



Contract No. 255-24

Agreement No. ICA25003

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

Simple Possession Advocacy and Representation (SPAR) Program Interlocal Cooperative Agreement

<b>1. Recipient</b> City of Richland 625 Swift Blvd, MS-04 Richland, WA 99352	<b>2. Recipient Representative</b> Jon Amundson, ICMA-CM Richland City Manager 625 Swift Blvd, MS-04 Richland, WA 99352
<b>3. Office of Public Defense (OPD)</b> 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957	<b>4. OPD Representative</b> Grace O'Connor Supervising Attorney Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957
<b>5. Agreement Amount</b> \$10,000	<b>6. Agreement Period</b> July 1, 2024 through June 30, 2025
<b>7. Purpose</b> Consistent with Second Engrossed Second Substitute Senate Bill 5536, Chapter 1, sec. 35, sec. 39, <i>Laws of 2023</i> , the purpose of this interlocal cooperative agreement is to (1) memorialize that City (Recipient) designated OPD to contract directly with indigent defense provider(s) for consultation and representation on Qualifying Cases in Recipient's court of limited jurisdiction, and (2) to provide reimbursement to City (Recipient) for the cost of providing defense counsel in Qualifying Cases in the event that OPD is not able to provide an indigent defense contractor.	
<b>8. Acknowledgement, Incorporation by Reference, and Execution</b> The Office of Public Defense (OPD) and Recipient acknowledge and accept the terms of this Agreement and attachments and execute this Agreement as of the date the last signatory signed. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Exhibit A, Special Terms and Conditions, and Exhibit B, General Terms and Conditions.	
<b>FOR RECIPIENT</b>   _____ Jon Amundson, ICMA-CM Richland City Manager  <b>Jun 20, 2024</b> _____ Date	<b>FOR OPD</b>   _____ Grace O'Connor (Jun 20, 2024 13:56 PDT) _____ Grace O'Connor, Supervising Attorney  <b>Jun 20, 2024</b> _____ Date

## **EXHIBIT A: SPECIAL TERMS AND CONDITIONS**

### **1. OPD DESIGNATED TO CONTRACT**

- a) Recipient designates OPD to contract directly with indigent defense providers for consultation and representation on Qualifying Cases in Recipient's court of limited jurisdiction.
- b) Upon entering into a contract for services with an indigent defense provider of OPD's choosing (hereinafter "Contractor") OPD will notify Recipient and the presiding judge of Recipient's court of limited jurisdiction, of Contractor's name, contact information, and availability for appointment on Qualifying Cases.

### **2. AGREEMENT MANAGEMENT**

- a) The Representative for each of the parties will be responsible for and will be the contact person for all communications regarding the performance of this Agreement.
- b) The Representative for OPD and their contact information is identified on the Face Sheet of this Agreement.
- c) The Representative for Recipient and their contact information is identified on the Face Sheet of this Agreement.

### **3. REIMBURSEMENT IN THE EVENT NO CONTRACTOR IS AVAILABLE**

- a) Subject to Section 5 of this Exhibit, Terms of Reimbursement, OPD shall reimburse for authorized expenses as identified in Section 8 of this Exhibit, Authorized Reimbursable Expenses in the event OPD is not able to provide a Contractor for a Qualifying Case.
- b) OPD will subtract from reimbursement amounts where Recipient or Recipient's court has assessed a cost of counsel against an indigent defendant and the indigent defendant has either signed a promissory note for that amount, or had a fee imposed at sentencing for this purpose. Recipient shall report such assessed costs to OPD.

### **4. ALLOCATED MAXIMUM REIMBURSEMENT AMOUNT**

- a) The maximum amount Recipient may be reimbursed for authorized expenses shall not exceed \$10,000 for the period of this Agreement.
- b) Subject to the availability of funds, and upon mutual agreement, Recipient and OPD may amend this Agreement in writing to increase the allocated maximum reimbursement amount.
- c) By mutual agreement, Recipient and OPD may extend this agreement for an additional maximum reimbursement amount.

### **5. TERMS OF REIMBURSEMENT**

- a) OPD will reimburse Recipient upon acceptance of expenses and receipt of properly completed invoices and calculation worksheets, and sufficient documentation supporting the invoices and calculation worksheets. Recipient shall submit invoices to the Representative for OPD

subject to the invoicing schedule included in subsection (h) of this Section.

- b) OPD will provide an invoice form and calculation worksheets to Recipient. Recipient shall provide sufficient documentation accompanying the invoice and calculation worksheet to prove, to OPD's satisfaction, the costs incurred by Recipient and to allow OPD to determine that the costs were for Authorized Reimbursable Expenses. Sufficient documentation will include a description of the work performed, including case numbers during the invoice time period, and proof that the requested expenses were paid by Recipient. Sufficient documentation demonstrating costs incurred by Recipient may include, but is not limited to, salary pay stubs or invoices for contracted services. OPD reserves the right to amend the invoice form and calculation worksheets at any time.
- c) Payment will be considered timely if made by OPD within 30 calendar days after receipt of properly completed invoices and calculation worksheets. OPD shall send payment to the address designated by Recipient and associated with Recipient's Statewide Vendor Number .
- d) OPD may, in its sole discretion, terminate this Agreement or withhold payments claimed by Recipient for services rendered if Recipient fails to satisfactorily comply with any term or condition of this Agreement.
- e) OPD shall not make any payments in advance or in anticipation of services or supplies to be provided under this Agreement.
- f) Recipient shall report whether it will be unable to spend any allocated maximum reimbursement amount during the Agreement Period, or if Recipient anticipates a need to increase the allocated maximum reimbursement amount. Any request to increase the allocated maximum amount will be subject to Section 4(b) of this Exhibit. OPD reserves the right to reallocate funds to other jurisdictions that Recipient reports as unable to be spent.
- g) Reimbursable expenses must be incurred between July 1, 2024 and June 30, 2025. Recipient shall bear the cost of and ensure continued Consultation and Representation for all individuals who are being represented by Recipient's attorneys on Qualifying Cases when the agreement period ends.
- h) OPD's fiscal year runs from July 1 to June 30 of each year, and OPD is unable to pay expenses from a previous fiscal year with the following fiscal year's budget. Accordingly, Recipient must submit invoices for costs incurred between July 1, 2024 and June 30, 2025, by August 1, 2025.

**6. DUPLICATION OF BILLED COSTS**

Recipient shall not bill OPD for services performed under this Agreement, and OPD shall not pay Recipient, if Recipient is entitled to payment or has been or will be paid by any other source, including grants, for that service.

**7. DISALLOWED COSTS**

Recipient is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its contractors or subcontractors.

**8. AUTHORIZED REIMBURSABLE EXPENSES**

- a. Recipient is authorized to seek reimbursement for the following costs, subject to the provisions in Sections 3 and 5 of this Exhibit:

1. Compensation for attorney Representation on Qualifying Cases;
2. Compensation for attorney Consultation on Qualifying Cases;
3. Support staff time devoted to assisting and supporting attorney Representation and Consultation on Qualifying Cases;
4. Investigation costs associated with Qualifying Cases;
5. Expert services where the scope of the expert's expertise is related to a Qualifying Charge.
6. Compensation for attorney Representation on an appeal undertaken according to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) where the RALJ appeal contains an issue for review arising from a Qualifying Charge.

## 9. **OVERSIGHT**

- a) Over the duration of the agreement term, OPD may conduct site visits for purposes of ensuring the use of funds for their specified purposes. At OPD's request, Recipient will assist in scheduling such site visits and inviting appropriate attendees such as, but not limited to: public defense attorneys, judicial officers, and city or county representatives as applicable.

## 10. **DEFINITIONS**

- a. "Alternatives to Prosecution" means an opportunity to depart from the traditional criminal case process of charge to plea or trial. Examples include, but are not limited to, stipulated continuances, deferrals, Specialty or Therapeutic courts, Pre-file Diversion programs, or Pre-trial Diversion programs.
- b. "Consultation" means consultation for a Client prior to assignment of counsel at first appearance or arraignment. Consultation also means advising a Client on Pre-File or Pre-Trial Diversion options. Consultation also means advising a Client during the pendency of pre-trial Diversion.
- c. "Client" means an indigent individual facing a pending charge or charged with a Qualifying Charge in a court of limited jurisdiction.
- d. "Pre-File Diversion" means an opportunity for a Client to depart from the criminal legal system, initiated by either law enforcement or the prosecutor, that takes place before charges are filed against the Client. Pre-File Diversion may be, but need not be, organized under RCW 69.50.4011(3)(c), 69.50.4013(2)(c), 69.50.4014(2), or 69.41.030(2)(e).
- e. "Pre-Trial Diversion" means an opportunity for a Client to depart from the criminal legal system after charges are filed against a defendant but before a plea is entered, or before proceeding to trial. Pre-Trial Diversion may be, but need not be, organized under RCW 69.50.4017.
- f. "Qualifying Charge" means a charge of violating RCW 69.50.4011(1)(b) or (c), 69.50.4013, 69.50.4014, 69.41.030(2), (b), or (c); or a charge under a local ordinance involving allegations of possession or public use of a controlled substance, counterfeit substance, or legend drug.
- g. "Qualifying Case" means a proceeding filed against a Client in a court of limited jurisdiction in which at least one of the charges filed, either originally or as amended, is a Qualifying Charge,

even if later dismissed.

- h. "Representation" means appointment to represent Clients in Qualifying Cases, including but not limited to appearance at arraignment, pre-trial appearances, motions, sentencings, status conferences, review hearings, client conferences, and preparation for trial. Representation also means appointment to represent Clients for Alternatives to Prosecution, including on motions to terminate Clients from Alternatives to Prosecution.
- i. "Specialty or Therapeutic Court" means a court utilizing a program structured to achieve both a reduction in recidivism and an increase in the likelihood of rehabilitation, or to address substance use disorder or mental health conditions in defendants through continuous and judicially supervised treatment and the appropriate use of services, sanctions, and incentives.

**11. ORDER OF PRECEDENCE**

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

- a. Applicable federal and state of Washington statutes, regulations, and court rules
- b. Exhibit A, Special Terms and Conditions
- c. Exhibit B, General Terms and Conditions

## EXHIBIT B: 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.**

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 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, 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, 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**

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, Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of 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 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**

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 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. 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.

**RESOLUTION NO. 2024-82**

**A RESOLUTION OF THE CITY OF RICHLAND, WASHINGTON, AUTHORIZING AN INTERLOCAL AGREEMENT WITH THE WASHINGTON STATE OFFICE OF PUBLIC DEFENSE FOR PARTICIPATION IN THE SIMPLE POSSESSION ADVOCACY AND REPRESENTATION PROGRAM.**

**WHEREAS**, , in *State v. Blake*, 197 W.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013 unconstitutional because the statute imposed strict liability and did not require proof that the offender knowingly possessed a controlled substance; and

**WHEREAS**, after the decision in *Blake*, the Washington State Legislature passed temporary drug-related legislation during the 2021 session which reduced the penalty from felony to misdemeanor for a person to knowingly possess a controlled substance; and

**WHEREAS**, the 2021 legislation sunsets on July 1, 2023; and

**WHEREAS**, on May 16, 2023, the Washington State Legislature passed permanent drug-related legislation through SB 5536 that criminalizes knowing possession and knowing use in public of counterfeit or controlled substances (i.e., drugs such as fentanyl and other opioids, methamphetamine, heroin, and cocaine) and prohibits the knowing possession of non-prescribed legend drugs, as well as their knowing use in a public place; and

**WHEREAS**, the offenses described herein are misdemeanor offenses under state law prosecuted in district court; and

**WHEREAS**, the Washington State Office of Public Defense offers a Simple Possession Advocacy and Representation (SPAR) Program designed to help counties and cities provide public defense services for individuals charged under the offenses created in SB 5536; and

**WHEREAS**, Richland is eligible to receive support from the Washington State Office of Public Defense SPAR Program, and no matching funds are required.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Richland that the City Manager is authorized to sign and execute an interlocal agreement with the Washington State Office of Public Defense to receive support through the SPAR Program as provided therein. Such support may include contracting with a public defender on behalf of the City of Richland to provide defense counsel in qualifying cases, and/or reimbursement from the Washington State Office of Public Defense for costs related to procuring defense counsel for qualifying cases.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.



**ADOPTED** by the City Council of the City of Richland, Washington, at a regular meeting on the 18<sup>th</sup> day of June, 2024.

Theresa A Richardson  
Theresa Richardson, Mayor

Attest:

Jennifer Rogers  
Jennifer Rogers, City Clerk

Approved as to Form:

Heather Kintzley  
Heather Kintzley, City Attorney