


**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners
FROM: Philip Morley, County Administrator 
DATE: June 7, 2010
SUBJECT: Subrecipient Agreement for OPD Public Defender Improvement Grant; Jefferson Associated Counsel; \$32,945

STATEMENT OF ISSUE:

Board of County Commissioner approval is requested for the attached Subrecipient Agreement for OPD Public Defender Improvement Grant with Jefferson Associated Counsel (JAC), totaling \$32,945. This would provide for indigent defense improvements by JAC.

ANALYSIS:

The Washington State Office of Public Defense (OPD) awarded Jefferson County a grant for public defense improvements pursuant to RCW 10.101 totaling \$36,545 in 2010. Of this amount, \$32,945 would be used for improvements to services provided by the County's contracted public defender, Jefferson Associated Counsel. The remaining \$ 3,600 of the OPD grant has been reserved to fund improvements to indigent services provided through our own courts. OPD's rules for how these funds may be used are attached to this memo.

The \$32,945 contract with Jefferson Associated Counsel enables JAC to provide investigation and attorney services, in excess of what their basic agreement with the County funds. This includes 20 hours per week of investigation services, and 8 hours per week of defense attorney services. Under the proposed agreement, JAC would document the services provided on a quarterly basis.

FISCAL IMPACT:

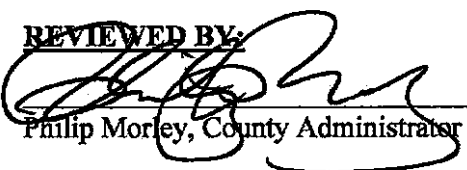
No fiscal impact. This agreement is 100% grant funded.

RECOMMENDATION:

Approve and sign the Subrecipient Agreement for OPD Public Defender Improvement Grant with Jefferson Associated Counsel, totaling \$32,945.

- Attachments:**
- WA OPD County/City Use of State Public Defense Funding
 - Subrecipient Agreement for OPD Public Defender Improvement Grant

REVIEWED BY:


Philip Morley, County Administrator

6/3/10

Date

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING (as amended June 2008)

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. The funds cannot be spent on purely administrative functions. Following are guidelines regarding permitted use of state public defense funds.

- 1. State public defense funding under Chapter 10.101 RCW *may* be used in the following ways:**
 - a) Additional investigator services
 - b) Additional expert services
 - c) Creation of a public defense office
 - d) New quality monitoring by an attorney coordinator who can act as a legal supervisor for the attorneys providing public defense (but non-attorney administrative employees of the county or city are not an approved use of funds)
 - e) Computers or access to electronic legal research systems for public defenders
 - f) Increase in public defense attorney compensation
 - g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
 - h) Addition of more attorneys to lower public defense caseloads
 - i) Addition of social worker services to assist public defense attorneys
 - j) Direct training costs to train public defense attorneys
 - k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
 - l) Provision of internet connectivity (e.g. wireless) for public defense attorneys
 - m) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)

- 2. State public defense funding under Chapter 10.101 RCW *may not* be used in the following ways:**
 - a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
 - b) Billing or other administrative costs incurred by the county or city in administering the public defense program
 - c) Indigency screening
 - d) County, city or court technology systems or administrative equipment
 - e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

**SUBRECIPIENT AGREEMENT
FOR OPD PUBLIC DEFENDER IMPROVEMENT GRANT**

THIS AGREEMENT is between the local government recipient Jefferson County (herein called the Grantee) and Jefferson Associated Counsel (herein called the Subrecipient) of State Office of Public Defense Public Defender Improvement Grant (OPDG) funds.

WHEREAS, the Washington State Office of Public Defense provides funds to county governments selected to undertake and carry out certain programs and projects under the OPDG program in compliance with all applicable local, state and federal laws, regulations and policies; and

WHEREAS, the Grantee has applied for and received funds from OPD and entered into Grant Agreement No. GRT10215; and the Scope of Service included in this Agreement is authorized as part of the Grantee's approved OPDG funds; and

WHEREAS, it benefits the Grantee to engage the Subrecipient to accomplish the Scope of Service and the objectives of the OPDG funds;

NOW, THEREFORE, it is agreed between the parties that:

1. SCOPE OF SERVICE

The Subrecipient shall use the OPDG funds to hire an investigator for twenty (20) hours per week, and fund eight (8) additional attorney hours per week to lower per attorney public defense caseloads, as detailed below.

Investigator (20 hours per week)	20,550.00	Total cost per year
OPDG Funding (20 hours per week)	20,550.00	(100%)

Attorney (40 hours per week)	63,403.00	Total cost per year
OPDG Funding (8 hours per week)	12,395.00	(20% - approx.)

Total OPDG Funding	32,395.00
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Subrecipient shall submit quarterly reports documenting OPDG services provided pursuant to this Agreement.

2. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of January 2010 and end on the 31st day of December of 2010. Work performed prior to entry of Agreement is hereby ratified.

3. OBJECTIVES

All activities funded with OPDG funds must meet one of the OPDG funding objectives. The Subrecipient certifies the activities carried out under this Agreement will meet OPDG rules pursuant to Washington State Office of Public Defense County/City Use of State Public Defense Funding (as amended June 2008) attached as Exhibit 1.

4. BUDGET

The Subrecipient shall include the OPDG funds in its 2010 budget accounting regularly submitted to Jefferson County in its Third and Fourth Quarters.

5. PAYMENTS

The Grantee shall, upon adoption of this Agreement, forward the OPDG funds to Subrecipient in the amount of \$32,945.

6. INSURANCE

The Subrecipient shall obtain and keep in force during the term of the contract, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

The Grantee will be named on all certificates of insurance as an additional insured. The certificate of insurance shall cover the activities specified in or performed under this contract.

- A. Professional Liability and Management Errors and Omissions Insurance with total aggregate coverage in the amount of one million dollars (\$1,000,000.00).
- B. Worker's Compensation and Employer's Liability insurance as required by the State of Washington.
- C. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all company-owned vehicles assigned to or used in the performance of the contract for a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence.
- D. General Commercial Liability Insurance in an amount not less than a single limit of one million dollars (\$1,000,000.00) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall include the following minimum coverages:
 - a. Broad Form Property Damage, with no employee exclusion;
 - b. Personal Injury Liability, including extended bodily injury;
 - c. Broad Form Contractual/Commercial Liability, including: completed operations;
 - d. Premises – Operations Liability (M&C);
 - e. Independent Contractors and Subcontractors;
 - f. Blanket Contractual Liability;

- g. Personal Injury/Property Damage Liability, arising out of the use of non-owned vehicles for business purposes.

7. GENERAL CONDITIONS

A. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this agreement. The Grantee shall be exempt from all payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

B. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the service or subject matter called for in this Agreement.

C. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

D. OPDG Terms and Conditions

The Subrecipient agrees to the special and general terms and conditions of the OPDG attached as Exhibit 2.

8. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

9. PERFORMANCE WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the

Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

10. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

APPROVED and signed this ____ day of _____, 2010.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

JEFFERSON ASSOCIATED COUNSEL

David Sullivan, Chair

Richard Davies

Attest:

Erin Lundgren, Deputy Clerk of the Board

Approved as to Legal Sufficiency Only:

David Alvarez, Deputy Prosecuting Attorney

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING (as amended June 2008)

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EXHIBIT 2

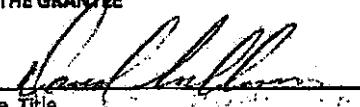
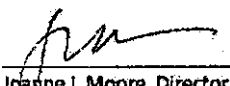
11/30/09

11/30/09
A. 21318

Grant Agreement No. GRT10215

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

1. Grantee Jefferson County 1820 Jefferson Street PO Box 1220 Port Townsend, WA 98368	2. Grantee Representative Philip Morley Jefferson County Administrator PO Box 1220 Port Townsend, WA 98368
3. Office of Public Defense (OPD) 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957	4. OPD Representative Joanne I. Moore Director Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957
5. Grant Amount \$36,545.00	6. Grant Period January 1, 2010 through December 31, 2010
7. Grant Purpose The Chapter 10.101 RCW county grants are statutory formula grants for the purpose of improving the quality of public defense services in Washington counties. (See Chapter 10.101 RCW.)	
The Office of Public Defense (OPD) and Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start January 1, 2010 and end December 31, 2010. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Special Terms and Conditions of the County Grant, and General Terms and Conditions of the County Grant.	
FOR THE GRANTEE  _____ Name, Title _____ Date	FOR OPD  _____ Joanne I. Moore, Director 11/30/09 _____ Date

as to form
Prosecutor's C

SPECIAL TERMS AND CONDITIONS OF THE COUNTY GRANT

1. **GRANT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Grant.

- a. The Representative for OPD and their contact information are identified on the Face Sheet of this Grant.
- b. The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

2. **GRANT AWARD AMOUNT**

The Grantee is awarded Thirty Six Thousand Five Hundred Forty Five and 00/100 Dollars (\$36,545.00) to be used for the purpose(s) described in the USE OF GRANT FUNDS below.

3. **PROHIBITED USE OF GRANT FUNDS (as adopted in OPD Policy County/City Use of State Public Defense Funding)**

- a. Grant funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of state grant funds.
- b. Grant funds cannot be spent on purely administrative functions or billing costs.
- c. Grant funds cannot be used for indigency screening costs.
- d. Grant funds cannot be used for county or court technology systems or administrative equipment.
- e. Grant funds cannot be used for county attorney time, including advice on public defense contracting.

4. **USE OF GRANT FUNDS**

- a. Grantee agrees to use the grant funds to improve the quality of legal representation directly received by indigent defendants. (See OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
- b. Grantee agrees to use the funds in calendar year 2010. If Grantee is unable to use the funds in 2010, the Grantee agrees to notify OPD to determine what action needs to be taken.
- c. Grantee agrees to deposit the grant check within 14 days of receipt.

5. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes, regulations, and court rules
- Special Terms and Conditions Of the County Grant
- General Terms and Conditions of the County Grant

GENERAL TERMS AND CONDITIONS OF THE COUNTY GRANT

1. **ALL WRITINGS CONTAINED HEREIN**

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

2. **AMENDMENTS**

This Grant may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.

3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

4. **ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of OPD.

5. **ATTORNEY'S FEES**

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

6. **CONFORMANCE**

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

7. **ETHICS/CONFLICTS OF INTEREST**

In performing under this Grant, the Grantee shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.

8. **GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. **INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Grant.

10. **LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, court rules, policies of local and state and federal governments, as now or hereafter amended.

11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part.

12. **RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of the Grant, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.

13. **RECORDS MAINTENANCE**

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant. Grantee shall retain such records for a period of six (6) years following the end of the grant period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the

records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

14. **RIGHT OF INSPECTION**

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by OPD, the Office of the State Auditor, and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

15. **SEVERABILITY**

If any provision of this Grant or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Grant that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Grant and to this end the provisions of this Grant are declared to be severable.

16. **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing.