

**CONTRACT FOR INDIGENT DEFENSE
IN
THE 106TH JUDICIAL DISTRICT COURT OF TEXAS
DAWSON, GARZA AND LYNN COUNTIES**

1. INTRODUCTION

The county of Dawson ("COUNTY") and The Law Offices of Arthur Aguilar, Jr. ("ATTORNEY") are the parties to this agreement. The District Judge of the 106th Judicial District ("DISTRICT JUDGE") is the appointing authority approving ATTORNEY to represent indigent criminal defendants in COUNTY. This agreement establishes conditions under which ATTORNEY will provide legal representation for indigent criminal defendants in COUNTY.

2. SCOPE OF WORK

ATTORNEY will provide legal representation for indigent criminal defendants in COUNTY for felony cases only. Under this contract, a felony will be considered to be any criminal offense that carries a possible punishment of confinement in excess of one year or that is classified as a State Jail Felony, Third Degree Felony, Second Degree Felony or First Degree Felony by the Penal Code of Texas. Under this contract, ATTORNEY will represent only those defendants designated by DISTRICT JUDGE, and no file shall be opened or appearance made under this contract except by order of DISTRICT JUDGE. ATTORNEY shall represent such defendants in the trial court and on direct appeal in any of the appellate courts to which such case is appealed. Post conviction writs are extraordinary and are NOT covered in this contract. Capital Murder Trials where the State elects to pursue the Death Penalty are NOT covered in this contract. This contract does not cover any juvenile or misdemeanor work in the 106th Judicial District. However, if an indigent defendant has a misdemeanor charge as well as a felony charge, ATTORNEY will handle the misdemeanor charge at no extra cost to COUNTY as long as the misdemeanor charge is taken into account in determining sentence for the felony offense as provided in Section 12.45 of the Texas Penal Code. Otherwise, ATTORNEY will consider the indigent defendant to be under this contract for only the felony case. ATTORNEY shall meet qualifications and shall devote time, attention and energies to the performance of duties under this contract pursuant to the provisions of the 106th Judicial District's Local Indigent Defense Plan, including but not limited to the qualifications set out in the Application/Affidavit for the 106th Judicial District Court Attorney Appointment List. DISTRICT JUDGE will monitor ATTORNEY's caseload under this contract to ensure that the quality and effectiveness of ATTORNEY's representation of defendants is not compromised and that each defendant is being provided effective representation. If DISTRICT JUDGE finds that ATTORNEY's representation is being compromised or is falling below that which is expected by the Court, DISTRICT JUDGE will make adjustments to ATTORNEY's caseload. ATTORNEY's caseload under this contract shall not exceed 500 actual cases in Dawson, Garza and Lynn Counties in the 106th Judicial District.

3. **CONTRACT PERIOD**

This agreement shall commence on October 1, 2022, and shall terminate September 30, 2023, unless terminated earlier by either party. The parties shall have an option to renew the contract for additional years, and prior to August 1, 2023, the parties will revisit the contract to consider any desired modifications to the terms and conditions of this contract.

4. **CONSIDERATION**

The parties agree that if this contract covered the legal representation for indigent criminal defendants in Dawson, Garza and Lynn Counties of the 106th Judicial District, the total consideration for legal representation at the trial court level would be \$80,000.00, plus \$30,000.00 for an investigator for the contract period.

The consideration for legal representation at the trial court level under this contract between COUNTY and ATTORNEY is COUNTY's pro rata portion of \$80,000.00, plus \$30,000.00 for an investigator, payable in monthly installments, based on indigent defense provided under the 2022 Contract for Indigent Defense in each of the counties of the 106th Judicial District. COUNTY agrees to pay ATTORNEY for services at the trial court level a monthly amount for COUNTY's pro rata share as follows:

COUNTY	FOR \$80,000.00 CONTRACT	FOR \$30,000.00 INVESTIGATOR	MONTHLY AMOUNT PAID BY COUNTY
Dawson (41.463%)	\$33,170.40	\$12,438.90	\$3,800.78
Garza (26.423%)	\$21,138.40	\$7,926.90	\$2,422.11
Lynn (32.114%)	\$25,691.20	\$9,634.20	\$2,943.78

The above amount is the total consideration to be paid by COUNTY for legal representation of indigent criminal defendants at the trial court level for all cases opened during the term of this contract, and ATTORNEY shall furnish at his own cost all equipment, travel, office space, office supplies, secretaries, salaries of any kind, and any and all other trial court expenses except as provided otherwise in this contract.

In consideration for ATTORNEY's appellate representation of COUNTY's indigent criminal defendants under this contract, COUNTY agrees to pay additional ATTORNEY's fees for legal services at the rate accepted in this area for such services and approved by DISTRICT JUDGE. If ATTORNEY is required to travel to the appellate court for representation under this contract, COUNTY agrees to pay ATTORNEY's actual expenses for lodging and mileage at the prevailing state rate after approval by DISTRICT JUDGE.

COUNTY shall not be obligated for any other additional amount or expenses unless specifically designated in this agreement or required by law, detailed in the Request to Pay Counsel, and approved by DISTRICT JUDGE.

If the renewal option is exercised, COUNTY's designated monthly percentage will be adjusted to reflect the number of COUNTY's cases under the contract in trial court compared to the number of trial court level cases under the contract in Dawson, Garza and Lynn Counties during the previous contract.

5. EXPERTS AND INTERPRETERS

ATTORNEY will obtain prior approval of expenses for experts by filing a motion in the 106th Judicial District Court, stating the need for such assistance and the estimated expense. Expert expenses incurred with prior court approval shall be reimbursed as provided in the order granting approval. Expert expenses incurred without prior approval shall be reimbursed only if necessarily and reasonably incurred. ATTORNEY will arrange for interpreters when the need exists. Expenses for interpreters shall be paid by COUNTY after approval by DISTRICT JUDGE.

6. CHANGE OF VENUE

If there is a change of venue which moves a case from the boundaries of the 106th Judicial District, then ATTORNEY will be allowed his actual expenses in regard to lodging, meals, court fees or costs, copy machine fees, or any other fees approved by DISTRICT JUDGE in the original jurisdiction. Any such expenses should be discussed, if at all possible, with DISTRICT JUDGE prior to incurring the same. In such cases, any travel (mileage fees) outside the 106th Judicial District will be paid at the prevailing state rate. All other fees designated herein will be the responsibility of and paid by the County of original jurisdiction.

7. ASSIGNMENT

ATTORNEY may employ an associate attorney(s) to assist in representing defendants under this contract with the prior consent and approval of DISTRICT JUDGE, but only at ATTORNEY's sole expense. ATTORNEY shall not assign its entire rights under this contract or delegate the entire performance of its duties under this contract.

8. CONFLICTS

ATTORNEY will notify the office of DISTRICT JUDGE as soon as ATTORNEY is aware of ethical conflicts between indigent defendants and will file a Motion to Withdraw and be responsible to set the case for a hearing regarding the ethical conflict for consideration if deemed necessary by the Court.

9. REPORTS

ATTORNEY shall compile a year-end report giving the number of indigent defendants served, the number of individual cases handled, the types of cases, the disposition of the

cases handled, and any other reporting information required to be in compliance with the law. Such report shall identify the cases by county and shall include cases for the other contracting counties in the 106th Judicial District as well as COUNTY's cases. For approval and payment, ATTORNEY shall provide itemized interim progress reports to COUNTY and DISTRICT JUDGE as requested for indigent defense expenditure reports. Payment shall be made by COUNTY after approval by DISTRICT JUDGE.

10. ATTORNEY'S PRIVATE PRACTICE

It is agreed that ATTORNEY may maintain a private practice. It is further agreed and understood that ATTORNEY's private practice will not interfere in any material manner with the indigent criminal defense cases provided for in this contract.

11. TERMINATION

If COUNTY wishes to terminate this contract, COUNTY may determine that desire by a majority vote of the Commissioners Court of COUNTY. Either party may terminate with 90 days notice by Certified Mail to the other party. ATTORNEY shall complete all cases that are open as of the date of the termination notice unless relieved or replaced by DISTRICT JUDGE.

12. AMENDMENTS

Any alterations, additions or deletions in the terms and conditions of this contract shall be by written amendment approved by DISTRICT JUDGE and executed by ATTORNEY and the Commissioners Court of COUNTY.

13. SEVERABILITY

If any provision of this contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue.

14. SURVIVAL OF TERMS

Termination of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that the parties have expressly agreed in writing shall survive any such termination or which by their nature would be intended to be applicable following such termination.

15. INDEPENDENT CONTRACTOR

It is agreed that ATTORNEY is an independent contractor and that this contract does not create an employment relationship between COUNTY and ATTORNEY. ATTORNEY, not COUNTY, will be responsible for appropriate payment of social security taxes and federal income taxes applicable to the consideration received by ATTORNEY under this contract.

COUNTY shall not be liable or responsible and shall be saved and held harmless by ATTORNEY from and against any and all suits, actions, claims or liability of any character arising out of the performance of ATTORNEY under this contract, including claims and damages arising from acts of negligence or acts of malpractice of ATTORNEY.

16. **NO WAIVER OF SOVEREIGN IMMUNITY**

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY COUNTY OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT COUNTY OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

17. **GOVERNING LAW AND JURISDICTION**

This contract shall be construed in accordance with and governed by the laws of the State of Texas, except for its provisions regarding conflicts of laws. The venue of any suit brought for any breach of this contract is fixed in any court of competent jurisdiction in Dawson County, Texas. All payments under the contract shall be due and payable at ATTORNEY's office in Lubbock, Texas. This contract represents the entire agreement between the parties. No prior agreement of understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract. The County Judge of COUNTY has signed this agreement pursuant to the authority placed in him by the Commissioners Court. Any signatory executing this contract on behalf of either ATTORNEY or COUNTY warrants and guarantees that he has authority to execute this contract on behalf of ATTORNEY or COUNTY and to validly and legally bind ATTORNEY and COUNTY to the provisions of this contract.

EXECUTED IN MULTIPLE ORIGINALS ON THE DATES SHOWN.

COUNTY:



Foy O'Brien, County Judge

ATTEST:



Clare Christy, County Clerk, Dawson County

Date: 9/20/22

ATTORNEY:

THE LAW OFFICES OF ARTHUR AGUILAR, JR.

By: Artie Aguilar

Date: 9-19-22

APPOINTING AUTHORITY:

Reed A. Filley
Reed A. Filley, District Judge

Date: 9/20/22

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