period in which the contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear; and
 7. Provide for representation on any City criminal justice committees or workgroups as requested by the Contract Administrator, the Court, or any other City criminal justice agency. The Primary Defender shall represent the interests of both the Primary Defender and the Secondary Defender at these meetings. The Primary Defender is expected to set general administrative policy for both the Primary and Secondary defender agencies. The Primary Defender shall keep the Secondary Defender informed of the issues presented at these meetings. Should a difference of opinion arise between the Primary and Secondary Defenders as to the position the Defense should take on an issue, the Secondary Defender shall give their opinion in writing to

the Primary Defender. The Primary Defender will then share this opinion with the other members of the committee or workgroup.

- G. Duties and Responsibilities of Primary Defender Attorneys: In order to perform their duties under this Contract, staff attorneys of the Primary Defender shall:
1. Counsel and represent in all ensuing criminal proceedings before appeal those clients who are officially referred by the Court. Such services include, but are not limited to: preparation for and representation of the client at the pretrial hearings, trial and at sentencing. Attorneys or other staff will call out-of-custody clients to remind them of upcoming court dates.
 2. Use City funding to represent clients only in criminal matters in Seattle Municipal Court. Attorneys shall not use City funding to represent clients in any matter which is civil in nature.
 3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client.

Section 5: PERFORMANCE AND QUALIFICATIONS

A. Practice Standards and Records

1. The Primary Defender shall ensure that all attorneys, paraprofessional staff and supervisors shall maintain contemporaneous records of all legal services provided on a specific case. The records shall provide a factual description of the work done and shall be sufficiently detailed to allow monitoring of legal service activity by the Contract Administrator.
2. Upon closing a case, all attorney, paraprofessional and supervisor files associated with the case shall be cross referenced and accessible as a whole for monitoring by the Contract Administrator.
3. The Primary Defender shall establish practice standards to address the following substantive areas of contract compliance. The practice standards shall set objective expectations for each position and shall be measurable by objective means. With each practice standard, the Primary Defender shall include a procedure for monitoring compliance with the standard. Written practice standards are due to the Contract Administrator for review by January 1, 2005. Practice standards should address the following areas:
 - a. Attorney practice, including but not limited to;
 - i. Lawyer-client relationship, initial case actions, investigation and preparation, preliminary hearings; disposition without trial; trial; post conviction or fact finding and any other areas of attorney practice deemed appropriate by Primary Defender management or Board.
 - ii. Attorney use of paraprofessionals and expert service.
 - b. Paraprofessional practice.

- c. Supervision of attorneys and paraprofessionals.
4. The Primary Defender agrees that, within available resources, reasonable efforts will be made by the Primary Defender to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. The Primary Defender is not prohibited from rotating attorneys through various Primary Defender 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. A member of the Primary Defender staff shall visit any assigned in-custody criminal defendant and obtain basic contact and other fundamental intake information for a bond hearing within one (1) working day from notification to the Primary Defender of the assignment of the case and the in-custody status of the client. This provision applies to clients in custody at any facility within King County.
 6. The Primary Defender attorneys shall make contact with all assigned clients within five (5) working days from a case assignment or no later than the day prior to the first pretrial hearing whichever comes first.
 7. The Seattle City Attorney's Office is responsible for making a copy of discovery available to the Primary Defender. The Primary Defender shall obtain discovery as soon as possible after case assignment but no later than three (3) business days of the assignment, whether initial or subsequent, on any case. The Primary Defender shall obtain a copy of discovery at arraignment if available.
 8. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. The Primary Defender shall notify the Contract Administrator immediately of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Primary Defender shall provide the Contract Administrator with a written explanation stating the basis for the conflict in its notification.
 9. The Primary Defender shall establish and enforce policies and procedures to ensure that attorney time and other Defender resources funded by this Contract shall only be used for work which is authorized by this Contract.
 10. The Primary Defender shall ensure that a preliminary written response to any written complaints concerning services provided by the employees of the Defender or the Defender itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Primary Defender Director or the Director's designee. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Primary Defender.
 11. The Primary Defender shall establish policies and procedures for pro-bono work provided by staff of the Primary Defender. 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.

B. Minimum Attorney Qualifications:

1. Every attorney providing indigent defense services must be a licensed member of the Washington State Bar and be a member in good standing of the Bar.
2. Every Primary Defender attorney shall satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; seven (7) hours of each year's required continuing legal education credits shall be in courses relating to criminal law practice or other areas of law in which the Primary Defender provides legal services to clients under the terms of this Contract. The Primary Defender will maintain for inspection on its premises records of compliance with this provision.
3. The Primary Defender may employ interns pursuant to Admission to Practice Rule (APR) 9. No more than 5% of the cases handled by the Primary Defender may be assigned to Rule 9 interns.
4. The Primary Defender attorneys who supervise the misdemeanor attorneys must have at least three years of criminal defense experience in superior, district or municipal courts in Washington State.
5. Unless prior written approval has been granted by the Contract Administrator, no attorney may provide services under this contract if that attorney has been removed from representation in a case for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

C. Evaluations:

The Primary Defender director, or his/her designee, shall evaluate the professional performance of Primary Defender attorneys and paraprofessional staff annually. Attorney evaluations should include monitoring of time and caseload records, review of case files, quality of case preparation, as well as in-court observation. Paraprofessional evaluations shall be sufficiently comprehensive to assess the quality of the actual work performed. The Contractor shall submit to the City a summary report of the annual attorney performance evaluations. The Contractor shall make available to the City its evaluation criteria and evidence evaluations were conducted, although all evaluations are to be confidential between the Contractor's director and the Contractor attorney.

Section 6: PAYMENT

- A. In 2005, the City shall reimburse the Primary Defender for the services as specified in Section 4, Scope of Work, in the amount not to exceed \$3,503,155 except as provided in Section 6 D and 6 G. This amount assumes that in 2005 King County will adjust the Kenny Salary Schedule by 2.1%. Should the actual adjustment to the Kenny Salary Schedule be either more or less than 2.1%, the charges will be adjusted accordingly. The specific costs are shown in Attachment 2 – 2005 Charges for Public Defense Services. This attachment will be updated yearly to show the 2006 and 2007 charges.

The amount of payment to the Primary Defender for the period for January 1, 2005 through December 31, 2007, will be determined based on the 2005, 2006, and 2007 budgets passed by the Seattle City Council.

Any obligation by the City to provide any amount beyond what is available is specifically conditioned on passage by the Seattle City Council of a supplemental appropriation. In the event that no additional funds are available, the caseloads and payments as currently described shall be renegotiated to reflect total funds available.

Payment for 2006 and 2007 shall be adjusted to account for changes in projected caseload and changes in cost. Allowable cost increases include inflationary adjustments to the Kenny Salary Schedule, benefits, rent, and other required operations and maintenance costs and must be approved by the Contract Administrator. Assuming no changes in the level of service, total cost may not increase by more than the rolling average of the CPI-W. The only allowable exception is if the Kenny Salary Schedule increases by more than inflation in order to remain consistent with salaries in the King County Prosecutor's Office. Increased costs due to changes in level of service must be approved by the Contract Administrator.

- B. The Primary Defender shall provide the City with a certification of completed case assignments twenty (20) working days after the close of each calendar month. The City will pay the Primary Defender by the thirtieth (30) working day of the following month.
- C. The City will pay the Primary Defender \$101,902.44 per month to staff the arraignment, intake and Seattle Mental Health Court calendars. This cost will be updated annually as described in Section 6 A and as shown in Attachment 2.
- D. The City will reimburse the Primary Defender for actual costs incurred for clients who use the Community Voice Mail program while their cases are being resolved in Seattle Municipal Court. In 2005, this cost is estimated to be \$1.50 per month per voice mail box.
- E. The City will pay the Primary Defender \$306.60 per completed case. Payment for the final month will not be made until all closed case reports for the year have been submitted to the Contract Administrator. The cost per case will be updated annually as described in Section 6 A and as shown in Attachment 2.
- F. In 2005, the City will make a one-time up front payment to the Primary Defender of \$389,239. The amount is based on the three year deferred revenue calculations as shown in Attachment 2 – 2005 Charges for Services. Should the contract terminate prior to December 31, 2007, the Primary Defender will refund a pro-rated portion of this payment back to the City.
- G. Completed cases shall be closed and submitted to the Administrator for payment within 60 days of the date of final action. A criminal case is completed when all charges are dismissed by the City Attorney's Office, the case is dismissed by the Court, the client is acquitted on all charges, or the client is sentenced after a conviction. If a client absconds for more than 90 days, the case may be closed and submitted to the Administrator for payment for the following terms: if the attorney performed less than 6 hours of work on the case, no payment will be made; if the attorney performed 6 – 12 hours of work on the case, partial payment will be made; if the attorney performed more than 12 hours of work on the case, full payment will be made.

- a. A case which was closed and submitted to the Contract Administrator for full payment because the court had issued a bench warrant for the client and had struck all further court dates shall not be considered a new case when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
 - b. A case which was closed and submitted to the Contract Administrator for partial payment because the court had issued a bench warrant for the client and had struck all further court dates may receive the remaining balance of payment (upon case completion) when that warrant is quashed or served and new hearing dates are set within 12 months of the case closure.
 - c. If the warrant is quashed or served and new hearing dates are set more than 12 months after the case was closed, it will be treated as a new case and may be submitted for payment upon case completion.
- H. The Primary Defender will receive no fee for a misdemeanor case when the Court dismisses the case upon the motion of the prosecuting attorney before any legal services have been provided.
- I. No payment shall be made for work done on cases which are subsequently identified as conflicts with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the Court; or for other extraordinary circumstances approved by the City including, but not limited to, information or evidence which defense counsel could not have reasonably known or discovered at the time of the initial conflicts check.
- J. In the event of failure to comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in Section 13 of this Contract.

Section 7: REPORTING REQUIREMENTS

Case Management System: The Primary Defender will implement a new case management system that will allow them to file the monthly report described below electronically. This new case management system will be in place by January 1, 2006. The Primary Defender does not need to provide this report electronically until January 1, 2006.

Reporting: As of January 1, 2006, the Primary Defender will provide the City with monthly electronic reports in spreadsheet format on all closed cases. Cases must be closed within 60 days after the last hearing on the case. These reports must contain:

- Defendant's name
- Cause number(s)
- Criminal charges filed
- If it was a probation review hearing
- Disposition of each charge
- Number of court hearings

- Number of failures to appear and warrants issued
- Defendant's jail custody status prior to sentencing
- Bench Trial, Jury Trial, Plea or Dismissal
- If dismissal, reason for the dismissal
- Whether an appeal was filed
- Attorney(s) name(s)
- Date case assigned
- Date case closed
- Hours spent by attorney
- Hours spent by each type of support staff, investigators, social workers, or paralegals

As of January 1, 2005, the Primary Defender must provide the Contract Administrator the reports described below.

Report Title	Due Date
Open and Closed Case Reports including attorney assignment	Monthly (by 20 th day of the following month)
Expenditure Reports	Monthly
Additional Credit Forms (used if the Court appoints a public defender to a case)	Monthly
Certification of Case Credits (certs)	Agency response 10 days after receipt of Certs from OPD
Quarterly Case Credit and Case Allocation Report	Quarterly (April, July, October, January)
Salary and Staff Position Reports, including calendar coverage	Quarterly
Year-end Report of Reserve Accounts and Operating Accounts	January
Year-end Attorney Case Assignment Report	January
Year-End Closed Case Report	January
Annual Financial Statements, IRS Form 990, Audit Report including management letters	August
Additional summaries, reports or documents as requested by the Contract Administrator with reasonable notice	Varies

The City of Seattle, or any of its duly authorized representatives, shall have access to any such books, records and documents for inspection, audit and copying. The report is due on or before the twentieth (20th) day of the following month for services of the prior month. Payment may be withheld if reports are not submitted on time.

The Primary Defender will immediately notify the Contract Administrator in writing when it becomes aware that a complaint lodged with the Bar Association has resulted in reprimand, suspension, or disbarment of an attorney providing services under this Contract.

Section 8: OPERATING BUDGET

The Primary Defender shall apply funds received from the City under this Contract in accordance with the approved annual budget as shown in Attachment 2.

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

The funds provided by the City to the Primary Defender 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 City 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 the Seattle Municipal Court cases shall be reported and traceable in a method consistent with accounting standards noted below. If the Primary Defender receives any revenue from any other source, the costs paid, including prorated overhead, for work done with that revenue shall be reported and traceable according to the accounting standards noted below.

Section 9: INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Primary Defender 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.

Section 10: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All official notices under this Contract shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to City:

Catherine Cornwall, Senior Policy Analyst
Office of Policy and Management, P.O. Box 94745
Seattle, WA 98124-4745

If to the Primary Defender:

Dave Chapman, Director
Associated Counsel for the Accused
110 Prefontaine Place S. Suite 200
Seattle, WA 98104

Section 11: OTHER EMPLOYMENT

The Primary Defender agrees that its legal staff shall have as its primary employment representation of indigent clients. The Primary Defender further agrees that it will abide by all provisions of this Contract regarding Personal Performance of this Contract.

Section 12: CORRECTIVE ACTION

If the City believes that a breach of this Contract has occurred, and if the City believes said breach to warrant corrective action, the following sequential procedure shall apply:

- A. The City will notify the Primary Defender and the Board President in writing of the nature of the breach;
- B. The Primary Defender shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) working days from the date of the Primary Defender's response;
- C. The City will notify the Primary Defender in writing of the City's determination as to the sufficiency of the Primary Defender's corrective action plan. The determination of the sufficiency of the Primary Defender's corrective action plan will be at the sole discretion of the City; however, the City's determination of the sufficiency of the Primary Defender's corrective action plan shall take into consideration the reasonableness of the proposed corrective action, in light of the alleged breach. In all cases where corrective action is determined by the City to be appropriate, the City shall work with the Primary Defender to implement the plan;
- D. In the event that the Primary Defender does not respond within the appropriate time with the corrective action plan, or the Primary Defender's corrective action plan is determined by the City to be insufficient, the City may commence termination of this Contract in whole or in part pursuant to Section 13 (A) Termination and Suspension;
- E. In addition, the City may withhold any payment owed the Primary Defender or prohibit the Primary Defender from incurring additional obligations of funds until the City is satisfied the corrective action has been taken or completed; and
- F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 13 Termination and Suspension.

Section 13: TERMINATION AND SUSPENSION

- A. The City may terminate this Contract in whole or in part upon ten (10) days' written notice to the Primary Defender in the event:

1. The Primary Defender substantially breaches any duty, obligation, or service required pursuant to this Contract.
2. The Primary Defender engages in misappropriation of funds or fraudulent disbursement of funds.
3. The duties, obligations, or services herein become impossible, illegal, or not feasible.

Before the City terminates this Contract pursuant to subsection 13. A. - Termination and Suspension, the City shall provide the Primary Defender written notice of termination, which notice shall include the reasons for termination and the effective date of termination. The Primary Defender shall have the opportunity to submit a written response to the City within (10) working days from the date of the City's notice. If the Primary Defender elects to submit a written response, the Contract Administrator will review the response and make a determination within ten (10) days after receipt of the Primary Defender's response. In the event the Primary Defender does not concur with the determination, the Primary Defender may request a review of the decision by the Mayor. In the event the Mayor reaffirms termination, the Contract shall terminate in ten (10) days from the date of the final decision of the Mayor. If the Mayor does not make a final determination within twenty (20) days provided herein, the Contract shall remain in full force and effect until such decision is made and communicated to the Primary Defender. Once a final determination is made by the Mayor, and if such determination sustains the decision of termination, said decision shall become effective ten (10) days from the date the final determination is made and communicated to the Primary Defender.

In the event this Contract is terminated in whole or in part pursuant to Subsection A of this Section, the Primary Defender shall be liable for damages, including the reasonable costs of the procurement of similar services from another source unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Primary Defender's control, fault or negligence.

- B. In the event that for any reason, expected or actual funding from any source, not to include funding appropriated by the City from City funds, shall be reduced, withdrawn, suspended, or otherwise not available, the City may suspend or terminate any portion of this Contract which relies on the reduced, withdrawn, suspended, or otherwise unavailable funds.

The City will notify the Primary Defender in writing that the specific funding is no longer available for all or part of this Contract, and upon receipt of such notice, the Primary Defender will be released from performing the services required under the terms of this Contract which relied upon such funding. The City will be released from contracted liability with the Primary Defender for cases not yet assigned pursuant to portions of this Contract for which funds have not been received by the City.

In the event that any such termination or suspension is required, the termination or suspension of services required to be performed under the terms of this Contract shall be

limited to such services that directly rely on such funding; the balance of this Contract shall remain in full force and effect.

- C. In the event of the termination or suspension of this Contract, the Primary Defender shall remit any unexpended balance of funds paid for cases assigned and not completed, less the amount the City and the Primary Defender agree shall be necessary to deliver services in those cases. The Contract Administrator may request the Primary Defender to attempt to withdraw from any case assigned and not completed. Provided that, should a court require, after the Primary Defender has attempted to withdraw, the appearance of counsel from the Primary Defender for any client previously represented by the Primary Defender where such representation is no longer the obligation of the Primary Defender pursuant to the terms of this Contract, the City will honor payment to the Primary Defender upon judicial verification that continued representation is required. The amount to be paid to the Primary Defender shall be on the same basis as assigned counsel payments.
- D. The Primary Defender reserves the right to terminate this Contract with cause with thirty (30) days written notice should the City substantially breach any duty, obligation or service pursuant to this Contract. In the event that the Primary Defender terminates this Contract for reasons other than cause resulting from substantial breach of this Contract by the City, the Primary Defender shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the Contract Administrator that (i) no default actually occurred, or (ii) the failure to perform was without the Primary Defender's control, fault or negligence.
- E. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, the Primary Defender shall return to the City those funds, unexpended or misappropriated, which, at the time of termination, have been paid to the Primary Defender by the City.
- F. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.
- G. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract. In the event that legal remedies are pursued for wrongful termination or suspension or for any other reason, the nonprevailing party shall be required to reimburse the prevailing party for all attorney's fees.
- H. In the event of termination, suspension, or non-renewal of this Contract, all cases not required to be completed by the Primary Defender shall be returned to the Contract Administrator for reassignment.

Section 14: DISPUTES (OTHER THAN SUSPENSION OR TERMINATION)

- A. The Primary Defender shall address questions or claims regarding meaning and intent of the Contract or arising from this Contract in writing to the City Contract Administrator, within ten (10) calendar days of the date in which the Primary Defender knows or should

know of the question or claim. The City will ordinarily respond to the Primary Defender in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the thirtieth day following receipt by the City.

- B. In the event the Primary Defender disagrees with any determination or decision of the City, the Primary Defender may, within ten (10) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Contract Administrator. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The Contract Administrator will review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the Contract Administrator shall be a condition precedent to litigation hereunder.
- C. Pending final decision of a dispute hereunder, the Primary Defender shall proceed diligently with the performance of the contract and in accordance with the direction of the City. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the City.

Section 15: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

- A. The Primary Defender shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Primary Defender shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Primary Defender shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.
- B. The Primary Defender shall furnish to the Contract Administrator, upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Primary Defender in implementing the requirements of this section, and will permit access to the Primary Defender's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.
- C. If, upon investigation, the Contract Administrator finds probable cause to believe that the Primary Defender has failed to comply with any of the requirements of this section, the Primary Defender shall be so notified in writing. The Contract Administrator shall give the

Primary Defender an opportunity to be heard, after ten calendar days' notice. If, after the Primary Defender's opportunity to be heard, the Contract Administrator still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Primary Defender, pending compliance by the Primary Defender with the requirements of this section.

- D. The City encourages the use of women and minority employees and apprentices on all City contracts and encourages outreach efforts in employment opportunities. Outreach efforts may include use of targeted solicitation lists, advertisements in publications directed to underrepresented communities, providing student internships or apprentice opportunities, noting the Primary Defender's Equal Employment Opportunity (EEO) policy in solicitations, emphasizing EEO and outreach policies within the company, and using the services of available minority community and public organizations to perform outreach.
- E. Upon request by the Contract Administrator, the Primary Defender shall submit EEO Reports in the form specified by the City, detailing actual employment data for the Primary Defender and for any and all subcontractor(s) utilized for the Work.
- F. The Primary Defender, by executing this Contract, is affirming that the Primary Defender complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.44 as incorporated in this Contract. Any violation of the mandatory requirements of the provisions of this section shall be a material breach of Contract for which the Primary Defender may be subject to damages and sanctions provided for by the Contract and by applicable law.
- G. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Contract.

Section 16: EQUAL BENEFITS

- A. The Primary Defender shall comply with the requirements of SMC Ch. 20.45 that obligate the Primary Defender to make the same or equivalent benefits ("equal benefits") available to its employees with domestic partners as the Primary Defender makes available to its employees with spouses. At the City's request, the Primary Defender shall provide complete information and verification of the Primary Defender's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. The equal benefit provisions of SMC Ch. 20.45 do not apply to sub Primary Defenders used under this Contract.
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A shall be a material breach of Contract for which the City may:
 - 1. Require the Primary Defender to pay actual damages for each day that the Defender is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - 2. Terminate the Contract; or
 - 3. Disqualify the Primary Defender from bidding on or being awarded a City contract for a period of up to five (5) years; or

4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder.

Section 17: WOMEN AND MINORITY BUSINESS ENTERPRISES

- A. General: The City encourages the use of Women and Minority Business Enterprises (“WMBEs”) as subContractors and women and minority employees in all City contracts, and encourages outreach efforts to include women and minorities in employment, contracting, and subcontracting opportunities.

Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

The Primary Defender shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- B. Non-Discrimination: The Primary Defender shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- C. Record-Keeping: The Primary Defender shall maintain, for at least 12 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Primary Defender solicitations to subContractors and suppliers, all subContractor and supplier proposals received, and all subContractors and suppliers actually utilized under this Contract. The City shall have the right to inspect and copy such records.
- D. Sanctions for Violation: Any violation of the mandatory requirements of the provisions of this section (sub-sections B and C) shall be a material breach of contract for which the Primary Defender may be subject to damages and sanctions provided for by the Contract and by applicable law.

Section 18: LABOR HARMONY

The Primary Defender is required to sign labor peace/labor harmony agreements between the firm and any labor organization that has informed the City or the firm that it seeks to represent employees at the firm. The labor peace/labor harmony agreements will be for the purpose of establishing ground rules for the conduct of the firm and the union during any union organizing effort and collective bargaining process that will guarantee uninterrupted services and to avoid

picketing and/or other economic action at the firm that might adversely affect the interests of the City.

Section 19: OTHER LEGAL REQUIREMENTS

- A. General Requirement: The Primary Defender, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Primary Defender shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: The Primary Defender, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: The Primary Defender shall use, whenever practicable, recycled content paper on all documents submitted to the City, in accordance with SMC 3.38.904.
- D. Americans with Disabilities Act: The Primary Defender shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- E. Fair Contracting Practices Ordinance: The Primary Defender shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.

Section 20: INDEMNIFICATION

The Primary Defender does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Primary Defender's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Primary Defender, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Primary Defender waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Primary Defender acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

Section 21: INSURANCE

Insurance certification required. The Primary Defender must carry the following coverages and limits of liability:

- General Liability with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.
- Professional Liability (Errors, and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.
- Workers' Compensation per statutory requirements of the Washington industrial insurance RCW Title 51.

Section 22: ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. The Primary Defender shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract.
- B. The Primary Defender further covenants and agrees that it shall maintain all records which sufficiently and properly reflect all costs and indirect costs of any nature for any subcontracts or personal service contracts. Said records shall include, but not be limited to, documentation of any funds expended by the Primary Defender for said personal service contracts or subcontracts, documentation of the nature of the service which is rendered, and records which demonstrate the amount of time spent by each subcontractor or personal service contractor rendering service pursuant to the subcontract or personal service contract.
- C. These records shall be maintained for a period of (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14.
- D. Willful failure to maintain or produce records or other required documentation during the time for maintenance of records may result in specific, related costs being disallowed. In the event the City has reason to believe that such a failure exists, notice shall be given to the Primary Defender and the Primary Defender shall respond in writing. The time for notification and response shall be the same as set forth in Section 13.A.

If the Primary Defender's response is deemed unacceptable, the question of whether or not specific costs are disallowed shall be determined by a City appointed, qualified independent Certified Public Accountant, in a manner consistent with generally accepted auditing

standards and accounting principles. Disallowed costs may be recovered from the Primary Defender by the City.

Section 23: AUDITS, RECORDS, AND ANNUAL FINANCIAL STATEMENTS

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

The Primary Defender must ensure that the City has full access to materials necessary to verify compliance with all terms of this contract. At any time, upon reasonable notice during business hours and as often as the City may deem necessary for a period of six (6) years, the Primary Defender shall provide to the City right of access to its facilities, including those of any subcontractor, to auditing records, data, invoices, materials, payrolls and other data relating to all matters covered by this contract. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Primary Defender must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege.

The Primary Defender shall maintain such data and records in an accessible location and condition for a period of not less than six (6) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Primary Defender agrees to cooperate with the City or its agent in the evaluation of the Primary Defender'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 City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with RCW Chapter 42.17.

Notwithstanding any of the above provisions of this paragraph, all Constitutional, statutory, and common law rights and privileges of any indigent client are not waived. Provided further that nothing in this section shall require the disclosure of the names of any client represented pursuant to RCW 13.34 et seq, or RCW 71.02 et seq, or RCW 71.05 et seq.

- B. The Primary Defender shall have its annual financial statement audited by an independent Certified Public Accountant and shall provide the City with a copy of such audit no later than the last working day in August of the following year. Audits shall be prepared in accordance with Generally Accepted Auditing Standards and shall include balance sheet, income statement, and statement of changes in cash flow. The independent Certified Public Accountant shall issue an internal control or management letter listing any reportable conditions or internal control weaknesses or stating that no reportable conditions or control weaknesses were noted. A copy of this letter shall be provided to the City Contract Administrator along with the annual audit report. The Primary Defender shall provide to the City its response and corrective action plan for all findings and reportable conditions contained in its audit. The Primary Defender shall provide the City with a copy of its IRS Form 990 (Return of Organization Exempt from Tax) when it is filed with the IRS.

All audited annual financial statements shall be based on the accrual method of accounting for revenue and expenditures. The Primary Defender's annual financial statements shall be prepared recognizing all reserve accounts, prepayment accounts and operating accounts at the end of the Contract Term. Any independent auditor hired by the Primary Defender to fulfill the Contract audit requirements must agree to provide access to audit working papers if requested by the City.

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

Section 24: CONTRACTUAL RELATIONSHIP

The relationship of the Primary Defender to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize the Primary Defender to act as the agent or legal representative of the City for any purpose whatsoever and neither the Primary Defender nor its employees shall be deemed employees of the City. The Primary Defender is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. It is expressly understood and agreed that the Primary Defender and the Primary Defender's employees shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The Primary Defender shall complete this Contract according to the Primary Defender's own means and methods of work, which shall be in the exclusive charge and control of the Primary Defender and which shall not be subject to control or supervision by the City, except such requirements for performance as are specified in this City.

The Primary Defender agrees that it has secured or will secure at the Primary Defender's own expense, all persons, employees, and equipment required to perform the services contemplated/required under this Contract. The Primary Defender further agrees that any equipment or materials acquired with funds provided by this Contract shall be utilized for the purpose of performing the services contemplated/required by this Contract.

Section 25: ASSIGNMENT AND SUBCONTRACTING

The Primary Defender shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Said consent must be sought in writing by the Primary Defender not less than fifteen (15) days prior to the date of any proposed assignment. Any subcontract made by the Primary Defender shall incorporate by reference all the terms of this Contract. The Primary Defender shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Primary Defender from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

Section 26: INVOLVEMENT OF FORMER CITY EMPLOYEES

- A. The Primary Defender shall promptly notify the City in writing of any person who is expected to perform any of the Work funded by this contract and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.

- B. The Primary Defender shall ensure that no Work or matter related to the Work funded by this contract is performed by any person (employee, subcontractor, or otherwise) who:
 - (1) was a City officer or employee within the past twelve (12) months; and
 - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

Section 27: NO CONFLICT OF INTEREST

The Primary Defender confirms that the Primary Defender does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Primary Defender selection, negotiation, drafting, signing, administration, or evaluating the Primary Defender's performance. As used in this section, the term "Primary Defender" shall include any employee of the Primary Defender who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

Section 28: ERRORS & OMISSIONS; CORRECTION

The Primary Defender shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Primary Defender under this Contract. The Primary Defender, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Primary Defender services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

Section 29: INTELLECTUAL PROPERTY RIGHTS

The Primary Defender hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Primary Defender does not convey to the City, nor does the City obtain, any right to any document or material utilized by Primary Defender that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Primary Defender has clearly identified in writing such material as preexisting prior to commencement of the Work.

To the extent that preexisting materials are incorporated into the Work, the Primary Defender grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

All materials and documents prepared by the Primary Defender in connection with the Work are instruments of service and the Primary Defender shall retain the copyright (including the right of reuse) whether or not the Work is completed. The Primary Defender grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Primary Defender for the City under this Contract. If requested by the City, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Primary Defender does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

Section 30: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 31: EXTRA WORK

The City may desire to have the Primary Defender perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Contract. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment.

Section 32: BOARD OF DIRECTORS

The Primary Defender shall provide the City with the names, addresses, and professions of members of the Board of Directors and a copy of the by-laws. The Primary Defender shall notify in writing the City within thirty days notification of changes in membership, and by-laws.

Section 33: MISCELLANEOUS PROVISIONS

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Primary Defender after the time the same shall have become due nor payment to the Primary Defender for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, Primary Defender, employee or associate of the Primary Defender prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.

- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Political Activity Prohibited: None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used in the performance of this Contract for any partisan political activity or to further the election or defeat of any candidate for public office.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below.

PRIMARY DEFENDER

THE CITY OF SEATTLE

By _____
 Signature Date
 David K. Chapman
 Managing Director,
 Associated Counsel for the Accused

By _____
 Signature Date
 Ken Nakatsu
 Director,
 Department of Executive Administration

City of Seattle Business License Number: 29393001
Washington State Unified Business Identifier Number (UBI): 600 144 320
Federal Tax ID Number: 91-1431100

ATTACHMENT 1 – KING COUNTY KENNY SALARY PLAN

2005 Kenny Salary Table							
(2005 COLA RATE - 2.1%)							
RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
Public Defense Attorney 1	\$45,431	\$46,976					
Public Defense Attorney 2	\$50,065	\$53,025					
Public Defense Attorney 3	\$57,664	\$61,509					
Public Defense Attorney 4	\$65,987	\$67,593	\$69,200	\$71,487	\$72,974	\$74,797	
Senior Public Defense Attorney 1	\$74,459	\$76,757	\$78,784	\$80,541	\$82,703	\$85,947	\$86,757
Senior Public Defense Attorney 2	\$80,135	\$82,568	\$84,731	\$86,757	\$88,920	\$90,947	\$93,244
Senior Public Defense Attorney 3	\$92,839	\$95,541	\$97,973	\$100,136	\$102,974	\$105,135	\$108,109

ATTACHMENT 2 – 2005 CHARGES FOR SERVICES