


**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners

FROM: Philip Morley, County Administrator 

DATE: January 22, 2013

SUBJECT: Amendment No. 1 to Public Defense Agreement; Jefferson Associated Counsel; up to \$46,302.

STATEMENT OF ISSUE:

Board of County Commissioner approval is requested for Amendment No. 1 to the Public Defense Agreement with Jefferson Associated Counsel for indigent defense to provide for the defense of Michael Pierce in State v. Pierce (case 09-1-00058-7).

ANALYSIS:

On February 22, 2011, the County entered into an agreement with Jefferson Associated Counsel (JAC) to provide indigent defense services for Superior Court, Juvenile Services, and District Court. The Scope of Services of the original agreement specifically excludes cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10,95,040, or which involves a gravely serious offense, including, but not limited to, murder, sexually violent predator and other charges which might necessitate a disproportionately large expenditure of attorney time for costs, and allows for the County to negotiate with JAC regarding the compensation for representing the defendant in such a case.

RCW 10.101.005 mandates effective legal representation of indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process. On January 4, 2013, the Jefferson County Superior Court appointed JAC to represent Mr. Pierce as an indigent defendant in State v. Pierce, 09-1-00058-7, which includes two counts of Aggravated Murder which are gravely serious offenses as well as other serious violent felonies.

To provide defense for State v. Pierce, JAC requested compensation to dedicate Mr. Richard Davies as first chair attorney at half time, a second chair attorney position at quarter time, the equivalent of half time position combined between support and in-house investigator services, and attendant office support/supplies to meet the defendant's constitutional right to an adequate defense. The cost of this is \$ 7,717 per month starting January 1, 2013 and continuing through June 30, 2013 or termination of defense for State v. Pierce, whichever comes first. The total

compensation for this six-month period shall not exceed \$46,302. At this time it appears the case may be complete by the end of June, 2013.

FISCAL IMPACT:

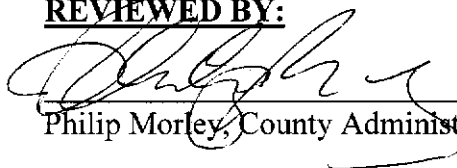
The potential added contract cost in 2013 is \$ 7,717 per month, which could be up to \$ 46,302 for the first six months of 2013.


The cost for this case is not currently in the 2013 County Budget, and will require future budget amendment. The costs may be paid from excess general fund revenues, if any, or pursuant to Jefferson County Resolution No. 048-12, extraordinary justice costs may be paid as a loan for repayment over time so as to avoid a concentrated single-year impact on the general fund. Costs for this extraordinary case will be addressed through a subsequent quarterly budget appropriation, likely in the budget extension for the 2nd quarter of 2013.

RECOMMENDATION:

Approve and sign the proposed Amendment No. 1 to the Public Defense Agreement with Jefferson Associated Counsel.

REVIEWED BY:


Philip Morley, County Administrator


Date

AMENDMENT No.1 To The PUBLIC DEFENSE AGREEMENT
By and Between
JEFFERSON ASSOCIATED COUNSEL
And
JEFFERSON COUNTY

Purpose: The purpose of this amendment is to adjust the contract price for 2013 based on the increased workload required to represent the defendant, Mr. Pierce, in State v. Pierce, 09-1-00058-7, which involves gravely serious offenses.

WHEREAS, on February 22, 2011, Jefferson County, a municipal corporation (herein known as "County") entered into an agreement ("original agreement") with Jefferson Associated Counsel, a non-profit corporation (herein known as "JAC") to provide criminal defense and related services for indigent defendants and other persons facing commitment or incarceration in Jefferson County; and

WHEREAS, the Scope of Services of the original agreement specifically excludes cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10.95.040, or which involves a gravely serious offense, including, but not limited to, murder, sexually violent predator which might necessitate a disproportionately large expenditure of attorney time for costs, but Paragraph T of Exhibit A Scope of Services of the original agreement allows for the County to negotiate with JAC regarding the compensation for representing the defendant in such a case; and

WHEREAS, RCW 10.101.005 mandates effective legal representation of indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process; and

WHEREAS, on January 4, 2013, Jefferson County Superior Court appointed JAC to represent Mr. Pierce as an indigent defendant in State v. Pierce, 09-1-00058-7, which includes two counts of Aggravated Murder and other serious violent felonies; and

WHEREAS, in order to provide effective representation for Mr. Pierce, additional funding is appropriate to provide JAC the resources to represent Mr. Pierce; and

WHEREAS, the County and JAC have negotiated funding terms for providing representation for Mr. Pierce consistent with Standards 3.2, 3.4 and 3.6 of Washington State Supreme Court Order No. 25700-A-1004 and Order No. 25700-A-1008 regarding cases involving serious offenses;

AMENDMENT NO. 1 TO PUBLIC DEFENDER AGREEMENT By and Between
Jefferson Associated Counsel and Jefferson County

NOW, THEREFORE, the parties agree as follows:

1. A new Paragraph U. is added to Exhibit A Scope of Services of the original agreement, as follows:

U. Defense In State v. Pierce, 09-1-00058-7. Pursuant to Paragraph T above regarding cases which involve a gravely serious offense and pursuant to Court appointment, JAC shall provide defense for Mr. Pierce in State v. Pierce, 09-1-00058-7 through June 30, 2013, or through termination of defense by JAC, whichever is earlier. The date for "termination of defense" by JAC in State v. Pierce, 09-1-00058-7 is defined for the purposes of this Amendment to the original agreement as the earliest of the following: 1) sentencing of Mr. Pierce based upon entry of a guilty plea by him in the court record, 2) completion of a trial in Superior Court, including, but not limited to, resolution of the criminal charges by a jury or, if convicted, sentencing of Mr. Pierce, or 3) the date when JAC's representation of Mr. Pierce ends. This case shall not be counted against JAC's contracted caseload points under the original agreement.

At a minimum, defense provided by JAC shall include Mr. Richard Davies dedicated as first chair attorney at half time, a second chair attorney position at quarter time, the equivalent of half time position combined between support and in-house investigator services, and attendant office support/supplies. Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate. Should the case continue in Superior Court past June 30, 2013, the parties will negotiate and execute an appropriate amendment to extend this agreement, including an appropriate level of compensation. Defense in State v. Pierce provided by JAC on or after January 4, 2013, is hereby ratified and considered to be work performed pursuant to this Agreement.

Any additional outside investigative services approved by the Court in State v. Pierce, 09-1-00058-7 shall be paid separately from the terms of this agreement.

2. A new Sub-Paragraph A.5. is added to Exhibit B: Compensation, as follows:

5. Compensation for Defense In State v. Pierce, 09-1-00058-7. The County shall pay JAC \$ 7,717 per month for defense in State v. Pierce to provide the services and support listed in Paragraph U of Exhibit A of this Agreement. Said compensation shall start January 1, 2013 and continue through June 30, 2013 or termination of defense for State v. Pierce, whichever comes first. The total compensation for this six-month period shall not exceed \$46,302.

Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate.

AMENDMENT NO. 1 TO PUBLIC DEFENDER AGREEMENT By and Between
Jefferson Associated Counsel and Jefferson County

Invoicing for defense in State v. Pierce shall be pursuant to Paragraph C, below.

3. Except as set forth in this Amendment, all other terms of the original February 22, 2011, Public Defense Agreement remain in full force and effect.

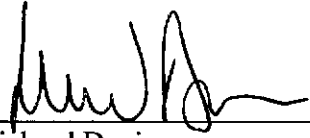
APPROVED and signed this _____ day of _____, 2013.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

JEFFERSON ASSOCIATED COUNSEL

John Austin, Chair

Date



Richard Davies

1/16/13

Date

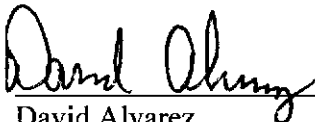
Attest:

Raina Randall

Deputy Clerk of the Board

Date

Approved as to Legal Sufficiency Only:



David Alvarez

Deputy Prosecuting Attorney

1/16/13
~~1/17/13~~

Date

PUBLIC DEFENSE AGREEMENT
By and Between
JEFFERSON ASSOCIATED COUNSEL
And
JEFFERSON COUNTY

Purpose: The purpose of this Agreement is to provide mandated legal defense services to eligible persons charged with offenses or at risk of a loss of liberty or liberty interest in the courts of Jefferson County.

Parties: This Contract for Professional Services (the Contract) is entered into by Jefferson County, a political subdivision and municipal corporation of the State of Washington, having its principal offices at P.O. Box 1220, Port Townsend, WA 98368 (hereinafter "County") and Jefferson Associated Counsel, a non-profit corporation having its principal offices at 333 Benedict Street, Port Townsend, WA 98368 (hereinafter "Contractor").

SECTION 1. PERIOD OF PERFORMANCE

- 1.1 The Contract will become effective on **March 1, 2011**, and terminate on **December 31, 2013**; and may be renewed for up to two additional one-year terms by mutual agreement by the parties. In no event will any extension of the Contract become effective unless and until it is approved and executed by the Jefferson County Board of Commissioners. The contractor will notify the County of their desire to renew the contract six months before its expiration.
- 1.2 In the event that the date of termination of the contract passes without the parties' execution of a similar contract or the County has not selected another Firm, then the contract shall remain in force for 60 days, during which time monthly payments shall be paid at 1/12th the last annual contract amount.
- 1.3 The public defense firm will continue to actively represent, faithfully and with due diligence, all cases assigned under this Agreement and complete those cases which remain pending following the termination of this Agreement; provided that, in the event there is no contract between the County and public defense firm, the public defense firm will not be obligated to continue representing cases beyond thirty (30) days after termination pursuant to subsections 1.2 or 1.3, whichever is later, and the County shall compensate the public defense firm at a reasonable fee established by the Court for said outstanding cases.

SECTION 2. SERVICES TO BE PROVIDED

- 2.1 A description of the services to be performed by the Contractor is set forth in Exhibit A: Description of Services, which is attached to the Contract and incorporated by this reference.
- 2.2 The Contractor 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 Contractor will perform the work specified in the Contract according to standard industry practices and in conformity with state law.
- 2.4 The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- 2.5 The Contractor will prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the County.

SECTION 3. CONTRACT REPRESENTATIVES

- 3.1 The County and the Contractor 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

Jefferson County
Philip Morley, County Administrator
1820 Jefferson Street
P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9100
pmorley@co.jefferson.wa.us

PUBLIC DEFENDER

Jefferson Associated Counsel
Richard Davies, Director
333 Benedict Street
Port Townsend, WA 98368
(360) 385-5613
jac@olympus.net

SECTION 4. COMPENSATION

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Exhibit B: Compensation, which is attached to the Contract and incorporated by this reference.
- 4.2 Except as specifically allowed herein, the total amount payable under the Contract by the County to the Contractor in no event will exceed:
- Four Hundred Eight Thousand Four Hundred Fifty Three Dollars (\$408,453.00) in 2011,
 - Five Hundred Five Thousand Eight Hundred Fifty One Dollars (\$505,851.00) in 2012, and
 - Five Hundred Twenty Six Thousand Seven Hundred Eighty Eight Dollars (\$526,788.00) in 2013.

- 4.4 The Contractor will be paid only for work expressly authorized in the Contract.
- 4.5 The Contractor 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.
- 4.6 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 20 business days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.
- 4.7 At the end of services under this Contract, any investigation revenues remaining with the Contractor shall be returned to the County within 30 days.

SECTION 5. AMENDMENTS AND CHANGES IN WORK

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.

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

The Contractor shall indemnify and hold the County, and its officers, employees, and agents harmless from and shall process and defend at its own expense, including all costs, attorney fees and expenses relating thereto, all claims, demands, or suits at law or equity arising in whole or in part, directly or indirectly, from the Contractor's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require the Contractor to indemnify the County against and hold harmless the County from claims, demands or suits based solely upon the conduct of the County, its officers, employees and agents, and; provided further that if the claims or suits are caused by or result from the concurrent negligence of: (a) the Contractor's agents or employees; and, (b) the County, its officers, employees and agents, this indemnity provision with respect to claims or suits based upon such negligence, and/or the costs to the County of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the Contractor's negligence, or the negligence of the Contractor's agents or employees.

The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.

The Contractor specifically assumes potential liability for actions brought against the County by the Contractor's employees, including all other persons engaged by it to perform any work or service required of the Contractor under this agreement wherein payment for such work or services is sought; and, solely for the purpose of this indemnification in defense, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor recognizes that this waiver was specifically entered into pursuant to provisions of RCW 4.25.115 and was subject of mutual negotiation.

SECTION 7. INSURANCE

7.1. The Contractor 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 County 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 coverage of not less than \$1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude hazards related to the work rendered as part of the Contract.
- B. Worker's Compensation and Employer's Liability. The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Jefferson County Risk Management Division. If the Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
- 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) per occurrence. The aggregate limit will be at least \$2 million. Coverage will include owned, hired and non-owned automobiles.
- 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 a 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:
 - i. Broad Form Property Damage, with no employee exclusion;
 - ii. Personal Injury Liability, including extended bodily injury;
 - iii. Broad Form Contractual/Commercial Liability, including: completed operations;
 - iv. Premises - Operations Liability (M&C);
 - v. Independent Contractors and subcontractors;
 - vi. Blanket Contractual Liability.
 - vii. Personal Injury/Property Damage Liability, arising out of the use of non-owned vehicles for business purposes.

7.2. Miscellaneous Insurance Provisions.

- A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.
- B. The Contractor's commercial general liability insurance and automobile liability insurance will include the County, its officers, officials, employees and agents with respect to performance of services.
- C. The Contractor's commercial general liability insurance and automobile liability insurance will contain no specific limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees and agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- F. The Contractor will include all subcontractors as insurers under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.
- G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.
- H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.
- I. Proof that said insurance requirements have been and are being satisfied by the Contractor shall be kept current by the Contractor

7.3. **Verification of Coverage and Acceptability of Insurers.**

- A. The Contractor 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 Contractor 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. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the County as an additional insured.
- D. Certificates of insurance will show the certificate holder as Jefferson County and indicate "care of" the appropriate County's contract representative. The address of the certificate holder will be shown as the current address of the appropriate County office or department.
- E. If applicable, the Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Jefferson County that the Contractor is currently paying workers' compensation.
- F. Written notice of cancellation or change will be made to the County at the following address:

Jefferson County
Philip Morley, County Administrator
1820 Jefferson Street
P.O. Box 1220
Port Townsend, WA 98368
- G. The Contractor 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. In the event that the date of termination of the contract passes without the parties' execution of a similar contract or the County has not selected another firm, then the contract shall remain in force for 60 days, during which time monthly payments shall be paid at 1/12th the last annual contract amount.
- 8.2. The Contractor will continue to actively represent, faithfully and with due diligence, all cases assigned under this Agreement and complete those cases which remain pending following the termination of this Agreement; provided that, in the event there is no contract between the County and Contractor, the Contractor will not be obligated to continue representing cases beyond thirty (30) days after termination on December 31, 2013 or pursuant to subsection 8.1., whichever is later, and the County shall compensate the Contractor at a reasonable fee established by the Court for said outstanding cases.
- 8.3. If the County confronts a significant reduction in revenues for the Contract, and the Board of County Commissioners determines and adopts a finding that a financial emergency exists within the General Fund, in meeting its constitutional obligation to provide for indigent defense, the County may reopen the Contract for renegotiation notwithstanding any other termination provision in the Contract. Failure to reach mutual agreement upon renegotiation shall be grounds for the County to terminate the Contract.
- 8.4. The Agreement may be terminated, upon thirty (30) days written notice for any material breach of any of the terms of the agreement by either party. After receipt of notice, and before termination, the party in default may cure the defect, in which case the agreement shall continue in force for the full term. The COUNTY shall pay a pro-rated share of the agreed funding upon termination based upon the balance of time remaining in the term unless otherwise negotiated. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses for all damages sustained by the County by reason of the Contractor's breach.

SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- 9.1 The Contractor will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Contract will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.
- 9.2 The Contractor warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract.

SECTION 10. INDEPENDENT CONTRACTOR

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an agent, an employee or a servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in the Contract. The Contractor shall perform the contracted work. Any designee shall have prior County approval to substitute for the contracted representative.
- 10.2 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees.
- 10.3 The Contractor will have and maintain complete responsibility and control over all of its subcontractors, employees, agents and representatives. No subcontractor, employee, agent or representative of the Contractor will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

SECTION 11. NONDISCRIMINATION

The Contractor, its assignees, delegates or subcontractors will not discriminate against any person in performance of any of its obligations under the Contract on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status or the presence of any disability.

SECTION 12. DISPUTES

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County Administrator. All rulings, orders, instructions and decisions of the County Administrator will be final and conclusive. Solely for the purposes of this Contract, the County and the Contractor agree that any judicial appeal of the County Administrator's decision shall be governed both procedurally and substantively by RCW 34.05.510 et seq., also known as the Administrative Procedures Act, except that the State of Washington need not be named as a respondent or served pleadings in such a judicial action.

SECTION 13. CHOICE OF LAW, JURISDICTION AND VENUE

- 13.1 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.
- 13.2 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 14. MISCELLANEOUS

- 14.1. **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.
- 14.2. **Tax Payments.** The Contractor 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 Contractor or are otherwise mandated by Title 26 U.S.C.
- 14.3. **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.
- 14.4. **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related financial and caseload point records for at least six years after termination of the Contract or pursuant to state record retention standards, whichever is longer.
- 14.5. **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor 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.
- 14.6. **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.

14.7. **Entire Agreement.** The parties acknowledge that this Contract, including referenced exhibits, 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.

14.8. **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 Contractor have signed this contract on the date noted:

JEFFERSON COUNTY

[Signature] _____
By: _____ Date _____
Chairman

CONTRACT SERVICE PROVIDER

[Signature] _____ 2/18/11
By: DREZON _____ Date _____
Title: Regional Director

ATTEST:

[Signature] _____ 2/22/11
Raina Randall _____ Date _____
Deputy Clerk of the Board

APPROVED AS TO FORM ONLY:

[Signature] _____ 2/24/2011
David Alvarez _____ Date _____
Deputy Prosecuting Attorney

SIGNED 2ND
COPY - Failed to
do so originally
when other copy
signed - DA

SCOPE OF SERVICES.

A. General Description. Contractor will provide legal representation in compliance with Chapter 10.101 RCW and the Rules of Professional Conduct to all indigent defendants charged under ordinances of the County and City of Port Townsend, and the laws of Washington State who qualify for appointed counsel as appointed by the Court. The Contractor will provide legal representation in Superior Court, Juvenile Court and District Court for certain indigent defenders including:

- Adult Superior Court/Felony, including Drug Court;
- Juvenile and Family Court Offender and Civil matters, including but not limited to Juvenile offenders, Juvenile civil matters including youth at risk, juvenile truancy, juvenile dependency, guardianship, and family support contempt, Topside, and Family Therapeutic Court;
- Adult District Court/Misdemeanor, including but not limited to persons faced with jailable misdemeanor and traffic offenses commitments or incarcerations, and RALJ appeals therefrom.

The Contractor will provide legal representation for eligible defendants, from court appointment or screening through trial, sentencing, post-conviction review and violations, and any appeals to Superior Court. Such cases include domestic violence cases. The Contractor, or subcontractor of the Contractor, will provide criminal defense services at in-custody bail hearings, and will be available to talk and meet with indigent defendants in the Jefferson County Jail. Said representation may be in person, or may include telephonic or video proceedings.

This scope does not include:

- Civil matters for which a person is not legally entitled to counsel as a matter of law;
- State Office of Public Defense-funded adult representation in dependency cases;
- Cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10.95.040, or involves a gravely serious offense, including, but not limited to, murder, sexually violent predator or an unusually large number of defendants, as from a massive drug arrest, either of which might necessitate a disproportionately large expenditure of attorney time for costs, not contemplated within this Contract
- Washington Appellate cases, except that as part of an existing case, the Contractor shall assist clients in filing Notice of Appeal and initiate the process by which an appropriate agency can arrange for appellate counsel.

B. Caseload and Points Per Case.

Pursuant to the Points per Case table below, the Contractor will provide indigent defense for cases based on a total annual contracted caseload point value of 1,292 in 2011, and 1,550 each year thereafter.

Type	Points per Case (scale of 400)
DISTRICT COURT	
Misdemeanors pre-judgment, & RALJ appeals	1.00
Misdemeanors post-judgment	0.25
JUVENILE COURT	
Juvenile Offenders pre-judgment	1.60
Juvenile Offenders post-judgment	0.40
Open Juvenile Dependency	5.00
Juvenile Status Offenses	2.00
SUPERIOR COURT	
Felonies pre-judgment	2.67
Felonies post-judgment	0.67
Civil Commitments & Drug Court	1.60

The total annual contracted caseload point value includes all cases assigned on or after March 1, 2011 and January 1 each year thereafter, as specified in this Contract and subsequent contract, multiplied by their case-type point values, and summed for the calendar year.

- For purposes of tracking caseload and cases above or below the caseload, the weighted scale shown above (Points per Case) shall be used to assign a point value to each case
- A "case" is defined as the filing of a document with the court naming a person as defendant or respondent, to which a public defense attorney is appointed in order to provide representation.
- Case count is defined by incident date. A single individual charged with several charges arising from one event shall be counted as one case for caseload tracking purposes although the charges are written on two or more citations, unless the charges are severed for trial. Any series of events that are charged under a single cause number shall be considered as one case for caseload tracking purposes although the events may have occurred on different dates, unless the charges are severed for trial.
- A case is counted when the Court screens the defendant for eligibility and appoints the Contractor, or the Judge directly appoints the Contractor from the bench.

- In recognition of various circumstances which can cause the termination of the public defense firm's representation and/or the reappointment of a public defense firm to represent a particular defendant with respect to a particular citation or cause number, the following rules shall apply to determine how much credit on the "points per case (scale of 400)" shall be given to the firm or persons providing the County with indigent defense. This chart applies to any of the following circumstances:

- Defendant hires his own attorney;
- Public defense firm must withdraw due to an ethical conflict of interest;
- Public defense firm is removed from a case; OR
- Public defense firm is reappointed although previously ceased representation after earlier appointment for same Defendant (typically Defendant hired a private attorney in between).

VENUE	One-Fifth Credit for Points per Case	Half Credit for Points per Case	Full Credit for Points per Case
Superior Court	Up to and including initial appearance or arraignment	Up to and including completion of Omnibus or unsuccessful dispositive motion	Upon successful dispositive motion, any suppression motions, pre-trial or trial completed
District Court	Up to and including initial appearance & arraignment (generally synonymous)	Up to and including pre-trial motion or unsuccessful dispositive motion	Upon readiness completed, successful dispositive motion, any suppression motions, pre-trial or trial completed
Juvenile	Up to and including initial appearance & arraignment (usually occur at same time)	Up to and including one or more pre-trial conferences OR failed dispositive motion	Upon fact-finding, successful dispositive motion, or any suppression motions completed.

In any event, if the public defense firm's attorneys have done no work on the case, no points shall be counted.

- C. Screening. Determination of indigency for eligibility for appointed counsel for this contract will be determined by the court. Should the Contractor determine a defendant is not eligible for assigned counsel, the Contractor will so inform the court and move to withdraw from the case.
- D. Associated Counsel. Any counsel associated with or employed by the Contractor shall have the authority to perform the services called for herein, and the Contractor may employ associated counsel to assist at the Contractor's expense. The Contractor and all associated counsel hired pursuant to this section shall be admitted to practice law pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacation, illnesses, and simultaneous settings in more than one courtroom.

- E. The Contractor shall maintain a secure and private office accessible to clients where mail is received and process is served and confidentiality preserved in Port Townsend or the Tri-Area that will be open during regular business hours, said hours to be determined by Contractor. The office shall be staffed by an attorney and a secretary/paralegal, who is available for both office support and to assist the public in referrals to other agencies, and for general consultation and advice. The Contractor must maintain a phone with answering service or equipment so they are accessible to clients.
- F. In addition, the office will provide an attorney to represent defendants in conformity with CrRLJ 3.1 and CrR 3.1. To assist in the smooth operation of the courts, the Contractor's office will provide counsel to represent defendants, even in the absence or unavailability of a particular defendant's assigned counsel for scheduled court appearances.
- G. The Contractor shall have adequate staff available to respond to emergency and non-emergency calls 24 hours a day, 365 days a year. Such response is intended to satisfy requests from arrested individuals asserting their right to speak with counsel.
- H. Twenty-Four Hour Telephone Access. The Contractor shall provide and timely update as necessary the Jefferson County Jail and JeffCom 911 Dispatch Center with the telephone number or numbers at which the Contractor can be reached for critical-stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day.
- I. The Contractor will be available to appear in Court with the defendant.
- J. The Contractor shall not be assigned or accept a particular appointment if it would create a true bona fide conflict of interest or would otherwise constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. The Contractor shall have the right, for good cause, to decline to advise or represent, and, with consent and agreement of the Court and pursuant to Court rule, to withdraw from representing any person in any case referred or assigned to the Contractor.
- K. The Contractor shall separately manage and account for all revenues and expenditures for investigation; and shall be responsible for all expenses and fees for investigators utilized in defense of cases assigned. County revenues for investigations shall only be used for that purpose. Any investigation revenues from the County not utilized in one year shall be carried over and be added to investigation funds available for use in the next. At the end of services under the County contract, any investigation revenues remaining shall be returned to the County. The Contractor may apply to the court, under exceptional circumstances, for expert witness funds to be used for investigative services, subject to the approval of the court.

- L. Expert Witness, Investigator Fees. The County shall reimburse the Contractor for reasonable expert witness and investigator fees if the court orders an expert witness upon motion of the Contractor. The Contractor shall not incur expenses and fees for expert witnesses without prior Court approval pursuant to applicable statutes and Court rules.
- M. Discovery Provided. The County shall provide to the Contractor at no cost to the Contractor or the defendant one (1) copy of all discoverable materials concerning each assigned case with the exception of audio and video tapes which shall be made available for inspection in accordance with rules for discovery. The copy may be electronic or printed, at the sole discretion of the Prosecutor.
- N. Standards for Public Defense Services. The Contractor shall comply with the standards for public defense services as adopted as guidelines by the County by Ordinance No. 04-0323-09 or subsequent County ordinance adopted pursuant to chapter 10.101 RCW, or as may be adopted and required by the Washington State Supreme Court. The Contractor shall submit an affidavit to the County Clerk, stating that the Contractor is in compliance with such standards.
- O. The Contractor and associated counsel will annually attend training approved by the Office of Public Defense, continuing legal education in areas relating to their public defense practice.
- P. Staffing Levels. Throughout the term of the contract, the Contractor must provide a sufficient number of attorneys to adequately staff appearances at Jefferson County Superior, Juvenile and District Courts.
- Q. The County has been awarded a State Office of Public Defense (OPD) Public Defender Improvement Grant for 2011, and anticipates similar grants each year thereafter. Under this Contract, Contractor is a subrecipient and staffing levels in this Contract include eight (8) attorney hours per week and twenty (20) investigator hours per week, which constitute public defender improvements and which shall comply with Washington State Office of Public Defense County/City Use of State Public Defense Funding (as amended June 2008) attached as Exhibit C, or as subsequently amended thereafter by the OPD.
- R. Reporting. The Contractor shall file monthly reports with the County as an electronic spreadsheet in Excel delineating each client the Contractor has been appointed to represent in the year to date, including but not limited to the cause number(s), type of case pursuant to this Contract, date of assignment, charge(s), each case's caseload points pursuant to this Contract, court, assigned defense attorney, disposition, bench or jury trial, and whether an appeal was filed. The monthly reports are due on or before the tenth (10th) day of each month.

The Contractor shall also file third and fourth quarter reports including a detailed year-to-date expenditure report in a format consistent with the financial pro forma submitted as part of the Contractor's proposal or as approved by the County; including, but not limited to all personnel costs, overhead costs, rents and leases, and other costs directly associated

with the Contractor's office, a separate accounting of all revenues and expenditures for investigative services and the amount to be carried over to the next year or returned to the County at the conclusion of the contracted services, and a projected budget for the next year. The fourth quarter report shall also list for each public defense attorney the number and types of cases outside this scope and the number of hours billed or caseload points equivalents. The third and fourth quarter reports are due on or before the tenth (10th) day after the end of each quarter (October 10th, January 10th).

- S. Expressly excluded from the scope of services of the contract between the Contractor and Jefferson County is any legal work the Contractor may undertake in the civil arena for persons it is representing on criminal matters. Such civil matters may include, but are not limited to, legal representation relating to landlord-tenant, liens not arising from the criminal matter, garnishment, worker's compensation, bankruptcy and all other aspects of civil law. This exclusion applies even in those circumstances where the criminal matter is allegedly related to or connected with the civil law assistance the public defense client may seek or require.

- T. In the event of appointment involving cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10,95,040, or involves a gravely serious offense, including, but not limited to, murder, sexually violent predator or an unusually large number of defendants, as from a massive drug arrest, either of which might necessitate a disproportionately large expenditure of attorney time for costs, not contemplated within this Contract, the County reserves the right to negotiate with Contractor compensation for the case and/or the Court may appoint special counsel at court expense and administration.

COMPENSATION

A. 1. The Contractor agrees to perform the services listed herein and comply with all Contract terms and conditions for an annual payment in 2011, 2012 and 2013 as follows:

Fee Schedule	2011	2012	2013
	March 1-December 31	January 1-December 31	January 1-December 31
Annual Caseload Points	1,292 caseload points	1,550 caseload points	1,550 caseload points
Annual Cost:	\$ 381,812.00	\$ 472,995.00	\$ 493,624.00
Attorney FTEs assigned	3.75 FTEs annualized	3.75 FTEs annualized	3.75 FTEs annualized

In addition to and **above** the costs in the table above, the County shall pay Contractor for investigative services for each year sufficient for each of the caseloads as follows:

Investigations Fee Schedule	2011	2012	2013
	March 1-December 31	January 1-December 31	January 1-December 31
Investigative Services Cost:	\$ 26,641.00	\$ 32,856.00	\$ 33,164.00
Investigator FTEs assigned:	0.75 FTEs annualized	0.75 FTEs annualized	0.75 FTEs annualized

CONTRACT TOTAL	2011	2012	2013
	March 1-December 31	January 1-December 31	January 1-December 31
Total Cost:	\$ 408,453.00	\$ 505,851.00	\$ 526,788.00

2. The public defense firm shall separately manage and account for all revenues and expenditures for investigation; and shall be responsible for all expenses and fees for investigators utilized in defense of cases assigned. County revenues for investigations may only be used for that purpose. Any investigation revenues from the County not utilized in one year shall be carried over and be added to investigation funds available for use in the next. At the end of services under this Contract, any investigation revenues remaining shall be returned to the County within 30 days. The public defense firm may apply to the court, under exceptional circumstances, for expert witness funds to be used for investigative services, subject to the approval of the court.
3. Compensation shall be monthly calculated at 1/12th of a flat annual fee. No additional fees, costs, charges, telephone fees, paralegal fees, delivery fees, or any other reimbursable expenses will be allowed.

A monthly billing statement shall be submitted in the form specified by the County and payment shall be reviewed for approval by the appropriate County representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such billing statement.

4. The Contractor shall be responsible for complying with applicable standards at their sole cost, unless mutually agreed to by the Contractor and the County.
- B. Adjustments for Contracted Caseload. The Contractor shall give the County Administrator 30 days notice of potential for exceeding the total annual contracted caseload point value. The total annual contracted caseload point value includes all cases assigned as specified in this Contract and subsequent contracts, multiplied by their case-type point values, and summed for the calendar year. It shall be the determination of the County Administrator as to whether the total contracted caseload point value is exceeded. Cases exceeding the total annual contracted caseload point value will be compensated based on their point value and the firm's average cost and average investigation cost per point in that year. For additional cases, the County Administrator may also either: 1) assign alternate counsel (via the judges); or 2) execute a service agreement with an additional qualified attorney or firm.

If the actual total annual caseload point value for any one year is less than 87% of the total annual contracted point value for that year, the contracted caseload and compensation for the succeeding year shall be decreased proportionately.

Should the City of Port Townsend withdraw from having Jefferson County provide for indigent defense for municipal cases in District Court, the District Court caseload points and compensation under this Contract shall be revised proportionately for the remainder of that year and in following years.

In the event of appointment involving cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10,95,040, or involves a gravely serious offense, including, but not limited to, murder, sexually violent predator or an unusually large number of defendants, as from a massive drug arrest, either of which might necessitate a disproportionately large expenditure of attorney time for costs, not contemplated within this RFP, the County reserves the right to negotiate with the Contractor compensation for the case and/or the Court may appoint special counsel at court expense and administration.

- C. Invoicing.
Invoices shall be monthly and may be submitted the month immediately proceeding each month of work to be performed. Invoices shall be submitted to the County Administrator's Office located at 1820 Jefferson Street, P.O. Box 1220, Port Townsend, WA 98368. Invoice amounts shall be 1/12 the annual contract amount. The County shall pay all valid invoices using its normal bill paying process.

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.