

PUBLIC DEFENDER CONTRACT

Between

GOLIAD COUNTY, TEXAS

And

TEXAS RIOGRANDE LEGAL AID, INC.

October 1, 2019

GOLIAD PUBLIC DEFENDER CONTRACT

Goliad 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 indigent persons accused of crimes in Goliad County through the TRLA Texas Rural Defender Service (“TRDS”) program.

1. Parties.

- 1.1. Goliad County, Texas is a political subdivision of the State of Texas and is authorized by the laws of the State to execute this agreement. Goliad County has been awarded grant funds from the Texas Indigent Defense Commission to provide partial funding for the legal services here described.
- 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. Texas Rural Defender Services is an integral component of TRLA and is operated and managed consistent with other TRLA policies and practices. TRLA has full authority to provide the services required under the terms of this agreement.

2. Services Provided. TRLA agrees to provide legal services to indigent defendants in the County who are charged with crimes as follows:

- 2.1. TRLA shall promptly interview all persons accused of Felony, Class A or Class B Misdemeanor crimes as defined by the Texas Penal Code as well as all juveniles charged with offenses within the participating jurisdictions, to 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;
- 2.2. Plan for Assignment of Counsel
 - 2.2.1. The County shall maintain its plan for the assignment of counsel for indigent defendants in criminal and juvenile delinquency prosecutions and shall designate the authorities therein who are to determine eligibility for representation by the public defender and make assignments of counsel.
- 2.3. When assigned under the terms of this agreement, TRLA shall provide representation consistent with caseload guidelines promulgated by the Texas Indigent Defense Commission, as lawyers are hired and trained by TRLA, as follows:
 - 2.3.1. Felonies – a maximum of 128 cases per year per lawyer.
 - 2.3.2. Misdemeanors – a maximum of 226 cases per year per lawyer.
 - 2.3.3. Juvenile – a maximum of 265 cases per year per lawyer.
 - 2.3.4. Appeals – a maximum of 31 cases per year per lawyer.
 - 2.3.5. Mixed caseload. No lawyer shall be required to accept assignments of cases in excess of the numbers stated in this section; if a lawyer’s caseload is

- composed of a mixture of felonies, misdemeanors and/or juvenile cases, the pro rata combination of cases shall not exceed these limits.
- 2.4. A “case” shall be considered as a single criminal prosecution initiated by a charging instrument in a court of competent jurisdiction within the County and having a separate and distinct cause number. A “case” commences at the magistrate’s hearing pursuant to Tex. Code Crim. Proc. Art. 15.17 and shall be considered as the same case after an indictment or information is filed in a court of record.
- 2.4.1. 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.
- 2.4.2. 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.
- 2.4.3. Juvenile Cases:
- 2.4.3.1. 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 2.4.1 or 2.4.2 of this agreement.
- 2.4.3.2. In providing representation in juvenile cases, TRLA may expend other funds available to TRLA, including grant monies received from the Legal Services Corporation (“LSC”) and other sources. TRLA shall have the exclusive authority under this agreement to determine which juveniles, if any, it will represent with funds other than those authorized by this grant agreement. If TRLA uses grant funds received from LSC or another source for the representation of juveniles, it will comply with all applicable LSC regulations, policies, standards and guidelines governing such representation or any restrictions imposed on other such grants.
- 2.4.4. 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 be considered as a separate “case” for purposes of this agreement.
- 2.4.5. 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.
- 2.5. 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.

- 2.6. 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.
- 2.7. 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 TRDS 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 Goliad County.
- 2.8. 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.
- 2.9. Attorneys employed full time by the TRDS shall not accept employment on a privately retained basis in either criminal or civil cases.
- 2.10. Services of Experts and Other Consultants.
 - 2.10.1. TRLA shall engage expert witnesses, stenographers and technical consultants to perform reasonable and necessary services under this contract.
 - 2.10.2. TRLA may seek in individual cases, by proper motion, to pay for medical or psychiatric evaluations and other expert services, when the expense of such services exceeds \$5,000.

3. **Assignment of Cases.** TRLA shall begin accepting case assignments under this agreement on October 1, 2019.

- 3.1. During the period of this agreement TRLA shall notify the County immediately upon determining that:
 - 3.1.1. one or more courts are not assigning cases to the TRDS when the program has capacity for accepting additional assignments; or,

- 3.1.2. TRLA will reach its total contract quota of cases before the expiration of a term of this contract.
 - 3.2. In either circumstance described in paragraphs 3.1.1 or 3.1.2, 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 TRDS resources or adjustment of the contract.
4. **Term of Agreement.**
 - 4.1. This agreement will be in effect from October 1, 2019 until September 30, 2020.
 - 4.2. If this agreement is not modified or terminated in writing by the parties before June 30 of each subsequent year, this agreement shall automatically be renewed for another one-year term commencing on October 1 of each subsequent year.
 - 4.3. TRLA may incur costs and expenses in reliance on this agreement and will continue providing legal services to eligible clients on and after October 1, 2019.
 - 4.4. 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.
 - 4.4.1. Unless otherwise agreed in writing, termination of this contract does not affect any existing obligation or liability of any party.
 - 4.4.2. Any party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.
 - 4.5. This contract may be modified or terminated only by the means defined in paragraphs 4.2, 4.4, and 11.2. Any "suspension" or "expiration" of this agreement must conform to paragraphs 4.2, 4.4, or 11.2.
 - 4.6. At the time that this contract is executed, sufficient funds either are available within the counties' current grants and/or appropriations, or are expected to become available to finance the costs of this contract.
5. **Voucher Submissions.**
 - 5.1. No later than ten days after the end of each month, TRLA shall submit to the County a voucher for one-twelfth of the amount specified in Paragraph 6.1, *infra*.
 - 5.2. 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 6.1.
 - 5.3. No later than fifteen days after the close of each calendar quarter, TRLA shall submit a report to each participating county containing all case reporting data required by the Texas Indigent Defense Commission for that county.

6. Contract Amount and Payments.

6.1. The total maximum contract amount for the one-year term of this agreement is One Hundred Fourteen Thousand, Four Hundred Twenty-four (\$114,424) Dollars per year.

6.1.1. Goliad County shall pay TRLA invoiced amounts not to exceed One Hundred Fourteen Thousand, Four Hundred Twenty-four (\$114,424) Dollars and in monthly installments not to exceed Nine Thousand, Five Hundred and Thirty-five and 33/100s (\$9,535.33) Dollars, including any periods of automatic renewal under Sec. 4.2. Actual invoiced amounts will be based on staffing levels approved by the County and the Texas Indigent Defense Commission in writing and supported by actual program expenditures.

7. Accounting and record keeping.

7.1. 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.

7.2. 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.

7.3. TRLA staff shall maintain current information, including activity logs, pleadings and other case-related documents, on each TRDS 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.

7.4. TRLA shall provide to the County data required each quarter to complete the county's quarterly grant progress report to the Texas Indigent Defense Commission and annually report case dispositions needed by the county auditor to complete the Indigent Defense Expenditure Report to the Texas Indigent Defense Commission.

7.5. TRLA shall preserve all assignment, financial and case service records for a period of seven years from the date the case is closed.

8. Independent Contractor.

8.1. 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.

8.2. 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.

- 8.3. 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.
- 8.4. 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 2.5, 2.6, 2.7, and 2.8.

9. Non-discrimination.

- 9.1. 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.
- 9.2. TRLA will submit reports as the County may require demonstrating compliance with this assurance.

10. Impossibility of Performance.

- 10.1. 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.
- 10.2. In the event of circumstances beyond a party's control that may render timely performance by that party impossible under paragraph 10.1, either party may terminate this contract, or the affected part, by written notice.

11. Wind-Down Procedures.

- 11.1. Effective Date of Termination.
 - 11.1.1. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by written notice under paragraph 4.4, the "effective date" of termination is September 30 of the contract year.
 - 11.1.2. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by mutual agreement under paragraph 4.4, the "effective date" of termination is 90 days after such mutual agreement is memorialized in writing.
 - 11.1.3. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by a party under paragraph 11.2, the "effective date" of termination is 90 days after written notice is received by the non-terminating party.
- 11.2. Upon receipt by a party of a notice of intent to terminate this agreement, no further cases shall be assigned or accepted as of the date such notice is received, or as otherwise agreed in writing between the parties.
- 11.3. TRLA shall act in good faith to complete timely and competent legal services on all existing cases assigned before the effective date of termination of this contract.

- 11.3.1. TRLA shall promptly notify all clients with pending cases of any notice of termination and will offer each client an opportunity to make an informed and voluntary decision whether to continue with TRLA as counsel or request that TRLA withdraw from representation.
- 11.3.2. For all clients who request that TRLA withdraw, TRLA will file appropriate motions to withdraw with the court in which the case is pending and seek the appointment of private counsel for the defendant.
- 11.4. Payment after the Effective Date of Termination.
 - 11.4.1. Upon termination of this contract, the County shall continue to make timely monthly payments of the contract amount as defined in paragraph 6.1.1 for a period of no more than 120 days after the effective date of the termination, or until all such cases are concluded, whichever shall come first.
 - 11.4.2. After the 120-day wind-down period defined in paragraph 11.4.1, the County shall compensate TRLA for legal services performed on any cases in that county not yet resolved at its actual cost of providing such services under Generally Accepted Accounting Principles for non-profit corporations in the United States.

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


Goliad County:
 Hon. Mike Bennett
 Goliad County Judge
 P. O. Box 677
 Goliad, Texas 77963

Texas RioGrande Legal Aid
 Robert W. Doggett
 Executive Director
 301 South Texas Avenue
 Mercedes, Texas 78570

13. **Entire Agreement.**


- 13.1. This writing constitutes the entire agreement between the parties.
- 13.2. No other oral or written understandings, agreements, or representations exist regarding this agreement.
- 13.3. 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.
- 13.4. 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. Mike Bennett, County Judge
Goliad County, Texas
P. O. Box 677
Hallettsville, Texas 77963
Telephone: 361-645-3337
Email: mbennett@goliadcountytexas.gov

12-23-19
Date



Robert W. Doggett, Executive Director
Texas RioGrande Legal Aid, Inc.
301 South Texas Avenue
Mercedes, Texas 78570
Telephone: 512-374-2700
Email: rdoggett@trla.org

12/19/19

Date