

WHATCOM COUNTY PUBLIC DEFENDER

We listen. We care. We fight.

**ASSISTANT CHIEF
DEPUTY**
Thomas H. Fryer

**OFFICE
ADMINISTRATOR**
Julie G. Wiles

**INVESTIGATIVE
SUPERVISOR**
Joe Dozal

INVESTIGATORS
Brandi Bowers
Kelsey Grindley
Ryan Gray
Susie Coberly
Tallan Paul

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HEALTH
SPECIALISTS**
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SENIOR DEPUTY II
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Richard S. Larson

SENIOR DEPUTIES
Jane Boman
Peter G. Ramey
Krista van Amerongen
Scott Schmidt
C. Kurt Parrish
Timothy Arnold
Shoshanah Epstein
Sarah Jurick
Carl Munson

DEPUTIES
Kayla Wolfe
Matthew Mearns
Kathryn Brush
Sydney Miyahara
Eleanor R. White
Eric Mapes
Saybin Shankman
Nathaniel L.J. Freimund

RECEIVED

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**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

MEMORANDUM

Date: November 17, 2023

To: Satpal Sidhu
Whatcom County Executive

From: Julie Wiles 
Office Administrator

Subject: Contract re: Washington State Office of Public Defense grant funding for 2024

BACKGROUND

Each year, since 2007, the Public Defender's office has received grant funds from the Washington State Office of Public Defense (pursuant to Chapter 10.101 RCW) in order to help cover two attorney positions in the Whatcom County Public Defender's Office. The grant is based on the amount of felony filings and therefore fluctuates from year to year.

For 2024, the Office of Public Defense proposes to provide \$213,905.00 to the Whatcom County Public Defender's Office for the purpose of improving the quality of public defense services.

ACTION:

We request the County Council approve the contract and for the Executive to then sign the contract, for further processing.

Enclosures:

Contract Information Sheet

2 originals of the subject OPD contract for signature

SPECIAL TERMS AND CONDITIONS

1. AGREEMENT MANAGEMENT

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

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

2. DISTRIBUTION AMOUNT

The Distribution Amount is Two hundred thirteen thousand nine hundred five dollars and 00/100 Dollars (\$213,905.00) to be used for the purpose(s) described in the USE OF FUNDS below.

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

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

4. USE OF FUNDS

- a. Recipient agrees to use the RCW 10.101.070 funds to improve the quality of legal representation directly received by indigent defendants. (See Chapter 10.101 RCW and OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
- b. Recipient agrees to use the funds for the following purpose(s):
 - i. Adding attorneys to reduce public defense caseloads.
- c. Recipient agrees to use the funds in calendar year 2024. If Recipient is unable to use the funds in 2024, the Recipient agrees to notify OPD to determine what action needs to be taken.
- d. Recipient agrees to deposit the RCW 10.101.070 funds check within 14 days of receipt.

5. OVERSIGHT

Over the duration of the grant term, OPD may conduct site visits for purposes of addressing improvements to public defense and ensuring the use of grant funds for their specified purposes. At OPD's request, Grantee will assist in scheduling such site visits and inviting appropriate attendees such as, but not limited to: public defense attorneys, judicial officers, and county representatives.

6. ORDER OF PRECEDENCE

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

- a. Applicable federal and state of Washington statutes, regulations, and court rules
- b. Special Terms and Conditions
- c. General Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. **ALL WRITINGS CONTAINED HEREIN**
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
2. **AMENDMENTS**
This Agreement may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.
3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**
The Recipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **ASSIGNMENT**
Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Recipient without prior written consent of OPD.
5. **ATTORNEY'S FEES**
Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.
6. **CONFORMANCE**
If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.
7. **ETHICS/CONFLICTS OF INTEREST**
In performing under this Agreement, the Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.
8. **GOVERNING LAW AND VENUE**
This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.
9. **INDEMNIFICATION**
To the fullest extent permitted by law, the Recipient shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement.
10. **LAWS**
The Recipient shall comply with all applicable laws, ordinances, codes, regulations, court rules, policies of local and state and federal governments, as now or hereafter amended.
11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**
During the performance of this Agreement, the Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Recipient's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.
12. **RECAPTURE**
In the event that the Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.

13. RECORDS MAINTENANCE

The Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

14. RIGHT OF INSPECTION

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

15. SEVERABILITY

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

16. 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 Contract and prior to normal completion, OPD may terminate this Contract. OPD shall in good faith provide as much notice as possible of such termination.

17. 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.