



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**March 22, 2004**

**Ordinance 14854**

**Proposed No.** 2004-0095.1

**Sponsors** Lambert

1                   AN ORDINANCE authorizing and approving the 2003  
2                   office of the public defender contracts for legal services.  
3  
4

5                   **STATEMENT OF FACTS:**

- 6                   1. K.C.C. 2.60.040 requires King County council approval of all legal  
7                   services contracts entered into by the administrator of the office of the  
8                   public defender.  
9                   2. The county executive through the department of community and human  
10                  services has completed contract negotiations with four defender  
11                  associations for 2003 legal defense services.

12                  **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

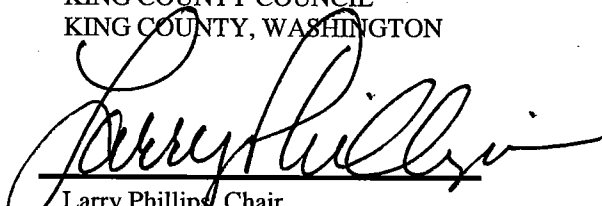
13                    SECTION 1. The King County council authorizes and approves the attached  
14 2003 defender association contracts for legal services.

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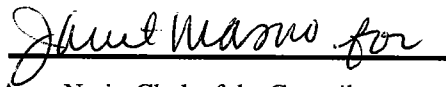
Ordinance 14854 was introduced on 2/23/2004 and passed by the Metropolitan King County Council on 3/22/2004, by the following vote:

Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. McKenna, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine  
No: 0  
Excused: 0

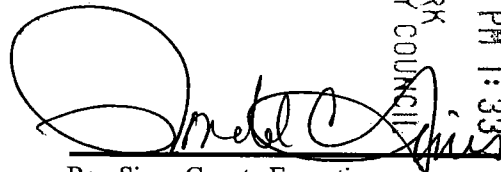
KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Phillips, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

APPROVED this 29 day of March, 2004.

  
Ron Sims, County Executive

RECEIVED  
2004 MAR 30 PM 1:33  
CLERK  
KING COUNTY COUNCIL

- Attachments**
- A. King County Agency Services Contract - 2003 - Associated Counsel for the Accused, B. King County Agency Services Contract - 2003 - Northwest Defenders Association, C. King County Agency Services Contract - 2003 - Society of Counsel Representing Accused Persons, D. King County Agency Services Contract - 2003 - The Defender Association

14854

King County Contract No.  
Federal Taxpayer ID No.

Attachment A  
2004-095

D32895D  
91-0910677

Department/Division Community and Human Services/Office of the Public Defender  
 Agency Associated Counsel for the Accused  
 Project Title Public Defense Legal Services  
 Contract Amount \$7,573,098 Fund Code 00000010  
 Contract Period From: January 1, 2003 To December 31, 2003

**KING COUNTY AGENCY SERVICES CONTRACT – 2003**

THIS CONTRACT is entered into by KING COUNTY (the "County"), and Associated Counsel for the Accused, whose address is 110 Prefontaine Place South, Suite 200, 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 representation in King County, by the Agency, 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. 14517; 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).

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:

- Certificate of Insurance/Endorsements Attached hereto as Exhibit I
- Personnel Inventory Report Attached hereto as Exhibit II
- Affidavit of Compliance Attached hereto as Exhibit III
- 504/ADA Assurance of Compliance Attached hereto as Exhibit IV
- Public Defense Legal Services Attached hereto as Exhibit V

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

**II. DURATION OF CONTRACT**

This Contract shall commence on the 1<sup>st</sup> day of January 2003, and shall terminate on the 31<sup>st</sup> day of December 2003 ("Contract Term"), unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

**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 its final billing package and all outstanding reports within twenty (20) days of the date this Contract terminates. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency within the timeframe established in III.A. above.

**IV. OPERATING BUDGET**

- A. The funds provided by the County to the Agency pursuant to the terms of this Contract are solely for expenses which are directly and legitimately related to the performance of the provisions of this Contract. In the event the County, in its sole discretion, 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 and Sexually Violent Predator cases 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 which complies 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 (6) 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 (10) 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 reserve accounts and operating accounts at the end of the Contract Term.
- D. Any and all reserve or reserve equivalent accounts must be cash equivalent accounts. Cash equivalent accounts are defined as short term, highly liquid investments that are both readily convertible to known amounts of cash, and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.
- 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 will 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 will 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 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 (6) 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. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

**IX. CORRECTIVE ACTION**

If the County determines 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 corrective action, the following sequential procedure will apply:

- A. The County will notify the Agency in writing of the nature of the breach;

The Agency 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. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Agency's response, 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 will notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The determination of sufficiency of the Agency's corrective action plan shall be at the sole discretion of the County. The county's determination of sufficiency of the Agency's corrective action plan 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.B.;

- 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. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Subsections A, B, C, D, and E, nor shall the exercise of any right within this section 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 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 fifteen (15) days prior to the date of any proposed assignment. This provision shall not apply to previously budgeted and approved short-term personal service subcontracts with individuals to perform work which is under the direct supervision and control of the Agency. Any individuals entering into such short-term personal service subcontracts shall meet any experience requirements imposed by any terms of this Contract and the

Exhibits hereto. Short-term subcontracts shall include any contract for a time period less than twelve (12) months in the aggregate over a period of three (3) years. The County shall be notified and must provide prior approval if any short-term subcontracts are renewed or extended at any time throughout the Contract Term.

- B. "Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.
- C. "Personal Service Subcontract" shall mean a contract for the provision of professional services, which includes but is not limited to counseling services, consulting services, bookkeeping services, accounting services, social work services, investigator services and legal services.

## **XI. TERMINATION**

- A. The County may terminate Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the Agency forty-five (45) days advance written notice of the termination. The Agency may terminate this Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the County ninety (90) days advance written notice of the termination.
- B. The County may terminate this Contract, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Agency materially breaches any 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, employees, subcontractors, agents or representatives 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.

If the Contract is terminated by the County pursuant to this Subsection XI.B.1., 2 or 3, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.

Agency refusal to accept an individual case assignment from OPD shall not alone be considered a material breach of this Contract, however, nothing in this provision shall prohibit the County from considering such refusal as a failure to comply with Contract terms and requiring Agency corrective action.

In the event the County terminates the Contract due to misappropriation of funds, non-performance of services, mismanagement, material misrepresentation, or any act or omission which jeopardizes the Agency's tax-exempt status under Code section 501(c)(3), then subject to the provisions of Section XI.D., the Agency shall return to the County any funds misappropriated or unexpended which, as of the date of termination and upon account reconciliation, are funds that have been paid to the Agency by the County, whether under this or a prior 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 (7) days advance written notice, in the event the County commits any material breach of this Contract.

- C. In the event of the termination of this Contract the Agency shall remit any unexpended balance of funds paid, including 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.
- D. 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 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 will 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.

## **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 will make a determination decision and respond in writing to the Agency within thirty (30) 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 Public Defender who will forward the letter with comments to the Department of Community and Human Services Director. The Department Director will make a final determination and respond in writing to the Agency within thirty (30) days of receipt.

Nothing herein shall impair the operation 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 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 will 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 will 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 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 may 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 (3) 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 will 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 will 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 forty-five (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. 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.

C. 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 and Exhibits hereto.

D. 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/).

E. 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.

F. 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 occupation 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.

G. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six (6) 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 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.

H. Sanctions for Violations

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

## I. 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 (2) 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 XV.

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 (2) 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 programs and services offered by 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 it 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 Subsection XIX. or does not disclose other interest required to be disclosed pursuant to KCC Chapter 3.04, the County will 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 have a Board of Directors, that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency except as provided in D. below. The Agency shall provide the County with the names, addresses, and professions of members of the Board of Directors and a copy of the Agency’s bylaws on an annual basis. The Agency shall provide the County with notification of changes in membership of the Board of Directors and/or bylaws within thirty (30) days of any such change.

- A. The Agency shall establish an orientation program for all new members of its Board of Directors that includes training relating to the fiduciary duties and responsibilities of nonprofit board members.
- B. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501c(3) status, that addresses issues regarding gifts, financial gain, and improper use of position.
- C. This Contract must be reviewed and approved for Agency signature by the Agency’s Board of Directors. No less frequently than annually, the members of the Board of Directors of the Agency shall meet with a representative of the County to discuss Contract issues as may be mutually agreed upon or as required by the County.
- D. 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 acquisition or rental by the Agency of 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,
    - c. a corporation in which an employee or Board member of the Agency, or
    - d. a relative of such a person has ownership.
- E. 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, subject to the authority and control of the Board, shall be responsible for receiving or depositing 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**

None of the 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, in whole or in part, with Contract funds at a cost of \$1,000 per item or more, when the purchase of such equipment is identified as reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County, and/or federal, and/or state government.
- B. The Agency shall be responsible for all such property, including the proper care and maintenance of the equipment.
- C. The Agency shall ensure that all such equipment will be returned to the appropriate government agency, whether federal, state or county, upon termination of this Contract unless otherwise agreed upon by the parties.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property 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 (1) 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 Public Defender, and the director of the County department specified on page one (1) of this Contract.

Any due date within which a party must take some action shall be computed from the date that the notice is received by said party according to the terms of this Contract or at such date as required in written notice.

## **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 modified for use in the performance of this Contract.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use 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. Each amendment to this Contract must be approved by the Board of Directors of the Agency.

## **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 will be covered by Court rules.

If the cost of recycled paper is more than 15% 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 it shall protect 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 Office of Public Defense shall sign a declaration acknowledging that all communication with prospective clients, clients or employees of the Agency concerning a specific case or pattern of cases shall be covered by attorney-client privilege.

## **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 use or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to use appropriate safeguards to prevent use or disclosure of protected health information other than as provided for in this Contract.
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 protect 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 provided for by this Contract of which it becomes aware.
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. 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. Waive 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.

**XXXII. 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

ASSOCIATED COUNSEL FOR THE ACCUSED

FOR

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Approved by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY  
SPECIAL DEPUTY PROSECUTOR

Date: July 27, 2003

**ACORD CERTIFICATE OF LIABILITY INSURANCE**

OP ID LT  
ASO4000

DATE (MM/DD/YY)  
12/02/03

**PRODUCER**  
Walmsley-Degginger & Co.  
W-D Insurance  
Post Office Box 1100  
Mercer Island WA 98040-1100  
Phone: 206-232-6000 Fax: 206-232-6015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE**

**INSURED**  
  
Associated Counsel for  
110 Prefontaine S, #200  
Seattle WA 98104

INSURER A: Valley Forge Insurance Co.  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b>	143115531	12/31/01	12/31/04	EACH OCCURRENCE \$ 500,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> WA Stop Gap				PERSONAL & ADV INJURY \$ EXCLUDED
	GENL AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ 1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$ 1,000,000
	<b>AUTOMOBILE LIABILITY</b>				<p>RECEIVED DEC 03 2003 Office of Public Defense</p>
<input type="checkbox"/> ANY AUTO	BODILY INJURY (Per person) \$				
<input type="checkbox"/> ALL OWNED AUTOS	BODILY INJURY (Per accident) \$				
<input type="checkbox"/> SCHEDULED AUTOS	PROPERTY DAMAGE (Per accident) \$				
<input type="checkbox"/> HIRED AUTOS					
<input type="checkbox"/> NON-OWNED AUTOS					
<b>GARAGE LIABILITY</b>					AUTO ONLY - EA ACCIDENT \$
<input type="checkbox"/> ANY AUTO					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
A	<b>EXCESS LIABILITY</b>	143115531	12/31/01	12/31/04	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 1,000,000
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
					\$
<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b>					WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
<b>OTHER</b>					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
King County Office of the Public Defender, its officers, officials, employees and agents are named Additional Insured per form CG2026.

<b>CERTIFICATE HOLDER</b>	<input checked="" type="checkbox"/> <b>ADDITIONAL INSURED; INSURER LETTER:</b>	<b>CANCELLATION</b>
King County Office of the Public Defender Anne C. Harper, The Pub. Def. 123 Third Ave. S. Seattle WA 98104		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. <b>WALMSLEY DEGGINGER CO. INC.</b> AUTHORIZED REPRESENTATIVE Kenneth McIntosh <i>Kenneth McIntosh</i>

**14854**

Named Insured: Associated Counsel for the Accused

Policy Number: 1043115531

**COMMERCIAL GENERAL LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

**SCHEDULE**

Name of Person or Organization:

**King County Office of the Public Defender, its officials, officers, employees and agents.**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of ~~your operations or premises owned by or rented to you.~~

## EXHIBIT V

### PUBLIC DEFENSE LEGAL SERVICES

#### I. WORK STATEMENT

The Agency shall provide the services of a specified number of attorneys and staff members in accordance with all of the laws and WACs of the State of Washington, King County Code (KCC), Washington State Rules for Professional Conduct (RPC), and WA State Bar Association Standards for Public Defense that are applicable to their business and the substance of the legal services that are the subject of this Contract.

#### II. PROGRAM DESCRIPTION

##### A. GOAL

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

##### B. ELIGIBLE POPULATION

The population served shall be indigent persons entitled to appointed counsel in King County courts and Seattle Municipal Court, as assigned by the Office of The Public Defender (OPD) or as appointed from the bench.

##### C. DEFINITIONS

1. Indigent: An indigent defendant, parent, or juvenile is a person determined indigent by the County or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
2. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent in a single citation, complaint or information, or in the case of misdemeanors a series of citations set for one court hearing, that will ultimately lead to one disposition.

If a related series of charges or citations 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.

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.

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

# 14854

request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel.

3. 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, deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.

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 felony or 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.

4. 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. The type of work described by a case credit is shown in Attachment I of this Exhibit.

### 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 II of this Exhibit, for each quarter of the year. The quarterly case credit amounts in Attachment II are provided for planning purposes. OPD shall make reasonable efforts to distribute cases beyond variance, consistent with the case credit allocation in Attachment II of this Exhibit.
- b. Quarterly variance shall be no more than 10%, and annually no more than 5%, for all case categories except Felony and other complex case litigation cases, which shall have a quarterly variance of no more than 7.5% and an annual variance of no more than 2.5%.
- c. The Agency shall accept case assignments and case credits above the projected variance levels on a monthly basis. The County shall pay the Agency for work in excess of the variance levels according to Section IV of this Exhibit.
- d. In the event that OPD assigns the Agency a case in the King County Courthouse, that is transferred by the court to the Regional Justice Center (RJC) and the court orders a transfer of the case from the

Agency to other counsel, the County will compensate the Agency for additional costs attributable to the transfer. The compensation shall be in case credits, as shown in Attachment I.

- e. In the event that once a case assignment has been made by OPD, and the Agency has begun delivery of legal services, the defendant/respondent absconds for a period of ninety (90) days or more (180 days for COC cases), upon re-apprehension, the allocation of a new case credit shall be determined by OPD.
  - 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 or credits shall be determined and assigned by OPD.
2. Funds for payment for expert services are not included in this Exhibit. Requests for appointment for expert service shall be made to OPD for pre-approval and, as approved, shall be reimbursed by OPD upon receipt of invoice from Agency.
3. Case Categories
- a. Felony: 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 (1) year, and as listed in Attachment I.
  - b. 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, restitution, and material witness hearings.
  - c. Complex Litigation: All capital homicide cases, all aggravated homicide cases, and those felony fraud cases filed by the Fraud Unit of the King County Prosecuting Attorney's Office where the estimated attorney hours necessary exceeds one hundred seventy (170) hours. Aggravated homicide cases are considered capital 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) A complex litigation case shall occupy the full time of either one (1) or two (2) attorneys during the first 60 days past assignment or reassignment.

- 3) Each complex litigation case shall have one (1) FTE qualified at Senior Public Defense I level or above, or one half-time (.5) FTE qualified at Senior I and one half-time (.5) FTE Defender IV and one half-time (.5) FTE investigator assigned. Attorney assignment in capital cases will comply with SPR 2 (Superior Court Special Proceedings Rules).
  - 4) The Agency shall accept all complex litigation cases as determined by OPD after consultation with the Agency.
  - 5) Once a complex litigation case has proceeded for two (2) months after assignment, the Agency shall submit a litigation plan to OPD for approval.
  - 6) Funding on complex litigation cases shall be determined by OPD based on the litigation plan.
- d. 593: Any charge filed by the King County Prosecutor in King County Superior Court, alleging that the defendant is a final strike Persistent Offender, under RCW 9.94A.030, et. seq.
- e. Misdemeanor: Any criminal case filed by the King County Prosecutor in the District Courts or filed by the Seattle City Prosecutor in Seattle Municipal Court.
- 1) 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.
  - 2) 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.
- f. Juvenile Services: Coverage for all juvenile cases filed in juvenile court, including Diversion Calls.
- 1) 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.



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- 2) Juvenile Offender Restitution Hearing: A juvenile offender restitution hearing consists of a hearing or hearings related to the determination of amounts of restitution or 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 hearing.
  - 3) Child in Need of Services Petition: A Child in Need of Services (CHIN) petition (including Youth At Risk) involves the representation of one child or one parent/parents from the filing of the petition through determination of services. In the event that a court consolidates a truancy matter with proceedings under a Youth at Risk or Child in Need of Services Petition, the Agency shall receive additional case credit for the truancy representation.
  - 4) Child in Need of Services Review: A Child in Need of Services (including Youth At Risk) Review shall include all legal services necessary to represent the child or parent/parents from notice of said review to the conclusion of said review hearing.
  - 5) Truancy: A petition filed under RCW 28A.225.030. A case assignment will be made when the Court notifies OPD of a signed judicial order, setting a show cause hearing for Contempt of Court and requiring appointment of counsel.
- g. Dependency Services: Coverage for all dependency, termination, and guardianship cases.
- 1) Dependency Case: A dependency case is legal representation of an assigned client from:
    - a) The 30-day shelter care hearing to the setting of a dependency fact-finding date. Should an agreed order of dependency be entered or other dispositional action occur on or before the date of the thirty-day shelter care review, it shall be considered part of the dependency case; or
    - b) 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 first scheduled review, it shall be considered part of the dependency case.
  - 2) Post-Dependency Finding Hearing: A dependency review shall include legal representation at any hearing or hearings related to the original dependency filing, excluding the initial 72 hour

shelter care review, the thirty-day shelter care review, and the dispositional hearing. Services included within this category shall include, but not be limited to: shelter care, visitation, and six-month reviews, or other reviews or hearings set by the court. In the event that a court consolidates a family court matter with proceedings under a dependency petition, the Agency shall receive additional dependency review credits under this section for representation involving other issues in the consolidated matter.

- 3) Dependency Trial/Termination or Guardianship Trial
  - a) A dependency trial shall include:
    - i) A fact finding for a dependency and the preparation for said fact finding or the entry of an agreed order of dependency and agreed disposition order at the time of the scheduled dependency fact finding hearing, or
    - ii) Entry of an agreed order of dependency and any contested hearing or hearings related to the dispositional order pursuant to the agreed order.
  - b) A termination trial shall include:
    - i) A fact-finding on a termination petition or guardianship petition and the preparation for said fact finding, or
    - ii) Entry of an agreed order regarding termination or guardianship petition at the time of the scheduled fact-finding.
- h. Civil Contempt of Court: A civil contempt case shall include legal representation up to a maximum of three (3) hearings, related 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. The Agency shall not provide legal services beyond the show of cause. Every review after the first case credit is assigned partial case credit, as noted in the case credit schedule attached to this Exhibit.
- i. Involuntary Commitment Cases:
  - 1) 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

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to RCW 71.05.280, except such hearings defined in (2) and (3) below:

- 2) 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.
  - 3) A hearing held pursuant to a petition for involuntary administration of medications or ECT therapy shall be considered a separate case.
  - 4) An alcohol involuntary commitment proceeding filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
  - 5) A drug-related involuntary commitment filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
- j. Sexual Predator Cases: The Agency shall provide legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, including when civil commitment petitions have been filed by the King County Prosecuting Attorney or the Attorney General's Office, subject to such conditions stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services (DSHS) from the effective date of such agreement, and be reimbursed at a rate determined by DSHS or as ordered by the Court.
- k. Calendars—Coverage for calendars includes the following:
- 1) The Agency will provide legal advice 24 hours a day 7 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 within the jurisdiction of OPD. Attorney of the Day (AOD) for legal advice may occur both in RJC and Seattle. This includes a call from a defendant or a police agency to respond for line-up presentations.
  - 2) Felony Arraignment Calendar.
  - 3) Felony Sentence Modification Calendar: The Agency shall provide an attorney and a paralegal for legal representation for cases up to an average of forty (40) matters per week on a quarterly basis on the Superior Court Probation Modification Calendar.

- 4) King County Court Misdemeanor includes: District Court Felony Investigation Calendar, Bench warrant return calendar, and initial detention hearings for new misdemeanor charges.
- 5) 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.
- 6) 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 juvenile 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.
- 7) Dependency Calendar. All initial 72 hours shelter care calendars in Seattle or RJC shall include the presence of an attorney.
- 8) Drug Court: Any Felony criminal case filed into King County Drug Court.
- 9) District Mental Health Court includes: Any case filed into King County District Mental Health Court. The designated Agency shall staff the Court with 1.25 FTE attorneys and a .8 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.
- 10) Seattle Mental Health Court includes: Any case filed into Seattle Municipal Mental Health Court. The designated Agency shall staff the Court with 1.5 FTE attorneys, a .17 supervising attorney and 1 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.

## B. PERFORMANCE

1. 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. Work under this contract shall not mean Pro Se representation of himself or herself by any attorney employed by the Agency if such representation utilizes neither funds, time, nor equipment provided by this Contract.
2. 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

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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.

3. 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 (1) working day from notification to the Agency 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.
4. The Agency agrees that an attorney shall be required to make contact with all indigent persons within five (5) working days from a case assignment.
5. The Agency agrees that a preliminary written response to any written complaints from OPD concerning services provided by the Agency, shall be submitted to OPD within two (2) working days of the date the complaint is received by the Agency Director.
6. Conflicts of interest arise in a number of circumstances in the representation of indigent persons. Participants in the representation of indigent persons shall be cognizant of the potential for conflicts and recognize that their management of conflicts is governed by the mandatory provisions of the Washington State Rules of Professional Conduct (RPC) as adopted in 1985 and thereafter amended, and judicial interpretations of those rules.

Upon assignment of any client to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within ten (10) days of the assignment, whether initial or subsequent, on any case. Discovery shall be reviewed within ten (10) days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD as soon as possible of any conflict of interest as defined by the Washington State Rules of Professional Conduct.

7. The Agency shall establish guidelines for pro-bono work provided by staff of the Agency. Guidelines shall assure that any such representation is not provided to the exclusion or detriment of legal services that are the subject of this Contract. Funds received under this Contract shall not be used to subsidize work performed outside the scope of this Contract.
8. Minimum Attorney Qualifications
  - a. Each Agency attorney shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State 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 Agency provides legal services to clients under the terms of this Exhibit. The Agency

shall maintain on its premises a copy of the current CLE report to the BAR Association.

- b. Each staff attorney representing a defendant 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 (b) 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, or parole revocation hearing, 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 shall provide sufficient support staff, including investigators, to provide for effective assistance of counsel.
- g. The Agency shall provide a year-end attorney case assignment report which shall include for each attorney the case numbers, indigent person's name, court, and date assigned.

## 9. Attorney Evaluation

The Agency director, or his/her designee, shall evaluate the professional performance of each individual Agency attorney annually. 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. The Agency shall keep a written record of attorney performance evaluations.

## 10. Attorney Training

The Agency shall provide access to sufficient training to keep all attorneys abreast of developments in criminal law, procedure, and court rules.

11. Case Credit Work Load Guidelines

The County shall review Agency case credit work loads, case assignments, standards, and support staff/attorney ratios for each area of cases. In addition, the Agency's staffing plan may be reviewed by OPD to verify that attorney experience levels and placement within the salary schedule are reasonable when compared to responsibilities or capabilities of the attorney.

The Agency agrees to pay attorney salaries commensurate with the Salary Plan (Attachment IV); however, the Agency may assign an attorney to a program area or position for the purposes of providing supervision, lead-work, or specific needed skills to a specific category of cases, or to a specific court.

a. The following are average annual case credit work loads per attorney:

Felony	150
Complex	150
593	150
King County Misdemeanor	450
Juvenile	330
Dependency	180
Contempt of Court	225
Drug Court	2.6 FTE
District MH Court	2.05 FTE
CHINS/Becca	280
Seattle Muni. Ct. Misdemeanor	380
ITA	410
Sexual Predator	tbd by Agency and OPD
Seattle MH Court	2.67 FTE

b. The Agencies may use legal interns. They shall be used in accordance with Washington State Admission to Practice Rule #9.

#### IV. COMPENSATION AND METHOD OF PAYMENT

- A. The Agency shall be reimbursed monthly as provided in Attachment III of this Exhibit. The Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 through December 31, 2003. The Agency shall submit in a format approved by the County a monthly Billing Invoice Package that consists of an invoice and reports as stated in Section V. Reporting Requirements of this Exhibit. The Billing Invoice Package is due within ten (10) days after Agency receipt of the OPD Case Credit Certification Report.

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- B. Payments made for extraordinary expenses that are in addition to those payments shown in Attachment III. Payment Schedule, shall be approved in advance of expenditure by OPD.
- C. 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.

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 quarterly variance percentages outlined in Section III. Program Requirements will be applied to the projected caseload to establish the variance range.
  - 2. The actual quarterly caseload for each type of case, as shown in the quarterly Certified Statistics will be compared to the actual variance range, for each type of case.
  - 3. 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.
  - 4. 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 will be made.
  - 5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
- D. Year End Reconciliation: The final payment for 2003 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.
  - 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.



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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.
5. The value of cases below or above the variance shall be calculated as follows:
  - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
  - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
  - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
  - d. The final case credit reconciliation shall be completed by January 20, 2004.
- E. **Sexual Predator Cases:** The Agency shall be paid by OPD from funds provided 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 regular monthly expenditure reports and an invoice to OPD that includes a statement of the names and the number of hours spent by each attorney working on the case during the month. OPD shall submit to the State of Washington an invoice that includes the information provided by the Agency within ten (10) days of receipt of the Agency invoice. OPD shall remit funds received from the State of Washington to the Agency within ten (10) days of receipt. Payment to the Agency shall be made subject to such other conditions as stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services.
- F. **Information System Modifications:** Agency hardware, network software, application software, and connectivity products are included in the administrative amount paid to the Agency. Subject to prior OPD approval, the Agency shall be reimbursed based on submission of invoices from vendors or consultants, for the costs of modifications to software programs required by the information system changes being undertaken by OPD.
- G. **Reserves and prepayments**
  1. The Agency shall ensure that it has sufficient funds to complete cases assigned but not completed at the end of the contract period.
  2. The County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, CHNS/BECCA and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75% completed, November cases are 50% completed, and December cases are 25% completed. For dependency cases it is assumed October cases are 15% completed, November cases are 10% completed, and December cases are 5% completed.

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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 with the monthly billing package at the times indicated in the chart below.

Report Title	2003 Due Date in Billing Package
Variance Explanation Open and Closed Cases Expenditure Report Certification of Case Credits (Certs) Additional Credit Forms	Monthly
Quarterly Case Credit and Case Allocation Summary	April July October January
Year-end Report of Reserve Accounts and Operating Accounts Year-end Attorney Case Assignment Report	January
Annual Subcontract Attorney Use Report	April
Annual Financial Statements, IRS Form 990, Audit Report	August

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ATTACHMENT I

Case Credit Application Schedule

Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Felony</b>	
One completed case	1 case credit
Multiple count cases	0.25 case credit for each count beyond four; does not apply to felony fraud cases.
Atty/Day or substantial advice	0.10 case credit
Atty/Day or substantial advice in the King County Detention Facility	0.20 case credit
Probation or other reviews	0.33 case credit
Assignment for sentencing only	Felony cases assigned for purposes of sentencing or resentencing only shall be assigned at 0.30 of a felony case credit.
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	1 case credit
Homicide	2 case credits
Seattle District Court expedited felony subsequently refiled in Superior Court	1 case credit
Bench Warrant during case or case transferred to another agency or assigned counsel	1 case credit if more than 10 hours of work has been done. No case credit if 10 or less hours work has been done.
<b>Complex Litigation</b>	As below and as noted in the litigation plan.
	Capital Cases: 2 FTE attorneys; 25 complex litigation case credits per month.
	Aggravated Homicide: 1 FTE attorney; 12.5 complex litigation case credits per month.
	Felony Fraud: 1 FTE attorney; 12.5 complex litigation case credits per month.
<b>596</b>	1 case credit, plus one additional credit for every

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
	12.1 hours on a monthly basis as requested by the Agency.
<b>King County or Seattle Misdemeanor</b>	
One completed case	1 case credit
Review, resentencing or other hearing	1 case credit
One Seattle Municipal Court probation hearing	0.60 case credit
One Seattle District Court expedited felony	1 case credit
Misdemeanor Appeal	4 case credits
Misdemeanor Writ	3 case credits
<b>Juvenile Offender-NDA only</b>	
One completed case	1 case credit
Decline hearing	1 case credit
A case that exceeds 40 attorney hours	0.50 case credit for each 15 hour increment over 40 hours
Reviews or Hearings	0.33 case credit
Atty/Day for substantial advice	0.10 case credit
<b>Juvenile Offender- ACA,SCRAP,TDA</b>	Calendar funding
<b>Juvenile Dependency</b>	
A dependency case	1 case credit
Post Dependency Finding Hearing	0.40 case credit
Dependency trial	0.50 case credit
Termination trial	1 case credit
Atty/Day for substantial advice	0.10 case credit

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Civil Contempt</b>	
From show cause initial assignment hearing up to and including 2 contempt reviews	1 case credit
Subsequent reviews	.33 case credit
<b>Drug Court</b>	calendar funding
<b>District Mental Health Court</b>	calendar funding
<b>Child in Need of Services/ Bases (including At-Risk Youth)</b>	
One completed case	1 case credit
Truancy: One initial and two review hearings	1 case credit
Review or other hearing	0.33 case credit
<b>ITA</b>	1 case credit
<b>Seattle Mental Health Court</b>	calendar funding
<b>Sexual Predator</b>	Tbd by Agency and OPD
<b>Other Circumstances</b>	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2003 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Aggravated Murder First Degree/Capital Punishment cases	Aggravated murder and capital punishment cases not included in the complex litigation provisions of this Exhibit shall be given extra credits based upon negotiations between OPD and the Agency.
Felony Fraud cases	Felony Fraud cases filed by the Fraud Unit of the King County Prosecutor's Office are included in the

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<b>Type of Case</b>	<b>For purposes of payment under this Contract, the following application of case credits shall apply:</b>
	complex litigation provisions of this Contract and shall be given extra credits based upon negotiation between OPD and the Agency, if the nature of the case requires such extra credits. Factors entering into the awarding of extra credits include, but are not limited to, amount and complexity of evidence, number of defendants and the anticipated or actual time of trial.
Assignment of additional FTEs	OPD may approve additional FTEs being assigned depending on ease of geographic access.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery within the time frames set, withdrawn for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit and may grant appropriate credit. Should such credit be denied, OPD shall inform the Agency of the basis for denial.
Other conditions for additional credit	Services on case in excess of 100 hours, as approved in advance by OPD.

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## ATTACHMENT II

### Case Credit Allocation and Cases Assigned Estimate for 2003

Case Category	Total Agency Case Credit Allocation at Seattle	Total Agency Case Credit Allocation at RJC	Agency's % of Total OPD Case Credits	1st Quarter Case Credits	2nd Quarter Case Credits	3rd Quarter Case Credits	4th Quarter Case Credits
<i>Felony</i>	1,305	1,254	27%	639	640	640	640
<i>Complex</i>	288		31%	72	72	72	72
593	98	16	33%	28	29	29	28
<b>Total Felony</b>	1,691	1,270	28%	739	741	741	740
KC Misd	4,647		52%	1,161	1,162	1,162	1,162
Juv Off	1,536		31%	384	384	384	384
Dep.		214	8%	53	54	54	53
COC			0%	-	-	-	-
Drug Ct	850		100%	212	213	213	212
D MH Ct	Per scope of work		100%				
Becca		234	17%	58	59	59	58
SM Ct Misd	1,687		26%	421	422	422	422
ITA			0%	-	-	-	-
S MH Ct	Per scope of work		100%				
<b>TOTAL</b>	<b>10,411</b>	<b>1,718</b>	<b>32%</b>	<b>3,028</b>	<b>3,035</b>	<b>3,035</b>	<b>3,031</b>

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## ATTACHMENT III

### Payment Schedule

This Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 to December 31, 2003. In 2003, the Agency shall be paid the following monthly amounts for cases and special services:

Program Area	Monthly Payment		TOTAL Annual Amount
	Period	Monthly Total	
Current Expense Administrative Cost	Jan-Jun	40,762	244,573
	Jul + Retro	50,371	50,371
	Aug-Dec	42,135	<u>210,675</u>
			<b>505,619</b>
Felony, including the following services: RJC Felony Arraignment; RJC 24-Hour Emergency Phone; AOD; VUCSA Fast-Track	Jan-Jun	207,697	1,246,181
	Jul + Retro	261,796	261,796
	Aug-Dec	215,425	<u>1,077,126</u>
			<b>2,585,103</b>
King County Misdemeanor, including the following services: KCCF & RJC In-Custody Calendar; Domestic Violence Calendar; KCCF & RJC Change of Venue; KCCF & RJC First Appearance; KCCF and RJC Probation Revocation Calendar; King County 24-Hour Emergency Phone	Jan-Jun	109,360	656,158
	Jul + Retro	172,812	172,812
	Aug-Dec	118,424	<u>592,121</u>
			<b>1,421,091</b>
Juvenile, including the following services: Juvenile First Appearance Calendar; Diversion Calls	Jan-Jun	76,429	458,572
	Jul + Retro	28,303	28,303
	Aug-Dec	69,553	<u>347,767</u>
			<b>834,642</b>
Dependency, including RJC Dependency Calendar	Jan-Jun	9,928	59,566
	Jul + Retro	5,219	5,219
	Aug-Dec	9,255	<u>46,274</u>
			<b>111,059</b>
Drug Diversion Court, including the following services: Drug Court Calendar	Jan-Jun	22,035	132,209
	Jul + Retro	23,235	23,235
	Aug-Dec	22,206	<u>111,031</u>
			<b>266,475</b>



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<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Becca	Jan-Jun Jul + Retro Aug-Dec	9,153 127 7,864	54,919 127 <u>39,318</u> <b>94,364</b>
Mental Health Court, including the following services: 24-Hour Emergency Phone	Jan-Jun Jul + Retro Aug-Dec	0 117,936 16,848	0 117,936 <u>84,239</u> <b>202,175</b>
Seattle Misdemeanor, including the following Services on weekdays only: Out-of-Custody Arraignments; In-Custody Arraignments; Evening In-Custody and Out-of-Custody Arraignments; and Seattle Municipal Mental Health Court	Jan-Jun Jul + Retro Aug-Dec	131,432 117,075 129,381	788,590 117,075 <u>646,903</u> <b>1,552,568</b>
<b>TOTAL</b>	Jan-Jun Jul + Retro Aug-Dec	606,794 776,874 614,243	3,640,768 776,874 <u>3,155,455</u> <b>7,573,098</b>

ATTACHMENT IV  
 Salary Plan

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2003 Kenny Salary Table  
 (2003 COLA INCLUDED)

RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
Public Defense Attorney 1	\$ 43,612	\$ 45,094					
Public Defense Attorney 2	\$ 48,059	\$ 50,901					
Public Defense Attorney 3	\$ 55,355	\$ 59,045					
Public Defense Attorney 4	\$ 63,344	\$ 64,886	\$ 66,428	\$ 68,624	\$ 70,050	\$ 71,802	
Senior Public Defense Attorney 1	\$ 71,477	\$ 73,683	\$ 75,629	\$ 77,315	\$ 79,391	\$ 82,504	\$ 83,282
Senior Public Defense Attorney 2	\$ 76,926	\$ 79,261	\$ 81,336	\$ 83,282	\$ 85,358	\$ 87,304	\$ 89,509
Senior Public Defense Attorney 3	\$ 89,120	\$ 91,714	\$ 94,049	\$ 96,125	\$ 98,849	\$ 100,925	\$ 103,778

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Attachment B  
**2004-095**

King County Contract No. D32896D  
Federal Taxpayer ID No. 91-1392873

Department/Division Community and Human Services/Office of the Public Defender  
Agency Northwest Defenders Association  
Project Title Public Defense Legal Services  
Contract Amount \$3,265,313 Fund Code 00000010  
Contract Period From: January 1, 2003 To December 31, 2003

**KING COUNTY AGENCY SERVICES CONTRACT – 2003**

THIS CONTRACT is entered into by KING COUNTY (the "County"), and Northwest Defenders Association, whose address is 900 Fourth Avenue, Suite 3700, Seattle, WA 98164, (the "Agency").

WHEREAS, the County desires to have legal services, as described in the Contract, performed for indigent persons legally entitled to appointed representation in King County, by the Agency, 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. 14517; 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).

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:

- Certificate of Insurance/Endorsements Attached hereto as Exhibit I
- Personnel Inventory Report Attached hereto as Exhibit II
- Affidavit of Compliance Attached hereto as Exhibit III
- 504/ADA Assurance of Compliance Attached hereto as Exhibit IV
- Public Defense Legal Services Attached hereto as Exhibit V

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

## II. DURATION OF CONTRACT

This Contract shall commence on the 1<sup>st</sup> day of January 2003, and shall terminate on the 31<sup>st</sup> day of December 2003 ("Contract Term"), unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

## 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 its final billing package and all outstanding reports within twenty (20) days of the date this Contract terminates. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency within the timeframe established in III.A. above.

## IV. OPERATING BUDGET

A. The funds provided by the County to the Agency pursuant to the terms of this Contract are solely for expenses which are directly and legitimately related to the performance of the provisions of this Contract. In the event the County, in its sole discretion, 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 and Sexually Violent Predator cases 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 which complies 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 (6) 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 (10) 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 reserve accounts and operating accounts at the end of the Contract Term.
- D. Any and all reserve or reserve equivalent accounts must be cash equivalent accounts. Cash equivalent accounts are defined as short term, highly liquid investments that are both readily convertible to known amounts of cash, and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.
- 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 will 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 will 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 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 (6) 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. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

## **IX. CORRECTIVE ACTION**

If the County determines 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 corrective action, the following sequential procedure will apply:

- A. The County will notify the Agency in writing of the nature of the breach;  
  
The Agency 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. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Agency's response, 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 will notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The determination of sufficiency of the Agency's corrective action plan shall be at the sole discretion of the County. The county's determination of sufficiency of the Agency's corrective action plan 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.B.;
- 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. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Subsections A, B, C, D, and E, nor shall the exercise of any right within this section 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 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 fifteen (15) days prior to the date of any proposed assignment. This provision shall not apply to previously budgeted and approved short-term personal service subcontracts with individuals to perform work which is under the direct supervision and control of the Agency. Any individuals entering into such short-term personal service subcontracts shall meet any experience requirements imposed by any terms of this Contract and the

Exhibits hereto. Short-term subcontracts shall include any contract for a time period less than twelve (12) months in the aggregate over a period of three (3) years. The County shall be notified and must provide prior approval if any short-term subcontracts are renewed or extended at any time throughout the Contract Term.

- B. "Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.
- C. "Personal Service Subcontract" shall mean a contract for the provision of professional services, which includes but is not limited to counseling services, consulting services, bookkeeping services, accounting services, social work services, investigator services and legal services.

## **XI. TERMINATION**

- A. The County may terminate Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the Agency forty-five (45) days advance written notice of the termination. The Agency may terminate this Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the County ninety (90) days advance written notice of the termination.
- B. The County may terminate this Contract, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Agency materially breaches any 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, employees, subcontractors, agents or representatives 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.

If the Contract is terminated by the County pursuant to this Subsection XI.B.1., 2 or 3, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.

Agency refusal to accept an individual case assignment from OPD shall not alone be considered a material breach of this Contract, however, nothing in this provision shall prohibit the County from considering such refusal as a failure to comply with Contract terms and requiring Agency corrective action.

In the event the County terminates the Contract due to misappropriation of funds, non-performance of services, mismanagement, material misrepresentation, or any act or omission which jeopardizes the Agency's tax-exempt status under Code section 501(c)(3), then subject to the provisions of Section XI.D., the Agency shall return to the County any funds misappropriated or unexpended which, as of the date of termination and upon account reconciliation, are funds that have been paid to the Agency by the County, whether under this or a prior 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 (7) days advance written notice, in the event the County commits any material breach of this Contract.

- C. In the event of the termination of this Contract the Agency shall remit any unexpended balance of funds paid, including 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.
- D. 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 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 will 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.

## **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 will make a determination decision and respond in writing to the Agency within thirty (30) 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 Public Defender who will forward the letter with comments to the Department of Community and Human Services Director. The Department Director will make a final determination and respond in writing to the Agency within thirty (30) days of receipt.

Nothing herein shall impair the operation 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 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 will 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 will 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 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 may 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 (3) 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 will 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 will 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 forty-five (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. 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.

C. 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 and Exhibits hereto.

D. 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/).

E. 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.

F. 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 occupation 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.

G. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six (6) 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 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.

H. Sanctions for Violations

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

## I. 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 (2) 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 XV.

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 (2) 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 programs and services offered by 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 it 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 Subsection XIX. or does not disclose other interest required to be disclosed pursuant to KCC Chapter 3.04, the County will 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 have a Board of Directors, that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency except as provided in D. below. The Agency shall provide the County with the names, addresses, and professions of members of the Board of Directors and a copy of the Agency's bylaws on an annual basis. The Agency shall provide the County with notification of changes in membership of the Board of Directors and/or bylaws within thirty (30) days of any such change.

- A. The Agency shall establish an orientation program for all new members of its Board of Directors that includes training relating to the fiduciary duties and responsibilities of nonprofit board members.
- B. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501c(3) status, that addresses issues regarding gifts, financial gain, and improper use of position.
- C. This Contract must be reviewed and approved for Agency signature by the Agency's Board of Directors. No less frequently than annually, the members of the Board of Directors of the Agency shall meet with a representative of the County to discuss Contract issues as may be mutually agreed upon or as required by the County.
- D. 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 acquisition or rental by the Agency of 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,
    - c. a corporation in which an employee or Board member of the Agency, or
    - d. a relative of such a person has ownership.
- E. 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, subject to the authority and control of the Board, shall be responsible for receiving or depositing 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**

None of the 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, in whole or in part, with Contract funds at a cost of \$1,000 per item or more, when the purchase of such equipment is identified as reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County, and/or federal, and/or state government.
- B. The Agency shall be responsible for all such property, including the proper care and maintenance of the equipment.
- C. The Agency shall ensure that all such equipment will be returned to the appropriate government agency, whether federal, state or county, upon termination of this Contract unless otherwise agreed upon by the parties.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property 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 (1) 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 Public Defender, and the director of the County department specified on page one (1) of this Contract.

Any due date within which a party must take some action shall be computed from the date that the notice is received by said party according to the terms of this Contract or at such date as required in written notice.

**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 modified for use in the performance of this Contract.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use 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. Each amendment to this Contract must be approved by the Board of Directors of the Agency.

**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 will be covered by Court rules.

If the cost of recycled paper is more than 15% 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 it shall protect 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 Office of Public Defense shall sign a declaration acknowledging that all communication with prospective clients, clients or employees of the Agency concerning a specific case or pattern of cases shall be covered by attorney-client privilege.

## **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 use or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to use appropriate safeguards to prevent use or disclosure of protected health information other than as provided for in this Contract.
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 protect 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 provided for by this Contract of which it becomes aware.
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. 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. Waive 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.

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**XXXII. 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

NORTHWEST DEFENDERS ASSOCIATION

FOR

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Approved by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY  
SPECIAL DEPUTY PROSECUTOR

Date: July 27, 2003

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## ACORD

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
12/11/03

**PRODUCER**  
CHARLES R. HORN INSURANCE LLC  
PO BOX 535

MERCER ISLAND WA 98040-  
(206) 232-8832

**INSURED**  
NORTHWEST DEFENDERS ASSOC,  
900 FOURTH AVENUE SUITE 3700

SEATTLE WA 98101-  
(206) 674-4700

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### COMPANIES AFFORDING COVERAGE

- COMPANY A AMERICAN STATES INSURANCE COMPANY
- COMPANY B
- COMPANY C
- COMPANY D

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	02 BO 845463-2	01/05/03	01/05/04	GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 PERSONAL & ADV INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$200,000 MED EXP (Any one person) \$10,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	02 BO 845463-2	01/05/03	01/05/04	COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY:
	<b>BARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO		/ /	/ /	EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	01-CT-007892-10	01/05/03	01/05/04	EACH OCCURRENCE \$1,000,000 AGGREGATE \$ VIO STATL TRCY LIMITS OTHER EA EL EACH ACCIDENT \$ EL DISEASE - POLICY LIMIT \$ EL DISEASE - EA EMPLOYEE \$
<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE <input type="checkbox"/> OTHER		/ /	/ /		

LOCATION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
CERTIFICATE HOLDER LISTED AS ADDITIONAL INSURED PER PAGE 11 OF THE CONTRACT  
SERVICES

3 COUNTY OFFICE OF PUBLIC DEFENDER  
THIRD AVE. SOUTH  
4TH FLOOR  
SEATTLE WA 98104

IF SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Charles R. Horn*

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**EXHIBIT V**

**PUBLIC DEFENSE LEGAL SERVICES**

**I. WORK STATEMENT**

The Agency shall provide the services of a specified number of attorneys and staff members in accordance with all of the laws and WACs of the State of Washington, King County Code (KCC), Washington State Rules for Professional Conduct (RPC), and WA State Bar Association Standards for Public Defense that are applicable to their business and the substance of the legal services that are the subject of this Contract.

**II. PROGRAM DESCRIPTION**

**A. GOAL**

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

**B. ELIGIBLE POPULATION**

The population served shall be indigent persons entitled to appointed counsel in King County courts and Seattle Municipal Court, as assigned by the Office of The Public Defender (OPD) or as appointed from the bench.

**C. DEFINITIONS**

1. Indigent: An indigent defendant, parent, or juvenile is a person determined indigent by the County or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
2. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent in a single citation, complaint or information, or in the case of misdemeanors a series of citations set for one court hearing, that will ultimately lead to one disposition.

If a related series of charges or citations 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.

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.

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



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request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel.

3. 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, deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.

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 felony or 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.

4. 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. The type of work described by a case credit is shown in Attachment I of this Exhibit.

### 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 II of this Exhibit, for each quarter of the year. The quarterly case credit amounts in Attachment II are provided for planning purposes. OPD shall make reasonable efforts to distribute cases beyond variance, consistent with the case credit allocation in Attachment II of this Exhibit.
- b. Quarterly variance shall be no more than 10%, and annually no more than 5%, for all case categories except Felony and other complex case litigation cases, which shall have a quarterly variance of no more than 7.5% and an annual variance of no more than 2.5%.
- c. The Agency shall accept case assignments and case credits above the projected variance levels on a monthly basis. The County shall pay the Agency for work in excess of the variance levels according to Section IV of this Exhibit.
- d. In the event that OPD assigns the Agency a case in the King County Courthouse, that is transferred by the court to the Regional Justice Center (RJC) and the court orders a transfer of the case from the

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Agency to other counsel, the County will compensate the Agency for additional costs attributable to the transfer. The compensation shall be in case credits, as shown in Attachment I.

- e. In the event that once a case assignment has been made by OPD, and the Agency has begun delivery of legal services, the defendant/respondent absconds for a period of ninety (90) days or more (180 days for COC cases), upon re-apprehension, the allocation of a new case credit shall be determined by OPD.
  - 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 or credits shall be determined and assigned by OPD.
2. Funds for payment for expert services are not included in this Exhibit. Requests for appointment for expert service shall be made to OPD for pre-approval and, as approved, shall be reimbursed by OPD upon receipt of invoice from Agency.
  3. Case Categories
    - a. **Felony:** 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 (1) year, and as listed in Attachment I.
    - b. **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, restitution, and material witness hearings.
    - c. **Complex Litigation:** All capital homicide cases, all aggravated homicide cases, and those felony fraud cases filed by the Fraud Unit of the King County Prosecuting Attorney's Office where the estimated attorney hours necessary exceeds one hundred seventy (170) hours. Aggravated homicide cases are considered capital 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) A complex litigation case shall occupy the full time of either one (1) or two (2) attorneys during the first 60 days past assignment or reassignment.

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- 3) Each complex litigation case shall have one (1) FTE qualified at Senior Public Defense I level or above, or one half-time (.5) FTE qualified at Senior I and one half-time (.5) FTE Defender IV and one half-time (.5) FTE investigator assigned. Attorney assignment in capital cases will comply with SPR 2 (Superior Court Special Proceedings Rules).
  - 4) The Agency shall accept all complex litigation cases as determined by OPD after consultation with the Agency.
  - 5) Once a complex litigation case has proceeded for two (2) months after assignment, the Agency shall submit a litigation plan to OPD for approval.
  - 6) Funding on complex litigation cases shall be determined by OPD based on the litigation plan.
- d. 593: Any charge filed by the King County Prosecutor in King County Superior Court, alleging that the defendant is a final strike Persistent Offender, under RCW 9.94A.030, et. seq.
- e. Misdemeanor: Any criminal case filed by the King County Prosecutor in the District Courts or filed by the Seattle City Prosecutor in Seattle Municipal Court.
- 1) 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.
  - 2) 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.
- f. Juvenile Services: Coverage for all juvenile cases filed in juvenile court, including Diversion Calls.
- 1) 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.

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- 2) **Juvenile Offender Restitution Hearing:** A juvenile offender restitution hearing consists of a hearing or hearings related to the determination of amounts of restitution or 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 hearing.
  - 3) **Child in Need of Services Petition:** A Child in Need of Services (CHIN) petition (including Youth At Risk) involves the representation of one child or one parent/parents from the filing of the petition through determination of services. In the event that a court consolidates a truancy matter with proceedings under a Youth at Risk or Child in Need of Services Petition, the Agency shall receive additional case credit for the truancy representation.
  - 4) **Child in Need of Services Review:** A Child in Need of Services (including Youth At Risk) Review shall include all legal services necessary to represent the child or parent/parents from notice of said review to the conclusion of said review hearing.
  - 5) **Truancy:** A petition filed under RCW 28A.225.030. A case assignment will be made when the Court notifies OPD of a signed judicial order, setting a show cause hearing for Contempt of Court and requiring appointment of counsel.
- g. **Dependency Services:** Coverage for all dependency, termination, and guardianship cases.
- 1) **Dependency Case:** A dependency case is legal representation of an assigned client from:
    - a) The 30-day shelter care hearing to the setting of a dependency fact-finding date. Should an agreed order of dependency be entered or other dispositional action occur on or before the date of the thirty-day shelter care review, it shall be considered part of the dependency case; or
    - b) 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 first scheduled review, it shall be considered part of the dependency case.
  - 2) **Post-Dependency Finding Hearing:** A dependency review shall include legal representation at any hearing or hearings related to the original dependency filing, excluding the initial 72 hour

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shelter care review, the thirty-day shelter care review, and the dispositional hearing. Services included within this category shall include, but not be limited to: shelter care, visitation, and six-month reviews, or other reviews or hearings set by the court. In the event that a court consolidates a family court matter with proceedings under a dependency petition, the Agency shall receive additional dependency review credits under this section for representation involving other issues in the consolidated matter.

- 3) Dependency Trial/Termination or Guardianship Trial
  - a) A dependency trial shall include:
    - i) A fact finding for a dependency and the preparation for said fact finding or the entry of an agreed order of dependency and agreed disposition order at the time of the scheduled dependency fact finding hearing, or
    - ii) Entry of an agreed order of dependency and any contested hearing or hearings related to the dispositional order pursuant to the agreed order.
  - b) A termination trial shall include:
    - i) A fact-finding on a termination petition or guardianship petition and the preparation for said fact finding, or
    - ii) Entry of an agreed order regarding termination or guardianship petition at the time of the scheduled fact-finding.
- h. Civil Contempt of Court: A civil contempt case shall include legal representation up to a maximum of three (3) hearings, related 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. The Agency shall not provide legal services beyond the show of cause. Every review after the first case credit is assigned partial case credit, as noted in the case credit schedule attached to this Exhibit.
- i. Involuntary Commitment Cases:
  - 1) 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

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to RCW 71.05.280, except such hearings defined in (2) and (3) below.

- 2) 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.
  - 3) A hearing held pursuant to a petition for involuntary administration of medications or ECT therapy shall be considered a separate case.
  - 4) An alcohol involuntary commitment proceeding filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
  - 5) A drug-related involuntary commitment filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
- j. Sexual Predator Cases: The Agency shall provide legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, including when civil commitment petitions have been filed by the King County Prosecuting Attorney or the Attorney General's Office, subject to such conditions stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services (DSHS) from the effective date of such agreement, and be reimbursed at a rate determined by DSHS or as ordered by the Court.
- k. Calendars—Coverage for calendars includes the following:
- 1) The Agency will provide legal advice 24 hours a day 7 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 within the jurisdiction of OPD. Attorney of the Day (AOD) for legal advice may occur both in RJC and Seattle. This includes a call from a defendant or a police agency to respond for line-up presentations.
  - 2) Felony Arraignment Calendar.
  - 3) Felony Sentence Modification Calendar: The Agency shall provide an attorney and a paralegal for legal representation for cases up to an average of forty (40) matters per week on a quarterly basis on the Superior Court Probation Modification Calendar.

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- 4) King County Court Misdemeanor includes: District Court Felony Investigation Calendar, Bench warrant return calendar, and initial detention hearings for new misdemeanor charges.
- 5) 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.
- 6) 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 juvenile 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.
- 7) Dependency Calendar. All initial 72 hours shelter care calendars in Seattle or RJC shall include the presence of an attorney.
- 8) Drug Court: Any Felony criminal case filed into King County Drug Court.
- 9) District Mental Health Court includes: Any case filed into King County District Mental Health Court. The designated Agency shall staff the Court with 1.25 FTE attorneys and a .8 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.
- 10) Seattle Mental Health Court includes: Any case filed into Seattle Municipal Mental Health Court. The designated Agency shall staff the Court with 1.5 FTE attorneys, a .17 supervising attorney and 1 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.

## B. PERFORMANCE

1. 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. Work under this contract shall not mean Pro Se representation of himself or herself by any attorney employed by the Agency if such representation utilizes neither funds, time, nor equipment provided by this Contract.
2. 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

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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.

3. 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 (1) working day from notification to the Agency 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.
4. The Agency agrees that an attorney shall be required to make contact with all indigent persons within five (5) working days from a case assignment.
5. The Agency agrees that a preliminary written response to any written complaints from OPD concerning services provided by the Agency, shall be submitted to OPD within two (2) working days of the date the complaint is received by the Agency Director.
6. Conflicts of interest arise in a number of circumstances in the representation of indigent persons. Participants in the representation of indigent persons shall be cognizant of the potential for conflicts and recognize that their management of conflicts is governed by the mandatory provisions of the Washington State Rules of Professional Conduct (RPC) as adopted in 1985 and thereafter amended, and judicial interpretations of those rules.

Upon assignment of any client to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within ten (10) days of the assignment, whether initial or subsequent, on any case. Discovery shall be reviewed within ten (10) days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD as soon as possible of any conflict of interest as defined by the Washington State Rules of Professional Conduct.

7. The Agency shall establish guidelines for pro-bono work provided by staff of the Agency. Guidelines shall assure that any such representation is not provided to the exclusion or detriment of legal services that are the subject of this Contract. Funds received under this Contract shall not be used to subsidize work performed outside the scope of this Contract.
8. Minimum Attorney Qualifications
  - a. Each Agency attorney shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State 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 Agency provides legal services to clients under the terms of this Exhibit. The Agency



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shall maintain on its premises a copy of the current CLE report to the BAR Association.

- b. Each staff attorney representing a defendant 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 (b) 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, or parole revocation hearing, 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 shall provide sufficient support staff, including investigators, to provide for effective assistance of counsel.
- g. The Agency shall provide a year-end attorney case assignment report which shall include for each attorney the case numbers, indigent person's name, court, and date assigned.

## 9. Attorney Evaluation

The Agency director, or his/her designee, shall evaluate the professional performance of each individual Agency attorney annually. 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. The Agency shall keep a written record of attorney performance evaluations.

## 10. Attorney Training

The Agency shall provide access to sufficient training to keep all attorneys abreast of developments in criminal law, procedure, and court rules.

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11. Case Credit Work Load Guidelines

The County shall review Agency case credit work loads, case assignments, standards, and support staff/attorney ratios for each area of cases. In addition, the Agency's staffing plan may be reviewed by OPD to verify that attorney experience levels and placement within the salary schedule are reasonable when compared to responsibilities or capabilities of the attorney.

The Agency agrees to pay attorney salaries commensurate with the Salary Plan (Attachment IV); however, the Agency may assign an attorney to a program area or position for the purposes of providing supervision, lead-work, or specific needed skills to a specific category of cases, or to a specific court.

a. The following are average annual case credit work loads per attorney:

Felony	150
Complex	150
593	150
King County Misdemeanor	450
Juvenile	330
Dependency	180
Contempt of Court	225
Drug Court	2.6 FTE
District MH Court	2.05 FTE
CHINS/Becca	280
Seattle Muni. Ct. Misdemeanor	380
ITA	410
Sexual Predator	tbd by Agency and OPD
Seattle MH Court	2.67 FTE

b. The Agencies may use legal interns. They shall be used in accordance with Washington State Admission to Practice Rule #9.

**IV. COMPENSATION AND METHOD OF PAYMENT**

- A. The Agency shall be reimbursed monthly as provided in Attachment III of this Exhibit. The Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 through December 31, 2003. The Agency shall submit in a format approved by the County a monthly Billing Invoice Package that consists of an invoice and reports as stated in Section V. Reporting Requirements of this Exhibit. The Billing Invoice Package is due within ten (10) days after Agency receipt of the OPD Case Credit Certification Report.

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- B. Payments made for extraordinary expenses that are in addition to those payments shown in Attachment III. Payment Schedule, shall be approved in advance of expenditure by OPD.
- C. 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.

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 quarterly variance percentages outlined in Section III. Program Requirements will be applied to the projected caseload to establish the variance range.
  - 2. The actual quarterly caseload for each type of case, as shown in the quarterly Certified Statistics will be compared to the actual variance range, for each type of case.
  - 3. 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.
  - 4. 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 will be made.
  - 5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
- D. Year End Reconciliation: The final payment for 2003 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.
  - 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.

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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.
  5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
    - d. The final case credit reconciliation shall be completed by January 20, 2004.
- E. Sexual Predator Cases: The Agency shall be paid by OPD from funds provided 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 regular monthly expenditure reports and an invoice to OPD that includes a statement of the names and the number of hours spent by each attorney working on the case during the month. OPD shall submit to the State of Washington an invoice that includes the information provided by the Agency within ten (10) days of receipt of the Agency invoice. OPD shall remit funds received from the State of Washington to the Agency within ten (10) days of receipt. Payment to the Agency shall be made subject to such other conditions as stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services.
- F. Information System Modifications: Agency hardware, network software, application software, and connectivity products are included in the administrative amount paid to the Agency. Subject to prior OPD approval, the Agency shall be reimbursed based on submission of invoices from vendors or consultants, for the costs of modifications to software programs required by the information system changes being undertaken by OPD.
- G. Reserves and prepayments
1. The Agency shall ensure that it has sufficient funds to complete cases assigned but not completed at the end of the contract period.
  2. The County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, CHNS/BECCA and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75% completed, November cases are 50% completed, and December cases are 25% completed. For dependency cases it is assumed October cases are 15% completed, November cases are 10% completed, and December cases are 5% completed.

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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 with the monthly billing package at the times indicated in the chart below.

<b>Report Title</b>	<b>2003 Due Date in Billing Package</b>
Variance Explanation Open and Closed Cases Expenditure Report Certification of Case Credits (Certs) Additional Credit Forms	Monthly
Quarterly Case Credit and Case Allocation Summary	April July October January
Year-end Report of Reserve Accounts and Operating Accounts Year-end Attorney Case Assignment Report	January
Annual Subcontract Attorney Use Report	April
Annual Financial Statements, IRS Form 990, Audit Report	August

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## ATTACHMENT I

### Case Credit Application Schedule

Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Felony</b>	
One completed case	1 case credit
Multiple count cases	0.25 case credit for each count beyond four; does not apply to felony fraud cases.
Atty/Day or substantial advice	0.10 case credit
Atty/Day or substantial advice in the King County Detention Facility	0.20 case credit
Probation or other reviews	0.33 case credit
Assignment for sentencing only	Felony cases assigned for purposes of sentencing or resentencing only shall be assigned at 0.30 of a felony case credit.
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	1 case credit
Homicide	2 case credits
Seattle District Court expedited felony subsequently refiled in Superior Court	1 case credit
Bench Warrant during case or case transferred to another agency or assigned counsel	1 case credit if more than 10 hours of work has been done. No case credit if 10 or less hours work has been done.
<b>Complex Litigation</b>	As below and as noted in the litigation plan.
	Capital Cases: 2 FTE attorneys; 25 complex litigation case credits per month.
	Aggravated Homicide: 1 FTE attorney; 12.5 complex litigation case credits per month.
	Felony Fraud: 1 FTE attorney; 12.5 complex litigation case credits per month.
<b>598</b>	1 case credit, plus one additional credit for every

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
	12.1 hours on a monthly basis as requested by the Agency.
<b>King County or Seattle Misdemeanor</b>	
One completed case	1 case credit
Review, resentencing or other hearing	1 case credit
One Seattle Municipal Court probation hearing	0.60 case credit
One Seattle District Court expedited felony	1 case credit
Misdemeanor Appeal	4 case credits
Misdemeanor Writ	3 case credits
<b>Juvenile Offender-NDA only</b>	
One completed case	1 case credit
Decline hearing	1 case credit
A case that exceeds 40 attorney hours	0.50 case credit for each 15 hour increment over 40 hours
Reviews or Hearings	0.33 case credit
Atty/Day for substantial advice	0.10 case credit
<b>Juvenile Offender- ACA,SCRAP,TDA</b>	Calendar funding
<b>Juvenile Dependency</b>	
A dependency case	1 case credit
Post Dependency Finding Hearing	0.40 case credit
Dependency trial	0.50 case credit
Termination trial	1 case credit
Atty/Day for substantial advice	0.10 case credit

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Civil Contempt</b>	
From show cause initial assignment hearing up to and including 2 contempt reviews	1 case credit
Subsequent reviews	.33 case credit
<b>Drug Court</b>	calendar funding
<b>District Mental Health Court</b>	calendar funding
<b>Child in Need of Services/ Becca (including At-Risk Youth)</b>	
One completed case	1 case credit
Truancy: One initial and two review hearings	1 case credit
Review or other hearing	0.33 case credit
<b>ITA</b>	1 case credit
<b>Seattle Mental Health Court</b>	calendar funding
<b>Sexual Predator</b>	Tbd by Agency and OPD
<b>Other Circumstances</b>	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2003 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Aggravated Murder First Degree/Capital Punishment cases	Aggravated murder and capital punishment cases not included in the complex litigation provisions of this Exhibit shall be given extra credits based upon negotiations between OPD and the Agency.
Felony Fraud cases	Felony Fraud cases filed by the Fraud Unit of the King County Prosecutor's Office are included in the



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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
	complex litigation provisions of this Contract and shall be given extra credits based upon negotiation between OPD and the Agency, if the nature of the case requires such extra credits. Factors entering into the awarding of extra credits include, but are not limited to, amount and complexity of evidence, number of defendants and the anticipated or actual time of trial.
Assignment of additional FTEs	OPD may approve additional FTEs being assigned depending on ease of geographic access.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery within the time frames set, withdrawn for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit and may grant appropriate credit. Should such credit be denied, OPD shall inform the Agency of the basis for denial.
Other conditions for additional credit	Services on case in excess of 100 hours, as approved in advance by OPD.

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## ATTACHMENT II

### Case Credit Allocation and Cases Assigned Estimate for 2003

Case Category	Total Agency Case Credit Allocation at Seattle	Total Agency Case Credit Allocation at RJC	Agency's % of Total OPD Case Credits	1st Quarter Case Credits	2nd Quarter Case Credits	3rd Quarter Case Credits	4th Quarter Case Credits
<i>Felony</i>	1,842		19%	460	461	461	460
<i>Complex</i>	114		12%	28	29	29	28
593	40		12%	10	10	10	10
Total Fel.	1,996		19%	498	500	500	498
KC Misd	410		5%	102	103	103	102
Juv Off	276		6%	69	69	69	69
Dependency	83		3%	20	21	21	21
COC			0%				
Drug Court			0%				
D MH Ct			0%				
Becca	154		11%	38	39	39	38
SM Ct Misd	2,041		32%	510	510	511	510
ITA			0%				
S MH Ct			0%	-	-	-	-
<b>TOTAL</b>	<b>4,960</b>	<b>0</b>	<b>12%</b>	<b>1,237</b>	<b>1,242</b>	<b>1,243</b>	<b>1,238</b>

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## ATTACHMENT III

### Payment Schedule

This Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 to December 31, 2003. In 2003, the Agency shall be paid the following monthly amounts for cases and special services:

<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Current Expense Administrative Cost	Jan-Jun Jul + Retro Aug-Dec	24,704 29,207 25,347	148,224 29,207 <u>126,736</u> <b>304,167</b>
Felony, including the following services: Plea Calendar; Case Setting; Trial Call Calendar; Out-of-Custody Omnibus Hearing; In-Custody Omnibus Hearing; Motions Calendar; Bond Hearings; VUCSA Fast-Track; Weekly Trial Status Meeting	Jan-Jun Jul + Retro Aug-Dec	105,068 106,888 105,328	630,408 106,888 <u>526,638</u> <b>1,263,934</b>
King County Misdemeanor, including the following services: KCCF & RJC In-Custody Calendar; Domestic Violence Calendar; KCCF & RJC Change of Venue; KCCF & RJC First Appearance; KCCF and RJC Probation Revocation Calendar; King County 24-Hour Emergency Phone	Jan-Jun Jul + Retro Aug-Dec	6,986 13,784 7,957	41,919 13,784 <u>39,787</u> <b>95,490</b>
Juvenile, including the following services: Juvenile First Appearance Calendar; Diversion Calls	Jan-Jun Jul + Retro Aug-Dec	8,242 15,188 9,234	49,452 15,188 <u>46,171</u> <b>110,811</b>
Dependency, including Dependency AOD Calendar in Seattle and RJC	Jan-Jun Jul + Retro Aug-Dec	8,242 4,139 7,656	49,452 4,139 <u>38,279</u> <b>91,870</b>
Becca	Jan-Jun Jul + Retro Aug-Dec	5,993 1,912 5,410	35,959 1,912 <u>27,050</u> <b>64,921</b>

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<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Seattle Misdemeanor, including the following Services: In-Custody Sunday Arraignment; Readiness Calendar; Tuesday Evening Pre-trial Calendar	<b>Jan-Jun</b>	130,033	780,198
	<b>Jul + Retro</b>	(1,962)	(1,962)
	<b>Aug-Dec</b>	111,177	<u>555,883</u>
			<b>1,334,119</b>
<b>TOTAL</b>	<b>Jan-Jun</b>	289,268	1,735,612
	<b>Jul + Retro</b>	169,156	169,156
	<b>Aug-Dec</b>	272,109	<u>1,360,545</u>
			<b>3,265,313</b>

ATTACHMENT IV

Salary Plan

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**2003 Kenny Salary Table  
 (2003 COLA INCLUDED)**

RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
Public Defense Attorney 1	\$ 43,612	\$ 45,094					
Public Defense Attorney 2	\$ 48,059	\$ 50,901					
Public Defense Attorney 3	\$ 55,355	\$ 59,045					
Public Defense Attorney 4	\$ 63,344	\$ 64,886	\$ 66,428	\$ 68,624	\$ 70,050	\$ 71,802	
Senior Public Defense Attorney 1	\$ 71,477	\$ 73,683	\$ 75,629	\$ 77,315	\$ 79,391	\$ 82,504	\$ 83,282
Senior Public Defense Attorney 2	\$ 76,926	\$ 79,261	\$ 81,336	\$ 83,282	\$ 85,358	\$ 87,304	\$ 89,509
Senior Public Defense Attorney 3	\$ 89,120	\$ 91,714	\$ 94,049	\$ 96,125	\$ 98,849	\$ 100,925	\$ 103,778

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King County Contract No.  
Federal Taxpayer ID No.

Attachment C  
2004-095

D32897D  
91-0984541

Department/Division Community and Human Services/Office of the Public Defender

Agency Society of Counsel Representing Accused Persons

Project Title Public Defense Legal Services

Contract Amount \$6,228,907 Fund Code 00000010

Contract Period From: January 1, 2003 To December 31, 2003

**KING COUNTY AGENCY SERVICES CONTRACT – 2003**

THIS CONTRACT is entered into by KING COUNTY (the "County"), and Society of Counsel Representing Accused Persons, whose address is 1401 East Jefferson, Suite 200, Seattle, WA 98122, (the "Agency").

WHEREAS, the County desires to have legal services, as described in the Contract, performed for indigent persons legally entitled to appointed representation in King County, by the Agency, 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. 14517; 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).

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:

- Certificate of Insurance/Endorsements Attached hereto as Exhibit I
- Personnel Inventory Report Attached hereto as Exhibit II
- Affidavit of Compliance Attached hereto as Exhibit III
- 504/ADA Assurance of Compliance Attached hereto as Exhibit IV
- Public Defense Legal Services Attached hereto as Exhibit V

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

## II. DURATION OF CONTRACT

This Contract shall commence on the 1<sup>st</sup> day of January 2003, and shall terminate on the 31<sup>st</sup> day of December 2003 ("Contract Term"), unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

## 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 its final billing package and all outstanding reports within twenty (20) days of the date this Contract terminates. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency within the timeframe established in III.A. above.

## IV. OPERATING BUDGET

- A. The funds provided by the County to the Agency pursuant to the terms of this Contract are solely for expenses which are directly and legitimately related to the performance of the provisions of this Contract. In the event the County, in its sole discretion, 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 and Sexually Violent Predator cases 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 which complies 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 (6) 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 (10) 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 reserve accounts and operating accounts at the end of the Contract Term.
- D. Any and all reserve or reserve equivalent accounts must be cash equivalent accounts. Cash equivalent accounts are defined as short term, highly liquid investments that are both readily convertible to known amounts of cash, and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.
- 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 will 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 will 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 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 (6) 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. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

## **IX. CORRECTIVE ACTION**

If the County determines 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 corrective action, the following sequential procedure will apply:

- A. The County will notify the Agency in writing of the nature of the breach;

The Agency 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. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Agency's response, 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 will notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The determination of sufficiency of the Agency's corrective action plan shall be at the sole discretion of the County. The county's determination of sufficiency of the Agency's corrective action plan 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.B.;

- 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. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Subsections A, B, C, D, and E, nor shall the exercise of any right within this section 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 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 fifteen (15) days prior to the date of any proposed assignment. This provision shall not apply to previously budgeted and approved short-term personal service subcontracts with individuals to perform work which is under the direct supervision and control of the Agency. Any individuals entering into such short-term personal service subcontracts shall meet any experience requirements imposed by any terms of this Contract and the

Exhibits hereto. Short-term subcontracts shall include any contract for a time period less than twelve (12) months in the aggregate over a period of three (3) years. The County shall be notified and must provide prior approval if any short-term subcontracts are renewed or extended at any time throughout the Contract Term.

- B. "Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.
- C. "Personal Service Subcontract" shall mean a contract for the provision of professional services, which includes but is not limited to counseling services, consulting services, bookkeeping services, accounting services, social work services, investigator services and legal services.

## XI. TERMINATION

- A. The County may terminate Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the Agency forty-five (45) days advance written notice of the termination. The Agency may terminate this Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the County ninety (90) days advance written notice of the termination.
- B. The County may terminate this Contract, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Agency materially breaches any 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, employees, subcontractors, agents or representatives 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.

If the Contract is terminated by the County pursuant to this Subsection XI.B.1., 2 or 3, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.

Agency refusal to accept an individual case assignment from OPD shall not alone be considered a material breach of this Contract, however, nothing in this provision shall prohibit the County from considering such refusal as a failure to comply with Contract terms and requiring Agency corrective action.

In the event the County terminates the Contract due to misappropriation of funds, non-performance of services, mismanagement, material misrepresentation, or any act or omission which jeopardizes the Agency's tax-exempt status under Code section 501(c)(3), then subject to the provisions of Section XI.D., the Agency shall return to the County any funds misappropriated or unexpended which, as of the date of termination and upon account reconciliation, are funds that have been paid to the Agency by the County, whether under this or a prior 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 (7) days advance written notice, in the event the County commits any material breach of this Contract.

- C. In the event of the termination of this Contract the Agency shall remit any unexpended balance of funds paid, including 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.
- D. 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 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 will 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.

## **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 will make a determination decision and respond in writing to the Agency within thirty (30) 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 Public Defender who will forward the letter with comments to the Department of Community and Human Services Director. The Department Director will make a final determination and respond in writing to the Agency within thirty (30) days of receipt.

Nothing herein shall impair the operation 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 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 will 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 will 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 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 may 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 (3) 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 will 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 will 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 forty-five (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. 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.

C. 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 and Exhibits hereto.

D. 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/).

E. 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.

F. 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 occupation 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.

G. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six (6) 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 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.

H. Sanctions for Violations

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

## I. 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 (2) 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 XV.

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 (2) 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 programs and services offered by 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 it 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 Subsection XIX. or does not disclose other interest required to be disclosed pursuant to KCC Chapter 3.04, the County will 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 have a Board of Directors, that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency except as provided in D. below. The Agency shall provide the County with the names, addresses, and professions of members of the Board of Directors and a copy of the Agency's bylaws on an annual basis. The Agency shall provide the County with notification of changes in membership of the Board of Directors and/or bylaws within thirty (30) days of any such change.

- A. The Agency shall establish an orientation program for all new members of its Board of Directors that includes training relating to the fiduciary duties and responsibilities of nonprofit board members.
- B. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501c(3) status, that addresses issues regarding gifts, financial gain, and improper use of position.
- C. This Contract must be reviewed and approved for Agency signature by the Agency's Board of Directors. No less frequently than annually, the members of the Board of Directors of the Agency shall meet with a representative of the County to discuss Contract issues as may be mutually agreed upon or as required by the County.
- D. 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 acquisition or rental by the Agency of 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,
    - c. a corporation in which an employee or Board member of the Agency, or
    - d. a relative of such a person has ownership.
- E. 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, subject to the authority and control of the Board, shall be responsible for receiving or depositing 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**

None of the 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, in whole or in part, with Contract funds at a cost of \$1,000 per item or more, when the purchase of such equipment is identified as reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County, and/or federal, and/or state government.
- B. The Agency shall be responsible for all such property, including the proper care and maintenance of the equipment.
- C. The Agency shall ensure that all such equipment will be returned to the appropriate government agency, whether federal, state or county, upon termination of this Contract unless otherwise agreed upon by the parties.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property 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 (1) 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 Public Defender, and the director of the County department specified on page one (1) of this Contract.

Any due date within which a party must take some action shall be computed from the date that the notice is received by said party according to the terms of this Contract or at such date as required in written notice.

## **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 modified for use in the performance of this Contract.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use 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. Each amendment to this Contract must be approved by the Board of Directors of the Agency.

## **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 will be covered by Court rules.

If the cost of recycled paper is more than 15% 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 it shall protect 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 Office of Public Defense shall sign a declaration acknowledging that all communication with prospective clients, clients or employees of the Agency concerning a specific case or pattern of cases shall be covered by attorney-client privilege.

**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 use or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to use appropriate safeguards to prevent use or disclosure of protected health information other than as provided for in this Contract.
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 protect 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 provided for by this Contract of which it becomes aware.
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. 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. Waive 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.



**XXXII. 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

SOCIETY OF COUNSEL REPRESENTING  
ACCUSED PERSONS

FOR

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Approved by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY  
SPECIAL DEPUTY PROSECUTOR

Date: July 27, 2003

## ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID DES  
SOCOF-1

DATE (MM/DD/YY)  
12/08/03

**PRODUCER**  
Hall-Conway-Jackson, Inc.  
P.O. Box 8010  
Mill Creek WA 98082-8010  
Phone: 425-368-1200 Fax: 425-368-1290

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### INSURERS AFFORDING COVERAGE

**INSURED**  
Society of Counsel  
Representing Accused Persons  
Attn: Stephanie Valentine  
1401 E. Jefferson, Suite 200  
Seattle, WA 98122

INSURER A **Valley Forge**  
INSURER B **Continental Casualty Ins. Co.**  
INSURER C  
INSURER D  
INSURER E

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	1029047730	06/17/03	06/17/04	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 10,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP ACG \$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY	1029047730	06/07/03	06/07/04	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY AGG \$
B	EXCESS LIABILITY	B1082221731	06/17/03	06/17/04	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 2,000,000
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	1029047730	06/07/03	06/07/04	WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**  
Certificate holder is additional insured per policy provisions and form number G20510C attached as respects interest as a funding source re: 2003 contract with King County.

<b>CERTIFICATE HOLDER</b>	<b>ADDITIONAL INSURED; INSURER LETTER:</b>	<b>CANCELLATION</b>
King County; Its Officials, Officers, Agents & Employees 123 Walthew Seattle, WA 98104-1598	KING821	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE Hall-Conway-Jackson

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## BUSINESS ACCOUNT PACKAGE POLICY BUSINESSOWNERS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION C - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F - LIABILITY AND MEDICAL EXPENSES DEFINITIONS.

### A. COVERAGES

#### 1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance does not apply. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in SECTION D - LIMITS OF INSURANCE; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and

(b) The "bodily injury" or "property damage" occurs during the policy period.

(2) To:

(a) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing,

broadcasting or telecasting done by or for you;

(b) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

d. "Property damage" that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the "occurrence" that caused it.

#### e. Coverage Extension - Supplementary Payments

In addition to the Limits of Insurance, we will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.

(5) All costs taxed against the insured in the "suit."

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(Ed. 01/97)

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.

(7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit," we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) agrees in writing to:

- (a) cooperate with us in the investigation, settlement or defense of the "suit";
- (b) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) notify any other insurer whose coverage is available to the indemnitee; and
- (d) cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) provides us with written authorization to:

- (a) obtain records and other information related to the "suit"; and
- (b) conduct and control the defense of the indemnitee in such "suit"

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph B.1.b.(2) of EXCLUSIONS, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgements or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph f., above are no longer met.

## 2. Medical Expenses

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the Limit of Insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;

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EXHIBIT V

PUBLIC DEFENSE LEGAL SERVICES

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I. WORK STATEMENT

The Agency shall provide the services of a specified number of attorneys and staff members in accordance with all of the laws and WACs of the State of Washington, King County Code (KCC), Washington State Rules for Professional Conduct (RPC), and WA State Bar Association Standards for Public Defense that are applicable to their business and the substance of the legal services that are the subject of this Contract.

II. PROGRAM DESCRIPTION

A. GOAL

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

B. ELIGIBLE POPULATION

The population served shall be indigent persons entitled to appointed counsel in King County courts and Seattle Municipal Court, as assigned by the Office of The Public Defender (OPD) or as appointed from the bench.

C. DEFINITIONS

1. Indigent: An indigent defendant, parent, or juvenile is a person determined indigent by the County or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
2. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent in a single citation, complaint or information, or in the case of misdemeanors a series of citations set for one court hearing, that will ultimately lead to one disposition.

If a related series of charges or citations 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.

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.

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.

3. 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, deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.

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 felony or 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.

4. 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. The type of work described by a case credit is shown in Attachment I of this Exhibit.

### 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 II of this Exhibit, for each quarter of the year. The quarterly case credit amounts in Attachment II are provided for planning purposes. OPD shall make reasonable efforts to distribute cases beyond variance, consistent with the case credit allocation in Attachment II of this Exhibit.
- b. Quarterly variance shall be no more than 10%, and annually no more than 5%, for all case categories except Felony and other complex case litigation cases, which shall have a quarterly variance of no more than 7.5% and an annual variance of no more than 2.5%.
- c. The Agency shall accept case assignments and case credits above the projected variance levels on a monthly basis. The County shall pay the Agency for work in excess of the variance levels according to Section IV of this Exhibit.
- d. In the event that OPD assigns the Agency a case in the King County Courthouse, that is transferred by the court to the Regional Justice Center (RJC) and the court orders a transfer of the case from the

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Agency to other counsel, the County will compensate the Agency for additional costs attributable to the transfer. The compensation shall be in case credits, as shown in Attachment I.

- e. In the event that once a case assignment has been made by OPD, and the Agency has begun delivery of legal services, the defendant/respondent absconds for a period of ninety (90) days or more (180 days for COC cases), upon re-apprehension, the allocation of a new case credit shall be determined by OPD.
  - 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 or credits shall be determined and assigned by OPD.
2. Funds for payment for expert services are not included in this Exhibit. Requests for appointment for expert service shall be made to OPD for pre-approval and, as approved, shall be reimbursed by OPD upon receipt of invoice from Agency.
3. Case Categories
- a. **Felony:** 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 (1) year, and as listed in Attachment I.
  - b. **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, restitution, and material witness hearings.
  - c. **Complex Litigation:** All capital homicide cases, all aggravated homicide cases, and those felony fraud cases filed by the Fraud Unit of the King County Prosecuting Attorney's Office where the estimated attorney hours necessary exceeds one hundred seventy (170) hours. Aggravated homicide cases are considered capital 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) A complex litigation case shall occupy the full time of either one (1) or two (2) attorneys during the first 60 days past assignment or reassignment.

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- 3) Each complex litigation case shall have one (1) FTE qualified at Senior Public Defense I level or above, or one half-time (.5) FTE qualified at Senior I and one half-time (.5) FTE Defender IV and one half-time (.5) FTE investigator assigned. Attorney assignment in capital cases will comply with SPR 2 (Superior Court Special Proceedings Rules).
  - 4) The Agency shall accept all complex litigation cases as determined by OPD after consultation with the Agency.
  - 5) Once a complex litigation case has proceeded for two (2) months after assignment, the Agency shall submit a litigation plan to OPD for approval.
  - 6) Funding on complex litigation cases shall be determined by OPD based on the litigation plan.
- d. 593: Any charge filed by the King County Prosecutor in King County Superior Court, alleging that the defendant is a final strike Persistent Offender, under RCW 9.94A.030, et. seq.
- e. Misdemeanor: Any criminal case filed by the King County Prosecutor in the District Courts or filed by the Seattle City Prosecutor in Seattle Municipal Court.
- 1) 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.
  - 2) 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.
- f. Juvenile Services: Coverage for all juvenile cases filed in juvenile court, including Diversion Calls.
- 1) 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.



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- 2) Juvenile Offender Restitution Hearing: A juvenile offender restitution hearing consists of a hearing or hearings related to the determination of amounts of restitution or 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 hearing.
  - 3) Child in Need of Services Petition: A Child in Need of Services (CHIN) petition (including Youth At Risk) involves the representation of one child or one parent/parents from the filing of the petition through determination of services. In the event that a court consolidates a truancy matter with proceedings under a Youth at Risk or Child in Need of Services Petition, the Agency shall receive additional case credit for the truancy representation.
  - 4) Child in Need of Services Review: A Child in Need of Services (including Youth At Risk) Review shall include all legal services necessary to represent the child or parent/parents from notice of said review to the conclusion of said review hearing.
  - 5) Truancy: A petition filed under RCW 28A.225.030. A case assignment will be made when the Court notifies OPD of a signed judicial order, setting a show cause hearing for Contempt of Court and requiring appointment of counsel.
- g. Dependency Services: Coverage for all dependency, termination, and guardianship cases.
- 1) Dependency Case: A dependency case is legal representation of an assigned client from:
    - a) The 30-day shelter care hearing to the setting of a dependency fact-finding date. Should an agreed order of dependency be entered or other dispositional action occur on or before the date of the thirty-day shelter care review, it shall be considered part of the dependency case; or
    - b) 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 first scheduled review, it shall be considered part of the dependency case.
  - 2) Post-Dependency Finding Hearing: A dependency review shall include legal representation at any hearing or hearings related to the original dependency filing, excluding the initial 72 hour

shelter care review, the thirty-day shelter care review, and the dispositional hearing. Services included within this category shall include, but not be limited to: shelter care, visitation, and six-month reviews, or other reviews or hearings set by the court. In the event that a court consolidates a family court matter with proceedings under a dependency petition, the Agency shall receive additional dependency review credits under this section for representation involving other issues in the consolidated matter.

- 3) Dependency Trial/Termination or Guardianship Trial
  - a) A dependency trial shall include:
    - i) A fact finding for a dependency and the preparation for said fact finding or the entry of an agreed order of dependency and agreed disposition order at the time of the scheduled dependency fact finding hearing, or
    - ii) Entry of an agreed order of dependency and any contested hearing or hearings related to the dispositional order pursuant to the agreed order.
  - b) A termination trial shall include:
    - i) A fact-finding on a termination petition or guardianship petition and the preparation for said fact finding, or
    - ii) Entry of an agreed order regarding termination or guardianship petition at the time of the scheduled fact-finding.
- h. Civil Contempt of Court: A civil contempt case shall include legal representation up to a maximum of three (3) hearings, related 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. The Agency shall not provide legal services beyond the show of cause. Every review after the first case credit is assigned partial case credit, as noted in the case credit schedule attached to this Exhibit.
- i. Involuntary Commitment Cases:
  - 1) 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 (2) and (3) below.

- 2) 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.
  - 3) A hearing held pursuant to a petition for involuntary administration of medications or ECT therapy shall be considered a separate case.
  - 4) An alcohol involuntary commitment proceeding filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
  - 5) A drug-related involuntary commitment filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
- j. Sexual Predator Cases: The Agency shall provide legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, including when civil commitment petitions have been filed by the King County Prosecuting Attorney or the Attorney General's Office, subject to such conditions stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services (DSHS) from the effective date of such agreement, and be reimbursed at a rate determined by DSHS or as ordered by the Court.
- k. Calendars—Coverage for calendars includes the following:
- 1) The Agency will provide legal advice 24 hours a day 7 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 within the jurisdiction of OPD. Attorney of the Day (AOD) for legal advice may occur both in RJC and Seattle. This includes a call from a defendant or a police agency to respond for line-up presentations.
  - 2) Felony Arraignment Calendar.
  - 3) Felony Sentence Modification Calendar: The Agency shall provide an attorney and a paralegal for legal representation for cases up to an average of forty (40) matters per week on a quarterly basis on the Superior Court Probation Modification Calendar.

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- 4) King County Court Misdemeanor includes: District Court Felony Investigation Calendar, Bench warrant return calendar, and initial detention hearings for new misdemeanor charges.
- 5) 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.
- 6) 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 juvenile 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.
- 7) Dependency Calendar. All initial 72 hours shelter care calendars in Seattle or RJC shall include the presence of an attorney.
- 8) Drug Court: Any Felony criminal case filed into King County Drug Court.
- 9) District Mental Health Court includes: Any case filed into King County District Mental Health Court. The designated Agency shall staff the Court with 1.25 FTE attorneys and a .8 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.
- 10) Seattle Mental Health Court includes: Any case filed into Seattle Municipal Mental Health Court. The designated Agency shall staff the Court with 1.5 FTE attorneys, a .17 supervising attorney and 1 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.

## B. PERFORMANCE

1. 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. Work under this contract shall not mean Pro Se representation of himself or herself by any attorney employed by the Agency if such representation utilizes neither funds, time, nor equipment provided by this Contract.
2. 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.

3. 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 (1) working day from notification to the Agency 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.
4. The Agency agrees that an attorney shall be required to make contact with all indigent persons within five (5) working days from a case assignment.
5. The Agency agrees that a preliminary written response to any written complaints from OPD concerning services provided by the Agency, shall be submitted to OPD within two (2) working days of the date the complaint is received by the Agency Director.
6. Conflicts of interest arise in a number of circumstances in the representation of indigent persons. Participants in the representation of indigent persons shall be cognizant of the potential for conflicts and recognize that their management of conflicts is governed by the mandatory provisions of the Washington State Rules of Professional Conduct (RPC) as adopted in 1985 and thereafter amended, and judicial interpretations of those rules.

Upon assignment of any client to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within ten (10) days of the assignment, whether initial or subsequent, on any case. Discovery shall be reviewed within ten (10) days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD as soon as possible of any conflict of interest as defined by the Washington State Rules of Professional Conduct.

7. The Agency shall establish guidelines for pro-bono work provided by staff of the Agency. Guidelines shall assure that any such representation is not provided to the exclusion or detriment of legal services that are the subject of this Contract. Funds received under this Contract shall not be used to subsidize work performed outside the scope of this Contract.
8. Minimum Attorney Qualifications
  - a. Each Agency attorney shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State 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 Agency provides legal services to clients under the terms of this Exhibit. The Agency

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shall maintain on its premises a copy of the current CLE report to the BAR Association.

- b. Each staff attorney representing a defendant 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 (b) 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, or parole revocation hearing, 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 shall provide sufficient support staff, including investigators, to provide for effective assistance of counsel.
- g. The Agency shall provide a year-end attorney case assignment report which shall include for each attorney the case numbers, indigent person's name, court, and date assigned.

## 9. Attorney Evaluation

The Agency director, or his/her designee, shall evaluate the professional performance of each individual Agency attorney annually. 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. The Agency shall keep a written record of attorney performance evaluations.

## 10. Attorney Training

The Agency shall provide access to sufficient training to keep all attorneys abreast of developments in criminal law, procedure, and court rules.

11. Case Credit Work Load Guidelines

The County shall review Agency case credit work loads, case assignments, standards, and support staff/attorney ratios for each area of cases. In addition, the Agency's staffing plan may be reviewed by OPD to verify that attorney experience levels and placement within the salary schedule are reasonable when compared to responsibilities or capabilities of the attorney.

The Agency agrees to pay attorney salaries commensurate with the Salary Plan (Attachment IV); however, the Agency may assign an attorney to a program area or position for the purposes of providing supervision, lead-work, or specific needed skills to a specific category of cases, or to a specific court.

a. The following are average annual case credit work loads per attorney:

Felony	150
Complex	150
593	150
King County Misdemeanor	450
Juvenile	330
Dependency	180
Contempt of Court	225
Drug Court	2.6 FTE
District MH Court	2.05 FTE
CHINS/Becca	280
Seattle Muni. Ct. Misdemeanor	380
ITA	410
Sexual Predator	tbd by Agency and OPD
Seattle MH Court	2.67 FTE

b. The Agencies may use legal interns. They shall be used in accordance with Washington State Admission to Practice Rule #9.

**IV. COMPENSATION AND METHOD OF PAYMENT**

A. The Agency shall be reimbursed monthly as provided in Attachment III of this Exhibit. The Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 through December 31, 2003. The Agency shall submit in a format approved by the County a monthly Billing Invoice Package that consists of an invoice and reports as stated in Section V. Reporting Requirements of this Exhibit. The Billing Invoice Package is due within ten (10) days after Agency receipt of the OPD Case Credit Certification Report.

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- B. Payments made for extraordinary expenses that are in addition to those payments shown in Attachment III. Payment Schedule, shall be approved in advance of expenditure by OPD.
- C. 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.

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 quarterly variance percentages outlined in Section III. Program Requirements will be applied to the projected caseload to establish the variance range.
  - 2. The actual quarterly caseload for each type of case, as shown in the quarterly Certified Statistics will be compared to the actual variance range, for each type of case.
  - 3. 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.
  - 4. 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 will be made.
  - 5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
- D. Year End Reconciliation: The final payment for 2003 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.
  - 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.



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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.
  5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
    - d. The final case credit reconciliation shall be completed by January 20, 2004.
- E. Sexual Predator Cases: The Agency shall be paid by OPD from funds provided 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 regular monthly expenditure reports and an invoice to OPD that includes a statement of the names and the number of hours spent by each attorney working on the case during the month. OPD shall submit to the State of Washington an invoice that includes the information provided by the Agency within ten (10) days of receipt of the Agency invoice. OPD shall remit funds received from the State of Washington to the Agency within ten (10) days of receipt. Payment to the Agency shall be made subject to such other conditions as stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services.
- F. Information System Modifications: Agency hardware, network software, application software, and connectivity products are included in the administrative amount paid to the Agency. Subject to prior OPD approval, the Agency shall be reimbursed based on submission of invoices from vendors or consultants, for the costs of modifications to software programs required by the information system changes being undertaken by OPD.
- G. Reserves and prepayments
1. The Agency shall ensure that it has sufficient funds to complete cases assigned but not completed at the end of the contract period.
  2. The County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, CHNS/BECCA and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75% completed, November cases are 50% completed, and December cases are 25% completed. For dependency cases it is assumed October cases are 15% completed, November cases are 10% completed, and December cases are 5% completed.

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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 with the monthly billing package at the times indicated in the chart below.

<b>Report Title</b>	<b>2003 Due Date in Billing Package</b>
Variance Explanation Open and Closed Cases Expenditure Report Certification of Case Credits (Certs) Additional Credit Forms	Monthly
Quarterly Case Credit and Case Allocation Summary	April July October January
Year-end Report of Reserve Accounts and Operating Accounts Year-end Attorney Case Assignment Report	January
Annual Subcontract Attorney Use Report	April
Annual Financial Statements, IRS Form 990, Audit Report	August

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ATTACHMENT I

Case Credit Application Schedule

Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Felony</b>	
One completed case	1 case credit
Multiple count cases	0.25 case credit for each count beyond four; does not apply to felony fraud cases.
Atty/Day or substantial advice	0.10 case credit
Atty/Day or substantial advice in the King County Detention Facility	0.20 case credit
Probation or other reviews	0.33 case credit
Assignment for sentencing only	Felony cases assigned for purposes of sentencing or resentencing only shall be assigned at 0.30 of a felony case credit.
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	1 case credit
Homicide	2 case credits
Seattle District Court expedited felony subsequently refiled in Superior Court	1 case credit
Bench Warrant during case or case transferred to another agency or assigned counsel	1 case credit if more than 10 hours of work has been done. No case credit if 10 or less hours work has been done.
<b>Complex Litigation</b>	As below and as noted in the litigation plan.
	Capital Cases: 2 FTE attorneys; 25 complex litigation case credits per month.
	Aggravated Homicide: 1 FTE attorney; 12.5 complex litigation case credits per month.
	Felony Fraud: 1 FTE attorney; 12.5 complex litigation case credits per month.
<b>59%</b>	1 case credit, plus one additional credit for every

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
	12.1 hours on a monthly basis as requested by the Agency.
<b>King County or Seattle Misdemeanor</b>	
One completed case	1 case credit
Review, resentencing or other hearing	1 case credit
One Seattle Municipal Court probation hearing	0.60 case credit
One Seattle District Court expedited felony	1 case credit
Misdemeanor Appeal	4 case credits
Misdemeanor Writ	3 case credits
<b>Juvenile Offender-NDA only</b>	
One completed case	1 case credit
Decline hearing	1 case credit
A case that exceeds 40 attorney hours	0.50 case credit for each 15 hour increment over 40 hours
Reviews or Hearings	0.33 case credit
Atty/Day for substantial advice	0.10 case credit
<b>Juvenile Offender- ACA,SCRAP,TDA</b>	Calendar funding
<b>Juvenile Dependency</b>	
A dependency case	1 case credit
Post Dependency Finding Hearing	0.40 case credit
Dependency trial	0.50 case credit
Termination trial	1 case credit
Atty/Day for substantial advice	0.10 case credit

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Civil Contempt</b>	
From show cause initial assignment hearing up to and including 2 contempt reviews	1 case credit
Subsequent reviews	.33 case credit
<b>Drug Court</b>	calendar funding
<b>District Mental Health Court</b>	calendar funding
<b>Child In Need of Services/ Becca (including At-Risk Youth)</b>	
One completed case	1 case credit
Truancy: One initial and two review hearings	1 case credit
Review or other hearing	0.33 case credit
<b>ITA</b>	1 case credit
<b>Seattle Mental Health Court</b>	calendar funding
<b>Sexual Predator</b>	Tbd by Agency and OPD
<b>Other Circumstances</b>	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2003 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Aggravated Murder First Degree/Capital Punishment cases	Aggravated murder and capital punishment cases not included in the complex litigation provisions of this Exhibit shall be given extra credits based upon negotiations between OPD and the Agency.
Felony Fraud cases	Felony Fraud cases filed by the Fraud Unit of the King County Prosecutor's Office are included in the

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<b>Type of Case</b>	<b>For purposes of payment under this Contract, the following application of case credits shall apply:</b>
	complex litigation provisions of this Contract and shall be given extra credits based upon negotiation between OPD and the Agency, if the nature of the case requires such extra credits. Factors entering into the awarding of extra credits include, but are not limited to, amount and complexity of evidence, number of defendants and the anticipated or actual time of trial.
Assignment of additional FTEs	OPD may approve additional FTEs being assigned depending on ease of geographic access.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery within the time frames set, withdrawn for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit and may grant appropriate credit. Should such credit be denied, OPD shall inform the Agency of the basis for denial.
Other conditions for additional credit	Services on case in excess of 100 hours, as approved in advance by OPD.

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## ATTACHMENT II

### Case Credit Allocation and Cases Assigned Estimate for 2003

Case Category	Total Agency Case Credit Allocation at Seattle	Total Agency Case Credit Allocation at RJC	Agency's % of Total OPD Case Credits	1st Quarter Case Credits	2nd Quarter Case Credits	3rd Quarter Case Credits	4th Quarter Case Credits
<i>Felony</i>	1,064	977	22%	510	510	511	510
<i>Complex</i>	208		22%	52	52	52	52
593	64	11	22%	18	19	19	19
<b>Total Felony</b>	<b>1,336</b>	<b>988</b>	<b>22%</b>	<b>580</b>	<b>581</b>	<b>582</b>	<b>581</b>
KC Misd	1,797		20%	449	449	450	449
Juv Off	1,535		31%	383	384	384	384
Dependency	981	495	54%	369	369	369	369
COC	1,399		100%	349	350	350	350
Drug Court			0%				
D MH Ct			0%				
Becca		488	35%	122	122	122	122
SM Ct Misd			0%				
ITA			0%				
S MH Ct			0%				
<b>TOTAL</b>	<b>7,048</b>	<b>1,971</b>	<b>22%</b>	<b>2,252</b>	<b>2,255</b>	<b>2,257</b>	<b>2,255</b>

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## ATTACHMENT III

### Payment Schedule

This Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 to December 31, 2003. In 2003, the Agency shall be paid the following monthly amounts for cases and special services:

<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Current Expense Administrative Cost	<b>Jan-Jun</b>	41,735	250,412
	<b>Jul + Retro</b>	45,964	45,964
	<b>Aug-Dec</b>	42,339	<u>211,696</u>
			<b>508,072</b>
Felony, including the following services: KCCF Out-of-Custody SRA Calendar; RJC Felony Investigation Calendar; RJC In-Custody SRA Calendar; South-end Homicide AOD	<b>Jan-Jun</b>	179,140	1,074,840
	<b>Jul + Retro</b>	174,771	174,771
	<b>Aug-Dec</b>	178,516	<u>892,578</u>
			<b>2,142,189</b>
King County Misdemeanor, including the following services: KCCF In-Custody Probation, Revocation Calendar; Eastside DUI AOD; RJC Misdemeanor Calendar	<b>Jan-Jun</b>	70,496	422,976
	<b>Jul + Retro</b>	118,418	118,418
	<b>Aug-Dec</b>	77,342	<u>386,710</u>
			<b>928,104</b>
Juvenile, including the following services: Juvenile AOD and Juvenile First Appearance Calendar	<b>Jan-Jun</b>	72,780	436,678
	<b>Jul + Retro</b>	23,388	23,388
	<b>Aug-Dec</b>	65,724	<u>328,619</u>
			<b>788,685</b>
Dependency, including Dependency AOD Calendar in Seattle and RJC	<b>Jan-Jun</b>	92,407	554,444
	<b>Jul + Retro</b>	42,418	42,418
	<b>Aug-Dec</b>	85,266	<u>426,329</u>
			<b>1,023,191</b>
Contempt of Court	<b>Jan-Jun</b>	76,899	461,396
	<b>Jul + Retro</b>	(94,027)	(94,027)
	<b>Aug-Dec</b>	52,481	<u>262,407</u>
			<b>629,776</b>
Juvenile Drug Diversion Court	<b>Jan-Jun</b>	1,270	7,620
	<b>Jul + Retro</b>	1,270	1,270
	<b>Aug-Dec</b>	1,270	<u>6,350</u>
			<b>15,240</b>



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<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Becca	Jan-Jun	19,069	114,415
	Jul + Retro	(1,452)	(1,452)
	Aug-Dec	16,138	<u>80,688</u>
			<b>193,650</b>
TOTAL	Jan-Jun	553,797	3,322,781
	Jul + Retro	310,750	310,750
	Aug-Dec	517,805	<u>2,595,377</u>
			<b>6,228,907</b>

ATTACHMENT IV

Salary Plan

2003 Kenny Salary Table  
 (2003 COLA INCLUDED)

RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
Public Defense Attorney 1	\$ 43,612	\$ 45,094					
Public Defense Attorney 2	\$ 48,059	\$ 50,901					
Public Defense Attorney 3	\$ 55,355	\$ 59,045					
Public Defense Attorney 4	\$ 63,344	\$ 64,886	\$ 66,428	\$ 68,624	\$ 70,050	\$ 71,802	
Senior Public Defense Attorney 1	\$ 71,477	\$ 73,683	\$ 75,629	\$ 77,315	\$ 79,391	\$ 82,504	\$ 83,282
Senior Public Defense Attorney 2	\$ 76,926	\$ 79,261	\$ 81,336	\$ 83,282	\$ 85,358	\$ 87,304	\$ 89,509
Senior Public Defense Attorney 3	\$ 89,120	\$ 91,714	\$ 94,049	\$ 96,125	\$ 98,849	\$ 100,925	\$ 103,778

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Attachment D  
2004-095

King County Contract No.  
Federal Taxpayer ID No.

D32898D  
91-0852323

Department/Division Community and Human Services/Office of the Public Defender

Agency The Defender Association

Project Title Public Defense Legal Services

Contract Amount \$9,243,398 Fund Code 00000010

Contract Period From: January 1, 2003 To December 31, 2003

**KING COUNTY AGENCY SERVICES CONTRACT – 2003**

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 representation in King County, by the Agency, 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. 14517; 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).

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:

- Certificate of Insurance/Endorsements Attached hereto as Exhibit I
- Personnel Inventory Report Attached hereto as Exhibit II
- Affidavit of Compliance Attached hereto as Exhibit III
- 504/ADA Assurance of Compliance Attached hereto as Exhibit IV
- Public Defense Legal Services Attached hereto as Exhibit V

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

## II. DURATION OF CONTRACT

This Contract shall commence on the 1<sup>st</sup> day of January 2003, and shall terminate on the 31<sup>st</sup> day of December 2003 ("Contract Term"), unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

## 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 its final billing package and all outstanding reports within twenty (20) days of the date this Contract terminates. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency within the timeframe established in III.A. above.

## IV. OPERATING BUDGET

A. The funds provided by the County to the Agency pursuant to the terms of this Contract are solely for expenses which are directly and legitimately related to the performance of the provisions of this Contract. In the event the County, in its sole discretion, 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 and Sexually Violent Predator cases 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 which complies 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 (6) 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 (10) 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 reserve accounts and operating accounts at the end of the Contract Term.
- D. Any and all reserve or reserve equivalent accounts must be cash equivalent accounts. Cash equivalent accounts are defined as short term, highly liquid investments that are both readily convertible to known amounts of cash, and so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.
- 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 will 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 will 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 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 (6) 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. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

## **IX. CORRECTIVE ACTION**

If the County determines 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 corrective action, the following sequential procedure will apply:

- A. The County will notify the Agency in writing of the nature of the breach;

The Agency 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. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Agency's response, 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 will notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The determination of sufficiency of the Agency's corrective action plan shall be at the sole discretion of the County. The county's determination of sufficiency of the Agency's corrective action plan 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.B.;
- 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. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section XI. Subsections A, B, C, D, and E, nor shall the exercise of any right within this section 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 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 fifteen (15) days prior to the date of any proposed assignment. This provision shall not apply to previously budgeted and approved short-term personal service subcontracts with individuals to perform work which is under the direct supervision and control of the Agency. Any individuals entering into such short-term personal service subcontracts shall meet any experience requirements imposed by any terms of this Contract and the

Exhibits hereto. Short-term subcontracts shall include any contract for a time period less than twelve (12) months in the aggregate over a period of three (3) years. The County shall be notified and must provide prior approval if any short-term subcontracts are renewed or extended at any time throughout the Contract Term.

- B. "Subcontract" shall mean any agreement between the Agency and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.
- C. "Personal Service Subcontract" shall mean a contract for the provision of professional services, which includes but is not limited to counseling services, consulting services, bookkeeping services, accounting services, social work services, investigator services and legal services.

## XI. TERMINATION

- A. The County may terminate Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the Agency forty-five (45) days advance written notice of the termination. The Agency may terminate this Contract without cause, in whole or in part, prior to the end of the Contract Term, by providing the County ninety (90) days advance written notice of the termination.
- B. The County may terminate this Contract, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Agency materially breaches any 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, employees, subcontractors, agents or representatives 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.

If the Contract is terminated by the County pursuant to this Subsection XI.B.1., 2 or 3, the Agency shall be liable for damages, including any additional costs of procurement of similar services from another source.

Agency refusal to accept an individual case assignment from OPD shall not alone be considered a material breach of this Contract, however, nothing in this provision shall prohibit the County from considering such refusal as a failure to comply with Contract terms and requiring Agency corrective action.

In the event the County terminates the Contract due to misappropriation of funds, non-performance of services, mismanagement, material misrepresentation, or any act or omission which jeopardizes the Agency's tax-exempt status under Code section 501(c)(3), then subject to the provisions of Section XI.D., the Agency shall return to the County any funds misappropriated or unexpended which, as of the date of termination and upon account reconciliation, are funds that have been paid to the Agency by the County, whether under this or a prior 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 (7) days advance written notice, in the event the County commits any material breach of this Contract.

- C. In the event of the termination of this Contract the Agency shall remit any unexpended balance of funds paid, including 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.
- D. 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 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 will 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.

## **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 will make a determination decision and respond in writing to the Agency within thirty (30) 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 Public Defender who will forward the letter with comments to the Department of Community and Human Services Director. The Department Director will make a final determination and respond in writing to the Agency within thirty (30) days of receipt.

Nothing herein shall impair the operation 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 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 will 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 will 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 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 may 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 (3) 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 will 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 will 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 forty-five (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. 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.

C. 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 and Exhibits hereto.

D. 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/).

E. 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.

F. 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 occupation 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.

G. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six (6) 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 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.

H. Sanctions for Violations

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

## I. 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 (2) 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 XV.

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 (2) 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 programs and services offered by 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 it 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 Subsection XIX. or does not disclose other interest required to be disclosed pursuant to KCC Chapter 3.04, the County will 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 have a Board of Directors, that shall be comprised of neither employees nor relatives of employees, officers or directors of the Agency except as provided in D. below. The Agency shall provide the County with the names, addresses, and professions of members of the Board of Directors and a copy of the Agency's bylaws on an annual basis. The Agency shall provide the County with notification of changes in membership of the Board of Directors and/or bylaws within thirty (30) days of any such change.

- A. The Agency shall establish an orientation program for all new members of its Board of Directors that includes training relating to the fiduciary duties and responsibilities of nonprofit board members.
- B. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501c(3) status, that addresses issues regarding gifts, financial gain, and improper use of position.
- C. This Contract must be reviewed and approved for Agency signature by the Agency's Board of Directors. No less frequently than annually, the members of the Board of Directors of the Agency shall meet with a representative of the County to discuss Contract issues as may be mutually agreed upon or as required by the County.
- D. 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 acquisition or rental by the Agency of 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,
    - c. a corporation in which an employee or Board member of the Agency, or
    - d. a relative of such a person has ownership.
- E. 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, subject to the authority and control of the Board, shall be responsible for receiving or depositing 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**

None of the 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, in whole or in part, with Contract funds at a cost of \$1,000 per item or more, when the purchase of such equipment is identified as reimbursable as a Contract budget item, is upon its purchase or receipt the property of the County, and/or federal, and/or state government.
- B. The Agency shall be responsible for all such property, including the proper care and maintenance of the equipment.
- C. The Agency shall ensure that all such equipment will be returned to the appropriate government agency, whether federal, state or county, upon termination of this Contract unless otherwise agreed upon by the parties.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property 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 (1) 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 Public Defender, and the director of the County department specified on page one (1) of this Contract.

Any due date within which a party must take some action shall be computed from the date that the notice is received by said party according to the terms of this Contract or at such date as required in written notice.

**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 modified for use in the performance of this Contract.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Agency that are not modified for use 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. Each amendment to this Contract must be approved by the Board of Directors of the Agency.

**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 will be covered by Court rules.

If the cost of recycled paper is more than 15% 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 it shall protect 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 Office of Public Defense shall sign a declaration acknowledging that all communication with prospective clients, clients or employees of the Agency concerning a specific case or pattern of cases shall be covered by attorney-client privilege.

## **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 use or disclose protected health information other than as permitted or required by law.
2. The Agency agrees to use appropriate safeguards to prevent use or disclosure of protected health information other than as provided for in this Contract.
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 protect 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 provided for by this Contract of which it becomes aware.
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. 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. Waive 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.

**XXXII. 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 by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY  
SPECIAL DEPUTY PROSECUTOR

Date: July 27, 2003

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID LT  
DEF5000

DATE (MM/DD/YY)  
12/17/03

# 14854

PRODUCER  
Walmsley-Degginger & Co.  
W-D Insurance  
Post Office Box 1100  
Mercer Island WA 98040-1100  
Phone: 206-232-6000 Fax: 206-232-6015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

### INSURERS AFFORDING COVERAGE

INSURED  
  
The Defender Association  
810 3rd Avenue  
Seattle WA 98104

INSURER A: Valley Forge Insurance Co.  
INSURER B: Transcontinental Insurance Co.  
INSURER C:  
INSURER D:  
INSURER E:

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	116764787	11/19/01	11/19/04	EACH OCCURRENCE \$ \$500,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ \$100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ \$10,000
	<input checked="" type="checkbox"/> WA Stop Gap				PERSONAL & ADV INJURY \$ EXCLUDED
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ \$1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$ \$1,000,000
B	AUTOMOBILE LIABILITY	B000854419	11/19/01	11/19/02	COMBINED SINGLE LIMIT (Ea accident) \$ \$1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
A	EXCESS LIABILITY	116764787	11/19/01	11/19/04	EACH OCCURRENCE \$ \$1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ \$1,000,000
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input checked="" type="checkbox"/> RETENTION \$10,000				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
King County, its officers, officials, employees and agents are named  
Additional Insured per form CG2026 attached.

CERTIFICATE HOLDER  ADDITIONAL INSURED; INSURER LETTER: \_\_\_\_\_

CANCELLATION

**KINGFIN**  
  
King County  
Dept. of Finance  
821 Second Ave/Exch Bldg MS125  
Seattle WA 98104-1598

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~WHICH WILL BE TO THE ORIGINAL~~  
~~INSURER'S REPRESENTATIVE OR TO THE PERSONS AND FIRMS OF THE INSURER'S REPRESENTATIVE OR~~  
~~INSURER'S REPRESENTATIVE~~ **WALMSLEY DEGGINGER CO. INC.**  
AUTHORIZED REPRESENTATIVE  
Kenneth McIntosh

**14854**

Named Insured: The Defender Association

Policy Number: 1016764787  
**COMMERCIAL GENERAL LIABILITY**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

Name of Person or Organization:

**King County, its officers, officials, employees and agents.**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.



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**INSURANCE SUMMARY – PROFESSIONAL LIABILITY**

**THE DEFENDER ASSOCIATION**

Carrier: Columbia Casualty Company

Policy Term: March 1, 2003 to March 1, 2004

**Lawyers Professional Liability**

\$2,000,000 each claim  
\$2,000,000 in the aggregate

Deductible \$1,000 annual aggregate  
(Does not apply to Defense Costs)

Retroactive Date: Full Prior Acts

**Management Liability Errors & Omissions Endorsement**

\$2,000,000 each claim  
\$2,000,000 in the aggregate

Deductible \$1,000 annual aggregate  
(Does not apply to Defense Costs)

Retroactive Date: Full Prior Acts

**Employment Practices Coverage Endorsement**

\$ 50,000 each claim  
\$ 150,000 in the aggregate

Deductible \$1,000 annual aggregate  
(Does not apply to Defense Costs)

Retroactive Date: Full Prior Acts

**Punitive Damages Endorsement**

No Coverage

**Criminal Defense Endorsement**

\$ 50,000 each claim  
\$ 50,000 in the aggregate

Deductible \$1,000 annual aggregate

Retroactive Date: Full Prior Acts

**Walmsley-Degginger & Co., Inc.**

Corporate: 7426 S.E. 27th (P.O. Box 1100) Mercer Island, WA 98040 • (206) 232-6000 • Fax No. (206) 232-6015  
Toll Free (800) 659-8232

Gig Harbor (253) 884-0792 • Mukilteo (425) 493-1893 • Sherwood, OR (503) 625-8956

EXHIBIT V

**14854**

**PUBLIC DEFENSE LEGAL SERVICES**

**I. WORK STATEMENT**

The Agency shall provide the services of a specified number of attorneys and staff members in accordance with all of the laws and WACs of the State of Washington, King County Code (KCC), Washington State Rules for Professional Conduct (RPC), and WA State Bar Association Standards for Public Defense that are applicable to their business and the substance of the legal services that are the subject of this Contract.

**II. PROGRAM DESCRIPTION**

**A. GOAL**

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

**B. ELIGIBLE POPULATION**

The population served shall be indigent persons entitled to appointed counsel in King County courts and Seattle Municipal Court, as assigned by the Office of The Public Defender (OPD) or as appointed from the bench.

**C. DEFINITIONS**

1. Indigent: An indigent defendant, parent, or juvenile is a person determined indigent by the County or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101.
2. Criminal Case: A case is any one charge or series of related charges filed against one defendant/respondent in a single citation, complaint or information, or in the case of misdemeanors a series of citations set for one court hearing, that will ultimately lead to one disposition.

If a related series of charges or citations 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.

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.

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

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request, application to proceed in forma pauperis on appeal, and a motion for appointment of appellate counsel.

3. 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, deferral of sentence, the entry of an order of deferred prosecution, or a dispositional continuance.

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 felony or 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.

4. 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. The type of work described by a case credit is shown in Attachment I of this Exhibit.

### 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 II of this Exhibit, for each quarter of the year. The quarterly case credit amounts in Attachment II are provided for planning purposes. OPD shall make reasonable efforts to distribute cases beyond variance, consistent with the case credit allocation in Attachment II of this Exhibit.
- b. Quarterly variance shall be no more than 10%, and annually no more than 5%, for all case categories except Felony and other complex case litigation cases, which shall have a quarterly variance of no more than 7.5% and an annual variance of no more than 2.5%.
- c. The Agency shall accept case assignments and case credits above the projected variance levels on a monthly basis. The County shall pay the Agency for work in excess of the variance levels according to Section IV of this Exhibit.
- d. In the event that OPD assigns the Agency a case in the King County Courthouse, that is transferred by the court to the Regional Justice Center (RJC) and the court orders a transfer of the case from the

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Agency to other counsel, the County will compensate the Agency for additional costs attributable to the transfer. The compensation shall be in case credits, as shown in Attachment I.

- e. In the event that once a case assignment has been made by OPD, and the Agency has begun delivery of legal services, the defendant/respondent absconds for a period of ninety (90) days or more (180 days for COC cases), upon re-apprehension, the allocation of a new case credit shall be determined by OPD.
  - 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 or credits shall be determined and assigned by OPD.
2. Funds for payment for expert services are not included in this Exhibit. Requests for appointment for expert service shall be made to OPD for pre-approval and, as approved, shall be reimbursed by OPD upon receipt of invoice from Agency.
  3. Case Categories
    - a. Felony: 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 (1) year, and as listed in Attachment I.
    - b. 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, restitution, and material witness hearings.
    - c. Complex Litigation: All capital homicide cases, all aggravated homicide cases, and those felony fraud cases filed by the Fraud Unit of the King County Prosecuting Attorney's Office where the estimated attorney hours necessary exceeds one hundred seventy (170) hours. Aggravated homicide cases are considered capital 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) A complex litigation case shall occupy the full time of either one (1) or two (2) attorneys during the first 60 days past assignment or reassignment.

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- 3) Each complex litigation case shall have one (1) FTE qualified at Senior Public Defense I level or above, or one half-time (.5) FTE qualified at Senior I and one half-time (.5) FTE Defender IV and one half-time (.5) FTE investigator assigned. Attorney assignment in capital cases will comply with SPR 2 (Superior Court Special Proceedings Rules).
  - 4) The Agency shall accept all complex litigation cases as determined by OPD after consultation with the Agency.
  - 5) Once a complex litigation case has proceeded for two (2) months after assignment, the Agency shall submit a litigation plan to OPD for approval.
  - 6) Funding on complex litigation cases shall be determined by OPD based on the litigation plan.
- d. 593: Any charge filed by the King County Prosecutor in King County Superior Court, alleging that the defendant is a final strike Persistent Offender, under RCW 9.94A.030, et. seq.
- e. Misdemeanor: Any criminal case filed by the King County Prosecutor in the District Courts or filed by the Seattle City Prosecutor in Seattle Municipal Court.
- 1) 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.
  - 2) 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.
- f. Juvenile Services: Coverage for all juvenile cases filed in juvenile court, including Diversion Calls.
- 1) 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.

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- 2) Juvenile Offender Restitution Hearing: A juvenile offender restitution hearing consists of a hearing or hearings related to the determination of amounts of restitution or 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 hearing.
  - 3) Child in Need of Services Petition: A Child in Need of Services (CHIN) petition (including Youth At Risk) involves the representation of one child or one parent/parents from the filing of the petition through determination of services. In the event that a court consolidates a truancy matter with proceedings under a Youth at Risk or Child in Need of Services Petition, the Agency shall receive additional case credit for the truancy representation.
  - 4) Child in Need of Services Review: A Child in Need of Services (including Youth At Risk) Review shall include all legal services necessary to represent the child or parent/parents from notice of said review to the conclusion of said review hearing.
  - 5) Truancy: A petition filed under RCW 28A.225.030. A case assignment will be made when the Court notifies OPD of a signed judicial order, setting a show cause hearing for Contempt of Court and requiring appointment of counsel.
- g. Dependency Services: Coverage for all dependency, termination, and guardianship cases.
- 1) Dependency Case: A dependency case is legal representation of an assigned client from:
    - a) The 30-day shelter care hearing to the setting of a dependency fact-finding date. Should an agreed order of dependency be entered or other dispositional action occur on or before the date of the thirty-day shelter care review, it shall be considered part of the dependency case; or
    - b) 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 first scheduled review, it shall be considered part of the dependency case.
  - 2) Post-Dependency Finding Hearing: A dependency review shall include legal representation at any hearing or hearings related to the original dependency filing, excluding the initial 72 hour

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shelter care review, the thirty-day shelter care review, and the dispositional hearing. Services included within this category shall include, but not be limited to: shelter care, visitation, and six-month reviews, or other reviews or hearings set by the court. In the event that a court consolidates a family court matter with proceedings under a dependency petition, the Agency shall receive additional dependency review credits under this section for representation involving other issues in the consolidated matter.

- 3) Dependency Trial/Termination or Guardianship Trial
  - a) A dependency trial shall include:
    - i) A fact finding for a dependency and the preparation for said fact finding or the entry of an agreed order of dependency and agreed disposition order at the time of the scheduled dependency fact finding hearing, or
    - ii) Entry of an agreed order of dependency and any contested hearing or hearings related to the dispositional order pursuant to the agreed order.
  - b) A termination trial shall include:
    - i) A fact-finding on a termination petition or guardianship petition and the preparation for said fact finding, or
    - ii) Entry of an agreed order regarding termination or guardianship petition at the time of the scheduled fact-finding.
- h. Civil Contempt of Court: A civil contempt case shall include legal representation up to a maximum of three (3) hearings, related 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. The Agency shall not provide legal services beyond the show of cause. Every review after the first case credit is assigned partial case credit, as noted in the case credit schedule attached to this Exhibit.
- i. Involuntary Commitment Cases:
  - 1) 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

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to RCW 71.05.280, except such hearings defined in (2) and (3) below.

- 2) 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.
  - 3) A hearing held pursuant to a petition for involuntary administration of medications or ECT therapy shall be considered a separate case.
  - 4) An alcohol involuntary commitment proceeding filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
  - 5) A drug-related involuntary commitment filed pursuant to RCW 70.96A including all hearings under the same cause number shall be considered one case.
- j. Sexual Predator Cases: The Agency shall provide legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, including when civil commitment petitions have been filed by the King County Prosecuting Attorney or the Attorney General's Office, subject to such conditions stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services (DSHS) from the effective date of such agreement, and be reimbursed at a rate determined by DSHS or as ordered by the Court.
- k. Calendars—Coverage for calendars includes the following:
- 1) The Agency will provide legal advice 24 hours a day 7 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 within the jurisdiction of OPD. Attorney of the Day (AOD) for legal advice may occur both in RJC and Seattle. This includes a call from a defendant or a police agency to respond for line-up presentations.
  - 2) Felony Arraignment Calendar.
  - 3) Felony Sentence Modification Calendar: The Agency shall provide an attorney and a paralegal for legal representation for cases up to an average of forty (40) matters per week on a quarterly basis on the Superior Court Probation Modification Calendar.



- 4) King County Court Misdemeanor includes: District Court Felony Investigation Calendar, Bench warrant return calendar, and initial detention hearings for new misdemeanor charges.
- 5) 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.
- 6) 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 juvenile 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.
- 7) Dependency Calendar. All initial 72 hours shelter care calendars in Seattle or RJC shall include the presence of an attorney.
- 8) Drug Court: Any Felony criminal case filed into King County Drug Court.
- 9) District Mental Health Court includes: Any case filed into King County District Mental Health Court. The designated Agency shall staff the Court with 1.25 FTE attorneys and a .8 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.
- 10) Seattle Mental Health Court includes: Any case filed into Seattle Municipal Mental Health Court. The designated Agency shall staff the Court with 1.5 FTE attorneys, a .17 supervising attorney and 1 FTE social worker, and provide services according to the Scope of Work agreement between OPD and the Court.

## B. PERFORMANCE

1. 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. Work under this contract shall not mean Pro Se representation of himself or herself by any attorney employed by the Agency if such representation utilizes neither funds, time, nor equipment provided by this Contract.
2. 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

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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.

3. 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 (1) working day from notification to the Agency 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.
4. The Agency agrees that an attorney shall be required to make contact with all indigent persons within five (5) working days from a case assignment.
5. The Agency agrees that a preliminary written response to any written complaints from OPD concerning services provided by the Agency, shall be submitted to OPD within two (2) working days of the date the complaint is received by the Agency Director.
6. Conflicts of interest arise in a number of circumstances in the representation of indigent persons. Participants in the representation of indigent persons shall be cognizant of the potential for conflicts and recognize that their management of conflicts is governed by the mandatory provisions of the Washington State Rules of Professional Conduct (RPC) as adopted in 1985 and thereafter amended, and judicial interpretations of those rules.  
  
Upon assignment of any client to an Agency, the Agency shall make diligent and reasonable efforts to obtain discovery within ten (10) days of the assignment, whether initial or subsequent, on any case. Discovery shall be reviewed within ten (10) days after receipt for purposes of determining any conflicts of interest. The Agency shall notify OPD as soon as possible of any conflict of interest as defined by the Washington State Rules of Professional Conduct.
7. The Agency shall establish guidelines for pro-bono work provided by staff of the Agency. Guidelines shall assure that any such representation is not provided to the exclusion or detriment of legal services that are the subject of this Contract. Funds received under this Contract shall not be used to subsidize work performed outside the scope of this Contract.
8. Minimum Attorney Qualifications
  - a. Each Agency attorney shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State 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 Agency provides legal services to clients under the terms of this Exhibit. The Agency

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shall maintain on its premises a copy of the current CLE report to the BAR Association.

- b. Each staff attorney representing a defendant 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 (b) 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, or parole revocation hearing, 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 shall provide sufficient support staff, including investigators, to provide for effective assistance of counsel.
- g. The Agency shall provide a year-end attorney case assignment report which shall include for each attorney the case numbers, indigent person's name, court, and date assigned.

9. Attorney Evaluation

The Agency director, or his/her designee, shall evaluate the professional performance of each individual Agency attorney annually. 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. The Agency shall keep a written record of attorney performance evaluations.

10. Attorney Training

The Agency shall provide access to sufficient training to keep all attorneys abreast of developments in criminal law, procedure, and court rules.

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11. Case Credit Work Load Guidelines

The County shall review Agency case credit work loads, case assignments, standards, and support staff/attorney ratios for each area of cases. In addition, the Agency's staffing plan may be reviewed by OPD to verify that attorney experience levels and placement within the salary schedule are reasonable when compared to responsibilities or capabilities of the attorney.

The Agency agrees to pay attorney salaries commensurate with the Salary Plan (Attachment IV); however, the Agency may assign an attorney to a program area or position for the purposes of providing supervision, lead-work, or specific needed skills to a specific category of cases, or to a specific court.

a. The following are average annual case credit work loads per attorney:

Felony	150
Complex	150
593	150
King County Misdemeanor	450
Juvenile	330
Dependency	180
Contempt of Court	225
Drug Court	2.6 FTE
District MH Court	2.05 FTE
CHINS/Becca	280
Seattle Muni. Ct. Misdemeanor	380
ITA	410
Sexual Predator	tbd by Agency and OPD
Seattle MH Court	2.67 FTE

b. The Agencies may use legal interns. They shall be used in accordance with Washington State Admission to Practice Rule #9.

**IV. COMPENSATION AND METHOD OF PAYMENT**

- A. The Agency shall be reimbursed monthly as provided in Attachment III of this Exhibit. The Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 through December 31, 2003. The Agency shall submit in a format approved by the County a monthly Billing Invoice Package that consists of an invoice and reports as stated in Section V. Reporting Requirements of this Exhibit. The Billing Invoice Package is due within ten (10) days after Agency receipt of the OPD Case Credit Certification Report.

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- B. Payments made for extraordinary expenses that are in addition to those payments shown in Attachment III. Payment Schedule, shall be approved in advance of expenditure by OPD.
- C. 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.

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 quarterly variance percentages outlined in Section III. Program Requirements will be applied to the projected caseload to establish the variance range.
  2. The actual quarterly caseload for each type of case, as shown in the quarterly Certified Statistics will be compared to the actual variance range, for each type of case.
  3. 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.
  4. 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 will be made.
  5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
- D. Year End Reconciliation: The final payment for 2003 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.
  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.
  5. The value of cases below or above the variance shall be calculated as follows:
    - a. The cases will be multiplied by the appropriate case credit shown in Attachment I.
    - b. The resulting case credit amount will be divided by the appropriate caseload per attorney.
    - c. The resulting FTE amount will be multiplied by the appropriate attorney rate as used in the development of the 2003 Agency budget.
    - d. The final case credit reconciliation shall be completed by January 20, 2004.
- E. Sexual Predator Cases: The Agency shall be paid by OPD from funds provided 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 regular monthly expenditure reports and an invoice to OPD that includes a statement of the names and the number of hours spent by each attorney working on the case during the month. OPD shall submit to the State of Washington an invoice that includes the information provided by the Agency within ten (10) days of receipt of the Agency invoice. OPD shall remit funds received from the State of Washington to the Agency within ten (10) days of receipt. Payment to the Agency shall be made subject to such other conditions as stated in the current Interagency Agreement between the County and the State of Washington Department of Social and Health Services.
- F. Information System Modifications: Agency hardware, network software, application software, and connectivity products are included in the administrative amount paid to the Agency. Subject to prior OPD approval, the Agency shall be reimbursed based on submission of invoices from vendors or consultants, for the costs of modifications to software programs required by the information system changes being undertaken by OPD.
- G. Reserves and prepayments
1. The Agency shall ensure that it has sufficient funds to complete cases assigned but not completed at the end of the contract period.
  2. The County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, CHNS/BECCA and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75% completed, November cases are 50% completed, and December cases are 25% completed. For dependency cases it is assumed October cases are 15% completed, November cases are 10% completed, and December cases are 5% completed.

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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 with the monthly billing package at the times indicated in the chart below.

Report Title	2003 Due Date in Billing Package
Variance Explanation Open and Closed Cases Expenditure Report Certification of Case Credits (Certs) Additional Credit Forms	Monthly
Quarterly Case Credit and Case Allocation Summary	April July October January
Year-end Report of Reserve Accounts and Operating Accounts Year-end Attorney Case Assignment Report	January
Annual Subcontract Attorney Use Report	April
Annual Financial Statements, IRS Form 990, Audit Report	August

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## ATTACHMENT I

### Case Credit Application Schedule

Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Felony</b>	
One completed case	1 case credit
Multiple count cases	0.25 case credit for each count beyond four; does not apply to felony fraud cases.
Atty/Day or substantial advice	0.10 case credit
Atty/Day or substantial advice in the King County Detention Facility	0.20 case credit
Probation or other reviews	0.33 case credit
Assignment for sentencing only	Felony cases assigned for purposes of sentencing or resentencing only shall be assigned at 0.30 of a felony case credit.
Assignment for Motion to Withdraw Guilty Plea or a Motion for New Trial based on a claim of ineffective assistance of counsel	1 case credit
Homicide	2 case credits
Seattle District Court expedited felony subsequently refiled in Superior Court	1 case credit
Bench Warrant during case or case transferred to another agency or assigned counsel	1 case credit if more than 10 hours of work has been done. No case credit if 10 or less hours work has been done.
<b>Complex Litigation</b>	As below and as noted in the litigation plan.
	Capital Cases: 2 FTE attorneys; 25 complex litigation case credits per month.
	Aggravated Homicide: 1 FTE attorney; 12.5 complex litigation case credits per month.
	Felony Fraud: 1 FTE attorney; 12.5 complex litigation case credits per month.
<b>593</b>	1 case credit, plus one additional credit for every



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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
	12.1 hours on a monthly basis as requested by the Agency.
<b>King County or Seattle Misdemeanor</b>	
One completed case	1 case credit
Review, resentencing or other hearing	1 case credit
One Seattle Municipal Court probation hearing	0.60 case credit
One Seattle District Court expedited felony	1 case credit
Misdemeanor Appeal	4 case credits
Misdemeanor Writ	3 case credits
<b>Juvenile Offender-NDA only</b>	
One completed case	1 case credit
Decline hearing	1 case credit
A case that exceeds 40 attorney hours	0.50 case credit for each 15 hour increment over 40 hours
Reviews or Hearings	0.33 case credit
Atty/Day for substantial advice	0.10 case credit
<b>Juvenile Offender- ACA,SCRAP,TDA</b>	Calendar funding
<b>Juvenile Dependency</b>	
A dependency case	1 case credit
Post Dependency Finding Hearing	0.40 case credit
Dependency trial	0.50 case credit
Termination trial	1 case credit
Atty/Day for substantial advice	0.10 case credit

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Type of Case	For purposes of payment under this Contract, the following application of case credits shall apply:
<b>Civil Contempt</b>	
From show cause initial assignment hearing up to and including 2 contempt reviews	1 case credit
Subsequent reviews	.33 case credit
<b>Drug Court</b>	calendar funding
<b>District Mental Health Court</b>	calendar funding
<b>Child in Need of Services/ Becca (including At-Risk Youth)</b>	
One completed case	1 case credit
Truancy: One initial and two review hearings	1 case credit
Review or other hearing	0.33 case credit
<b>ITA</b>	1 case credit
<b>Seattle Mental Health Court</b>	calendar funding
<b>Sexual Predator</b>	Tbd by Agency and OPD
<b>Other Circumstances</b>	
New statutory mandates	Case types not contemplated by this Contract arising from legislation with effective dates after January 1, 2003 shall be assigned by OPD and accepted by the Agency subject to agreement on the credit to be given.
Aggravated Murder First Degree/Capital Punishment cases	Aggravated murder and capital punishment cases not included in the complex litigation provisions of this Exhibit shall be given extra credits based upon negotiations between OPD and the Agency.
Felony Fraud cases	Felony Fraud cases filed by the Fraud Unit of the King County Prosecutor's Office are included in the

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<b>Type of Case</b>	<b>For purposes of payment under this Contract, the following application of case credits shall apply:</b>
	complex litigation provisions of this Contract and shall be given extra credits based upon negotiation between OPD and the Agency, if the nature of the case requires such extra credits. Factors entering into the awarding of extra credits include, but are not limited to, amount and complexity of evidence, number of defendants and the anticipated or actual time of trial.
Assignment of additional FTEs	OPD may approve additional FTEs being assigned depending on ease of geographic access.
Credit for cases where the Agency withdraws due to a conflict of interest	When the Agency has reviewed discovery within the time frames set, withdrawn for reason of conflict and requested credit for time expended, OPD shall review the Agency's request for credit and may grant appropriate credit. Should such credit be denied, OPD shall inform the Agency of the basis for denial.
Other conditions for additional credit	Services on case in excess of 100 hours, as approved in advance by OPD.

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## ATTACHMENT II

### Case Credit Allocation and Cases Assigned Estimate for 2003

Case Category	Total Agency Case Credit Allocation at Seattle	Total Agency Case Credit Allocation at RJC	Agency's % of Total OPD Case Credits	1st Quarter Case Credits	2nd Quarter Case Credits	3rd Quarter Case Credits	4th Quarter Case Credits
<i>Felony</i>	2,352	668	32%	755	755	755	755
<i>Complex</i>	327		35%	81	82	82	82
<i>593</i>	110	2	33%	28	28	28	28
<b>Total Fel.</b>	<b>2,789</b>	<b>670</b>	<b>32%</b>	<b>864</b>	<b>865</b>	<b>865</b>	<b>865</b>
KC Misd	2,013		23%	503	503	504	503
Juv Off	1,536		31%	384	384	384	384
Dependency	654	329	36%	245	246	246	246
COC			0%				
Drug Court			0%				
D MH Ct			0%				
Becca	519		37%	129	130	130	130
SM Ct Misd	2,711		42%	677	678	678	678
ITA	2,181		100%	545	545	546	545
S MH Ct			0%				
<b>TOTAL</b>	<b>12,403</b>	<b>999</b>	<b>33%</b>	<b>3,347</b>	<b>3,351</b>	<b>3,353</b>	<b>3,351</b>

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## ATTACHMENT III

### Payment Schedule

This Payment Schedule shall pertain to all cases assigned to the Agency from January 1, 2003 to December 31, 2003. In 2003, the Agency shall be paid the following monthly amounts for cases and special services:

<u>Program Area</u>	<u>Monthly Payment</u>		<u>TOTAL Annual Amount</u>
	<u>Period</u>	<u>Monthly Total</u>	
Current Expense Administrative Cost	Jan-Jun	30,223	181,336
	Jul + Retro	37,061	37,061
	Aug-Dec	31,199	<u>155,997</u>
			<b>374,394</b>
Felony, including the following services: KCCF Felony Arraignment Calendar; KCCF Felony SRA Calendar; Seattle Line-ups; AOD; 24-Hour Emergency Phone	Jan-Jun	254,899	1,529,393
	Jul + Retro	298,642	298,642
	Aug-Dec	261,148	<u>1,305,739</u>
			<b>3,133,774</b>
King County Misdemeanor, including the following services: District Court Preliminary Appearance Calendar; 24-Hours Emergency Phone in Shoreline	Jan-Jun	61,540	369,238
	Jul + Retro	97,895	97,895
	Aug-Dec	66,733	<u>333,666</u>
			<b>800,799</b>
Juvenile, including the following services: Juvenile AOD Calendar; Restitution Calendar; Diversion Calls; 24-Hour Emergency Phone	Jan-Jun	65,506	393,038
	Jul + Retro	17,677	17,677
	Aug-Dec	58,674	<u>293,368</u>
			<b>704,083</b>
Dependency, including the following services: 72-Hour Shelter Care Calendar in Seattle and RJC; Dependency Calendar; 24-Hour Emergency Phone	Jan-Jun	67,506	405,035
	Jul + Retro	43,631	43,631
	Aug-Dec	64,095	<u>320,474</u>
			<b>769,140</b>
Becca	Jan-Jun	20,268	121,606
	Jul + Retro	(7,958)	(7,958)
	Aug-Dec	16,236	<u>81,178</u>
			<b>194,826</b>
ITA, including the following services: 24-Hour Emergency Phone	Jan-Jun	54,440	326,638
	Jul + Retro	84,734	84,734
	Aug-Dec	58,767	<u>293,837</u>
			<b>705,209</b>

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<u>Program Area</u>	Monthly Payment		TOTAL Annual Amount
	Period	Monthly Total	
Mental Health Court, including the following services: 24-Hour Emergency Phone	Jan-Jun Jul + Retro Aug-Dec	18,921 (113,528) 0	113,528 (113,528) <u>0</u> 0
Seattle Misdemeanor, including the following Services: Saturday In-Custody Arraignment and 24-hour Emergency Phone	Jan-Jun Jul + Retro Aug-Dec	156,838 60,406 118,265	941,027 60,406 <u>591,325</u> <b>1,592,758</b>
<b>TOTAL</b>	Jan-Jun Jul + Retro Aug-Dec	730,139 518,561 675,117	4,380,838 518,561 <u>3,375,584</u> <b>8,274,982</b>
Sex Predator Program			<b>968,416</b>
<b>GRAND TOTAL</b>			<b>9,243,398</b>

ATTACHMENT IV  
 Salary Plan

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2003 Kenny Salary Table  
 (2003 COLA INCLUDED)

RANGE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
Public Defense Attorney 1	\$ 43,612	\$ 45,094					
Public Defense Attorney 2	\$ 48,059	\$ 50,901					
Public Defense Attorney 3	\$ 55,355	\$ 59,045					
Public Defense Attorney 4	\$ 63,344	\$ 64,886	\$ 66,428	\$ 68,624	\$ 70,050	\$ 71,802	
Senior Public Defense Attorney 1	\$ 71,477	\$ 73,683	\$ 75,629	\$ 77,315	\$ 79,391	\$ 82,504	\$ 83,282
Senior Public Defense Attorney 2	\$ 76,926	\$ 79,261	\$ 81,336	\$ 83,282	\$ 85,358	\$ 87,304	\$ 89,509
Senior Public Defense Attorney 3	\$ 89,120	\$ 91,714	\$ 94,049	\$ 96,125	\$ 98,849	\$ 100,925	\$ 103,778