

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Public Defender's Office
Division/Program: (i.e. Dept, Division and Program)	
Contract or Grant Administrator:	Julie Wiles
Contractor's / Agency Name:	Washington State Office of Public Defense

Is this a New Contract?  Yes  No      If not, is this an Amendment or Renewal to an Existing Contract?      Yes  No    
 If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval?      Yes  No       If No, include WCC: \_\_\_\_\_   
 Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?      Yes  No       If yes, grantor agency contract number(s): GRT22083      CFDA#: 16.751

Is this contract grant funded?      Yes  No       If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process?      Contract \_\_\_\_\_   
 Yes  No       If yes, RFP and Bid number(s): \_\_\_\_\_      Cost Center: 2674

Is this agreement excluded from E-Verify?      No  Yes       If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- |   |  |
|---|--|
| <input type="checkbox"/> Professional services agreement for certified/licensed professional. | <input type="checkbox"/> Goods and services provided due to an emergency     |
| <input type="checkbox"/> Contract work is for less than \$100,000.                            | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input type="checkbox"/> Contract work is for less than 120 days.                             | <input type="checkbox"/> Work related subcontract less than \$25,000.        |
| <input type="checkbox"/> Interlocal Agreement (between Governments).                          | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.  |

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ 73,000.00  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ \_\_\_\_\_

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope:

To reimburse public defense providers who have not been able to access funds from local government or other sources, for increased service costs due to COVID-related impacts on attorney caseloads and workloads.

Term of Contract: January 1, 2022

Expiration Date: December 31, 2022

- |                   |  |                       |
|-------------------|--|-----------------------|
| Contract Routing: | 1. Prepared by: <u>Julie Wiles</u>                       | Date: <u>02/28/22</u> |
|                   | 2. Attorney signoff: <u>Karen Frakes</u>                 | Date: <u>03/01/22</u> |
|                   | 3. AS Finance reviewed: <u>MCaldwell</u>                 | Date: <u>3/1/22</u>   |
|                   | 4. IT reviewed (if IT related): _____                    | Date: _____           |
|                   | 5. Contractor signed: _____                              | Date: _____           |
|                   | 6. Submitted to Exec.: _____                             | Date: _____           |
|                   | 7. Council approved (if necessary): <u>(AB 2022-171)</u> | Date: _____           |
|                   | 8. Executive signed: _____                               | Date: _____           |
|                   | 9. Original to Council: _____                            | Date: _____           |

**FACE SHEET**

Agreement Number: GRT22083

**Washington State Office of Public Defense  
Coronavirus Emergency Supplemental Fund**

<b>1. Subrecipient</b> Whatcom County Public Defender 215 N Commercial St Bellingham, WA 98225		<b>2. Subrecipient Doing Business As (optional)</b>	
<b>3. Subrecipient Representative</b> Starck Follis Director 215 N Commercial St Bellingham, WA 98225 sfollis@co.whatcom.wa.us		<b>4. OPD Representative</b> Katrin Johnson Managing Attorney 360-586-3164 ext. 108 Katrin.Johnson@opd.wa.gov	
<b>5. Agreement Amount</b> \$73,000.00	<b>6. Funding Source</b> Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> January 1, 2022	<b>8. End Date</b> December 31, 2022
<b>9. Federal Funds (as applicable)</b> \$73,000.00	<b>Federal Agency:</b> Department of Justice	<b>CFDA Number:</b> 16.751	<b>Indirect Rate (if applicable):</b> Not Applicable
<b>10. Tax ID #</b>	<b>11. SWV #</b> SWV0002425-57	<b>12. UBI #</b> 91-6001383	<b>13. DUNS #</b> 060044641
<b>14. Agreement Purpose</b> To reimburse public defense providers who have not been able to access funds from a local government or other sources, for increased service costs due to COVID-related impacts on attorney caseloads and workloads.			
<b>15. Signing Statement</b> OPD, defined as the Washington State Office of Public Defense, and the Subrecipient, as defined above, acknowledge and accept the terms of this Agreement and Attachments and have executed this Agreement on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, and Attachment "C" – Reporting.			
<b>FOR SUBRECIPIENT</b>		<b>FOR OPD</b>	
_____		_____	
Date		Larry Jefferson, Director	
_____		_____	
Date		Date	

Approved as to form:

*Karen Frakes*  
Karen Frakes, Prosecuting Attorney's Office

**1. AUTHORITY**

OPD and Subrecipient enter into this Agreement pursuant to the authority delegated by the Washington State Department of Commerce to OPD in Interagency Agreement F20-3144C-004 to distribute FFY 2020 Coronavirus Emergency Supplemental Funds awarded by the U.S. Department of Justice.

**2. ACKNOWLEDGMENT OF FEDERAL FUNDS**

Federal Award Date: April 14, 2020  
Federal Award Identification Number (FAIN): 2020-VD-BX-0030  
Total amount of the federal award: \$10,885,923  
Awarding official: Katherine T. Sullivan

The Subrecipient agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Subrecipient describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following statements:

"This project was supported by Grant No. 2020-VD-BX-0030 awarded by Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Department of Justice. Grant funds are administered by the Office of Crime Victims Advocacy, Community Services and Housing Division, Washington State Department of Commerce"

**3. AGREEMENT MANAGEMENT**

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

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

The Representative for the Subrecipient and their contact information are identified on the Face Sheet of this Agreement.

**4. EXPENSES**

OPD shall reimburse expenses as identified below in Attachment A or as authorized in advance in writing by OPD as reimbursable. The maximum amount to be paid to the Subrecipient for authorized expenses shall not exceed \$73,000.00 (seventy-three thousand dollars).

**5. PERIOD OF PERFORMANCE**

The Washington State Department of Commerce has made federal funds available to OPD to assist public defense providers with increased costs due to COVID-related caseload increases, trial delays, and other obstacles to providing effective representation. Federal funding is available to qualifying Subrecipients for the period of January 1, 2022 through December 31, 2022. As such, the Period of Performance begins on January 1, 2022 regardless of the date of execution.

**6. BILLING PROCEDURES AND PAYMENT**

OPD will reimburse Subrecipient upon acceptance of expenses and receipt of properly completed invoices, which Subrecipient shall submit to the Representative for OPD once per month.

The invoices shall describe and document, to OPD's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Agreement Number GRT22083.

All invoices for services rendered or purchased during the period of January 1, 2022 through June 30, 2022 must be submitted to OPD no later than July 31, 2022. All invoices for services rendered or purchased during the period of July 1, 2022 through December 31, 2022 must be submitted to OPD no later than January 15, 2023. No reimbursement will be made for eligible expenses submitted for reimbursement outside these dates.

Payment shall be considered timely if made by OPD within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Subrecipient and associated with the Subrecipient's State Vendor Number.

OPD may, in its sole discretion, terminate the Agreement or withhold payments claimed by the Subrecipient for services rendered if the Subrecipient fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by OPD.

#### Duplication of Billed Costs

The Subrecipient shall not bill OPD for services performed under this Agreement, and OPD shall not pay the Subrecipient, if the Subrecipient is entitled to payment or has been or will be paid by any other source, including grants, for that service.

#### Disallowed Costs

The Subrecipient is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Contractors or Subcontractors.

### **7. SUBRECIPIENT DATA COLLECTION AND REPORTING REQUIREMENTS**

Subrecipient shall submit quarterly reports, in the form and format found in ATTACHMENT C regarding work under this Agreement performed by Subrecipients and the portion of funds expended for work performed by Subrecipients, pursuant to the following timeline:

- A. Quarter One (January 1 – March 31 2022) report is due to OPD by April 15, 2022;
- B. Quarter Two (April 1 – June 30 2022) report is due to OPD by July 15, 2022;
- C. Quarter Three (July 1 – September 30 2022) report is due to OPD by October 15, 2022;
- D. Quarter Four (October 1 – December 31 2022) report is due to OPD by January 15, 2023.

### **8. AUDIT**

If the Subrecipient expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Subrecipient shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Subrecipient shall:

- A. Submit to OPD the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to OPD follow-up and developed corrective action plans for all audit findings.

If the Subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Subrecipient shall notify OPD they did not meet the single audit requirement.

The Subrecipient shall send all single audit documentation to [Katrin.Johnson@opd.wa.gov](mailto:Katrin.Johnson@opd.wa.gov).

### **9. DEBARMENT**

- A. Subrecipient, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

- ii. Have not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Subrecipient is unable to certify to any of the statements in this Agreement, the Subrecipient shall attach an explanation to this Agreement.
- C. The Subrecipient agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by OPD.
- D. The Subrecipient further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

#### **LOWER TIER COVERED TRANSACTIONS**

- i. The lower tier Subrecipient certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - ii. Where the lower tier Subrecipient is unable to certify to any of the statements in this Agreement, such Subrecipient shall attach an explanation to this Agreement.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact OPD for assistance in obtaining a copy of these regulations.

#### **10. 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 and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

**1. DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "OPD" shall mean the Washington State Office of Public Defense.
- C. "Agreement" means the entire written agreement between OPD and the Subrecipient, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this Agreement shall be the same as delivery of an original.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subrecipient" means the legal entity identified on the face sheet and its employees and agents, who will receive a subaward for purposes of performing services under this Agreement.
- G. "Contractor" or "Subcontractor" shall mean a legal entity that enters into a procurement contract with the Subrecipient under this award. For purposes of this Agreement, a Contractor or Subcontractor shall provide direct legal services of indigent defendants in criminal and juvenile cases.

**2. 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.

**3. AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**4. ASSIGNMENT**

Neither this Agreement, work thereunder, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient without prior written consent of OPD.

**5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Subrecipient by OPD that is designated as "confidential" by OPD;
  - ii. All material produced by the Subrecipient that is designated as "confidential" by OPD; and
  - iii. All personal information in the possession of the Subrecipient that may not be disclosed under state or federal law.
  - iv. All material produced by the Subrecipient or its contractors or subcontractors that is deemed confidential under Washington Statutes and the Washington State Rules of Professional Conduct.
- B. The Subrecipient shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Subrecipient shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of OPD or as may be required by law. The Subrecipient shall take all necessary steps to assure that Confidential

Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Subrecipient shall provide OPD with its policies and procedures on confidentiality. OPD may require changes to such policies and procedures as they apply to this Agreement whenever OPD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Subrecipient shall make the changes within the time period specified by OPD. Upon request, the Subrecipient shall immediately return to OPD any Confidential Information that OPD reasonably determines has not been adequately protected by the Subrecipient against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Subrecipient shall notify OPD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## 6. COPYRIGHT

"Materials" means all items in any format including pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Materials" do not include attorney work product, written legal documents, audio-visual files developed in the course of attorney-client representation, or any information deemed confidential in paragraph 5 of this Agreement. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Washington State Department of Commerce (COMMERCE). COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Subrecipient hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Subrecipient hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Subrecipient warrants and represents that the Subrecipient has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Subrecipient shall exert all reasonable effort to advise OPD and COMMERCE, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Subrecipient shall provide OPD and COMMERCE with prompt written notice of each notice or claim of infringement received by the Subrecipient with respect to any Materials delivered under this Agreement. OPD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Subrecipient.

## 7. DISPUTES

Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties shall participate in mediation in good faith. The parties shall choose the mediator by mutual agreement. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation must precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Agreement will be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a dispute resolution board or arbitration.

**8. GOVERNING LAW AND VENUE**

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

**9. INDEMNIFICATION**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

**10. LICENSING, ACCREDITATION AND REGISTRATION**

The Subrecipient shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

**11. RECAPTURE**

In the event that the Subrecipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this 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.

Repayment by the Subrecipient of funds under this recapture provision shall occur within the time period specified by OPD. In the alternative, OPD may recapture such funds from payments due under this Agreement.

**12. RECORDS MAINTENANCE**

The Subrecipient shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

The Subrecipient shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials (as defined in this Agreement) generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by OPD, personnel duly authorized by OPD, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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 resolved.

**13. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, OPD may suspend or terminate the Agreement under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

**14. SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

**15. SUBCONTRACTING**

The Subrecipient may only subcontract work contemplated under this Agreement if it obtains the prior written approval of OPD.

If OPD approves subcontracting, the Subrecipient shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, OPD in writing may: (a) require the Subrecipient to amend its subcontracting procedures as they relate



to this Agreement; (b) prohibit the Subrecipient from subcontracting with a particular person or entity; or (c) require the Subrecipient to rescind or amend a subcontract.

Every subcontract shall bind the Subrecipient to follow all applicable terms of this Agreement. The Subrecipient is responsible to OPD if the Subrecipient fails to comply with any applicable term or condition of this Agreement. The Subrecipient shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Agreement. In no event shall the existence of a subcontract operate to release or reduce the liability of the Subrecipient to OPD for any breach in the performance of the Subrecipient's duties.

Every subcontract shall include a term that OPD and the State of Washington are not liable for claims or damages arising from a Subrecipient's performance of the subcontract.

#### **16. SURVIVAL**

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

#### **17. TERMINATION FOR CAUSE**

In the event OPD determines the Subrecipient has failed to comply with the conditions of this Agreement in a timely manner, OPD has the right to suspend or terminate this Agreement. Before suspending or terminating the Agreement, OPD shall notify the Subrecipient in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Agreement may be terminated or suspended.

In the event of termination or suspension, the Subrecipient shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of the competitive bidding, mailing, advertising and staff time.

OPD reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Subrecipient or a decision by OPD to terminate the Agreement. A termination shall be deemed a "Termination for Convenience" if it is determined that the Subrecipient: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of OPD provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

#### **18. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Agreement, OPD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, OPD shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination.

#### **19. TERMINATION PROCEDURES**

OPD shall pay to the Subrecipient the agreed upon price, if separately stated, for completed work and services accepted by OPD, and the amount agreed upon by the Subrecipient and OPD for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by OPD, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of OPD. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Agreement. OPD may withhold from any amounts due the Subrecipient such sum as the Authorized Representative determines to be necessary to protect OPD against potential loss or liability.

The rights and remedies of OPD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Subrecipient shall:

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- C. Assign to OPD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Subrecipient under the orders and subcontracts so terminated, in which case OPD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause; and
- E. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative.

**20. 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 and signed by Authorized Representative of OPD.

**1. Background:**

The COVID-19 pandemic has created a variety of impacts on public defense attorneys' workloads. The partial closures of courts and prosecution offices have created a backlog in non-emergency criminal and juvenile cases. Consequently public defense attorneys face a disproportionately high number of case assignments within a compressed period of time as closures have lifted. In effort to maintain safe operations, some courts have increased the frequency of criminal and juvenile calendars thereby reducing the number of people in a courtroom at a given time. These additional court calendars require increased public defense staffing. Furthermore, statewide and county-based suspensions on jury trials have resulted in trial backlogs. As jury trials resume, public defense counsel face a higher-than-average number of jury trials, leaving reduced time to attend to their pre-trial caseloads.

**2. Reimbursable Expenses:**

OPD shall reimburse Subrecipient for increased public defense attorney costs attributable to the COVID-19 pandemic. Costs may include: increased attorney and support staff for representation of indigent parties in the backlog and subsequent surge of cases resulting from reduced court operations, technology required for effective client representation from remote office locations and for meaningful participation in video remote court hearings, and other additional necessary expenses attributable to the COVID-19 pandemic that are incurred by public defense providers for continuous, safe representation of indigent clients.

**3. Non-Supplanting:**

The Subrecipient shall verify that it and all Subrecipients comply with the federal non-supplanting requirements, as prescribed as:

**Supplanting:** a state or unit of local government shall not reduce state or local funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity. Federal funds must be used to supplement existing state or local funds for program activities and may not replace state or local funds that have been appropriated or allocated for the same purpose. Additionally, federal funding may not replace state or local funding that is required by law. If a question of supplanting arises, the applicant or grantee will be required to substantiate that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

**4. Contractor or Subcontractor Identification:**

The Subrecipient will provide the following information concerning any organization with which it contracts under this Agreement, facilitating OPD's completion of the appropriate entries in the Federal Funding and Transparency Act database.

- Organizational Legal Name
- Street Address (including City, State and 9 digit Zip Code)
- Congressional District corresponding to the organization's street address
- Contract Amount
- Contract or Subcontract Number
- A copy of any contract or subcontract funded in-full or in-part by this Agreement

Contract or subcontract identification data will be provided to OPD within 21 days of such contract or subcontract.

**5. Reporting:**

The Subrecipient shall submit a quarterly report pursuant to Section 7 of SPECIAL TERMS AND CONDITIONS and ATTACHMENT C concerning the following essential performance measures:

- Number of staff attorneys, contract attorneys, and/or other support staff to whom funds were disbursed;
- Brief description of each aforementioned person's activities supported by grant funds;
- Resources purchased with reimbursed funds and a brief description of how each resource is necessary for defense costs related to the COVID-19 pandemic;
- Estimated number of individuals the provision of such activities or resources allowed to be safely served; and
- Brief narrative of the impact the activity/outcome supported or enabled by the activity undertaken.

Additional performance measures added to those required of OPD by the federal granting agency shall automatically be added to the essential performance measures to be reported quarterly.

The Subrecipient's award under this Agreement is \$73,000.00 (seventy-three thousand dollars).

Unless previously submitted and approved by OPD, within four weeks from executing this agreement, the Subrecipient shall submit a completed Eligibility Package to demonstrate the Subrecipient's eligibility to receive federal funds issued to the state through the Department of Justice. The Eligibility Package, available online at [https://www.opd.wa.gov/documents/00821-2020\\_CESF-Eligibility-Forms.pdf](https://www.opd.wa.gov/documents/00821-2020_CESF-Eligibility-Forms.pdf), must be completed, submitted, and approved by OPD prior to any reimbursement of expenses under this Agreement. OPD may, at its discretion, allow an extension for completion of the Eligibility Package, but no reimbursement of expenses is permitted until the Eligibility Package is completed and approved.

**Coronavirus Emergency Supplemental Fund (CESF)  
Quarterly Report to WA State Office of Public Defense (OPD)**

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Please check the appropriate boxes and fill-in the appropriate fields in this document. Submit by the deadline indicated below, to the postal address or email address at the end of this document.

**1. Reporting Period (check one)**

- 2022 Quarter One (January 1 – March 31 – report is due April 15, 2022)
- 2022 Quarter Two (April 1 – June 30 – report is due July 15, 2022)
- 2022 Quarter Three (July 1 – September 30 – report is due October 15, 2022)
- 2022 Quarter Four (October 1 – December 31 – report is due January 15, 2023)

**2. Subrecipient Information:**

- 2.a. Organization: \_\_\_\_\_
- 2.b. Contact Name: \_\_\_\_\_
- 2.c. Phone Number: \_\_\_\_\_
- 2.d. Email Address: \_\_\_\_\_

**3. Disbursement of 2022 Funds**

- 3.a. Did Subrecipient receive 2022 CESF funds during this Quarter?  Yes  No
- 3.b. Total contracted 2022 CESF funds: \_\_\_\_\_
- 3.c. 2022 CESF funds received in this Quarter: \_\_\_\_\_
- 3.d. 2022 CESF funds received in previous Quarter(s): \_\_\_\_\_
- 3.e. Remaining 2022 CESF Funds: \_\_\_\_\_

**4. To Whom Funds Were Disbursed During this Quarter:**

- 4.a. Staff attorneys and/or support staff  Yes  No
- 4.b. Number of staff paid by these funds: \_\_\_\_\_
- 4.c. Contract or subcontract attorneys or other legal support?  Yes  No
- 4.d. Number of contractors paid by these funds: \_\_\_\_\_
- 4.e. Copies of all contracts or subcontracts paid by these funds have been submitted to and approved by the WA State Office of Public Defense?  Yes  No

**Coronavirus Emergency Supplemental Fund (CESF)  
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5. **Brief description of activities** performed by the staff and/or contractors funded by CESF grant funds during this quarter:

6. **Resources purchased during this quarter** with reimbursed funds and a brief description of how each resource is necessary for defense costs related to the

COVID-19 pandemic:

7. **Estimated number of individuals** that received services from the staff and/or contract attorneys funded by CESF grant funds during this quarter: \_\_\_\_

8. **Brief narrative describing the impact** that CESF funds have had during this quarter to provide safe and effective indigent defense representation:

9. Signature: \_\_\_\_\_

Name: \_\_\_\_

Title: \_\_\_\_

Date: \_\_\_\_

**Coronavirus Emergency Supplemental Fund (CESF)  
Quarterly Report to WA State Office of Public Defense (OPD)**

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Please submit this Quarterly Report by the due date listed at the top of the first page by mail or email to:

Mail: Nicole Dodge  
WA State Office of Public Defense  
PO Box 40957  
Olympia, WA 98504-0957

Email: [nicole.dodge@opd.wa.gov](mailto:nicole.dodge@opd.wa.gov) (Subject line: CESF Grant Report)