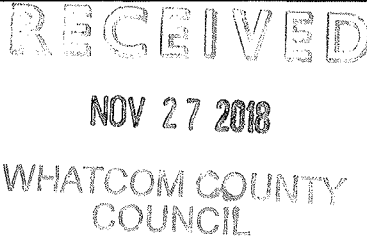


CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	JW	11/20/18		12.4.18	FINANCE /Council
Division Head:					
Dept. Head:					
Prosecutor:	fn RB	11/26/18			
Purchasing/Budget:	BB	11/26/18			
Executive:	AM	11.27.18			

TITLE OF DOCUMENT:

Contract agreement between Whatcom County and Washington State Office of Public Defense for grant funding.

ATTACHMENTS:

Contract
Memo

SEPA review required?	() Yes	(X) NO	Should Clerk schedule a hearing?	() Yes	(X) NO
SEPA review completed?	() Yes	(X) NO	Requested Date:		

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authority for County Executive to enter into a contract between Whatcom County and the Washington State Office of Public Defense for grant funding.

COMMITTEE ACTION:

COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

DIRECTOR
Starck M. Follis

CHIEF DEPUTY
Angela Anderson

OFFICE ADMINISTRATOR
Julie G. Wiles

INVESTIGATIVE SUPERVISOR
Joe Dozal

INVESTIGATORS
Cheri Mulligan
Brandi Bowers
Abby Goldman

WHATCOM COUNTY PUBLIC DEFENDER

215 N. Commercial Street
Central Plaza Building
Bellingham, Washington 98225

(360) 778-5640
FAX (360) 778-5641
pubdef@co.whatcom.wa.us

SENIOR DEPUTIES

Alan Chalfie
Shoshana Paige
Mamie G. Lackie
Darrin L. Hall
Maialisa A. S. Vanyo
Richard S. Larson
Leanne Stogsdill
Amy L.M. Jones
Jane Boman

DEPUTIES

Maggie Peach
Stephen W. Jackson
Jaylia Lewis
Peter Ramey
Damon Burk
Diana C. Anderson

RECEIVED

NOV 21 2018

JACK LOUWS
COUNTY EXECUTIVE

MEMORANDUM

To: Whatcom County Council Members
From: Starck Follis, Director, Whatcom County Public Defender's Office
Subject: Washington State Office of Public Defense grant funding
Date: November 21st, 2018

BACKGROUND

Each year the Public Defender's office receives grant funds from the Washington State Office of Public Defense (pursuant to Chapter 10.101 RCW) in order to cover two attorney positions in the Whatcom County Public Defender's Office. The grant is based on the amount of felony filings and therefore fluctuates from year to year.

For 2019, the Office of Public Defense proposes to provide \$196,141.00 to the Whatcom County Public Defender's Office; however, the cost of the two attorney positions comes to \$247,178.00. Therefore, we are asking for cost sharing in the amount of \$51,037.00 to cover the gap.

ACTION:

The County Executive requests council review and approval of this grant award and additional County contribution in the amount of \$51,037.00.



**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
201811030

Originating Department:	Public Defender' office
Division/Program: (i.e. Dept. Division and Program)	Click here to enter text.
Contract or Grant Administrator:	Julie Wiles
Contractor's / Agency Name:	Washington State Office of Public Defense

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
 Yes No If yes, grantor agency contract number(s): ICA19315 CFDA#: _____

Is this contract grant funded?
 Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process? Contract _____
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: 2667

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional.
 Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).
 Contract work is for less than 120 days. Work related subcontract less than \$25,000.
 Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>196,141.00</u>	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when : 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	

Summary of Scope: Legal representation of indigent clientele. Funding will be utilized to provide public defense through the Whatcom County Public Defender's Office for adult felony, adult misdemeanor and juvenile offender cases.

Term of Contract: 01/01/2019 to 12/31/2019 Expiration Date: 12/31/19

Contract Routing:	1. Prepared by: <u>Julie Wiles</u>	Date: <u>11/20/18</u>
	2. Attorney signoff: _____	Date: <u>11-21-18</u>
	3. AS Finance reviewed: <u>MCaldwell</u>	Date: <u>11/21/18</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: <u>11-21-18</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

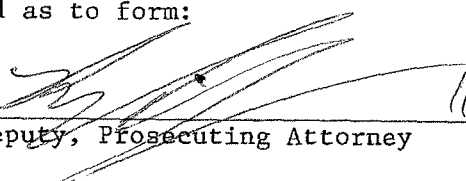
Agreement No. ICA19315

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

<p>1. Recipient –RCW 10.101.070 Funds Whatcom County 215 N Commercial Street Bellingham, WA 98225</p>	<p>2. Recipient Representative Starck Follis Director Whatcom County Public Defender 215 N Commercial Street Bellingham, WA 98225</p>
<p>3. Office of Public Defense (OPD) 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957</p>	<p>4. OPD Representative Joanne I. Moore Director Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957</p>
<p>5. Distribution Amount \$196,141</p>	<p>6. Use Period January 1, 2019 through December 31, 2019</p>
<p>7. Purpose Chapter 10.101 RCW county distributions are statutory formula distributions for the purpose of improving the quality of public defense services in Washington State counties.</p>	
<p>The Office of Public Defense (OPD) and Recipient, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start January 1, 2019 and end December 31, 2019. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions, and General Terms and Conditions.</p>	
<p>FOR THE RECIPIENT</p> <p>_____ Jack Louws, Whatcom County Executive</p> <p>_____ Date</p>	<p>FOR OPD</p> <p>_____ Joanne I. Moore, Director</p> <p>_____ Date</p>

Approved as to form:


 Civil Deputy, Prosecuting Attorney

11-21-18
 Date



WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE

Internet Email: opd@opd.wa.gov

(360) 586-3164
FAX (360) 586-8165

November 15, 2018

Starck Follis
Director
Whatcom County Public Defender
215 N Commercial Street
Bellingham, WA 98225

Re: Chapter 10.101 RCW Application for Public Defense Grant Funds

Dear Mr. Follis:

The Washington State Office of Public Defense (OPD) is pleased to announce the award of RCW 10.101.070 Public Defense Grant funds to Whatcom County. The award is \$196,141 for use in calendar year 2019.

Enclosed is a short Interagency Agreement for your review and signature by an authorized representative of Whatcom County. The signed Interagency Agreement should be returned to OPD by December 21, 2018. A conformed copy will be sent to you for your records. A copy of OPD's policy on authorized uses is enclosed.

The funds will be provided by paper check and mailed to you in early January 2018. The check will be issued to the entity corresponding to the Statewide Vendor Number that you provided in your application earlier this year, **SWV0002435-57**. If you want the check issued under a different Statewide Vendor Number, or if you want the check mailed to a different person or office, please let us know. If Whatcom County uses state BARS coding, these grant funds should be received under BARS revenue code 336.01.28.

Chapter 10.101 RCW requires counties awarded funds to demonstrate that they are either meeting the public defense standards referenced in RCW 10.101.030, or that the funds received are used to make appreciable demonstrable improvements in the delivery of public defense services.

Please take note that RCW 10.101.050 states in part, "Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases." From a review of Whatcom County's grant application, it appears that the County does not require this reporting of its contract attorneys. OPD recommends that Whatcom County takes steps to implement this process consistent with state statute. Please let us know whether we can provide any assistance to help you implement this practice.

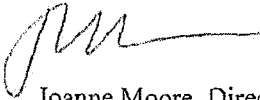
In addition, we wanted to bring attention to two items in your application pertaining to the Washington Supreme Court's Standards for Indigent Defense (Standards). First, the Standards establish annual caseload limits, which include "sentence violations." (Standard 3.3). The Standards also set guidelines for developing case weighting policies. It appears from Whatcom County's grant application that probation violation cases are weighted as a fraction of a case, yet the County does not have an official case weighting policy (application questions 2.2 and

2.3). We recommend that you review local practices in light of the Standards, and please feel free to contact our office if we can be of assistance.

Second, Whatcom County's application states in question 5.19 that no one is ensuring that private attorneys who contract for public defense services have filed certifications. Court rules regarding the appointment of counsel (CrR 3.1, CrRLJ 3.1, and JuCR 9.2) state that before appointing an attorney to represent indigent defendants or juveniles, "the court shall require the lawyer to certify to the court that he or she complies with the applicable Standards for Indigent Defense Services." The Standards further specify that signed certifications "must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel." We recommend that Whatcom County reviews local practices in light of these rules. Please feel free to contact our office if we can be of assistance.

We look forward to working with you and hope to visit your program during the year. If you have any questions, please feel free to contact Katrin Johnson at (360) 586-3164 ext. 108.

Sincerely,



Joanne Moore, Director

cc: Presiding Superior Court Judge Deborra Garrett
Presiding District Court Judge David M. Grant

Enclosures

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING (as amended June 2008)

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. The funds cannot be spent on purely administrative functions. Following are guidelines regarding permitted use of state public defense funds.

1. State public defense funding under Chapter 10.101 RCW *may* be used in the following ways:

- a) Additional investigator services
- b) Additional expert services
- c) Creation of a public defense office
- d) New quality monitoring by an attorney coordinator who can act as a legal supervisor for the attorneys providing public defense (but non-attorney administrative employees of the county or city are not an approved use of funds)
- e) Computers or access to electronic legal research systems for public defenders
- f) Increase in public defense attorney compensation
- g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
- h) Addition of more attorneys to lower public defense caseloads
- i) Addition of social worker services to assist public defense attorneys
- j) Direct training costs to train public defense attorneys
- k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
- l) Provision of internet connectivity (e.g. wireless) for public defense attorneys
- m) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)

2. State public defense funding under Chapter 10.101 RCW *may not* be used in the following ways:

- a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
- b) Billing or other administrative costs incurred by the county or city in administering the public defense program
- c) Indigency screening
- d) County, city or court technology systems or administrative equipment
- e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

SPECIAL TERMS AND CONDITIONS

1. AGREEMENT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

- a. The Representative for OPD and their contact information are identified on the Face Sheet of this Agreement.
- b. The Representative for the Recipient and their contact information are identified on the Face Sheet of this Agreement.

2. DISTRIBUTION AMOUNT

The Distribution Amount is **one hundred ninety-six thousand, one hundred forty-one and 00/100 Dollars (\$196,141)** to be used for the purpose(s) described in the USE OF FUNDS below.

3. PROHIBITED USE OF FUNDS (as adopted in OPD Policy County/City Use of State Public Defense Funding)

- a. Funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of RCW 10.101.070 funds.
- b. Funds cannot be spent on purely administrative functions or billing costs.
- c. Funds cannot be used for indigency screening costs.
- d. Funds cannot be used for county or court technology systems or administrative equipment.
- e. Funds cannot be used for county attorney time, including advice on public defense contracting.

4. USE OF FUNDS

- a. Recipient agrees to use the RCW 10.101.070 funds to improve the quality of legal representation directly received by indigent defendants. (See Chapter 10.101 RCW and OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
- b. Recipient agrees to use the funds for the following purpose:
 - i. Increase and/or sustain additional attorneys to reduce public defense caseloads.
- c. Recipient agrees to use the funds in calendar year 2019. If Recipient is unable to use the funds in 2019, the Recipient agrees to notify OPD to determine what action needs to be taken.
- d. Recipient agrees to deposit the RCW 10.101.070 funds check within 14 days of receipt.

5. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes, regulations, and court rules
- Special Terms and Conditions
- General Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. **ALL WRITINGS CONTAINED HEREIN**
This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
2. **AMENDMENTS**
This Agreement may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.
3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**
The Recipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **ASSIGNMENT**
Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Recipient without prior written consent of OPD.
5. **ATTORNEY'S FEES**
Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.
6. **CONFORMANCE**
If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.
7. **ETHICS/CONFLICTS OF INTEREST**
In performing under this Agreement, the Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.
8. **GOVERNING LAW AND VENUE**
This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.
9. **INDEMNIFICATION**
To the fullest extent permitted by law, the Recipient shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement.
10. **LAWS**
The Recipient shall comply with all applicable laws, ordinances, codes, regulations; court rules, policies of local and state and federal governments, as now or hereafter amended.
11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**
During the performance of this Agreement, the Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Recipient's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.
12. **RECAPTURE**
In the event that the Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.

13. RECORDS MAINTENANCE

The Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

14. RIGHT OF INSPECTION

At no additional cost all records relating to the Recipient's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by OPD, the Office of the State Auditor, and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. The Recipient shall provide access to its facilities for this purpose.

15. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

16. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing.

