AGREEMENT NO. 2015-7

PUBLIC DEFENDER AGREEMENT FOR 2015

THIS AGREEMENT is made by and between Pend Oreille County, State of Washington, hereinafter referred to as "County", and BAJALCALIEV AND SCUDDER, P.S., Attorney at Law, hereinafter referred to as "Public Defender", whereby the parties agree with each other as follows:

I.

The County, acting by and through its Board of Commissioners, with approval from its Superior and District court Judges, has determined to contract the services of qualified public defenders for 2015.

II.

Effective January 1, 2015, the Public Defenders will provide defense of every nature necessary and appropriate for the defense of indigent clients, both in Pend Oreille County Superior Court and in the Pend Oreille County District Court concerning all criminal charges therein filed after January 1, 2015, except for those charges filed in District Court by the City of Newport, its prosecutors, officers, agents, etc., or charges which, regardless of who files them in District Court, are classified as City of Newport cases because they occurred within the City limits. The City of Newport has contracted with its own public defenders to provide representation to indigent individuals prosecuted by the City.

III.

The Public Defender will also represent indigent clients in any type of proceeding, which could result in the incarceration of the indigent client, except those prosecuted by the City of Newport, subject to

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the exceptions in Paragraph XII.

IV.

The Public Defender will also provide defense services of every nature necessary and appropriate for the defense of indigent juveniles charged with a criminal offense in either District, Juvenile or Superior Court.

V.

The Public Defender will also advise indigent juveniles facing diversion in lieu of criminal prosecution or termination of diversion, if the indigent juvenile requests an attorney to advise him or her of these proceedings. The Public Defender shall represent juveniles at termination of diversion hearings actually held in juvenile court.

VI.

The Public Defender will represent children and/or parent(s) in CHIN's, Truancy and Youth at Risk actions, which commence on or after January 1, 2015.

VII.

The Public Defender shall not be obligated to provide representation on appeals except in the case of RALJ Appeals which are included in this contract.

VIII.

The parties anticipate that the LAW OFFICE OF BAJALCALIEV AND SCUDDER, LAW OFFICE OF ROBIN R. MCCROSKEY, and the LAW OFFICE OF F. DANA KELLEY act as the three Public Defenders. LAW OFFICE OF MICHAEL MORGAN will act as the "Conflict Public Defender".

The three Public Defenders shall be appointed equally on all cases mentioned under this contract, except for adult felony cases, which shall be assigned equally between the three Public Defenders and the Conflict Public Defender. Michael Morgan will also be appointed on cases when the three Public Defenders have a Conflict of Interest.

IX.

Pend Oreille County Sheriff shall notify one of the Public Defenders as soon as practicable if an arrestee who was taken into custody requests counsel. It should not be required that the Sheriff inform one of the Public Defenders of such arrest, or incarceration before the commencement of normal business hours, and subsequent to the end of the business day, unless counsel is requested by such defendant, and after he or she has been advised counsel may be available to him.

X.

It shall be the duty of the Public Defender to appear within a reasonable time when notified by either the Sheriff's Office or any of the Clerks of Court that there is a prisoner or defendant to be brought before the Court. The Public Defenders will provide initial representation for all defendants. The obligation will continue beyond the defendant's initial appearance in Court only if the Court determines the individual is indigent based upon an affidavit filed with the Court.

The Court will enter an Order of appointment in each matter wherein the Public Defender is appointed to represent an indigent individual. If the Public Defender is not present before the Court at the time of appointment, the Clerk of Court will provide the appointed attorney with written notice of the appointment.

XI.

The necessary forms to request appointment of a Public Defender will be available at the jail and from the Pend Oreille District Court and Superior Court. Upon completion, these forms will be forwarded to the District Court or Superior Court where the court will screen and review them to determine if the individual is indigent. In all cases, the Court will make the final determination regarding indigency.

XII.

BAJALCALIEV AND SCUDDER, P.S. has an independent law practices. In the event the Court determines that a Conflict of Interest exists under the Rules of Professional Conduct, wherein the Public Defender cannot provide representation, the Court will direct the clerk to notify the Conflict Attorney that he is appointed to represent the client.

The Public Defender is not responsible for compensation to the Conflict Attorney. Nothing shall prohibit the Public Defender or Conflict Attorney from providing an associate or other counsel when a Public Defender is unable to appear. All Court appearances shall be the responsibility of the Public Defenders or Conflict Attorney and included in the consideration paid for their services.

XIII.

The parties to this agreement intend that it cover virtually all degrees of criminal cases, which may arise during the term of this agreement. Each party recognizes that the possibility exists that an extremely complex or serious case such as First Degree Murder, Second Degree Murder, Aggravated Murder or a case subject to "Three Strikes" sentencing could occur. In that event, the Public Defender or the Conflict Attorney will be compensated at the standard hourly rate, set by Pend Oreille County Superior Court, at the time of the appointment.

The Public Defender shall not be appointed on cases or responsible for providing representation for cases beyond 75% of the maximum caseload for a single attorney under Standards for Indigent Defense

Type of Case	Caseload Guidelines	Caseload Points
Adult Felonies	150 cases per year	6.7/case
Adult Misdemeanors	400 cases per year	2.5/case
Juvenile Offenders	250 cases per year	4/case
Dependency	80 cases per year	12.5/case
Civil commitment	250 cases per year	4/case
Appeals from District Court (RALJ Appeals)	36 cases per year	27.75/case

(SID) 3.4. It is anticipated and understood that the Public Defender has a caseload outside of this Contract. Therefore, the Public Defender may not provide representation or be appointed on cases where they have exceeded the maximum caseload requirements considering the total caseload.

Limitations on Attorney Caseload. In order to insure effective representation for indigent clients, the Attorneys shall assure that no single attorney is responsible for a total of more than 750 Pend Oreille "caseload points" per year. Caseload points are calculated per the ~~below~~ num caseload standards: IM SK

In addition to the calculated points above, the attorney spends approximately 10% of his/her time on CHINS/ARY/Truancy/Child Support, and LFO's, taking up approximately 75 points out of the 750 points.

XIV.

On or before the second Monday of beginning of each quarter, the Public Defender shall prepare and submit a written report to the Board of Pend Oreille Commissioners, which shall reflect case appointments of the Public Defenders. All reports shall indicate the number of cases that were handled in each quarter during respective periods and indicated how many points have been used up to that date.

The report shall also contain any and all other information as requested by the Board of County Commissioners to enable them to understand the workload and extent of involvement of the Public Defender as long as it is consistent with the Rules of Professional Conduct. If said reports are not received by the Board of Commissioners of Pend Oreille County by the second Monday of beginning of each quarter, all further remunerations due or claimed to be due will be withheld until receipt of said reports.

XV.

The Public Defender shall perform any and all such other related duties as may be ordinarily required of defense counsel or as directed by the Court.

XVI.

The Public Defender is an officer of the Court and subject to appropriate order thereof. Supervisory fiscal responsibility in relation to the Public Defender is retained by the Board of Commissioners of Pend Oreille County.

XVII.

The parties intend that an Independent Contractor relationship will be created by this Agreement. No agent, servant, or otherwise of the Public Defender shall be or shall be deemed to be an employee, agent, servant or otherwise of the County for any purpose, and neither the Public Defender nor their

employees are entitled to any of the benefits that the County provides for County Employees. The Public Defender shall be solely and entirely responsible for their acts and for the performance of the services herein contemplated. The Public Defender is an independent contractor with the authority to control and direct the performance and details of the work. Under no circumstances shall any statement or any action of the parties be construed to define the Public Defender or any of the Public Defender's associates or employees as employees of Pend Oreille County. It is specifically understood by the parties the status of the Public Defender shall be that of an Independent Contractor.

XVIII.

Insurance coverage acceptable to the County is a condition precedent to the Public Defender's performance under this contract. The Public Defender shall provide the County with a Certificate of Liability Insurance. The Insurance coverage should be made on a claims-made policy form. The Public Defender agrees to maintain Legal Malpractice insurance at the minimum amount of $100,000.00 per occurrence, $300,000.00 aggregate. The policy shall provide that it cannot be cancelled or the limits reduced without 30 days advance notice to the County.

If this contract is terminated for any reason, or at its expiration if not renewed, and if the Public Defender's insurance is on a claim-made form, the Public Defender agree to purchase at their sole cost, a 3 year tail policy or extended reporting period. The Public Defender as appropriate, agree to provide a copy of the 3 year tail coverage or extended reporting period to the Board or Commissioners of Pend Oreille County prior to receiving final payment from Pend Oreille County. The Public Defender specifically understands and agrees that any remuneration due or claimed to be due under this contract will be withheld until receipt by the Board of Commissioners of Pend Oreille County of acceptable tail coverage or an extended reporting period as detailed above.

Further, in the event the Public Defender fails to purchase and provide the necessary tail coverage or an extended reporting period, the Public Defender, as applicable, agrees to indemnify and hold harmless the County, its agents, employees, officials and officers from any and all liability and/or losses and damaged

The Agency or Contractor shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability. The Contractor shall make decisions with regard to selection and retention of sub-Contractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability. Compliance with Title VI of the Civil Rights Act of 1964, and RCW 49.60, Law against Discrimination, and other related laws and statutes is required.

XIX.

In consideration for the service to be rendered by the Public Defender, the County shall pay the sum of NINTY SEVEN THOUSAND FOUR HUNDRED AND FORTY and 00/100 ($97,440.00) for the contract year 2015. Twelve (12) equal payments for each month in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY DOLLARS and 00/100. ($8,120.00) shall be made through the office of the Auditor on a monthly basis after approval by the Board of Commissioners. Payment will be made on the last full week of the month for which service has been rendered. Said compensation shall be deemed to include payments for administrative expenses to include office support services and expenses. Other services including, but not limited to, investigators or other experts shall be appointed by the Court and separately compensated through the Court.

XX.

In the event this contract is terminated prior to December 31, 2015 the Public Defender a will, in consideration of the monthly payments received up to the date of termination, complete all cases to which the Public Defenders and the Conflict Attorney have been appointed up to and including the 31st day of the month preceding the last day of the Public Defender's service, unless withdrawal or substitution of counsel (with replacement Public Defenders) is authorized under Washington State Court Rules.

In the event this contract is not renewed, the Public Defender will, in consideration of the twelve (12) monthly payments per year received, complete all cases to which the Public Defender and the Conflict Attorney have been appointed up to and including December 31, 2015, unless withdrawal or substitution of counsel (with replacement Public Defenders) is authorized under Washington State Court Rules.

XXI.

This contract may be terminated by the Public Defender during 2015 by giving ninety (90) days written notice to the Superior Court Judges and the Board of Commissioners. A Public Defender may substitute another attorney or Attorney's office to finish the term of the contract with the approval of the Superior Court Judges and the Board of Commissioners of Pend Oreille County. The Public Defender shall be paid for services up to and including the last day of such service, on the regular payment date.

This contract may be terminated by the County for cause upon a written notice of intent from the Board of Commissioners of Pend Oreille County directed to the Public Defenders and the Conflict Attorney ninety (90) days in advance of termina*tion. The Public Defender* shall continue, during said ninety (90) day period, to perform the duties under this contract, PROVIDED, the same are approved by the Superior Court Judges. The Public Defender shall be paid the regular monthly payment upon the next regular payment date.

IN WITNESS THEREOF, the parties hereto have hereunder set their hands this 12 day of January, 2015.

BOARD OF COUNTY COMMISSIONERS
PEND OREILLE COUNTY, WASHINGTON:

KAREN SKOOG, Member

MIKE MANUS, Vice-Chair

STEVE KISS, Chair

SIGNED AND DATED this 12 day of January, 2015.

BAJALCALIEV AND SCUDDER, P.S.

Barrett J. Scudder