

PUBLIC DEFENDER CONTRACT

Between

WILLACY COUNTY, TEXAS

And

TEXAS RIOGRANDE LEGAL AID, INC.

Effective August 1, 2007

PUBLIC DEFENDER CONTRACT

Willacy 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 Willacy County.

1. Parties.

- 1.1. Willacy County, Texas is a political subdivision of the State of Texas and is authorized by the laws of the State to execute this agreement.
- 1.2. 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. Solicitation of Proposals and Award. Having previously been awarded a grant by the Texas Task Force on Indigent Defense ("TFID") to operate a public defender system, the County published on March 21, 2007 a Solicitation of Proposals for the operation of a defender office for Willacy County, a copy of which is attached hereto and incorporated herein by reference for all purposes as Exhibit A. On May 14, 2007, TRLA submitted a proposal for the operation of a Public Defender Program for Willacy County. A copy of that proposal, as revised by agreement of the parties on June 11, 2007, is attached hereto and incorporated herein by reference for all purposes as Exhibit B.

3. Services Provided. TRLA agrees to provide legal services to indigent residents of Willacy County as follows:

- 3.1. TRLA shall promptly interview all persons accused of crimes within the County, and make recommendations to the appropriate judicial officials regarding eligibility for, and assignment of, counsel for the defense;
- 3.2. When assigned under the terms of this agreement, TRLA shall provide representation in a maximum of 500 cases during the first twelve months after August 1, 2007, including felonies, misdemeanors, juvenile delinquency cases, and appeals, but exclusive of capital cases where the prosecution is seeking the death penalty;
 - 3.2.1. A "case" shall be considered as a single prosecution initiated by a charging instrument in a court of competent jurisdiction within any county covered by this agreement and having a discrete cause number;
 - 3.2.1.1. A revocation of probation or parole shall be considered as a separate "case" for purposes of this agreement.
 - 3.2.1.2. A juvenile delinquency "case" may include an assignment to represent a juvenile who is in detention but against whom no petition has been filed, provided that if a petition is subsequently filed no additional case credit shall be charged to this contract.

- 3.2.2. An "appeal" shall be considered to be any action in an appellate court, including interlocutory or direct appeals, habeas corpus actions, mandamus or other extraordinary writs;
 - 3.2.2.1. each appeal shall be considered a separate "case" for purposes of this agreement.
 - 3.2.2.2. any action involving the same defendant under a different cause number shall be considered a separate appeal for purposes of this agreement.
- 3.2.3. A "misdemeanor" under the terms of this agreement shall not include Class C misdemeanors as defined by the Texas Code of Criminal Procedure, or any case that does not provide for the loss of liberty as a potential sanction.
- 3.3. 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 a final disposition in the case is entered, 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.
- 3.4. 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 of Willacy County who try criminal cases.
- 3.5. TRLA will initially establish its Public Defender staff in its existing office in Harlingen, Texas. However, TRLA will strive to obtain office space in Raymondville for the use of its staff and as a place for convenient meetings between its staff and clients, and will have its Investigator make regular visits to the Willacy County Jail. In addition, TRLA will publish its toll-free telephone number in suitable locations in Willacy County for convenient access by its clients.
- 3.6. TRLA will ensure that each attorney who represents a client pursuant to this contract agrees to provide 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 attorney must agree to provide constitutionally effective assistance of counsel to the client regardless of any business relationships or funding considerations that might otherwise adversely affect their work for indigent criminal defendants who are clients of TRLA. 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.
- 3.7. TRLA shall provide adequate supervision of less experienced attorneys by more experienced attorneys, and shall conduct periodic performance reviews and evaluations of staff.

- 3.8. Attorneys employed full time by the PD Program shall not accept employment on a retained basis in either criminal or civil cases.
- 3.9. TRLA shall engage expert witnesses, stenographers and technical consultants to perform reasonable and necessary services under this contract, including but not limited to, medical and psychiatric evaluations, DNA analysis, and polygraph and other forensic testing.

4. **Assignment of Cases.** TRLA shall begin accepting case assignments on August 1, 2007. It is understood, however, that it is unlikely that TRLA will be able to fully staff its Willacy County Public Defender office immediately and that, as a consequence, it may be necessary to limit the numbers of cases accepted in the first three months of operation, or until all staff is employed.

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 PD when the PD has capacity for accepting additional assignments; or,
- 4.1.2. that TRLA will reach its total contract quota of cases before the expiration of the contract.

In either circumstance described in this subsection, the County shall convene a meeting of representatives of TRLA, the County and applicable courts to develop a plan for effective utilization of resources or adjustment of the contract.

5. **Term of Agreement.** This agreement will be effective until September 30, 2007. If it is not modified in writing by the parties before September 30, 2007, it will automatically renew without further action, and be effective until September 30, 2008. If it is not modified in writing by the parties before September 30, 2008, it will automatically renew without further action, and be effective until September 30, 2009. If it is not modified in writing by the parties before September 30, 2009, it will automatically renew without further action, and be effective until September 30, 2010. TRLA may incur costs and expenses under this agreement upon its execution and will begin providing legal services to eligible clients on and after August 1, 2007.

5.1. The parties may agree in writing to modify or terminate this contract by mutual agreement at any time.

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

5.1.2. 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.

5.2. At the time 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. However, payments under this contract are subject to the availability of grant funds from the Texas Task Force on Indigent Defense ("TFID") in the grant years subsequent to the current year. The County may propose to modify, suspend, or terminate this contract if TFID and County funds will not be sufficient to pay anticipated costs of public defense services.

6. **Voucher Submissions.** 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. 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.
7. **Contract Amount and Payments.** For services rendered during the first twelve months that this agreement is in effect, the County agrees to pay TRLA the total sum of Two Hundred Twenty-four Thousand, Five Hundred Eighty (\$224,580.00) Dollars. The County agrees to pay this sum to TRLA in twelve equal monthly installments of Eighteen Thousand Seven Hundred Fifteen (\$18,715.00), with the first installment being paid on September 1, 2007. On September 1, 2008, the monthly amount payable may change depending on Paragraphs 7.1 or 7.2 below, or application of a carry-over as discussed in Paragraph 8 below.
- 7.1. For the second and third years that this contract is in effect, the parties may modify the amounts to be paid TRLA based upon caseloads or expenditure history in prior years.
- 7.2. Any party seeking to modify the contract amount shall provide written notice to the other party no later than sixty days prior to the end of the contract year, as defined by the dates in Paragraph 5 above.
8. **Carry-over.** If on September 30, 2008, 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 PD program expenses at its sole discretion. If the surplus amount 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 invoice for September, and from invoices for subsequent months if necessary, an amount equal to one-half of the surplus. TRLA shall also deduct any and all surplus amounts in excess of twenty-five percent during a contract year from its invoice for September, and from invoices for subsequent months if necessary.
9. **Accounting and record keeping.** 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. 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.
- 9.1. TRLA staff shall maintain current information, including activity logs, pleadings and other case-related documents, on each PD 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.

- 9.2. 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.** TRLA is an independent contractor who shall complete the requirements of this contract according to TRLA's own means and methods of work, 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 specified in this contract. 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, they may monitor the caseload of TRLA, they can even determine possible contract violations and recommend removal to the commissioner court. However neither the oversight board, the commissioners court, the judges, nor the local defense bar may impose on the operations of TRLA. They may not require TRLA to hire and fire, dictate office operation policies, or manage the operations of TRLA. The judges may have limited removal authority if they find that an attorney hired by TRLA is not providing adequate representation to defendants. Even in that case the judge can request removal of the attorney but cannot dictate to TRLA which attorney should replace the removed attorney.
11. **Non-discrimination.** 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 and will submit reports as the County may require to demonstrate compliance with this assurance.
12. **Impossibility of Performance.** 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. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.
13. **Wind-Down Procedures.** If either party suspends or terminates the contract, no further cases shall be assigned or accepted effective the date such notice is received or as agreed between the parties, and TRLA shall complete timely and adequate legal services on all existing cases assigned before the effective date of suspension or termination. The County shall continue to make timely monthly payments of the contract amount until all such cases are concluded; provided, however, that when the number of pending cases are twenty or fewer, the monthly payment obligations under this contract shall terminate, and the County shall pay TRLA for the remaining twenty cases at the rate being paid to private assigned counsel at the time the contract terminates.
14. **Contract Notices.** All notices required by this contract shall be delivered in writing to the following representatives of the parties:

Willacy County:

Texas RioGrande Legal Aid

Hon. Eliseo A. Barnhart
Willacy County Judge
190 N. Third Street
Raymondville, Texas 78580
Email: county.judge@willacycounty.org

David G. Hall
Executive Director
300 South Texas Boulevard
Weslaco, Texas 78596
Email: dhall@trla.org

15. **Entire Agreement.** This writing constitutes the entire agreement between the parties. There are no oral or written understandings, agreements, or representations regarding this agreement. 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. 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. Eliseo A. Barnhart, County Judge
Willacy County, Texas
190 North Third Street
Raymondville, Texas 78580

7/27/2007

Date



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

7/27/07

Date

FILED 27 DAY OF July
2007
FERRY FLORES, CLERK COUNTY
COURT, WILLACY CO., TEXAS
BY S. Barry
Deputy

Eliseo A. Barnhart Sr.

190 N. 3rd St./Courthouse Annex Bldg. • Raymondville, Texas 78580
(956) 689-3393 • Fax (956) 689-4817

Facsimile Transmittal

Task Force on
 To: *Indigent Defense* Fax: *512-475-3450*
 From: *Willacy County* Date: *8-28-07*
 Re: *Signed Contract* Pages: *8 (including cover)*
 CC:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

Notes:

CONFIDENTIAL

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