

CONTRACT FOR
SNOHOMISH COUNTY PUBLIC DEFENDER PROGRAM

THIS AGREEMENT (Contract) is entered into by and between SNOHOMISH COUNTY a political subdivision of the State of Washington (County) and the SNOHOMISH COUNTY PUBLIC DEFENDER ASSOCIATION, a Washington non-profit corporation (Association). In consideration of the terms and conditions set forth herein, the parties agree as follows:

1. **Definitions.**

"Administrator" means the Snohomish County Attorney in the Office of Public Defense or designee.

"Association" means the Snohomish County Public Defender Association -- a private non-profit corporation incorporated under the Articles of Incorporation and Certificate issued by the Secretary of State of the State of Washington on December 14, 1983, File Number 2-338829-1, pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

"Client" means (a) any person who is referred to the Association by the Administrator and/or the respective Court in which the person has been charged. This term also refers to (b) persons who are unrepresented by other counsel and have contacted the Association for information and legal counsel has been provided, unless referred to the Association as described above.

"County" means Snohomish County, Washington.

"Director" means the Director of the Snohomish County Public Defender Association.

"Executive" means the Snohomish County Executive or designee.

"Indigent Person" means any person unable to afford to hire or retain legal counsel, as such person is defined by current case law, statute or applicable Court Rules.

"Public Defender Program" means all rights, responsibilities, duties, benefits and operations arising out of this Contract, the purpose of which shall be to provide legal representation for indigent criminal defendants and juveniles in juvenile offender cases as required by law.

"Staff Attorney" means any attorney who is an employee of the Snohomish County Public Defender Association performing services under this Contract, and whose compensation, salary, or wages are paid from monies derived from the Contract.

2. **Scope of Service to be Performed by Association.** The Association shall be the operating agency for the Snohomish County Public Defender Program. The purpose and scope

of services are as defined in **Schedule A** attached hereto and by this reference made a part of this Contract.

3. **Duration of Contract.** This Contract shall commence on the 1st day of January, 2022, and shall terminate on the 31st day of December, 2022, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

4. **Records and Reports.** The Association will maintain such records and make reports to the County as provided in **Schedule B** attached hereto and by this reference made part of the Contract.

5. **Compensation.** The County will pay the Association for services provided hereunder as set out in **Schedule C** attached hereto and by this reference made part of this Contract.

6. **Direction and Control.** The Association agrees that it will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the Association is not entitled to any benefits or rights enjoyed by employees of the County. The Association specifically has the right to direct and control its own activities in providing the agreed services in accordance with the specifications set out in this Contract. County shall only have the right to ensure performance.

7. **Interest of Members of County.** No officer, employee, or agent of the County who exercises any function or responsibility in connection with planning and carrying out the Public Defender Program, or any other person who exercises any function or responsibility in connection with it shall have any personal financial interest, direct or indirect, in this Contract. The Association shall take appropriate steps to assure compliance with this requirement.

8. **Warranty of Authority.** The Association warrants that it has the authority to enter into and execute this Contract and will defend any disciplinary or judicial proceedings brought questioning its right and authority to conduct the Public Defender Program. The Association acknowledges that this Contract is made pursuant to and in reliance upon the presaid representation and warranty.

9. **Reservation Regarding Representation.** The Association, on behalf of its attorneys, and each attorney employed by the Association, reserve the right to decline to advise or represent any indigent or otherwise eligible person on the basis of actual or potential legal, ethical, or professional conflict of interest, and with the consent of the Court may withdraw from representing any particular person for good cause shown. In such event, the Association will immediately inform the Administrator in writing of such declination and the specific reason therefore, and will request appointment of other counsel for such person.

10. **Changes.** No changes or additions shall be made in this Contract except as agreed to by both parties and reduced to writing and executed with the same formalities as are required for the execution of this Contract. The parties may meet and discuss proposed modifications, if any, to this Contract, following submission of a report by the Executive to the County Council which:

- a. Describes all pertinent information regarding the Association's performance under this Contract;
- b. Discusses any significant difficulties or problems encountered during the term of the Contract; and
- c. Investigates and recommends any reasonable, cost-effective alternatives or improvements to the current Public Defender Program.

Nothing contained in this Contract shall be deemed, to preclude any party from seeking modification of any term contained herein should an unforeseen and material change in circumstances arise. Any proposed modification shall first be presented to the other party for review and approval. If approval of such proposed modification is not received within fifteen (15) days, the matter may be resolved as provided in Section 19. Any agreement, contract, understanding, or modification made between the parties subsequent to this Contract must be executed with identical formality as this Contract otherwise the same shall not be enforceable.

11. **Access to Books and Records; Audits and Inspections.** Except as prohibited by the attorney rules of professional conduct and the attorney client privilege, all records of the Association on any matter covered by this Contract shall be made available to the Administrator, the County and/or the State Auditor at any time during normal business hours, and as often as such parties may reasonably deem necessary. The Association will permit such parties to audit, examine and make copies, excerpts or transcripts from any records, and shall allow such parties to audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other non-confidential data relating to any matters covered by the Contract. In addition to the audit requirements defined above, the Association will participate in a performance audit paid for by the County.

12. **Hold Harmless.** The Association shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Association's acts, errors or omissions in the performance of this agreement, or those of Association's employees, agents, or subcontractors. PROVIDED HOWEVER, that the Association's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the Association's indemnity obligations hereunder shall apply only to the percentage of fault attributable to the Association, its employees, agents, or subcontractors.

With respect to the Association's obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions or suits filed against

the County, the Association further agrees to waive its immunity under the Industrial Insurance Act, Title 51 RCW, for any injury or death suffered by the Association's employees caused by or arising out of the Association's acts, errors or omissions in the performance of this agreement. This waiver is mutually negotiated by the parties.

The Association's obligation hereunder shall include, but is not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission or breach of any common law, statutory or other delegated duty by the Association, Association's employees, agents, or subcontractors.

13. **Insurance.** The Association shall procure by the time of execution of this Contract, and maintain for the duration of this Contract, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Association, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, the Association 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 completion of the work which is the subject of this Contract.

By requiring the minimum insurance coverage set forth in this Section 13, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Association under this Contract. The Association shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Association's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Association to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Association shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

(ii) Automobile Liability: \$N/A combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Contract;

(iv) Employers' Liability or "Stop Gap" coverage: \$1,000,000;

(v) Professional Liability: \$1,000,000.

(vi) Employee Dishonesty/Fidelity: \$50,000.

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Contract for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) 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 Association in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) The Association's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Association's liability to the County and shall be the sole responsibility of the Association.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

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

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

14. **Compliance with Laws.** The Association shall comply with all applicable federal, state and local laws, rules, and regulations in performing this Contract.

15. **Non-discrimination.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect

against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Association shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Association of the Association's compliance with the requirements of Chapter 2.460 SCC. If the Association is found to have violated this provision, or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Association's obligations under other federal, state, or local laws against discrimination.

16. **Public Records Act.** This agreement and all public records associated with this agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Association are needed for the County to respond to a request under the Act, as determined by the County, the Association agrees to make them promptly available to the County. If the Association considers any portion of any record provided to the County under this agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Association shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Association and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Association (a) of the request and (b) of the date that such information will be released to the requester unless the Association obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Association fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Association to claim any exemption from disclosure under the Act. The County shall not be liable to the Association for releasing records not clearly identified by the Association as confidential or proprietary. The County shall not be liable to the Association for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

17. **Termination.** The County may suspend or terminate payments pursuant to this Contract, in whole or in part, only after cause has been established by final judgment of the arbitration panel pursuant to Section 19 of this Contract. Cause shall include the following:

- a. Ineffective or improper use of Contract funds or compensation;
- b. Failure to comply with either the terms and conditions of this Contract, or with the Public Defender Program; or
- c. Submittal to the County of reports which are incorrect or incomplete in any material respect or which are fraudulent.

18. **Non-Assignment.** The Association shall not sublet or assign any of the rights, duties, or obligations covered by this Contract without the prior express written consent of the Snohomish County.

19. **Disputes and Arbitration.** Disputes or claims arising under this Contract between the County and the Association shall initially be resolved by consultation between the Director of the Association and the Administrator, and are to be resolved in accordance with the laws of the State of Washington. If resolution of such dispute or claim is not obtained within fifteen (15) days of such consultation, the matter shall, at the request of the County or Association, be submitted to a three-person panel for final, binding arbitration. Such panel shall consist of three members, one of which shall be selected by the County Executive, one selected by the Association, and the third selected jointly by the other two members. Decision by the panel shall be reached by simple majority vote of its members, and shall be rendered within twenty-one (21) days of submittal of any such matter to it.

20. **Conflicts Between Attachments and Text.** Should any conflicts exist between any attached exhibit or schedule and the text of this Contract, the text shall prevail.

21. **Governing Law and Venue.** This Contract shall be governed by the laws of the State of Washington and any lawsuit regarding this Contract must be brought in Snohomish County, Washington.

22. **Integrated Document.** This Contract embodies the entirety of the agreement between the County and the Association for enactment and operation of the Public Defender Program, its terms, and conditions. No verbal agreements, conversations, understandings, or writings with any officer, agent, or employee of the County prior to the execution of this Contract shall affect or modify any of the terms, conditions, or obligations contained in any documents comprising this Contract. Any such verbal agreements, conversations, understandings, or writings shall be considered as unofficial and in no way binding upon the County.

23. **Approvals and Notices.** Except as otherwise provided under this Contract, when County approval, authorization, waiver, instructions, or determinations are required, they shall be effective only when given:

- a. In writing and signed by the Executive; or
- b. With respect to fiscal procedures, in writing and signed by the Executive or the Snohomish County Director of Finance.

24. **When Rights and Remedies Are Not Waived.** In no event shall any payment by the County or acceptance of payment by the Association constitute or be construed to be a waiver by such party of any breach of contract, covenant, or default which may then exist on the part of the other. The making or acceptance of any such payment while any such breach of default shall exist shall in no way impair or prejudice any right or remedy available with respect to such breach of default.

25. **Severability.** If any provisions of this Contract are held invalid, the remainder of the Contract shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

“County”

“Association”

SNOHOMISH COUNTY:

SNOHOMISH COUNTY PUBLIC DEFENDER
ASSOCIATION:



Ken Klein
2021.12.16 10:30:23
-08'00'

Dave Somers Date
County Executive

/s/ Vickie Norris 12/02/2021
Vickie Norris Date
President, Board of Directors
Snohomish County Public Defender
Association

Approved as to form only:

/s/ George B. Marsh
Deputy Prosecuting Attorney Date

/s/ Diane C. Baer 11/23/2021
Risk Management Date

COUNCIL USE ONLY	
Approved	12/15/2021
ECAF #	2021-1039
MOT/ORD	Motion 21-454

Schedule A

THE PUBLIC DEFENDER PROGRAM

The Snohomish County Public Defender Program provides effective assistance of counsel for indigent persons charged with criminal offenses in the County's superior and district courts and for juveniles charged with juvenile offenses in the juvenile court.

A. STANDARDS FOR THE DELIVERY OF PUBLIC DEFENSE SERVICES

The County adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030 and Snohomish County Code 2.09.080:

1. Compensation of Counsel: The County and Association aspire to provide salaries and benefits for the attorneys and staff working in the Public Defender Program in parity with the salaries and benefits provided to the attorneys and staff of the Snohomish County Prosecuting Attorney.
2. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be as set out in **Section C** of this Schedule;
3. Case Load Limits and Types of Cases: The County recognizes the desirable case load standards adopted in 2011 by the Washington State Bar. These standards constitute a goal for the County in its budgeting for the Public Defender Program and for the Association in its allocation of resources;
4. Responsibility for Expert Witness Fees and Other Costs Associated with Representation: Expert witness fees and other costs associated with representation are paid from resources as approved by the Office of Public Defense in Superior Court and Juvenile cases and District Court;
5. Administrative Expenses: Administrative expenses shall be paid out of the compensation for the Association described in Section A.1 and A.4 of **Schedule C**;
6. Reports of Attorney Activity and Vouchers: The Association shall provide reports of attorney activity and vouchers as provided in **Schedule B**;
7. Training Supervision Monitoring and Evaluation of Attorneys: The Association shall provide for the training, supervision, monitoring, and evaluation of its attorneys as provided in Section A.2 of **Schedule C**;
8. Substitution of Attorneys or Assignment of Contracts: The Association shall determine the Staff Attorney to be assigned to a particular client and any substitutions that need to be made with that representation within the office. Substitution of counsel to an attorney outside the Association shall be made by the Administrator upon authorization of the Court. No portion of this Contract may be assigned without the authorization of the Executive;

9. Limitations on Private Practice of Association Attorneys: Staff Attorneys with the Association may provide legal services on a non-fee basis to persons who are not clients of the Association so long as it does not interfere with the efficient performance of the attorney's duties, does not conflict with the duties of the Association under this Contract, and is done outside of the attorney's assigned working hours with the Association. With the approval of the Administrator, the Association may also represent an indigent person charged in another county that is a conflict within that county's public defense system. Any such legal services shall be the sole responsibility of the Association and/or Association attorneys, and are wholly independent of services provided under this Contract;

10. Qualification of Attorneys: The Association shall act through attorneys licensed to practice law in the State of Washington, and through authorized assistants and shall assign only such cases to a Staff Attorney as the attorney is qualified by training and experience to handle;

11. Disposition of Client Complaints: The Association shall maintain procedures for receiving and responding to the complaints of its clients;

12. Cause for Termination of Contract or Removal of Attorney: Termination of this Contract shall be in accord with the provisions of Section 17 of the Contract. The termination of the employment of any Staff Attorney is solely within the authority of the Association;

13. Discrimination by the Association: (a) The Association shall comply with all applicable laws against discrimination in the provision of services under this Contract. In addition, in all hiring or employment there shall not be any discrimination against any employee or applicant for employment because of age sex, marital status, sexual orientation, race creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification; PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular work involved.

(b) In carrying out its obligations under this Contract the Association agrees to comply with the prohibitions against discrimination contained in the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this Contract constitutes a certification by the Association of the Association's compliance with these provisions. If the Association is found to have violated this provision, this Contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Association's obligations under other federal, state, or local laws against discrimination.

B. DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

In order to perform its responsibilities under the Contract, the Association shall have the power and duty to:

1. Hire all Public Defender Association personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of unemployment compensation, payment of worker compensation and industrial insurance taxes (where applicable), and employee benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend or remove personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging in or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Public Defender Program;
5. Report regularly to the Administrator on the characteristics of clients and cases, statistical analysis of participants, and need for remedial services, and such other data as may be necessary for proper evaluation during the progress of the Public Defender Program;
6. Cooperate with the Administrator in the evaluation of the Program;
7. Cooperate with the Administrator in seeking and implementing cost-saving alternatives to the Public Defender Program, and in developing methods to reduce the cost of appointing legal counsel to represent indigent persons;
8. Immediately notify the Administrator of any direct appointments made by the Judges of the respective county courts;
9. Accept and represent all cases and clients officially referred by the Administrator unless withdrawal from such representation is allowed in accordance with provisions above-stated;
10. Upon receipt from the prosecuting attorney of discovery or a witness list for a Superior Court case, conduct a search of the Association database to determine if there is a conflict of interest and immediately inform the Administrator if a conflict of interest is discovered.
11. In the event that this Contract is terminated or not renewed, complete representation of all clients who have been referred by the Administrator during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear.

C. DUTIES AND RESPONSIBILITIES OF STAFF ATTORNEYS

In order to perform their duties under this Contract, Staff Attorneys of the Association shall:

1. Advise and provide immediate legal assistance to all clients who request legal assistance during investigative stages by police or other prosecutorial agencies; or who are un-represented by other counsel and have contacted the Association regarding criminal or juvenile offender matters occurring in the County; or who are detained in the Snohomish County Jail or other places of detention within the County. Such requested legal assistance shall include:
 - (a) Legal counseling of suspects during investigative stages;
 - (b) Presence at lineups, interrogations, interviews by police and physical examinations in which the suspect participates;
 - (c) Aid in securing conflict counsel through the Office of Public Defense where a legal, ethical, or professional conflict arises;
2. Counsel and represent in all ensuing criminal and juvenile offender proceedings before appeal those clients who are officially referred by the Administrator. Such services include, but are not limited to: preparation for and representation of the client at the trial and at the sentencing or disposition hearing. Such services do not include representation in matters which are civil rather than criminal in nature except as herein provided;
3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client;
4. Counsel and represent those persons against whom petitions have been filed in the Snohomish County Superior Court for involuntary civil commitment under RCW Chapters 71.05 (Mental Illness).

D. RIGHTS AND RESPONSIBILITIES OF THE COUNTY

In addition to its duties herein prescribed, the County shall have the right to:

1. Audit fiscal records, with full power to:
 - (a) Prescribe adequate accounting procedures and internal controls to prevent misappropriation of funds;
 - (b) Direct compliance with the terms of this Contract and with applicable State law and County ordinances;
 - (c) Prohibit conduct or activities contrary to applicable State laws and County ordinances.

2. Monitor the operations and administration of the Public Defender Program. Such monitoring shall include such activities as are reasonable and necessary to assure the funds allocated to the Association are being used effectively and efficiently to accomplish the purposes for which the funds were made available, including but not limited to:
 - (a) Inspecting facilities and equipment;
 - (b) Ascertaining the quality of performance and the results thereof; and
 - (c) Offering criticism and suggestions for improved performance and service.

E. PROFESSIONAL CONDUCT

The Public Defender Association shall maintain the Public Defender Program independent of any governmental control, except as provided in this Contract. Attorneys employed by the Association shall represent clients, preserve client confidences, and discharge their duties hereunder in accordance with the Rules of Professional Conduct pertaining to attorneys licensed to practice law in the State of Washington, applicable Court rules, and in accordance with standards applied to private attorneys defending paying clients and the Standards for Public Defense Services adopted in 2011 by the Washington State Bar Association.

1. Exercise of Professional Judgment: Nothing in this Contract shall be construed to impair or inhibit the exercise of independent professional judgment by an attorney employed by the Public Defender Association with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract;
2. Standards of Professional Conduct: Nothing in this Contract shall require or authorize any attorney to perform any acts in any manner proscribed by, or neglect to perform any duties required by the Rules of Professional Conduct promulgated by the Supreme Court of the State of Washington as now or hereafter amended, or required or proscribed by applicable case law, Court rules or statute. This Contract shall neither require nor authorize any attorney to engage in any conduct deemed improper or unethical in opinions of the Washington State Bar Association.
3. Attorney-Client Privilege: Nothing in this Contract shall require or permit, without consent of the client concerned, access to or disclosure of:
 - (a) Any confidential communication made by a client to any attorney employed by the Public Defender Association or any such confidential communications made to agents or employees of the Association for such attorney;
 - (b) The advice given by an attorney to a client;
 - (c) The mental impressions, legal research or legal theories and strategies of counsel in preparation and presentation of legal proceedings undertaken pursuant to this

Contract; and

(d) Any other statements and materials privileged from disclosure in a court of law.

4. Attorneys Prohibited from Soliciting/Accepting Compensation From Clients: Attorneys employed by the Association shall not solicit or accept compensation from any client. An attorney may accept unsolicited non-monetary gifts with a value under \$75.

F. DEFENSE SERVICES TO BE PROVIDED

1. Representation of persons charged with felonies in the Snohomish County Superior Court;
2. Representation of persons charged with misdemeanors and gross misdemeanors in the Snohomish County District Court;
3. Representation of persons charged with felonies in the Snohomish County District Court;
4. Representation of persons filing a writ to the Snohomish County Superior Court from a Snohomish County District Court charge;
5. Representation of persons filing appeals in the Snohomish County Superior Court, pursuant to Criminal Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ);
6. Representation of persons appearing in Adult Drug Court;
7. Representation of persons appearing in Drug Offender Sentencing Alternative (DOSA) proceedings;
8. Representation of juveniles appearing before Juvenile Court for determination of probable cause, pursuant to JuCR 7.3;
9. Representation of juveniles charged with offenses in the Juvenile Court;
10. Representation of juveniles at show cause hearings in the Juvenile Court for modification of disposition orders pursuant to the provisions of JuCR 7.14;
11. Representation of juveniles appearing juvenile show cause calendars
12. Representation of juveniles at At-Risk-Youth (ARY), Child in Need of Services (CHINS) and Truancy proceedings;
13. Representation of persons against whom petitions are filed for civil commitment, pursuant to RCW Chapter 71.05;
14. Representation of persons against whom petitions are filed for civil contempt

proceedings by the State where incarceration is a possibility.

15. Representation of persons against whom petitions are filed for civil contempt proceedings by a private party where incarceration is a possibility.
16. Representation of persons appearing in Mental Health Court proceedings;
17. Provision of investigative services to aid in the preparation of the defense of clients of the Association;
18. Provision of information and legal counseling to juveniles related to Diversion, as requested by the Snohomish County Juvenile Court probation department;
19. Provision of information and legal counseling on a 24 hour basis to persons who have contacted the Association regarding specific criminal matters occurring in the County;
20. Appearance at the daily in-custody Superior Court video calendar and representation, solely for the purposes of that proceeding, of all persons appearing on the calendar who are not otherwise represented by counsel;
21. Appearance at the daily morning and afternoon in-custody District Court Video Calendars and representation of persons appearing in matters before the Court;
22. Appearance at out-of-custody arraignments in the four divisions of the Snohomish District Court to advise persons appearing without counsel; and
23. Provision of such other services as are assigned by the Office of Public Defense which are outside of the duties involved in a case. Such services may include, but are not limited to, representation of material witnesses and representation of persons reappearing before the trial courts for re-sentencing by an appellate court.
24. Representation of persons whose representation, under this Section F, was delayed by the COVID-19 Pandemic. For purposes of this subsection (24), this will include all matters subject to representation under this Section F that would have otherwise occurred between March, 2020, and December 2022, but for the Covid-19 Pandemic.

G. CASE CREDITS; DEFINITION OF CASE; DURATION OF CASE

1. One or more felony charges filed in a single information and resolved with no more than one trial or plea constitute one felony case credit. Charges filed against a defendant in separate informations will constitute separate felony case credits.
2. All misdemeanor charges arising out of a single incident, whether charged in multiple citations or complaints that are resolved with no more than one trial constitute one

misdemeanor case credit. Charges filed against a defendant arising out of separate incidents will constitute separate misdemeanor case credits.

3. One or more felony charges filed in a single complaint in district court where the prosecuting attorney has made an offer to reduce the charge or charges to one or more misdemeanors or gross misdemeanors constitute one expedited case. An expedited case shall count as one (1) misdemeanor credit.
4. Felony or misdemeanor counts severed at or before trial constitute separate felony or misdemeanor case credits.
5. Felony and misdemeanor cases reset for trial after a hung jury or other mistrial constitute another case credit.
6. A new trial or sentencing ordered by the trial or appellate court for a felony or misdemeanor case constitutes a separate case credit.
7. Felony and misdemeanor cases commence upon formal referral of a client to the Association by the Administrator, or upon a direct appointment by a Judge.
8. Except as provided in G. 14 (below) of this Schedule, a criminal case is concluded when all charges are dismissed by the prosecuting attorney, the case is dismissed by the Court, the client is acquitted on all charges or the client is sentenced after conviction.
9. A referral for pre-charging representation shall count as a case credit. If the pre-charged case is filed as a criminal charge within 6 months of the assignment, the charged case shall not be assigned as an additional case credit. If the pre-charged case is filed as a criminal charge after 6 months of the pre-charging assignment of the case, the charged case shall count as a case credit in addition to the pre-charging case credit.
10. An expedited case is completed at the time the client pleads guilty and is sentenced or when the charges are dismissed by the district court.
11. A post-conviction hearing ordered by the Superior Court at the time of sentencing, to be heard within six months, is considered part of the same felony case and will not constitute an additional case credit.
12. Superior Court post-conviction hearings, not specifically set at the time of sentencing or held more than six months after entry of the judgment and sentence, are not considered part of the same felony case and shall constitute .5 case credits.
13. Superior Court post-convictions hearings for: 1) review after an entry of an order finding the defendant not guilty by reason of insanity, and 2) post-conviction review of life sentences imposed on former youths shall constitute one case credit.
14. Representation in a Persistent-Offender case, where the assigned client is facing a mandatory life-sentence based on prior convictions, shall constitute 1 credits for each

month the case is open.

15. A felony case which was closed because the court had issued a bench warrant for the defendant and had struck further court dates will be part of the same case when the warrant is quashed or served and new court dates are set, unless the bench warrant is resolved more than six months after it was ordered. If the defendant returns from a bench warrant six months after the warrant was issued, the case shall count as an additional case credit.
16. A misdemeanor case referred to the Association by the Administrator for the first time subsequent to the conviction of the defendant for purposes of a sentencing hearing or for post-sentence review is considered a misdemeanor and shall count as one half of a misdemeanor case credit regardless of the amount of work performed.
17. One civil contempt case filed by the State shall count as one case credit. A civil contempt case filed by a private party shall count as one case so long as it does not last beyond three court hearings. A civil contempt case initiated by a private party which lasts longer than three hearings shall be considered an additional case credit.
18. Complex cases requiring extraordinary credits shall be authorized as the Administrator determines reasonably necessary for the Association to fulfill its obligations under this Agreement. Complex cases can include, but are not limited to, aggravated murder cases, and cases with: abnormally voluminous discovery, witnesses residing in other states and/or countries, complicated legal theories, or complicated defenses not associated with commonly charged felonies. A case requiring additional counsel for professional qualifications required by Indigent Defense Standard 14.2 is a Complex case.
19. Representation of material witnesses shall be considered a case credit.
20. Limitations on Felony Case Credits.
 - a. A felony case which is dismissed upon the motion of the prosecuting attorney before any legal services have been provided to the defendant will not count as a felony case credit.
 - b. A felony case in which the defendant hires private counsel, or which is determined to be a conflict of interest, before the Association has performed 2 hours of non-administrative work will not count as a felony case credit.
21. Limitations on Misdemeanor Case Credits.
 - a. A misdemeanor case which is dismissed upon the motion of the prosecuting attorney before any legal services have been provided to the defendant will not count as a misdemeanor case credit.
 - b. A misdemeanor case in which the defendant hires private counsel, or which is determined to be a conflict of interest, before the Association has performed 1 hour

of non-administrative work will not count as a misdemeanor case credit.

- c. If the Association has performed up to 2 hours of non-administrative work when the defendant hires private counsel or the case is determined to be a conflict of interest, the case will be counted as half of a misdemeanor case credit.

22. Upon termination of a case as defined in G.8 of this Schedule, representation by the Association shall cease.

H. STAFFING FOR FELONY AND MISDEMEANOR CASES

1. As the 2022 Contract period begins, the Association will assign 20 attorneys for full-time duty to handle the felony cases assigned to it and an additional attorney devoted solely to felony mental health/substance use cases, and 10 additional attorneys for full-time duty to handle the misdemeanor cases assigned to it. If sufficient non-conflict cases are filed in the courts, the Administrator will refer enough felony and misdemeanor cases to the Association to maintain full caseloads for this staff. The Administrator may refer as many additional felony and misdemeanor case credits to the Association as the Administrator deems appropriate.
2. A minimum of 9 lawyers representing indigent clients in misdemeanor matters shall be provided for under the terms of this Contract. These minimum limits shall be reviewed on a yearly basis and shall be set by mutual agreement.
3. To address the backlog of cases created by the COVID-19 Pandemic, the Association will employ a minimum of five (5) FTE Level 2 Felony Lawyers, one and one half (1.5) FTE Level 2 investigators, and one and one half (1.5) FTE Level 3 Legal Assistants, in order to provide representation under subsection F.24.

I. JUVENILE OFFENDER CASES

1. A juvenile offender case is defined as one or more juvenile offender charges filed in a single information with a unique cause number under provisions of RCW 13.40.070. A juvenile offender case begins with the filing of the information or upon first appearance of the client who has been taken into custody without a warrant and is completed when all matters within the scope of the case are permanently resolved.
2. The Association will receive caseloads for two full-time attorney positions and will provide all legal services for these cases.
3. Cases returned to the Administrator for reassignment pursuant to Section B.10 of this Schedule, because of a conflict of interest arising before one hour of non-administrative work has been performed, and cases taken over by privately retained counsel before one hour of non-administrative work has been performed will be subtracted from the count of cases.

4. The maximum yearly caseload of a full-time attorney is 250 cases. For each equivalent of a full-time attorney position, the Administrator will assign to the Association up to 20.8 cases each calendar month. In the month or months following any month in which less than 20.8 cases per attorney are assigned, the Administrator may assign cases above the 20.8 case limit to bring the average of case assignments for all months to 20.8 and the total for a year to 250. Should juvenile offender filings increase beyond the caseload limits, the Association will cooperate with the Administrator and other contractors to provide the additional attorney services in a manner consistent with the above-stated caseload standard.
5. The Association will also provide legal services for show cause hearings held pursuant to JuCR 7.14 for juveniles whose attorneys have withdrawn or whose supervision was transferred to Snohomish County from another county. These cases will be counted in the totals for juvenile offender cases pursuant to Section I.4. (above) of this Schedule at the rate of .5 credit per case.

J. APPEAL OF RULINGS

1. A RALJ/Writ case is defined as one cause number filed by the Association pursuant to Washington Rules for Appeal of Decisions of Courts of Limited Jurisdiction or RCW 7.16
2. The Association will receive caseloads for two full-time attorney positions and will provide all legal services for these cases.
3. Cases returned to the Administrator for reassignment pursuant to Section B.4 of this Schedule, because of a conflict of interest arising before one hour of non-administrative work has been performed, and cases taken over by privately retained counsel before one hour of non-administrative work has been performed will be subtracted from the count of cases.
4. The maximum yearly caseload of a full-time attorney is 36 cases. Should filings increase beyond the caseload limits, the Association will cooperate with the Administrator and other contractors to provide the additional attorney services in a manner consistent with the above-stated caseload standard.

Schedule B

RECORDS AND REPORTS

A. RECORDS

1. Establishment and Maintenance of Records: Records of all matters covered by this Contract shall be maintained by the Association in accordance with requirements prescribed by the County and the Administrator. Except as otherwise authorized by the Administrator, such records shall be maintained for a period of not less than five years after closure of each case or not less than five years after receipt of final payment pursuant to this Contract, whichever is later.
2. Documentation of Costs: All costs of the Association shall be supported by properly executed payroll, time records, invoices, contracts, and/or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, drafts, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible to the County and the Administrator.
3. Internal Control: The Association shall establish a system of internal control, which will conform to the general principles of accounting. Internal control comprises the plan or organization and the coordinate methods and measures adopted by an organization to safeguard its assets, check the adequacy and the reliability of its accounting data and to promote operating efficiency.

B. ATTORNEY TIME RECORDS

Each attorney performing services under this Contract shall maintain records of all hours and increments of hours spent on each individual case and the nature of the work completed during the documented time. The nature of the work shall be fall into one of the following categories: case work, client communication, court, and interviews. Records shall be updated and completed and the case closed within 30 days of the judgment and sentence, acquittal, dismissal, or conclusion of representation. Records shall be used outside the agency to compute average times per task and class of case to develop a case credit system reflective of the hours worked.

C. REPORTS AND INFORMATION

1. The Association shall, within ten days of the close of each month, submit a monthly statement to the Administrator for payment of its Expenses. The statement will include the following Expenses:
 - a. Administrative Expenses, pursuant to Section A.1. of **Schedule C**;
 - b. Legal Supervisors, pursuant to Section A.2. of **Schedule C**;

- c. IT Staff Specialist; pursuant to Section A.3. of **Schedule C**;
 - d. Administrative Expenses for Fund 124, pursuant to Section A. 4. of **Schedule C**;
 - e. Initial Felony Expenses, pursuant to Section A.5. of **Schedule C**, subject to any adjustments made pursuant to Sections C.1. or C.2. of **Schedule C**;
 - f. Initial Misdemeanor Lawyer Expenses, pursuant to A.5. of **Schedule C**, subject to any adjustments made pursuant to Sections C.1 or 2 of **Schedule C**;
 - g. Fund 124 Felony Lawyer Expenses, pursuant to Section A.6. of **Schedule C**,
 - h. Calendar Lawyer Expenses, pursuant to Section A.7.of **Schedule C**;
 - i. Civil Commitment Lawyer Expenses, pursuant to Section A.8. of **Schedule C**;
 - j. Adult Drug Court Lawyer Expenses, pursuant to Section A.9. of **Schedule C**;
 - k. Drug Court Offender Sentencing Alternative (DOSA) Expenses, pursuant to Section A. 10. of **Schedule C**;
 - l. Mental Health Court Lawyer Expenses, pursuant to Section A.11. of **Schedule C**;
 - m. Juvenile Offender Lawyer Expenses, pursuant to Section A. 12 of **Schedule C**;
 - n. Juvenile Show Cause Offender Lawyer Expenses, pursuant to Section A. 13 of **Schedule C**;
 - o. At Risk Youth (ARY), Child in Need of Services (CHINS) and Truancy lawyer expenses, pursuant to Section A. 14. of **Schedule C**;
 - p. Civil Contempt Attorney Expenses, pursuant to Section A. 15. of **Schedule C**;
 - q. RALJ/Writ Lawyer Expenses, pursuant to Section A.16. of **Scheduled C**;
 - r. Investigator Expenses, pursuant to Section A. 17. of **Schedule C**;
 - s. Social Worker Expenses, pursuant to Section A. 18. of **Schedule C**.
 - t. General Fund Overhead Expenses, pursuant to Section A.19 of **Schedule C**.
 - u. Fund 124 Overhead Expenses, pursuant to Section A.20. of **Schedule C**.
 - v. Other Legal Expenses pursuant to Section A.21. of **Schedule C**.
2. The statement shall also include a report setting forth the number of felony, misdemeanor, juvenile, and civil contempt court cases assigned during that month and any adjustments, to those numbers.

3. Within ten calendar days, the Administrator shall approve or require revision of the report and shall upon approval of same, submit a voucher to the County for payment to the Association once per month.
4. At such times and in such forms as the Administrator may require, the Association shall furnish any and all statements, records, reports, data and information which the County may require pertaining to matters covered by this Contract.

Schedule C

COMPENSATION

A. BASIC COMPENSATION

1. Administrative Expenses: Administrative Expenses include (a) salaries and benefits for the Director, Office Manager, and Operations Manager, (b) salaries and benefits of the Assistant Director, and (c) salaries and benefits for 14.75 administrative staff. The County shall pay the Association \$1,990,812 for its Administrative Expenses.
2. Supervising Lawyer: The supervising lawyer includes the salaries and benefits for the Association's two full-time (2.0) lawyers supervising misdemeanor attorneys (1 FTE), felony attorneys (1 FTE). The County shall pay the Association \$359,872 for its Administrative Expenses.
3. ITA Supervising Lawyer: The ITA supervising lawyer includes the salary and benefits for the Association's three-quarter-time (.75 FTE) Civil Commitment Supervisor (.75 FTE). The County shall pay the Association \$120,080 for its ITA supervising lawyer.
4. IT Specialist: The IT Specialist includes the salary and benefits for the Association's one full time (1) IT staff specialist. The County shall pay the Association \$89,219 for its Administrative Expenses
5. Administrative Expenses for Fund 124: Salaries and benefits for 2.5 clerical position to support attorneys funded from Fund 124 in the amount of \$229,769.
6. Initial Felony and Misdemeanor Lawyer Expenses: Initial Felony and Misdemeanor Lawyer Expenses include the salaries and benefits for the lawyers doing felony and misdemeanor caseloads as the 2021 Contract period begins. The Association will employ 20 lawyers to handle the number of felony case credit assignments and 10 lawyers to handle the number of misdemeanor case credit assignments. (Section F. 1, F. 2, and F. 4 of **Schedule A**). The County shall pay the Association \$4,327,452 for its Initial Felony and Misdemeanor Lawyer Expenses.
7. Fund 124 Felony Lawyer Expenses: Fund 124 Lawyer Expenses include the salary and benefits for one (1 FTE) full-time lawyer representing persons charged with felonies and in which the case involves mental health and/or controlled substance use. The County shall pay the Association \$135,728 for its Fund 124 Lawyer Expenses.
8. Calendar Lawyer Expenses: Calendar Lawyer Expenses include the salaries and benefits for one (3.0) full-time equivalent lawyers representing persons (a) at proceedings on the morning and afternoon in-custody District Court Video Calendars (b) Everett District Felony Calendar, and (c) Superior Court Calendars (Sections F. 21, F. 3, and F. 20. of **Schedule A**). The County shall pay the Association \$381,497 for its Calendar Lawyer Expenses.

9. Civil Commitment Lawyer Expenses: Civil Commitment Lawyer Expenses include the salaries and benefits for six and a half (6.5) full-time equivalent lawyer representing persons in civil commitment proceedings (Sections F. 13 Schedule A). The County shall pay the Association \$732,906 for its Civil Commitment Lawyer Expenses.
10. Adult Drug Court Lawyer Expenses: The Adult Drug Court Lawyer Expenses include the salary and benefits for one half (0.5) full-time equivalent lawyer representing persons in Drug Court proceedings (Section F.6 of **Schedule A**). The County shall pay the Association \$60,192 for its Drug Court Lawyer Expenses.
11. Drug Offender Sentencing Alternative (DOSA) Lawyer Expenses: The DOSA Lawyer expenses include the salary and benefits for one half (0.5) full-time equivalent lawyer representing persons in DOSA proceedings (Schedule F.7 of **Schedule A**). The County shall pay the Association \$60,192 for its DOSA Lawyer Expenses.
12. Mental Health Court Lawyer Expenses: Mental Health Court Lawyer Expenses include the salary and benefits for one half time (0.5) full-time equivalent lawyer representing persons in Mental Health Court proceedings (Section F. 16 of **Schedule A**). The County shall pay the Association of \$59,522 for its Mental Health Court Lawyer Expenses.
13. Juvenile Offender Lawyer Expenses: Juvenile Offender Lawyer Expenses include the salaries and benefits for the lawyers doing juvenile offender cases. The Association will employ two (2) full-time equivalent lawyers to handle its juvenile offender cases. (Section F. 9 of **Schedule A**). The County shall pay the Association \$266,173 for the Juvenile Court lawyer Expenses.
14. Juvenile Show Cause Lawyer Expenses: The Juvenile Drug Court Lawyer Expenses include the salary and benefits for one half (0.5) full-time equivalent lawyer representing juveniles in Juvenile Drug Court proceedings (Section F.10 of **Schedule A**). The County shall pay the Association \$59,522 for its Juvenile Drug Court Lawyer Expenses.
15. At Risk Youth (ARY), Child in Need of Services (CHINS) and Truancy Lawyer Expenses: At Risk Youth (ARY), Child in Need of Services (CHINS) and Truancy Lawyer Expenses include the salary and benefits for one (1.0) full-time equivalent lawyer representing juveniles at ARY, CHINS and Truancy proceedings (Sections F. 12 of **Schedule A**). The County shall pay the Association \$123,510 for its ARY, CHINS and Truancy Lawyer Expenses.
16. Civil Contempt Lawyer Expenses: The Civil Contempt Lawyer Expenses include the salary and benefits for a one (1) full-time equivalent lawyer representing persons in civil contempt cases (Section F. 14 and F. 15 of **Schedule A**). The County shall pay the Association of \$104,325 for its Civil Contempt Lawyer Expenses.
17. RALJ/Writ Lawyer Expenses: RALJ Lawyers include the salaries and benefits for two (2.0) full-time equivalent lawyers representing petitioners in RALJ cases in Snohomish

County Superior Court. (Section F. 5 of **Schedule A**). The County shall pay the Association \$285,275 for its RALJ Lawyer Expenses.

18. Investigator Expenses: Investigator Expenses include the salaries and benefits for the Association's seven and a half (7.0) investigators. (Section F. 17 of **Schedule A**). The County shall pay the Association \$812,737 for its investigator expenses.
19. Social Worker Expenses: The Social Worker Expenses include the salaries and benefits for the Association's two social workers. The County shall pay the Association \$247,360 for its Social Worker Expense.
20. Overhead Expenses: The County shall pay the Association for the overhead associated with the employment of each funded position. The County shall pay the Association \$1,659,257 for its overhead expenses.
21. Fund 124 Overhead: The County shall pay the Association for the overhead associated with the employment of each position funded through Fund 124. The County shall pay the Association \$283,123 for its Fund 124 overhead expenses.
22. Other Legal Services Expenses: The County shall pay the Association for the Other Legal Services performed pursuant to F.23 of Schedule A, as negotiated by the Administrator and Director and based on the Association's attorney salary scale, benefits, and overhead.
23. Covid-19 Backlog. The County will pay the Association for Covid-19 Backlog services performed pursuant to F.24 of Schedule A the amount of \$988,595.
24. Cost of Living Allocation ("COLA"). In the event County employees receive a COLA during 2022, the parties will amend the contract to increase the salaries of all Association employees providing services under this Agreement in an amount equal to the COLA received by County employees.

B. RATE OF COMPENSATION

1. Compensation for Administrative Expenses, Fund 124 Administrative Expenses, Supervising Lawyer Expenses, IT Specialist Expenses; Initial Felony Lawyer Expenses, Initial Misdemeanor Lawyer Expenses, Fund 124 Felony Lawyer, Calendar Lawyer Expenses, Civil Commitment Lawyer Expenses, Drug Court Lawyer Expenses, DOSA Lawyer Expenses, Mental Health Court Lawyer Expenses, Juvenile Offender Lawyer Expenses, Civil Contempt Lawyer Expenses, RALJ Lawyer Expenses, Investigator Expenses, Social Worker Expenses, Overhead Expenses, Fund 124 Overhead Expenses (Section A. 1 through 20 of this Schedule), and COVID-19 Backlog expenses shall be paid in equal monthly installments of one twelfth (1/12) of the total of these expenses.
2. Compensation for Other Legal Services Expenses (Section A. 21 of this Schedule) shall be paid upon submittal of monthly invoice.

