

REGIONAL PUBLIC DEFENDER CONTRACT

Between

BEE COUNTY, TEXAS

And

TEXAS RIOGRANDE LEGAL AID, INC.

August 1, 2013

REGIONAL PUBLIC DEFENDER CONTRACT

Bee County, Texas ("the County") and Texas RioGrande Legal Aid, Inc. ("TRLA") hereby enter into this agreement under which TRLA agrees to perform legal services for persons accused of crimes in Bee County and other counties that agree to participate in the Regional Public Defender ("RPD") Program that is established pursuant to this contract.

1. Parties.

1.1. Bee County, Texas is a political subdivision of the State of Texas and is authorized by the laws of the State to execute this agreement.

1.1.1. During the term of this agreement, other counties may elect to participate in the regional public defender program with the agreement of Bee County and TRLA as follows:

1.1.1.1. Live Oak and McMullen Counties, upon electing to participate, shall contribute each county's share of funding for the program to Bee County in pro rata shares based upon total population in the participating counties under the 2010 Census.

1.1.1.2. All other counties desiring to participate in the Regional Public Defender program shall do so under terms and agreements entered into by each county participating and TRLA.

1.1.1.3. All participating counties shall be bound by the terms and conditions of this agreement, and any modifications to the agreement shall require the consent in writing of all parties.

1.2. Texas RioGrande Legal Aid, Inc. is a non-profit corporation organized and operating under the laws of the State of Texas for the purpose of providing legal services to persons who are financially unable to pay for the services of attorneys engaged in the private practice of law. TRLA has full authority to provide the services required under the terms of this agreement.

2. **Continuation of Contract.** Bee County and TRLA entered into a contract ("the predecessor contract," attached as Exhibit A) for the operation of a regional public defender, funded in part by a grant from the Texas Commission on Indigent Defense, and that program has been operating since April 1, 2009. That contract expires on September 30, 2013, and the parties desire to continue the Regional Public Defender Program for a minimum of one additional year.

3. **Services Provided.** TRLA agrees to provide legal services to indigent residents of the participating counties who are charged with crimes as follows:

3.1. TRLA shall promptly interview all persons accused of felony, Class A or Class B Misdemeanor crimes as defined by the Texas Penal Code within the participating jurisdictions, determine whether it has a conflict of interest or other bar to representation, and make recommendations to the appropriate judicial officials regarding eligibility for, and assignment of, counsel for the defense;

- 3.2. Plan for Assignment of Counsel
- 3.2.1. The County shall maintain its plan for the assignment of counsel for indigent defendants in criminal prosecutions and shall designate the authorities therein who are to determine eligibility for representation by the public defender and make assignments of counsel.
- 3.2.2. The County will revise its plan for the assignment of counsel in juvenile delinquency cases to comply with the requirements set forth in paragraph 3.4.3.2.
- 3.3. When assigned under the terms of this agreement, TRLA shall provide representation in a maximum of 1463 cases during the twelve-month period of this agreement, including felonies, misdemeanors, juvenile cases, and appeals.
- 3.4. A "case" shall be considered as a single criminal prosecution initiated by a charging instrument in a court of competent jurisdiction within any county covered by this agreement and having a separate and distinct cause number.
- 3.4.1. Misdemeanors: A "misdemeanor" under the terms of this agreement shall include any offense punishable under sections 12.21 and 12.22 of the Texas Penal Code but shall not include Class C misdemeanors punishable under section 12.23 Texas Penal Code, or any case that does not provide for the loss of liberty as a potential sanction.
- 3.4.2. Felonies: A "felony" under the terms of this agreement shall include any offense punishable under sections 12.32, 12.33, 12.34, and 12.35 of the Texas Penal Code. It shall include "capital felonies" punishable under section 12.31 only if the State elects not to seek the death penalty.
- 3.4.3. Juvenile Cases:
- 3.4.3.1. A "juvenile case" under the terms of this agreement shall include cases described by section 51.03 of the Texas Family Code only if the conduct at issue, if the juvenile were an adult, would be described as a felony or misdemeanor under paragraphs 3.4.1 or 3.4.2 of this agreement.
- 3.4.3.2. In providing representation in juvenile cases, TRLA will expend other funds available to TRLA, including grant monies received from the Legal Services Corporation ("LSC"), the Texas Access to Justice Foundation ("TEAJF"), and other sources. TRLA shall have the exclusive authority under this agreement to determine which juveniles it will represent. If TRLA uses grant funds received from LSC for the representation of juveniles, it will comply with all applicable LSC regulations, policies, standards and guidelines governing such representation, and set parameters to determine indigency under the terms of those grant funds.
- 3.4.3.3. TRLA will provide to the County and to the local Juvenile Board current TRLA criteria for eligibility and a form for determining eligibility for services under TRLA eligibility policies. The County will coordinate with the Juvenile Board for initial eligibility screening to be conducted by County or Juvenile Probation personnel before making a referral of a juvenile to TRLA for representation in an initial detention hearing. TRLA will accept the determination for purposes of

representation at the detention hearing upon receipt of the supporting documentation but will conduct its own eligibility screening after the detention hearing to determine eligibility for further representation.

- 3.4.4. Motions to Revoke: A motion to revoke or a motion to adjudicate in an adult case and a motion to modify disposition in a juvenile case shall not be considered as a separate "case" for purposes of this agreement unless it occurs in a calendar year other than the year when the defendant was placed on probation.
- 3.4.5. Appeals: An "appeal" shall be considered to be any action in an appellate court, including interlocutory or direct appeals, habeas corpus actions pursuant to Tex. Code Crim. Proc. §11.07, mandamus or other extraordinary writs. Any action involving the same defendant under a different cause number shall be considered a separate appeal for purposes of this agreement, with the exception of cases where the different cause numbers were tried together and sentence was imposed by the court in the same hearing.
- 3.5. After assignment, TRLA shall provide representation and other legal services to its clients in all pre-trial, trial, and post-trial matters until such time as TRLA withdraws from representation in accordance with the provisions of Tex. R. Prof. Conduct § 1.15, the client retains private counsel, or the client becomes ineligible for representation under this contract.
- 3.6. TRLA will hire or employ all personnel necessary to perform the services that this contract requires, and shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations. TRLA will use due diligence to hire, assign, associate and train attorneys who are qualified to provide competent and effective services to the clients served hereunder, and who provide a quality of representation that is acceptable to the judges who try criminal cases in all participating counties.
- 3.7. TRLA will ensure that each attorney who represents a client pursuant to this contract provides competent, zealous legal services to each client in accordance with the attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct, the Texas Code of Criminal Procedure, and the federal and Texas Constitutions. Every TRLA attorney must agree to provide constitutionally effective assistance of counsel to the client regardless of what business relationships or funding sources result in their work for indigent criminal defendants who are clients of the Regional Public Defender Office. TRLA will ensure that each attorney understands that failure to zealously represent each client's interests and each client's interests alone may carry legal and license consequences. Every TRLA attorney representing clients under this agreement shall comply with the requirements of the county indigent defense plan adopted pursuant to the Texas Fair Defense Act for Bee, Live Oak and McMullen Counties.
- 3.8. At final disposition of a case, upon request of the trial court TRLA will provide a statement, either oral or written, of attorney hours and investigator hours directly attributable to the representation in the particular case. The trial court may use

such information in deciding whether to assess attorney's fees in the case, in compliance with applicable law. Provision of this information does not and cannot lessen or abrogate TRLA's ethical duty to zealously advocate for each client, including advocating that attorney's fees cannot or should not be imposed in any particular case or that the amount of attorney's fees in a case should be less than the amount suggested by the trial court.

- 3.9. TRLA will not assign any attorney in any case who has been determined to have provided ineffective counsel or been determined to be incompetent in any criminal matter. TRLA shall provide adequate supervision of less experienced attorneys by more experienced attorneys, and shall conduct periodic performance reviews and evaluations of staff.
 - 3.10. Attorneys employed full time by the Bee RPD shall not accept employment with a firm other than TRLA on a retained basis in either criminal or civil cases.
 - 3.11. Services of Experts and Other Consultants.
 - 3.11.1. TRLA shall engage expert witnesses, stenographers and technical consultants to perform reasonable and necessary services under this contract.
 - 3.11.2. TRLA may seek in individual cases, by proper motion, for the County to pay for medical or psychiatric evaluations and other expert services, if the expense of such services has exceeded, or will exceed, the \$ 18,000 budgeted in a contract year.
4. **Assignment of Cases.** TRLA shall begin accepting case assignments on October 1, 2013.
- 4.1. During the period of this agreement TRLA shall notify the County immediately upon determining that:
 - 4.1.1. one or more courts are not assigning cases to the RPD when the Program has capacity for accepting additional assignments; or,
 - 4.1.2. TRLA will reach its total contract quota of cases before the expiration of a term of this contract.
 - 4.2. In either circumstance described in paragraphs 4.1.1 or 4.1.2, the County within 30 days of received written notice from TRLA shall convene a meeting of representatives of TRLA, the County and applicable courts to develop a plan for effective utilization of RPD resources or adjustment of the contract.
5. **Term of Agreement.**
- 5.1. This agreement will be in effect from October 1, 2013 until September 30, 2014.
 - 5.2. If this agreement is not modified or terminated in writing by the parties before July 31 of each subsequent year, this agreement shall automatically be renewed for another one-year term commencing on October 1 of each subsequent year.
 - 5.3. TRLA may incur costs and expenses in reliance on this agreement upon its execution and will continue providing legal services to eligible clients on and after October 1, 2013.
 - 5.4. The parties may agree in writing to modify or terminate this contract by mutual agreement at any time. If a party desires to modify or terminate this agreement before the effective date of an annual term, it shall provide the other party written

notice of its intent to do so no less than ninety days before the date of termination.

5.4.1. Unless otherwise agreed in writing, termination of this contract does not affect any existing obligation or liability of either party.

5.4.2. Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

5.5. This contract may be modified or terminated only by the means defined in paragraphs 5.2, 5.4, and 12.2. Any "suspension" or "expiration" of this agreement must conform to paragraphs 5.2, 5.4, or 12.2.

5.6. At the time that this contract is executed, sufficient funds either are available within the County's current grants and/or appropriations, or are expected to become available to finance the costs of this contract.

6. Voucher Submissions.

6.1. No later than ten days after the end of each month, TRLA shall submit to the County an itemized statement of the cases that have been closed during the previous month, including the name of the accused, the cause number, court, the nature of the offenses charged, and a brief statement of the disposition of each such charge.

6.2. No later than fifteen days after the submission of the itemized statement, the County shall pay TRLA one-twelfth of the total amount due under this contract, as defined in paragraph 7.1.

7. Contract Amount and Payments.

7.1. The total contract amount of this agreement is \$475,000 per year.

7.2. Through the close of its fiscal year on September 30, 2012, TRLA had accrued a budget reserve under the predecessor contract of 223,942.

7.3. Payments for the First Contract Year (October 1, 2013 – September 30, 2014).

7.3.1. TRLA will apply \$200,000 of the reserve funds accrued under the predecessor contract to the operating expenses of this agreement through September 30, 2014.

7.3.2. Bee County shall pay TRLA the amount of \$275,000 in equal monthly installments of Twenty-Two Thousand, Nine Hundred Seventeen (\$22,917.00) Dollars during the initial contract period of twelve (12) months.

7.4. Beginning October 1, 2014, unless otherwise modified by agreement of the parties, the County shall pay TRLA the sum of Thirty-nine Thousand, Five Hundred Eighty-three (\$39,583.00) Dollars per month until the effective date of the termination of the agreement.

The remainder of the reserve funds shall be retained by TRLA and used for related RPD program expenses at its sole discretion.

8. Carry-over.

8.1. If on September 30, 2014, or at the conclusion of any twelve-month period thereafter, there is a surplus of funds received by TRLA in an amount less than ten percent of the total annual contract amount, such sums shall be retained by TRLA and used for related RPD program expenses at its sole discretion.

- 8.2. If the surplus described in paragraph 8.1 is greater than ten percent, but less than twenty-five percent, of the annual contract amount, the parties shall divide the surplus in excess of ten percent equally by having TRLA deduct from its next invoice, and from invoices for subsequent months if necessary, an amount equal to one-half of the surplus.
- 8.3. TRLA shall also deduct any and all surplus amounts in excess of twenty-five percent during a contract year from its next invoice after the close of the contract year, and from invoices for subsequent months if necessary.

9. Accounting and record keeping.

- 9.1. TRLA shall maintain financial records on an accrual basis and shall make such records pertaining to this agreement available to the County's representatives upon reasonable request.
- 9.2. TRLA shall engage an independent auditor to conduct an annual audit of all TRLA funds, including funds received under this contract, and a copy of the annual audit shall be furnished to the County within thirty days of its approval by the TRLA Board of Directors.
- 9.3. TRLA staff shall maintain current information, including activity logs, pleadings and other case-related documents, on each RPD case. That information shall be made available to the County under circumstances that do not require a client to waive the attorney-client privilege, or the attorney to violate the confidentiality standards of the profession, Tex. R. Prof. Conduct §1.05, or any other provision of law.
- 9.4. TRLA shall preserve all assignment, financial and case service records for a period of seven years from the date the case is closed.

10. Independent Contractor.

- 10.1. TRLA is an independent contractor that shall complete the requirements of this contract according to its own means and methods of work, including individual case assignments, which shall be in the exclusive charge and control of TRLA and which shall not be subject to control or supervision by the County or any judge, except as required by a Court's statutory, constitutional and inherent powers associated with the hearing and disposition of criminal cases, or as otherwise specified in this contract.
- 10.2. A Public Defender Oversight Board created by county officials and judges may recommend to the Commissioners Court what modifications should be sought as to this contract, may monitor the caseload of TRLA, may determine whether this contract has been violated, and may recommend removal of the public defender program to the Commissioner Court.
- 10.3. Neither the Oversight Board, the Commissioners Court, the judges, nor the local defense bar may interfere with the administration or management of TRLA, nor require TRLA to hire, discipline or fire employees, or otherwise interfere with office operations or policies.
- 10.4. A judge may have authority to remove an attorney in a specific case if the court finds that the attorney has failed to provide representation that meets constitutional and professional standards; in such circumstances, TRLA retains

the authority to assign a replacement attorney for the client subject to TRLA complying with provisions of paragraphs 3.5, 3.6, 3.7, and 3.8.

11. Non-discrimination.

- 11.1. TRLA will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, race, color, national origin, sex, sexual preference, disability, or religion.
- 11.2. TRLA will submit reports as the County may require demonstrating compliance with this assurance.

12. Impossibility of Performance.

- 12.1. Neither party shall be responsible for delay or default caused by theft, fire, flood, riot, war or other casualty, if the delay or default was beyond the party's reasonable control.
- 12.2. In the event of circumstances beyond a party's control that may render timely performance by that party impossible under paragraph 12.1, either party may terminate this contract, or the affected part, by written notice.

13. Wind-Down Procedures.

13.1. Effective Date of Termination.

- 13.1.1. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by written notice under paragraph 5.2, the "effective date" of termination is July 31 of the contract year.
- 13.1.2. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by mutual agreement under paragraph 5.4, the "effective date" of termination is the date of such mutual agreement is memorialized in writing.
- 13.1.3. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by a party under paragraph 12.2, the "effective date" of termination is the date written notice is received by the non-terminating party.

13.2. Upon termination of this agreement, no further cases shall be assigned or accepted as of the effective date of termination, or as otherwise agreed in writing between the parties.

13.3. TRLA shall act in good faith to complete timely and adequate legal services on all existing cases assigned before the effective date of termination of this contract.

13.4. Payment after the Effective Date Termination.

- 13.4.1. Upon termination of this contract under paragraph 5.2, the County shall continue to make timely monthly payments of the contract amount as defined in paragraph 7.3 through September 30 of the contract year, after which the County shall continue to make timely monthly payments of the contract amount as defined in paragraph 7.3 for a period of no more than 90 days or until all such cases are concluded, whichever shall come first.
- 13.4.2. Upon termination of this contract under paragraphs 5.4 or 12.2, the County shall continue to make timely monthly payments of the contract

amount as defined in paragraph 7.3 for a period of no more than 90 days after the effective date of the termination or until all such cases are concluded, whichever shall come first.

13.4.3. After the wind-down period, as defined in paragraphs 13.4.1 and 13.4.2, the County shall compensate TRLA for legal services performed on any cases not yet resolved at a rate of One Hundred Fifty (\$150.00) Dollars per hour until such cases are concluded, plus reasonable litigation expenses supported by appropriate documentation.

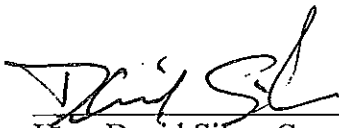
14. **Contract Notices.** All notices required by this contract shall be delivered in writing to the following representatives of the parties:

Bee County:	Texas RioGrande Legal Aid
Blandina Costley	David G. Hall
Bee County Auditor	Executive Director
111 S. St. Mary's, Ste. 101	300 South Texas Boulevard
Beeville, Texas 78102	Weslaco, Texas 78596

15. **Entire Agreement.**

- 15.1. This writing constitutes the entire agreement between the parties.
- 15.2. No other oral or written understandings, agreements, or representations exist regarding this agreement.
- 15.3. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. If made, such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given and shall be strictly construed.
- 15.4. The parties, by the signatures of the authorized representatives of each, hereby acknowledge that each has read this agreement, understands it, and agrees to be bound by its terms and conditions.

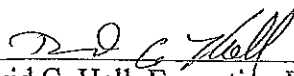
SIGNED AND EXECUTED by the parties on the date(s) indicated by the signatures of the authorized representatives.



Hon. David Silva, County Judge
Bee County, Texas
105 W. Corpus Christi St., Room 109
Beeville, Texas 78102

6 Aug 2-13

Date



David G. Hall, Executive Director
Texas RioGrande Legal Aid, Inc.
300 South Texas Boulevard
Weslaco, Texas 78596

8/21/13
Date