


**JEFFERSON COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**CONSENT AGENDA REQUEST**

**TO:** Board of County Commissioners  
**FROM:** Philip Morley, County Administrator   
**DATE:** February 21, 2012  
**RE:** Contract for Legal Services; Tolman Kirk Clucas, PLLC; Not to Exceed \$15,000.

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**STATEMENT OF ISSUE:**

Board of County Commissioner approval of the enclosed contract for legal services is requested to provide the District Court Judge representation in State of Washington v. Jefferson County District Court, Cause #12-2-00013-1. Pursuant to RCW 36.32.200, before it can become effective, the contract must also be approved by the Presiding Superior Court Judge, if the Superior Court deems representation in this matter is appropriate.

**ANALYSIS:**

The County Prosecutor requested a Writ of Certiorari in Jefferson County Superior Court (State of Washington v. Jefferson County District Court, Cause #12-2-00013-1) contesting in part the District Court Judge's jurisdictional authority to exercise discretion in approving a motion by the Prosecutor to dismiss charges in a District Court cause/file no. 8648 and 8649, State of Washington vs. Jennifer Dollar. In setting a hearing date, Superior Court Judge Anna Laurie requested that the District Court Judge be provided with representation.

The District Court Judge has requested representation, and in response to the wishes expressed by Superior Court Judge Laurie, staff has prepared the enclosed contract for legal services with Tolman Kirk Clucas, PLLC of Poulsbo. Primary representation would be by Jeffrey L. Tolman, partner in the firm

The Prosecutor does not believe legal representation for the District Court Judge is appropriate in this matter. The Superior Court Judge has been informed of the Prosecutor's position, and will ultimately decide whether or not to approve the enclosed contract pursuant to RCW 36.32.200.

**FISCAL IMPACT:**

Adequate funds are budgeted in Non-departmental for legal fees.

**RECOMMENDATION:**

Approve the proposed contract for legal services, subject to approval by the Presiding Superior Court Judge, as they may or may not deem appropriate.

**REVIEWED BY:**

  
Philip Morley, County Administrator

2/16/12  
Date

## CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services (the Contract) is entered into by Jefferson County, a political subdivision and municipal corporation of the State of Washington, at P.O. Box 1220, Port Townsend, WA 98368 (hereinafter "County") and Tolman Kirk Clucas, PLLC at PO Box 851 Poulsbo, WA 98370 (hereinafter "Attorney").

### SECTION 1. EFFECTIVE DATE OF CONTRACT

- 1.1 The Contract will become effective upon approval in writing by the Superior Court Judge for Jefferson County pursuant to RCW36.32.200 and execution by all parties. It shall terminate on *December 31, 2012*. In no event will any extension of the Contract become effective unless and until it is approved and executed in writing by both parties and approved in writing by the Judge of the Superior Court for Jefferson County.

### SECTION 2. SERVICES TO BE PROVIDED

- 2.1 County retains Attorney for legal services in connection with Jefferson County District Judge Jill Landes (Client) in State of Washington v. Jefferson County District Court, Cause #12-2-00013-1. Primary representation for the Client shall be provided by Jeffrey L. Tolman, a partner in Tolman Kirk Clucas, PLLC.
- 2.2 The Attorney agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, or labor will be furnished by the County.
- 2.3 The Attorney will perform the work specified in the Contract according to standard industry practices and in conformity with state law.
- 2.4 The Attorney will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

### SECTION 3. CONTRACT REPRESENTATIVES

- 3.1 The County and the Attorney will each have a contract representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

County's Contract Supervisor  
Philip Morley, County Administrator  
Jefferson County  
P.O. Box 1220  
Port Townsend, WA 98368  
(360) 385-9100 x-383  
[pmorley@co.jefferson.wa.us](mailto:pmorley@co.jefferson.wa.us)

Attorney's Contract Representative  
Jeffrey Tolman  
Tolman Kirk Clucas, PLLC  
P.O. Box 851  
Poulsbo, WA 98370  
(360) 779-5561  
[tolman@tolmankirkclucas.com](mailto:tolman@tolmankirkclucas.com)

**SECTION 4. COMPENSATION**

- 4.1 Attorney will be paid no more than Fifteen Thousand Dollars Even (\$15,000.00) billed as provided herein, unless this Contract is amended and executed as provided herein.
- 4.2 Time shall be billed out at \$250.00 an hour for phone calls, conferences, travel, court appearances and other related activities regarding the case with a minimum per activity charge of .2 of an hour.
- 4.3 It may be necessary to incur expenses in order to fully and adequately prepare the case. These expenses may include Court costs (filing fees, certified copies of documents, etc.) costs of service of process, the attendance at or transcription of deposition proceedings by a court reporter or services performed by an expert. Billings for any services which are received by the Attorney will promptly be forwarded to the County. Payment shall be paid promptly by the County either directly to the provider or to the Attorney's office for reimbursement to the firm or persons rendering the service if the Attorney's office has paid the funds on Client's behalf. Copies will be charged at .15¢ per copy. Expenses incurred as described in this Section 4.3 shall count against the maximum contract amount listed in Section 4.1 above.
- 4.4 Unless otherwise provided in the Contract, the Attorney may submit an invoice to the County Administrator once a month for payment of work actually completed to date. Subject to the other provisions of the Contract, then County generally will pay such an invoice within 30 days of receiving it.
- 4.5 The Attorney will be paid only for work expressly authorized in the Contract.
- 4.6 The Attorney will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.
- 4.7 If the Attorney fails to perform any substantial obligation and the failure has not been cured within 10 business days following notice from the County, the County may, in its sole discretion and upon written notice to the Attorney, withhold all monies due the Attorney, without penalty, until such failure to perform is cured.

**SECTION 5. CLIENT'S OBLIGATIONS**

- 5.1 Client's obligations with Attorney are a critical factor in Attorney's representation of Client. Client must keep Attorney informed immediately of any change of address, home or work telephone numbers, message number or other significant factors in Client's circumstance during the course of the representation. Client has an obligation to return Attorney's telephone calls if requested, Client must answer, return and sign all appropriate papers sent to Client for completion as well as promptly answer requests or information requests for production of documents, etc.

## **SECTION 6. AMENDMENTS**

- 6.1 In order to be effective, any Contract renewal, amendment or modification must be in writing, be signed by both parties and be attached to the Contract. Work under a renewal, an amendment or a modification may not commence until the renewal, amendment or modification has been approved by the County Commissioners and has become effective.

## **SECTION 7. LIABILITY, INSURANCE AND WARRANTY**

- 7.1 By accepting the terms of this contract, Attorney warrants and agrees that: (1) the firm is an independent contractor and no member or employee of the firm shall be deemed to be an employee of the County; (2) the work to be performed by the Attorney shall be performed only by attorneys experienced and qualified to perform the legal services, or legal assistants under the direct supervision and control of experienced attorneys; (3) Attorney shall indemnify the County against and hold the County harmless from any claim for funds or money made by a vendor who provided goods or services to the Attorney AND any claim by Client that client suffered any financial loss or expense; (4) the firm will have in effect professional liability insurance ("errors and omissions") with minimum limits of liability of at least 1,000,000. Said errors and omissions insurance shall be primary if any allegation is made of professional malpractice arising from Attorney's representation of Client in this matter, Jefferson County Superior Court Cause #12-2-00013-1.
- 7.2 Attorney has advised Client of the hazards and risks of litigation, and despite Attorney's best efforts on Client's behalf, there is no guarantee as to the outcome of the case.
- 7.3 **Verification of Coverage and Acceptability of Insurers.**
- A. The Attorney will place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or reinsurers licensed in the State of Washington.
  - B. The Attorney will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section within 10 days after the effective date of the Contract. The certificate(s) will, at a minimum, list limits of liability and coverage. The certificate(s) will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.
  - C. If applicable, the Attorney will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Jefferson County that the Attorney is currently paying workers' compensation.

- D. Written notice of cancellation or change will be made to the County at the following address:

Philip Morley, County Administrator  
Jefferson County  
P.O. Box 1220  
Port Townsend, WA 98368

- E. The Attorney or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Jefferson County Risk Manager.

## **SECTION 8. TERMINATION**

- 8.1 The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the best interests of the County. The County may terminate the Contract upon giving the Attorney 10 business days' written notice. In that event, the County will pay the Attorney for all costs incurred by the Attorney in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may immediately terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by County to the Attorney. No costs incurred after the effective date of the termination will be paid.
- 8.3 If the Attorney breaches any of its obligations under the Contract, and fails to cure the breach within 10 business days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Attorney only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Attorney will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Attorney's breach.

## **SECTION 9. CONFIDENTIALITY**

- 9.1 The Attorney and its employees, will maintain the confidentiality of all information provided by the County or acquired by the Attorney in performance of the Contract, except upon the prior express written consent of the County or upon an order entered by a court of competent jurisdiction. The Attorney will promptly give the County Administrator written notice of any judicial proceeding seeking disclosure of such information, as well as any contacts by citizens, proponents or interested parties as to matters before the Attorney.

- 9.2 The County is a political subdivision of the State of Washington and as such is subject to Ch. 42.56 RCW, the Public Records Act, which requires disclosure of non-exempt documents and records to a person or entity that requests such documents or records.

## **SECTION 10. CHOICE OF LAW, JURISDICTION AND VENUE**

- 10.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.
- 10.2 Any action of law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in Superior Court for Jefferson County.

## **SECTION 11. MISCELLANEOUS**

- 11.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.
- 11.2 **Tax Payments.** The Attorney will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts including, but not limited to, the employer's portion of any taxes that arise from compensation owed or paid to employees, agents or representatives of the Attorney or are otherwise mandated by Title 26 U.S.C.
- 11.3 **Personnel Removal.** The Attorney agrees to remove immediately any of its attorneys, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County Administrator.
- 11.4 **Legal Compliance.** The Attorney, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract. The Attorney shall be entitled to seek legal advice from the Jefferson County Prosecuting Attorney or his or her designee to the extent that the Prosecuting Attorney or his or her designee can provide such legal advice in a manner consistent with the applicable rules governing a lawyer's conduct.
- 11.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Attorney relating to the performance of the Contract. The Attorney will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.
- 11.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Attorney each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.

- 11.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
  
- 11.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.
  
- 11.9 **Notices.** Any notices will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the contract representatives provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

IN WITNESS WHEREOF: Jefferson County and the Attorney have signed this contract on the date noted:

**JEFFERSON COUNTY**

**TOLMAN KIRK CLUCAS, PLLC**

John Austin, Chair  
Date:

Jeffrey L. Tolman  
Date:

Attest/Authenticated:

Raina Randall  
Deputy Clerk of the Board

Pursuant to RCW 36.32.200 this contract of employment of Attorney is hereby approved.

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

Anna M. Laurie  
Presiding Superior Court Judge, Kitsap County  
Supreme Court Appointed Visiting Judge, Jefferson County