



**CITY OF KIRKLAND**  
City Manager's Office  
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www.kirklandwa.gov

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## MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Marilynne Beard, Deputy City Manager  
**Date:** November 29, 2012  
**Subject:** INDIGENT DEFENSE STANDARDS AND PUBLIC DEFENSE CONTRACT

### **RECOMMENDATION:**

City Council approves the attached resolution adopting indigent defense standards and authorizing the City Manager to execute a three year public defense contract incorporating the standards.

### **BACKGROUND DISCUSSION:**

The City is required to provide effective and competent public defense for indigent defendants with criminal charges filed in the Kirkland Municipal Court. The City contracts with the law firm of Stewart MacNichols Harmell, Inc. PS., to provide indigent defense services for qualifying Kirkland Municipal Court defendants. The current contract was renegotiated for three years in 2009 and amended in October 2011. The impetus for the contract amendment was the caseload impact resulting from annexation and anticipated new Washington State Supreme Court standards for indigent defense. Although an immediate contract change was needed to reflect annexation, the new indigent defense standards were still under discussion at the Supreme Court and the actual impact of annexation was not known. Given those circumstances, the City and law firm agreed to a 15 month contract term to better understand actual annexation caseload activity and for the indigent defense standards to be further clarified. The current contract expires December 31, 2012 and will need to be renewed. The recommended Council actions will renew the contract and update it to reflect the most recent court rules.

#### **Caseload Limits**

On June 15, 2012, the Washington Supreme Court announced the adoption of new standards for indigent defense services. The new standards include guidelines for caseload limits and the types of cases public defenders can handle as well as standards for administrative costs, limitations on private practice, qualifications for attorneys, appellate representation and use of legal interns. The standards were authored by the Washington State Bar Association's (WSBA) Council on Public Defense, approved by the WSBA, and adopted by the Supreme Court. The new standards became effective October 1, 2012, except for a standard regulating caseload limits which will take effect October 1, 2013.

Under the standards effective October 1, 2012, public defense contracts must specify the types of cases and the maximum number of cases for which representation will be provided. Criminal defense attorneys are required to certify to the Court their compliance with the indigent defense standards quarterly. The government entity responsible for contracting for public defense services must adopt and publish the standards. The public defense contract attached to the resolution incorporates these requirements.

Effective October 1, 2013, the caseload limit of a full-time public defense attorney should not exceed 400 misdemeanor cases per year, unless the local government employing or contracting with the public defense attorney has adopted a case weighting system. If a local government has adopted a case weighting system, the caseload limit is 300 cases per attorney per year. The full Supreme Court Order as amended is included as Attachment A.

While not now required, staff recommends including a preliminary case weighting system in the public defense contract. The City Manager's Office has worked with City's public defense firm, the Municipal Court, and the Kirkland Police Department to gather case weighting data. Factors considered include: complexity of the crimes, the average length of police reports for the various crimes, the discovery materials related to the crimes, the average amount of investigation and preparation necessary to defend the crimes, and the consequences of a conviction for the crimes. Staff has also looked to what other cities have done. Including the preliminary case weighting in the contract will afford an opportunity to evaluate and adjust the case weighting system over the coming year. This will ensure it correctly reflects the level of public defense services needed to provide quality defense to Kirkland defendants. Next year the City Council will need to adopt written policies and procedures should it wish to implement the case weighting system.

Prior to the adoption of the new standards by the Washington Supreme Court, state law required local governments to adopt standards for the delivery of public defense services. As provided in RCW 10.101.030, in October 2011, the City Council passed Resolution R-4894 adopting public defense standards and using the WSBA's *Standards for Indigent Defense*. The City contract for public defense services was contemporaneously amended to incorporate the standards adopted in Resolution R-4894. The attached resolution would adopt the Supreme Court indigent defense standards and use the WSBA's standards, adopted in Resolution R-4894, for guidance in interpreting and applying the Supreme Court's standards.

#### Annexation-related Caseload

The original estimate of the caseload impact for public defense services was based on the Municipal Court's estimate of additional case filings which was based on the Police Department's estimate of activity in the new neighborhoods. As noted during the budget process, the actual level of police activity and resulting court case filings were less than first estimated. As a result, positions originally approved in the annexation budget for police and court were held vacant and recommended for elimination in the 2013-2014 budget. While the Supreme Court was still in discussion about the new indigent defense standards, staff advised the City Council that the caseload limits would likely impact the cost of public defense services. In fact, the caseload limits do impact costs, however, the annexation budget for public defense services was more than enough to cover the marginal caseload and offsets the marginal costs associated with the caseload limits. Consequently, additional funding beyond that proposed in the 2013-2014 Budget will not be needed.

Recommended Action

Although the actual caseload limits imposed by the Supreme Court are not effective until October 1, 2013, staff is proposing that the public defense contract be updated to reflect caseload limits and a case weighting factor. This will allow time to work with the case weighting system to determine if it correctly reflects the level of public defense services needed to provide quality defense to Kirkland defendants. The case weighting standards are generally consistent with those being adopted by other municipal courts but specifically address cases filed in Kirkland Municipal Court. The contractor is developing a database to track caseloads by attorney in order to monitor compliance.

Staff is recommending that the contract have a three year term to allow further time for the case weighting standards to be established throughout the state and to assure that Kirkland's approach is consistent with statewide practices. Once the new system of caseload limits is better established, the City may want to consider issuing a request for proposals to assure that public defense services are being provided in the most cost effective manner possible. In the meantime, the City is well-served by the firm of Stewart, MacNichols Harmell, Inc. that has provided excellent service to the City and to Kirkland defendants and works effectively with all parties involved in the Kirkland Municipal Court system.

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# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE STANDARDS FOR  
INDIGENT DEFENSE AND CERTIFICATION OF  
COMPLIANCE

## ORDER

NO. 25700-A- 1008

The Office of Public Defense having recommended amendments to the Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

### ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the Standards for Indigent Defense, including the new Preamble, amendments to Standard 3.1, Standard 3.5, and Standard 5.2 will be published in the Washington Reports and become effective on October 1, 2012. The new subsection (e) of the Certification Form will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 7<sup>th</sup> day of September, 2012.

CLERK

BY RONALD R. CARPENTER

2012 SEP -7 A 10:23

FILED  
SUPREME COURT  
WASHINGTON

643/59

IN THE MATTER OF THE STANDARDS FOR INDIGENT DEFENSE AND CERTIFICATION  
OF COMPLIANCE

Madsen, C. J.

Chamber, J.

Fairhurst, J.

Owens, J.

Stepien, J.

Wiggins, J.

Conrad, J.

## STANDARDS FOR INDIGENT DEFENSE

[New]

### Preamble

The Washington Supreme Court adopts the following Standards to address certain basic elements of public defense practice related to the effective assistance of counsel. The Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2 references specific "Applicable Standards." The Court adopts additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wash.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign. To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.

### **Standard 1. Compensation**

[Reserved.]

### **Standard 2. Duties and Responsibilities of Counsel**

[Reserved.]

### **Standard 3. Caseload Limits and Types of Cases**

*Standard 3.1.* The contract or other employment agreement ~~or government budget~~ shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.

Standard 3.1 adopted effective October 1, 2012

*Standard 3.2.* The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, "quality representation" is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state's criminal justice system.

Standard 3.2 adopted effective October 1, 2012

*Standard 3.3. General Considerations.* Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney's caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

Definition of case. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

Standard 3.3 adopted effective October 1, 2012

*Standard 3.4. Caseload Limits.* Effective October 1, 2013.

*Standard 3.5. Case Counting.* ~~The local government entity responsible for employing, contracting with, or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. Attorneys may not engage in a case weighting system, unless pursuant to written policies and procedures that have been adopted and published by the local government entity responsible for employing, contracting with, or appointing them. A numerical case-weighting system must:~~

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;
- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation;
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to

attorney workload than average cases should be weighted upward. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

Standard 3.5 adopted effective October 1, 2012

*Standard 3.6. Case Weighting.* The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

A. Case Weighting Upward. Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers, and/or expenditures of time and resources should be weighted upward and counted as more than one case.

B. Case Weighting Downward. Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).

ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Noncomplex sentence violations should be weighted as at least 1/3 of a case.

iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.

iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed, or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.

v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on

continuance, or other alternative noncriminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Standard 3.6 adopted effective October 1, 2012

### **Related Standards**

ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION  
Defense Function std. 4-1.2 (3d ed. 1993)

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES std. 5-4.3 (3d ed. 1992)

AM. BAR ASS'N, GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (rev. ed. 2003)

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-441 (2006) (*Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*)

Am. Council of Chief Defenders, *Statement on Caseloads and Workloads* (Aug. 24, 2007)

ABA House of Delegates, *Eight Guidelines of Public Defense Related to Excessive Caseloads* (Aug. 2009)

TASK FORCE ON COURTS, NAT'L ADVISORY COMM'N ON CRIMINAL STANDARDS & GOALS, COURTS std. 13.12 (1973)

MODEL CODE OF PROF'L RESPONSIBILITY DR 6-101.

ABA House of Delegates, *The Ten Principles of a Public Defense Delivery System* (Feb. 2002)

ABA House of Delegates, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (Feb. 1996)

Nat'l Legal Aid & Defender Ass'n, Am. Council of Chief Defenders, Ethical Opinion 03-01 (2003).

Nat'l Legal Aid & Defender Ass'n, *Standards for Defender Services* std. IV-1 (1976)

Nat'l Legal Aid & Defender Ass'n, *Model Contract for Public Defense Services* (2000)

Nat'l Ass'n of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (2001)

Seattle Ordinance 121501 (June 14, 2004)

Indigent Defense Servs. Task Force, Seattle-King County Bar Ass'n, *Guidelines for Accreditation of Defender Agencies* Guideline 1 (1982)

Wash. State Office of Pub. Defense, *Parents Representation Program Standards of Representation* (2009)

BUREAU OF JUDICIAL ASSISTANCE, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE SERIES NO. 4, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001) (NCJ 185632)

## **Standard 4. Responsibility of Expert Witnesses**

[Reserved.]

## **Standard 5. Administrative Costs**

*Standard 5.1.* [Reserved.]

*Standard 5.2.*

A. Contracts for public defense services ~~shall~~ should provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel; telephones; law library, including electronic legal research; financial accounting; case management systems; computers and software; office space and supplies; training; meeting the reporting requirements imposed by these standards; and other costs necessarily incurred in the day-to-day management of the contract.

B. Public defense attorneys shall have (1) access to an office that accommodates confidential meetings with clients and (2) a postal address, and adequate telephone services to ensure prompt response to client contact.

Standard 5.2 adopted effective October 1, 2012

## **Standard 6. Investigators**

*Standard 6.1.* Public defense attorneys shall use investigation services as appropriate.

Standard 6.1 adopted effective October 1, 2012

## **Standards 7-12**

[Reserved.]

## **Standard 13. Limitations on Private Practice**

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 13 adopted effective October 1, 2012.

## **Standard 14. Qualifications of Attorneys**

*Standard 14.1.* In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and

E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and

F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and

G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

Standard 14.1 adopted effective October 1, 2012

*Standard 14.2. Attorneys' qualifications according to severity or type of case<sup>1</sup>:*

A. Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. At least five years' criminal trial experience; and
- iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.<sup>2</sup>

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<sup>1</sup> Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

SPRC 2  
APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law (and) be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist, and an investigator. Psychiatrists, psychologists, and other experts and support personnel should be added as needed.

B. Adult Felony Cases—Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served two years as a prosecutor; or
  - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases—Class B Violent Offense. Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either;
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases—All Other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a “two strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;<sup>3</sup> and
- ii. Have at least:
  - a. four years’ criminal trial experience; and
  - b. one year’s experience as a felony defense attorney; and
  - c. experience as lead counsel in at least one Class A felony trial; and
  - d. experience as counsel in cases involving each of the following:
    1. Mental health issues; and
    2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
    3. Expert witnesses; and
    4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases—Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases—Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
  - a. has served one year as a prosecutor; or
  - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. Has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

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<sup>3</sup> RCW 10.101.060(1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

I. Juvenile Sex Offense Cases. Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

J. Juvenile Status Offenses Cases. Each attorney representing a client in a “Becca” matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
  - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
  - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

K. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

L. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months’ dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

M. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
- iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
  - a. served one year as a prosecutor; or
  - b. served one year as a public defender; or one year in a private civil commitment practice, and
  - c. been trial counsel in five civil commitment initial hearings; and

iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender "Predator" Commitment Cases. Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
  - a. Three years' criminal trial experience; and
  - b. One year's experience as a felony defense attorney or one year's experience as a criminal appeals attorney; and
  - c. Experience as lead counsel in at least one felony trial; and
  - d. Experience as counsel in cases involving each of the following:
    1. Mental health issues; and
    2. Sexual offenses; and
    3. Expert witnesses; and
  - e. Familiarity with the Civil Rules; and
  - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment case should meet the minimum requirements in Section 1 and have either one year's experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts. Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

Standard 14.2 adopted effective October 1, 2012

*Standard 14.3. Appellate Representation.* Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and

B. Either:

- i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
- ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing, or other comparable work.

C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a court of limited jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing a RALJ appeal.

Standard 14.3 adopted effective October 1, 2012

*Standard 14.4. Legal Interns.*

A. Legal interns must meet the requirements set out in APR 9.

B. Legal interns shall receive training pursuant to APR 9, and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

Standard 14.4 adopted effective October 1, 2012

**Standards 15-18**

[Reserved.]

CERTIFICATION OF COMPLIANCE

[New]

For criminal and juvenile offender cases, a signed Certification of Compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

<p style="text-align: center;">_____ Court of Washington</p> <p>for _____</p> <hr/> <p>State of Washington _____,</p> <p style="text-align: center;">Plaintiff</p> <p>vs.</p> <p>_____</p> <p style="text-align: center;">Defendant</p>	<p>No.</p> <p>CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CrR 3.1/CrRLJ 3.1/JuCR 9.2</p>
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The undersigned attorney hereby certifies:

1. Approximately \_\_\_\_% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
  - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
  - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
  - c. **Investigators:** I have investigators available to me and will use investigation services as appropriate, in compliance with Standard 6.1.
  - d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective September 1, 2013: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]
  - e. **Specific Qualifications:** I meet the specific qualifications in Standard 14.2, Sections B-K, [Effective September 1, 2013.]

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Defendant's Lawyer, WSBA No.

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Date

RESOLUTION R-4949

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING INDIGENT DEFENSE STANDARDS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PUBLIC DEFENSE CONTRACT INCORPORATING THE STANDARDS.

WHEREAS, RCW 10.101.030 requires the City to adopt public defense standards using the standards of the Washington State Bar Association for public defense services as guidance; and

WHEREAS, most recently, on October 4, 2011, the City Council passed Resolution R-4894, adopting public defense standards guided by the Washington State Bar Association standards to ensure indigent defendants charged with crimes that are filed in Kirkland Municipal Court receive a constitutionally appropriate level of criminal defense; and

WHEREAS, the City contracts with the law firm of Stewart MacNichols Harmell, Inc. P.S., for public defense services and the contract incorporate the standards established in Resolution R-4894; and

WHEREAS, the Washington Supreme Court by Order No. 25700-A-1004, as amended, has adopted new standards for indigent defense which became effective October 1, 2012, with the exception of Standard 3.4 relating to case load limits which will be effective September 1, 2013; and

WHEREAS, the contract with the law firm of Stewart, Beall, MacNichols, and Harmell, Inc. P.S., is set to expire December 31, 2012; and

WHEREAS, the Kirkland City Council deems it to be in the public interest to adopt the new Washington Supreme Court standards by reference, and incorporate those standards in its public defense contract, while continuing to use as guidance the Washington State Bar Association standards included in Resolution R-4894;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. Pursuant to the provisions of RCW 10.101.030 the City Council adopts as its standards for indigent defense the standards contained in Washington Supreme Court Order No. 25700-A-1004, as amended, provided Standard 3.4 shall become effective on September 1, 2013.

Section 2. Resolution R-4894 which includes the Washington State Bar Association standards shall serve as a guide to interpret and apply the standards adopted by the Washington Supreme Court.

Section 3. The City Manager is authorized to execute a public defense contract incorporating the Washington Supreme Court's new standards for indigent defense in a form substantially similar to Attachment A.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2012.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk



## PUBLIC DEFENSE CONTRACT

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THIS CONTRACT is entered into by and between the CITY OF KIRKLAND, a municipal corporation, herein referred to as the "City," and Stewart MacNichols & Harmell, Inc., P.S., herein referred to as the "Contractor."

1. Scope of Services. All indigent criminal defendants charged under ordinances of the City who qualify for appointed counsel shall be referred to the Contractor. The Contractor shall provide legal representation for each of these defendants from the time of screening for eligibility through trial, sentencing, post-trial appearances and appeals to the Superior Court, if necessary. Contractor shall maintain an office within the City as well as 425 area code and 800 phone numbers throughout the term of this Contract. Whenever Contractor is counsel of record for an individual who is jailed on a City matter, Contractor shall be available to appear in court before such individual has been in custody for 24 hours; except that, this provision does not require the Contractor to be available to appear in Court on Saturdays, Sundays, or City holidays. The Contractor may withdraw upon completion of the case or the Contract as allowed by the Rules of Professional Conduct. The Contractor may assist the Court by assisting other persons charged with violating the City's ordinances, such as with preparation of forms. Any such assistance shall not obligate the Contractor to represent said person unless the defendant qualifies for appointed counsel.
2. Applicant Screening. Determination of indigency for eligibility for appointed counsel under this Contract shall be determined by a screening process established by the City. The City shall be responsible for handling the screening process. Should the Contractor determine a defendant is not eligible for assigned counsel, the Contractor shall withdraw from the case and so advise the Court and the City of the withdrawal and the reason therefor, subject to the Contractor's professional duties under the Rules of Professional Conduct.
3. 24-Hour Telephone Access. Contractor shall provide to the City Police Department the telephone number or numbers at which an attorney may be reached for "critical stage" advice to defendants during the course of police investigations and/or arrest twenty-four (24) hours each day.
4. Associated Counsel. Contractor may arrange for other attorneys to perform services under this Contract at Contractor's expense. Contractor may delegate the authority to perform Contract services to an attorney who is licensed to practice law before the courts of record for the State of Washington, unless City objects to services by that attorney. In any event, Contractor shall be responsible for overseeing and approving services performed by other attorneys. Contractor must immediately report to the City any change affecting the maintenance of membership in good standing of the Washington State Bar Association.

5. Proof of Professional Liability Insurance. Contractor will, at Contractor's sole expense, obtain and maintain during the life of this Contract, a policy of comprehensive general liability and professional liability insurance. Said policy shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence and be placed with an insurer authorized to do business in the State of Washington. Certificates issued by the insurance carrier showing such insurance to be in force shall be filed with the City not less than ten days following signing of this Contract.
  
6. Indemnification.
  - A. Contractor shall indemnify and hold the City, its elected officials, officers and employees harmless from any and all claims, losses or liability, including attorney's fees, whatsoever arising out of the Contractor's performance of obligations pursuant to this Contract, including claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Contractor, his agents, associates or employees, or occurring without the fault or neglect of the City.
  
  - B. With respect to the performance of this agreement and as to claims against the City, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees, and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties. This paragraph shall not apply to any damage resulting from the sole negligence of the City, its agents, and employees. To the extent any of the damages covered by this paragraph were caused by or resulted from the concurrent negligence of the City, its agents or employees, this obligation to indemnify, defend and hold harmless is valid and enforceable only to the extent of the negligence of the Contractor, its officers, agents and employees.
  
7. Compensation.
  - A. The City shall pay Contractor for services rendered under this Contract the sum of \$18,000 per month for the first 80 cases each month. Every three months, the Contractor will submit a bill in the amount of \$250 per case, for each case in excess of a total of 240 cases for the preceding three months. The City shall also pay to the Contractor a flat fee of \$500 for each case appealed from the District Court. In addition, the City shall be responsible for the preparation of appellate transcripts as required by court rules. The Contractor shall bill the City by the fifth day of the month for the previous month's services. Payment shall be made by the last day of each month, provided; the quarterly billing, described above, for the cases in excess of 240 cases shall be made by the fifth day of the month following completion of the quarter.
  
  - B. For the purposes of this section, "case" shall be defined as in Section 13.C. below.

- C. Either party may make a written request to re-open discussions regarding compensation. In the event that a party makes such a written request, the parties agree to engage in negotiations thereof for at least 30 days. If no agreement is reached after 30 days, then either party may give written notice of termination, to be effective no sooner than 30 days following the notice of termination.
8. Discovery Provided. The City shall provide to the Contractor, at no cost to the Contractor or the defendant, one copy of all discoverable material concerning each assigned case. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.
9. No Assignment or Subcontracts. No assignment or transfer of this Contract or any interest in this Contract shall be made by either of the parties without prior written consent.
10. Contractor Conflict. In the event the representation of a defendant hereunder raises a conflict of interest such that the Contractor cannot represent the defendant, said defendant shall be referred back to the City for further assignment.
11. Statistics. The Contractor shall provide statistics to the Municipal Court for all cases assigned, including the name of the client and the case number. In addition, this information shall be reported to the contract administrator no less often than within 30 days after the end of each quarter as to clients represented during the prior quarter.
12. Standards for Public Defense Services. The Contractor shall comply with the applicable Standards adopted by the Washington Supreme Court for attorneys to represent indigent persons. The Attorney shall also submit a certification to the Kirkland Municipal Court stating that the Attorney is in compliance with such standards. The certification shall be submitted on a quarterly basis throughout the term of this Contract.
13. Caseload Limits per Fulltime Equivalent Position
- A. Caseload Limits in General. The Contractor shall maintain a caseload such that each and every defendant can be provided effective assistance of counsel as required by this Contract. Subject to the remaining subsections of this section, a fulltime equivalent attorney position may be appointed to no more than 400 cases per year; provided, that a fulltime equivalent attorney position may be appointed to more than 400 cases per year if the managing partners of the Contractor determine that the Contractor will meet the terms of this Contract. Under no circumstances may a fulltime equivalent attorney position be appointed to more than 550 cases per year.
- B. Factors in Determining Permitted Caseload. In order to determine whether a fulltime equivalent attorney can be appointed to more than 400 cases per year, the Contractor shall consider the following:
- i. The experience of the attorneys who perform the work called for in this Contract.

- ii. The number of cases fulltime equivalent attorney positions are currently handling that are not in pre-trial status and not on appeal.
  - iii. The complexity of the cases.
  - iv. The services the Contractor provides to other municipalities or private clients.
- C. Case Defined. For the purposes of this section, the term "case" shall mean a group of criminal charges related to a single incident filed against a defendant to which the Contractor is appointed by the court, but shall not include temporary or provisional appointments at arraignments or in-custody hearings, appointments by a court at a court hearing for that one court hearing only, and shall not include pre-filing representation provided to a suspect who is under investigation for a violation of RCW 46.61.502, 46.61.503 or 46.61.504.
- D. Case Weighting. For the purposes of determining how many cases each fulltime equivalent attorney position is handling, each case shall be counted as follows:
- i. The charges listed below shall be counted as specified:
    - Allowing Minor to Frequent Bar 1/3
    - Allow Unauthorized Person to Drive 1/3
    - Altered License 1/3
    - Assault
      - Domestic Violence 1
      - Non-Domestic Violence 1
      - With Sexual Intent 2
    - Animal Cruelty 1
    - Attempted Assault 2/3
    - Attempted Forgery 2/3
    - Attempted Theft 2/3
    - Canceled Plates/Registration 1/3
    - Complicity 2/3
    - Commercial License Needed 1/3
    - Concealed Weapon 2/3
    - Conspiracy 2/3
    - Counterfeiting Trademark 2/3
    - Criminal Attempt 2/3
    - Criminal Trespass 1/3
    - Custodial Interference 1
    - Cyber Stalking 1
    - Dangerous Animal at Large 2/3
    - Discharge of Firearm 2/3
    - Disorderly Conduct 1/3
    - Display of Weapon 2/3
    - Driving with Suspended Registration 1/3
    - DUI 1

• DWLS 1	1/2
• DWLS 2	1/2
• DWLS 3	1/3
• Criminal Assistance	1/3
• Escape	2/3
• Failure to Transfer Title	1/3
• Failure to Disperse	1/3
• Failure to Obey	1/2
• Failure to Obey Flagman	1/2
• Failure to Obtain Vehicle License	1/3
• Failure to Stop	1/2
• Failure to Secure Load	1
• Failure to Surrender License	1/3
• False Identification	1/2
• False Insurance Card	1/2
• False Information	1/2
• False Reporting	1/2
• False Statement	1/2
• Fraud Dr. License	1/2
• Furnishing Liquor to Minor	1/2
• Harm to Police Dog	1
• Harassment	1
• Telephone Harassment	1
• Domestic Violence Harassment	1
• Hit and Run Attended	1
• Hit and Run Unattended	1/2
• Illegal Fireworks	1/3
• Illegal Use of Dealer Plates	1/3
• Immoral Conduct with a Minor	1
• In Park After Hours	1/3
• Indecent Exposure	1
• Inhale Toxic Fumes	1
• Interfering with Reporting to 911	2/3
• Invalid Trip Permit	1/3
• Lewd Act	1
• Littering Prohibited	1/3
• Loiter for Prostitution	1/2
• Malicious Mischief Domestic Violence	1
• Malicious Mischief Non-Domestic Violence	2/3
• Minor Frequenting a Tavern	1/2
• Minor Intoxicated in Public	1/2
• Minor in Possession/Consumption	1/2
• Neglect of a Child	1
• Negligent Driving 1	1
• No Valid Operator's License	1/3
• Obstructing	2/3
• Operating Vehicle Without Cert. of Ownership	1/3
• Operating Vehicle Without Ignition Interlock	1/2

• Patronizing a Prostitute	1/2
• Physical Control	1
• Possession of Drug Paraphernalia	1/2
• Possession of Marijuana	1/2
• Possession of Stolen Property	2/3
• Possession/Making Burglary Tools	2/3
• Possession Another's ID	1/2
• Possession of Legend	2/3
• Prostitution	1/2
• Provoking Assault	2/3
• Public Disturbance	1/3
• Reckless Driving	2/3
• Reckless Burning	2/3
• Reckless Endangerment	2/3
• Refuse to Cooperate	1/2
• Crimes Requiring Registration as Sex Offender	2
• Resisting Arrest	2/3
• Selling Liquor to Minor	1/2
• Stalking	1
• Tampering with Property of Others	1/2
• Tampering with a Witness	1
• Theft 3	2/3
• Theft of Rental Property	2/3
• Unlawful Issuance of Bank Check	2/3
• Unlawful Bus Conduct	1/2
• Unlawful Camping	1/3
• Unlawful Racing	2/3
• Urinating in Public	1/3
• Vehicle Prowl	2/3
• Vehicle Trespass	2/3
• Violation of Anti-harassment Order	2/3
• Violation of No Contact Order	2/3
• Violation of Instruction Permit	1/3
• Violation of Occupancy License	1/3
• Violation of Protection Order	2/3
• Violation of Restraining Order	2/3
• Weapons Capable of Harm	2/3

ii. All other charges shall be considered one case unless designated otherwise by agreement of the Contractor and the City Manager's Office.

E. Full Time Attorney Equivalent Position. Fulltime attorney equivalent position shall mean 40 hours of attorney services provided pursuant to this Contract.

F. Caseload Monitoring. Contractor shall continually monitor the caseload and performance of the Contractor as a whole and each attorney providing services pursuant to this Contract. Contractor shall provide projections at least three months

in advance regarding the caseload limits based upon the number of attorneys employed by the Contractor and trends in case filings.

- G. Caseload Level Shifting. In the event an attorney is handling a caseload such that the attorney is unable to provide effective assistance of counsel to each and every defendant, Contractor shall reduce the caseload of that attorney, and shift the reduced portion of the caseload to another attorney employed by the Contractor.
14. Refusal of Appointments. Contractor shall monitor the total number of cases handled by the Contract pursuant to this Contract. In the event Contractor is handling an excessive number of cases such that Contractor is unable to provide each and every defendant with effective assistance of counsel, then Contractor shall refuse further appointment of cases until such time as Contractor employs additional attorneys or the number of cases per attorney is reduced. Work performed pursuant to this Contract shall be Contractor's priority, and prior to refusing further appointments, Contractor shall attempt to withdraw from cases that Contractor handles that are not within the scope of this Contract and shall refuse to accept cases from clients outside of the scope of the work called for in this Contract.
15. Term of this Contract.
- A. Provision of services pursuant to this Contract shall commence at 12:01 a.m. on January 1, 2013.
- B. This Contract shall remain in force through December 31, 2015, unless terminated earlier pursuant to the provisions hereof.
16. Termination.
- A. For Cause. Either party may terminate this Contract in the event the second party fails to perform its obligations as described in this Contract and if such failure has not been corrected to the reasonable satisfaction of the first party in a timely manner after notice of breach has been provided to the second party.
- B. For Reasons Beyond Control of Parties. Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, acts of nature; war or warlike operations; civil commotion; riot; labor dispute, including strike, walkout or lockout; sabotage; or superior governmental regulation or control. Notice of termination pursuant to this subsection shall be given as far in advance as is reasonable.
- C. Without Cause. Either party may terminate this Contract at any time without cause upon giving the non-terminating party not less than ninety (90) days prior written notice.
17. Amendment

- A. No modification or amendment of the provisions of this Contract shall be effective unless in writing and signed by authorized representatives of the parties hereto.
  - B. The parties nonetheless agree to negotiate a fee adjustment in good faith in the event that a material increase in Contractor's level of service is requested by Kirkland, or results from practices or policies outside Contractor's reasonable control.
18. Entire Agreement. This Contract contains the entire agreement between the parties and may not be enlarged, modified or altered except in writing, signed by the parties and endorsed hereon.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF KIRKLAND

CONTRACTOR  
STEWART MACNICHOLS  
& HARMELL, INC., P.S.

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO FORM:  
KIRKLAND CITY ATTORNEY

\_\_\_\_\_

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