

REGIONAL PUBLIC DEFENDER CONTRACT

between

WILLACY COUNTY, TEXAS

and

TEXAS RIOGRANDE LEGAL AID, INC.

January 1, 2023

## CONTRACT

Willacy County, Texas ("the County") entered into an interlocal agreement with the Counties of Bee, McMullen, and Live Oak effective October 1, 2016 and became part of the Bee County Regional Public Defender Office. Under that interlocal agreement, Bee County entered into a contract with Texas RioGrande Legal Aid, Inc. ("TRLA"), under which TRLA agreed to perform legal services for persons accused of crimes in the counties of Bee, Live Oak, McMullen, and Willacy (Refugio County was added to this interlocal arrangement in FY2020). That Contract was renewed on October 1, 2023, to include all the same counties with some budget adjustments. All participating counties have agreed that public defender program administration will be simplified by separating contracting and grant funding for Refugio County and Willacy County programs. As such, Willacy County now wishes to contract directly with TRLA, under which TRLA continues to provide legal services for indigent persons accused of crimes in Willacy County effective on January 1, 2023.

1. **Parties.** 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.
  - a. 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.
  - b. Willacy County shall pay TRLA for indigent criminal defense services based upon negotiated criminal caseloads as outlined in Exhibits A, attached hereto.
  - c. The parties 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.
  - d. During the term of this agreement, other counties may wish to create a Regional Public Defender agreement with Willacy County and TRLA and may do so, so long as it is in accordance with this contract.
  - e. All other counties desiring to create a Regional Public Defender program with Willacy County and TRLA shall do so under terms entered into by Willacy and TRLA under this contract.
2. **Term of the Agreement.** This agreement will be in effect from January 1, 2023, until September 30, 2023. If this agreement is not modified or terminated in writing by the parties before July 30 of each subsequent year, this agreement shall automatically be renewed for another one-year term commencing on October 1 of each subsequent year.
  - a. It is mutually understood that the services provided under this agreement are funded by grant funds from the Texas Indigent Defense Commission (TIDC) and the County of Willacy, and that the use of those funds is subject to and governed by the Texas Grant Management Standard statutes, administrative regulations, and the specific conditions and requirements as outlined in the FY 2023 Statement of Grant Award.
  - b. 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 not otherwise funded by the TIDC grant.
  - c. 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, 2023.
  - d. 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.

- e. Unless otherwise agreed in writing, termination of this contract does not affect any existing obligation or liability of any party.
  - f. 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.
  - g. This contract may be modified or terminated only by the means defined in Section 2. Any "suspension" or "expiration" of this agreement must conform to the subsections in Section 14.
- 3. Services Provided.** TRLA agrees to provide criminal defense services to indigent residents of the participating counties who are charged with crimes as follows:
- a. Willacy 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.
  - b. After the appointment of a case to TRLA, by an authorized appointing authority within the county, TRLA will determine whether to accept the case, or decline it for a conflict of interest, whether the appointment exceeds the caseloads limitations for the county or court, or other reason that would be a barrier to representation.
  - c. TRLA will accept the maximum number of cases under the term of this contract as outlined in Exhibit A, attached hereto, in accordance with TIDC caseload guidelines. TRLA has sole authority to determine whether to accept a case for representation and will exercise that authority consistent with its internal policies and procedures, and in compliance with its ethical rules, and TIDC caseload guidelines. If TRLA does not believe it will be able to accept the expected number of cases, either due to staff vacancies or other factors, TRLA must notify the Willacy Public Defender Oversight Committee and all Judges within the jurisdiction, in writing, at the earliest possible date.
  - d. When TRLA accepts an appointment of a case under the terms of this agreement, TRLA shall provide representation to the client as it determines is needed to assist that client resolve the issues related to the case.
  - e. For purposes of this agreement, a case is one in which the complaint is presented to magistrate in hearings under Art. 15.17, Tex. Code Crim. Proc., and is a single criminal prosecution initiated by a charging instrument in a court of competent jurisdiction and having a separate and distinct cause number. A case commences at the special 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.
  - f. TRLA in its sole discretion determines the assistance needed. Multiple activities may be undertaken to assist a client including, but not limited to: bond reduction, habeas or examining trial prior to Information or Indictment; pre-trial motions and discovery; trial to judge or jury; appeal; original actions; administrative matters; other matters intertwined with the client's case that could impact the outcome of the case; and all activities consistent with professional responsibility, but such additional activities do not count as more than one case for purposes of this agreement.
- 4. Caseload Calculations.** TRLA will ensure that TIDC guidelines are adhered to and will be enforced according to Exhibit A. During the time that the case is not filed or indicted, for purposes of caseload calculations, a case shall only count as .5 of a full case. Once a case or charges is filed or indicted, each charge or count will count for 1 full case, regardless of whether several charges are indicted into one cause number.

For purposes of this agreement a case is either a misdemeanor or a felony as defined below:

- a. 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.

- b. 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 not include “capital felonies” punishable under section 12.31.
- c. Juvenile Cases: 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.
  - i. 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.
  - ii. 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 for the representation of juveniles, it will comply with all applicable LSC regulations, policies, standards and guidelines governing such representation.
- d. 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.
- e. 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. Action taken in an appellate court subsequent to disposition of a case in trial court by judgment or deferred adjudication shall be considered as a separate "case". 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.
- f. Pretrial Diversion Status Appointments. Once a client has agreed to and been accepted into a Pretrial Diversion program, the case will be deemed “disposed” for purposes of TRLA case calculations. Should a previous client, currently on Pretrial Diversion, need representation in court in any subsequent status or admonishment proceedings, relating to that Pretrial Diversion case, the Court shall provide a new Order of Appointment for the Client, and this shall be considered a separate case. Should the subsequent or additional work for this separate case only require limited representation at a limited number of hearings, these cases shall only count for .3 of a case for TRLA caseload calculations.
- g. After assignment, TRLA shall provide representation and other legal services to its clients in all pre-trial, and trial matters and 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, the case is disposed on the Courts docket, or the client becomes ineligible for representation under this contract. TRLA may provide representation and other legal services to existing or prior clients for post-trial matters, other than appeals, at its sole discretion. Post-trial or post-conviction services other than appeals, modifications, status hearings, admonishments, or other representation requested by the Court, shall not be deemed additional or separate cases for purposes of TRLA caseload calculations.
- h. TRLA will contract, hire or employ all personnel necessary to perform the services that this contract requires including those with criminal defense, investigatory, asylum, and immigration expertise, 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.
- i. TRLA will ensure that each attorney who represents a client pursuant to this agreement 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. All TRLA attorneys agree to strive 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. All TRLA attorneys understand that failure to zealously represent each client's interests and each client's interests alone may carry legal and license consequences.

- j. TRLA shall provide adequate supervision of less experienced attorneys by more experienced attorneys and shall conduct periodic performance reviews and evaluations of the attorneys assigned to cases.
- k. Services of Experts and Other Consultants.
  - i. TRLA may engage expert witnesses, stenographers and technical consultants to perform reasonable and necessary services under this contract, utilizing the designated expert and litigation budget as outlined in Exhibits A. Should TRLA need additional expert funds, in excess of the amounts budgeted for this contract, TRLA may seek additional funding by proper motion, for the court where the case is pending.
  - ii. For cases in which a competency evaluation is necessary under the Code of Criminal Procedure 46B, the county shall pay for the services provided by the forensic psychiatrist as provided under the Code of Criminal Procedure.

**5. Appointment of Cases.**

- a. During the period of this agreement TRLA shall notify the participating counties immediately upon determining that:
  - i. one or more courts are not assigning cases to the Willacy PDO when the program has capacity for accepting additional assignments; or,
  - ii. TRLA will reach its total contract quota of cases before the expiration of a term of this contract.
  - iii. In either circumstance described in Sections 5.a.i or 5.a.ii, the Willacy PDO Oversight Committee, within 30 days of received written notice from TRLA, shall convene a meeting of representatives of TRLA, the counties and applicable courts to develop a plan for effective utilization of the Willacy PDO resources or adjustment of the contract.
- b. Orders of appointment will be sent to TRLA along with all documents related to the case then in existence, including, but not limited to, the following:
  - i. Complaint, Information and/or Indictment;
  - ii. Order appointing counsel;
  - iii. Magistrate's Warning;
  - iv. Defendant's Affidavit of Indigence;
  - v. Inmate Mental Condition Report to Magistrate;
  - vi. Affidavit and Complaint for Warrant of Arrest; and,
  - vii. All other documents of record.

**6. Contract Amount and Payments.** The total contract amount of this agreement is Two Hundred Eighty-Three Thousand, Four Hundred Thirty-Six (\$283,436.00) Dollars for the remainder of FY2023.

- a. Willacy County shall pay TRLA the amount of \$283,436 in equal monthly installments of Thirty-One Thousand, Four Hundred Ninety-Three and 00/100s (\$31,493.00) Dollars during the term of this agreement, including any periods of automatic renewal under Sec. 2.
- b. Exhibits A, attached hereto reflect TRLA's staffing Budget for this contract. Staffing changes or budget adjustments, which consist of reallocations of funds among or within budget categories in excess of \$10,000 or ten percent of the original approved budget category, whichever is less, are considered budget adjustments and must be agreed to in writing by both parties.

**7. Carry-Over.** If on September 30, 2023, 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 Willacy PDO program expenses at its sole discretion.

- a. If the surplus described in Section 8 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.
- b. 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.

**8. Reporting, Accounting and Record keeping.**

- a. Within one month of the execution of this Agreement, TRLA must provide Willacy County and the Willacy PDO Oversight Committee, with its policies and procedures related to representation covered by this agreement.
- b. TRLA will provide a quarterly report to Willacy County and the Willacy PDO Oversight committee, according to the schedule below, and on or before the 10th day of the month, following the conclusion of a quarter, if this agreement is auto renewed or extended. The quarterly reporting shall include:
  - i. Financial reporting showing budgeted vs. actual expenditures, and the status of funds not expended,
  - ii. Programmatic reporting based on metrics identified by TIDC, and
  - iii. Staffing reporting that documents job title, hire dates, separation dates, transfers, vacancies, percentage of time dedicated to the Willacy PDO, and actual salaries and fringe benefits for each funded and filled position, or projected salaries for vacant positions.

Reporting Period	Date Report Due
January 2023 through March 2023	April 10, 2023
April 2023 through June 2023	June 10, 2023
July 2023 through September 2023	October 10, 2023

- c. TRLA staff shall maintain current information, including pleadings and other case related documents, on each case. That information shall be made available to the Willacy Public Defender Oversight Committee, under circumstances in a format, that does 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.
- d. TRLA will provide a monthly report to the Willacy Public Defender Oversight Committee, with updates on number of cases that have been accepted, the number of cases that have been disposed, and the status of the pending accepted cases.
- e. TRLA will record attorney and support staff work time in a manner that allows for accurate completion of the Indigent Defense Expenditure Report and Public Defender Addendum as the County is required to submit to TIDC. The Records must contain sufficient detail to allocate time and salary across the categories of offenses and to document the number of cases disposed by each attorney funded under this contract.
- f. TRLA shall designate a financial single point of contact with at least read-only access and general knowledge of the organizational finances regarding contract management, monitoring, and financial data reporting and to respond to the contract terms and deliverables.
- g. 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.
- h. TRLA shall preserve all assignment, financial and case service records for a period of seven years from the date the case is closed.

**9. Independent Contractor.**

- a. 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.
- b. A Willacy PDO Oversight Committee, 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.
- c. 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.
- d. 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.

#### **10. Non-discrimination.**

- a. 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. Impossibility of Performance.**


- a. 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.
- b. In the event of circumstances beyond a party's control that may render timely performance by that party impossible under Sec. 13.a, either party may terminate this contract, or the affected part, by written notice.

#### **12. Wind-Down Procedures.**

- a. Effective Date of Termination.
  - i. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by written notice under Sec. 2, the "effective date" of termination is September 30 of the contract year.
- b. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by mutual agreement under Sec. 2, the "effective date" of termination is 90 days after such mutual agreement is memorialized in writing.
- c. Unless otherwise agreed upon in writing by the parties, if this agreement is terminated by a party under Sec. 2, the "effective date" of termination is 90 days after written notice is received by the non-- terminating party.
- d. 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.
- e. 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.
- f. TRLA shall promptly notify all clients with pending cases of the 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.
- g. 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.
- h. Payment after the Effective Date of Termination.

- i. In the event that this agreement is not auto renewed or upon termination of this contract, Willacy County shall continue to reimburse TRLA for all actual personnel and non-personnel expenses incurred to resolve all cases still pending after the conclusion of the agreement, or upon conclusion of the final extension or renewal of this agreement, along with projected expenses that TRLA is likely to incur for costs associated with the termination of employees such as severance and vacation/sick time pay. TRLA will not be paid amounts in excess of the total contract amount or TRLA's actual program expenditures, whichever is less.
- i. Upon the conclusion of TRLA's responsibilities under this agreement, the conclusion of the final extension or renewal, including the closing down or winding of operations and disposing of all remaining and pending cases, any unused funding for the Willacy PDO will be returned to Willacy County within 90 days of the end of the contract term or the final date on which operations and cases are closed and disposed of, whichever is later.

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

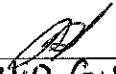
Willacy County  
  
 \_\_\_\_\_, County Judge  
 5716 W. Main Ave, Room 152  
 Raymondville, Texas 78580

Texas RioGrande Legal Aid, Inc.  
 Nicole Rivera Maesse  
 Deputy Executive Director  
 301 South Texas Ave.  
 Mercedes, TX 78570

**14. Entire Agreement.**

- a. This writing constitutes the entire agreement between the parties.
- b. No other oral or written understandings, agreements, or representations exist regarding this agreement.
- c. 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.
- d. 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.
- e. 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.

  
 \_\_\_\_\_, County Judge  
 Willacy County

02/08/23  
 Date

\_\_\_\_\_  
 Willacy, Texas 78580





NICOLE MAESSE (Feb 9, 2023 09:45 PST)

2.9.23

Nicole Rivera Maesse, Deputy Executive Director  
Texas RioGrande Legal Aid, Inc.  
301 South Texas Ave.  
Mercedes, TX 78570

Date

### ANNUAL WILLACY BUDGET

*(This Contract is only for the 9 months*

*Remaining in the FY2023 Fiscal year for a total of \$283,436)*

<b>Willacy Assigned</b>	<b>FTE</b>	<b>TOTAL</b>
Chief Defender	1	\$93,150
Misd Staff Attorneys	1	\$60,030
<b>Attorneys</b>	<b>2</b>	
<b>Investigators</b>	<b>0</b>	
<b>Paralegal</b>	<b>1</b>	<b>\$58,995</b>
<b>Legal Assistant</b>	<b>.5</b>	<b>\$24,323</b>
<b>Personnel</b>	<b>3.5</b>	<b>\$236,498</b>
<b>Non-personnel</b>		

Space	\$8,415	
Telephone/Data	\$3,000	
Travel	\$2,775	
Library/Legal Research	\$1,334	
Supplies	\$2,250	
Litigation Expenses	\$11,250	
Admin/IT	\$8,625	
Contract Svc. (Janitorial Service)	\$111	
Training, attorneys	\$2,250	
Training Investigators	\$375	
Training, support staff	\$375	
<b>Non-personnel</b>	<b>\$40,760</b>	
Division Positions	\$6,179	
<b>TOTAL Willacy</b>	<b>\$283,325</b>	

Annual Felonies	Monthly Felonies	Annual Misds	Monthly Misd	Annual Juvenile	Total Max/Yr	Monthly Average
139	11	239	20	15	392	32

\*\*These case numbers are based on the percentage of staff that is allocated to Willacy for the reduced amount of total expenditure that Willacy County is willing to pay TRLA for FY2023 and adherence to TIDC caseload guidelines.