


**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Philip Morley, County Administrator 

DATE: August 22, 2011

SUBJECT: Subrecipient Agreement for OPD Public Defender Improvement Grant; Jefferson Associated Counsel; \$5,490.83

STATEMENT OF ISSUE:

Board of County Commissioner approval is requested for the attached Subrecipient Agreement for Office of Public Defense Public Defender Improvement Grant with Jefferson Associated Counsel (JAC), totaling \$5,490.83. This continues the 2010 subrecipient agreement for the first two months of 2011 to provide indigent defense improvements by JAC.

ANALYSIS:

The Washington State Office of Public Defense (OPD) awarded Jefferson County a grant for 2011 to fund public defense improvements pursuant to RCW 10.101. Of this amount, \$5,490.83 would be used for improvements in January and February 2011 to services provided by the County's contracted public defender, Jefferson Associated Counsel. Another portion of the OPD grant is to fund improvements to indigent services provided through our own courts, while the bulk of the 2011 OPD grant was previously incorporated as service improvements under Jefferson Associated Counsel's new contract which commenced March 1, 2011.

JAC's 2010 contract for basic indigent defense continued through January and February 2011, pending the competitive selection and award of a new contract, which JAC also won. During these two months, JAC also continued to provide enhanced attorney and investigator services with the understanding that a pro-rata share of the 2011 OPD improvement grant would be dedicated for this purpose. The attached subrecipient agreement implements this.

The \$5,490.83 subrecipient agreement with Jefferson Associated Counsel would pay JAC for providing 20 hours per week of investigation services, and 8 hours per week of defense attorney services, in excess of their basic agreement with the County.

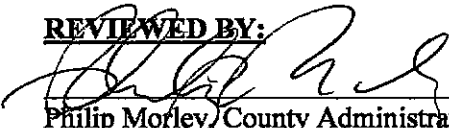
FISCAL IMPACT:

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

RECOMMENDATION:

Approve and sign the Subrecipient Agreement for OPD Public Defender Improvement Grant with Jefferson Associated Counsel for January and February 2011, totaling \$5,490.83.

REVIEWED BY:


Philip Morley, County Administrator


Date

**SUBRECIPIENT AGREEMENT
FOR OPD PUBLIC DEFENDER IMPROVEMENT GRANT
January, February, 2011**

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 applied for and received funds from OPD and entered into Grant Agreement ICA11084; and the Scope of Service included in this Agreement is authorized as part of the Grantee's approved OPDG funds; and

WHEREAS, the Subrecipient received similar funding pursuant to a Subrecipient Agreement for calendar year dated 2010; and

WHEREAS, the Subrecipient continued to provide public defense during January and February of 2011 pursuant to a 2010 contract amendment with the Grantee and employed an investigator (20 hours per week) and attorney (8 hours per week) during this period; and

WHEREAS, Jefferson Associated Counsel was awarded a contract to provide public defense services starting March 1, 2011, through December 31, 2013, which continues to designate Jefferson Associated Counsel as a Subrecipient of Public Defender Improvement Grants during this period to continue to provide eight (8) attorney hours per week and twenty (20) investigator hours per week;

WHEREAS, it benefits the Grantee to engage the Subrecipient to accomplish the Scope of Service and the objectives of the OPDG funds during the period of January 1 through February 28, 2011;

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)	3,425.00	Total cost 1/1/11 – 2/28/11
OPDG Funding (20 hours per week)	3,425.00	(100%)
Attorney (40 hours per week)	10,567.17	Total cost 1/1/11 – 2/28/11
OPDG Funding (8 hours per week)	2,065.83	(20% - approx.)
Total OPDG Funding	5,490.83	

2. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of January 2011 and end on the 28th day of February, 2011. 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).

4. BUDGET

The Subrecipient shall include the OPDG funds in its 2011 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 \$5,490.83.

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.

The SUBRECIPIENT'S insurance required by this Section shall be in all circumstances primary to any insurance available to the GRANTEE. The SUBRECIPIENT shall furnish the GRANTEE with verification of insurance and endorsements required by the AGREEMENT. The GRANTEE reserves the right to require complete, certified copies of all required insurance policies at any time.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the GRANTEE.

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. OPD Terms and Conditions

The Subrecipient shall comply with Washington State Office of Public Defense County/City Use of State Public Defense Funding (as amended June 2008) attached as Exhibit 1, and shall comply with the special and general terms and conditions of the Public Defender Improvement Grant, 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 _____, 2011.

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

John Austin, Chair

JEFFERSON ASSOCIATED COUNSEL




Richard Davies

Attest:

Raina Randall, Deputy Clerk of the Board

Approved as to Legal Sufficiency Only:

 8/15/2011

David Alvarez, Deputy Prosecuting Attorney

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.


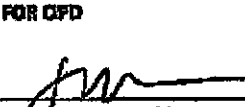
2 originals to VFD 1/4/2010
cc. Aud.
Dist Ct
Sup Ct
PA

Retain 2017

Agreement No. ICA 11084

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

1. Recipient—RCW 10.101.070 Funds Jefferson County 1820 Jefferson Street PO Box 1220 Port Townsend, WA 98368	2. Recipient Representative Philip Marley Jefferson County Administrator PO Box 1220 Port Townsend, WA 98368
3. Office of Public Defense (OPD) 711 Capitol Way South, Suite 108 PO Box 40957 Olympia, WA 98504-0957	4. OPD Representative Joanne I. Moore Director Office of Public Defense 711 Capitol Way South, Suite 108 PO Box 40957 Olympia, WA 98504-0957
5. Distribution Amount: \$34,520.00	6. Use Period January 1, 2011 through December 31, 2011
7. Purpose Chapter 10.101 RCW county distributions are statutory formula distributions for the purpose of improving the quality of public defense services in Washington State counties.	
The Office of Public Defense (OPD) and Recipient, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start January 1, 2011 and end December 31, 2011. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions, and General Terms and Conditions.	
FOR THE RECIPIENT  Name, Title December 20, 2010 Date	FOR OPD  Joanne I. Moore, Director December 22, 2010 Date

Approved as to form only:

 12/15/10
Jefferson Co. Prosecutor's Office

SPECIAL TERMS AND CONDITIONS

1. AGREEMENT 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 Agreement.

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

2. DISTRIBUTION AMOUNT

The Distribution Amount is Thirty-Four Thousand Five Hundred Twenty and 00/100 Dollars (\$34,520.00) to be used for the purpose(s) described in the USE OF FUNDS below.

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

- a. Funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of RCW 10.101.070 funds.
- b. Funds cannot be spent on purely administrative functions or billing costs.
- c. Funds cannot be used for indigency screening costs.
- d. Funds cannot be used for county or court technology systems or administrative equipment.
- e. Funds cannot be used for county attorney time, including advice on public defense contracting.

4. USE OF FUNDS

- a. Recipient agrees to use the RCW 10.101.070 funds to improve the quality of legal representation directly received by indigent defendants. (See Chapter 10.101 RCW and OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
- b. Recipient agrees to use the funds in calendar year 2011. If Recipient is unable to use the funds in 2011, the Recipient agrees to notify OPD to determine what action needs to be taken.
- c. Recipient agrees to deposit the RCW 10.101.070 funds check within 14 days of receipt.

5. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, 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
- General Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. **ALL WRITINGS CONTAINED HEREIN**
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
2. **AMENDMENTS**
This Agreement 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 Recipient 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 Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Recipient without prior written consent of OPD.
5. **ATTORNEY'S FEES**
Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorneys fees and costs.
6. **CONFORMANCE**
If any provision of this Agreement 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 Agreement, the Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.82 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 Agreement 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 Recipient 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 Agreement.
10. **LAWS**
The Recipient 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 Agreement, the Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Recipient's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.
12. **RECAPTURE**
In the event that the Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, 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 Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement 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 Recipient's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by CPD, 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 Agreement. The Recipient shall provide access to its facilities for this purpose.

15. SEVERABILITY

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