

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR DEFENSE COUNSEL SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and Jeff Carter (hereinafter “Contractor” or “Defense Counsel”), an individual licensed to practice law in the State of Texas.

WITNESSETH

WHEREAS, the County desires to reduce the number of veterans in the Fort Bend County criminal justice system; and

WHEREAS the County has received a grant from the Texas Indigent Defense Commission for a veterans contract defender as a part of the Fort Bend County Veterans Court Program; and

WHEREAS, the County desires that Contractor provide indigent defense services as a Veterans Contract Defender to represent the needs of veterans in misdemeanor matters through the Veterans Court Program which is a treatment court designed to help returning veterans whose service connected problems result in an encounter in the criminal justice system; and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

1.1 Contractor shall render Services to County as defined in the Scope of Services attached as Exhibit A, to this Agreement.

1.2 This Agreement, including positions and amounts, shall adhere to the grant terms and conditions will be followed unless scope and budget adjustments are obtained from the Commission.

1.3 County will monitor any contract that is for more than \$10,000 per year. If the County discovers that the Contractor's performance does not meet the operational or performance terms of the contract, the County will take the following actions:

1.3.1 Contractor cannot be found to have violated the Texas Lawyer's Creed, Texas State Bar Rules or any other Rules which the Court deems necessary to fulfill the performance objectives of the contracted attorneys and the grant. Upon notification from the court, the attorney will be given thirty (30) days to correct any defaults in their performance as determined by the Court. If Contractor fails to rectify any defaults in their performance, the Court shall remove the attorney from the case and assign another defense attorney to represent the client.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his or her conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is nine thousand five hundred dollars and no/100 (\$9,500.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of nine thousand five hundred dollars and no/100 (\$9,500.00), specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed nine thousand five hundred dollars and no/100 (\$9,500.00).

4.3 The County and Contractor clearly understand and agree that this Agreement will only be in effect pending approval of this Agreement by the Texas Indigent Defense Commission (TIDC) in accordance with the terms and conditions set out by in the TIDC Veterans Contract Defender Grant for indigent defense services.

4.4 It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.

Section 5. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from County and end no later than twelve (12) months thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience

7.1.1 County may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Confidential and Proprietary Information

10.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

10.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any

time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

10.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

10.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

10.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 11. Independent Contractor

11.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

11.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 12. Notices

12.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is

a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

12.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: County Auditor
401 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

Contractor: Jeff Carter

12.3 A Notice is effective only if the party giving or making the Notice has complied with Subsections 12.1 and 12.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

12.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

12.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 13. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 14. Performance Representation

14.1 Contractor represents to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

14.2 Contractor represents to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 15. Assignment

15.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this Subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

15.2 Neither party may delegate any performance under this Agreement.

15.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 16. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 17. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 18. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 19. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 20. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 21. Captions

The Section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 22. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2015.

FORT BEND COUNTY

JEFF CARTER

Robert E. Hebert, County Judge

Authorized Agent- Signature

Date

ATTEST:

Laura Richard, County Clerk

APPROVED:

Judge Jeffrey McMeans
Fort Bend County Veterans Court Program Director

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant, County Auditor

EXHIBIT A

SCOPE OF SERVICES AND DUTIES OF ATTORNEY

1. Serve as Veterans Contract Defender for defendants who are eligible to enroll in the Veterans Court Program.
2. Contractor services must meet all requirements of Texas Administrative Code Chapter 174 Subchapter B: Contract Defender Program Requirements.
3. Contractor will receive payment at an hourly rate of \$100.00 per hour for itemized work in and out of court.
4. The Contractor will adhere strictly to the County's written veterans defender plan of operation that includes the intake process, eligibility criteria, and the roles and responsibilities of defense counsel in the program.
5. The Fort Bend County Veterans Court Program will consist of one court docket that will meet once per month.
6. The docket for the Veterans Court Program (VCP) is expected to have a manageable docket of 20-25 veterans charged with misdemeanor offenses.
7. Each attorney will provide services for up to 10 hours each per month for the estimated time required to serve court program veterans, unless otherwise indicated by the Court.
8. Contractor will provide focused attention to each client to help them complete the program.
9. Contractor shall interview the client within a reasonable time after being assigned to the individual case.
10. Contractor will explain the program and provide advice on whether the veteran's case is one that is suitable for the program outlines of the court.
11. Contractor shall thoroughly discuss with the client the law and facts of the case, and the client's options.
12. Contractor shall inform the client that he or she may obtain personal legal counsel at the client's own expense instead of accepting the court-appointed counsel.
13. Contractor will counsel clients on whether they feel it is appropriate to forego their right to trial and guide them in consultation with any private counsel as to whether the veteran is a good fit for the court.
14. Contractor will work with the client to ensure compliance once accepted into the court.

15. Contractor will attend regular Veterans Court Program team staffing held before each court session to make certain that all the participants are on track.
16. Contractor will make recommendations to the Court for consequences if the veteran is not in compliance.
17. Contractor will collaborate with the other members of the court, including the probation staff, the VA representative, the county and non-profit veterans advocates, the judge, and the prosecution, in order to help the veteran succeed.
18. Contractor understands that the collaborative nature of this process is significantly different than the adversarial approach in regular courts. The defense counsel will use their working relationship with the other staff members and their unique training to assist the veterans in staying on course with treatment, and with any other aid [housing, transport, etc.] that is needed.
19. Contractor will assist the veteran in obtaining a clean record when and if that veteran completes his or her treatment course. To meet this goal, Contractor will assist in advising the Court of appropriate recommendations for appropriate resolution.
20. The defense counsel maintains continuous representation for the veteran throughout his or her involvement in the Veterans Court Program.
21. To withdraw from a case after appointment, Contractor must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. Contractor may not withdraw from a case unless the withdrawal is authorized by court order.
22. Meet all other requirements as set forth in the "Statement of Grant Award".
23. This Agreement, including positions and amounts, shall adhere to the grant terms and conditions to be followed unless scope and budget adjustments are obtained from the Commission.