



INFORMATIONAL MEMORANDUM

TO: COMMUNITY SERVICES AND SAFETY COMMITTEE

CC: Mayor Ekberg
David Cline, City Administrator

FROM: Cheryl Thompson, Executive Assistant

DATE: November 4, 2021

SUBJECT: Office of Public Defense 2022-2023 Grant Agreement

ISSUE

The Washington State Office of Public Defense (WSOPD) has awarded the City of Tukwila grant funds in the amount of \$75,000 for the Public Defense Program: \$37,500 for 2022 and \$37,500 for 2023. Council needs to approve execution of the grant agreement since the award exceeds the \$40,000 threshold.

BACKGROUND

The City of Tukwila has applied for and received grant awards from the WSOPD since 2013. The grant awards for 2013 – 2017 were for one year and ranged from \$22,000 - \$25,600. Effective 2018 WSOPD transitioned to a two-year grant application and award process and the City has received awards for \$85,000 for 2018-2019 and \$80,000 for 2020-2021.

DISCUSSION

On November 1, 2021 the City received notification that WSOPD has awarded the City \$75,000 in grant funds for 2022-2023: \$37,500 for each year. WSOPD has stipulated that the grant funds be used for the following: Increased compensation for public defense service providers; Reimbursement of training costs for public defense service providers; Investigator and/or expert services; Social worker services to assist public defense attorneys; and Interpreter services for attorney-client interviews and communications. The attached Grant Agreement must be signed and returned to WSOPD by December 30, 2021 to accept the award and receive the funds. The City agrees to utilize the grant funds as stipulated by WSOPD and to submit four written reports to WSOPD as outlined in the agreement.

Past grant awards from WSOPD have allowed the City to translate our public defense forms into six different languages; to provide interpreter resources to public defense attorneys for attorney-client appointments; to contract with a private investigator for public defense cases; to contract with a social services case manager to assist public defense clients in obtaining social service; to reimburse public defense attorneys for training costs for participating in trainings approved by WSOPD and to increase compensation to public defense service providers to cover additional

services implemented due to the transition to virtual court hearings. These grant funds will allow the City to continue providing these services in 2022-2023.

RECOMMENDATION

The Council is being asked to send this item to the consent agenda at the November 22, 2021 Special meeting.

ATTACHMENTS

2022-2023 Grant Agreement

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

<p>1. Grantee City of Tukwila 6200 Southcenter Blvd Tukwila, WA 98188</p>	<p>2. Grantee Representative Cheryl Thompson Executive Assistant 6200 Southcenter Blvd Tukwila, WA 98188</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 Katrin Johnson Managing Attorney Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957</p>
<p>5. Grant Amount \$75,000.00</p>	<p>6. Grant Period January 1, 2022 through December 31, 2023</p>
<p>7. Grant Purpose The Chapter 10.101 RCW city grants are competitive grants for the purpose of improving the quality of public defense services in Washington municipalities. (See Chapter 10.101 RCW.)</p>	
<p>The Office of Public Defense (OPD) and Grantee, as defined above, acknowledge and accept the terms of this Grant Agreement and attachments and have executed this Grant Agreement on the date below to start January 1, 2022 and end December 31, 2023. The rights and obligations of both parties to this Grant are governed by this Grant Agreement and the following other documents incorporated by reference: Special Terms and Conditions of the City Grant Agreement, General Terms and Conditions of City Grant Agreement, and Exhibits A, B, C, and D.</p>	
<p>FOR THE GRANTEE</p> <p>_____</p> <p>Allan Ekberg, Mayor</p> <p>_____</p> <p>Date</p>	<p>FOR OPD</p> <p>_____</p> <p>Larry Jefferson, Director</p> <p>_____</p> <p>Date</p>

SPECIAL TERMS AND CONDITIONS OF THE CITY GRANT AGREEMENT

1. GRANT 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 Grant.

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

2. GRANT AWARD AMOUNT

The Grantee is awarded seventy-five thousand dollars and 00/100 Dollars (\$75,000.00) to be used for the purpose(s) described in the USE OF GRANT FUNDS below. One-half of the award amount shall be disbursed to Grantee in January 2022 for use during calendar year 2022. The remaining one-half shall be disbursed to Grantee in January 2023 for use during calendar year 2023. The disbursement of any grant funds is subject to the availability of funding appropriated to OPD by the Washington State Legislature.

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

- a. Grant funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of state grant funds.
- b. Grant funds cannot be spent on purely city or court administrative functions or billing costs.
- c. Grant funds cannot be used for cost allocation.
- d. Grants funds cannot be used for indigency screening costs.
- e. Grant funds cannot be used for city or court technology systems or administrative equipment.
- f. Grant funds cannot be used for city attorney time, including advice on public defense contracting.

4. USE OF GRANT FUNDS

- a. Grantee agrees to use the grant funds for the following:
 - i. Increased compensation for public defense service providers
 - ii. Reimbursement of training costs for public defense service providers
 - iii. Investigator and/or expert services
 - iv. Social worker services to assist public defense attorneys
 - v. Interpreter services for attorney-client interviews and communications.
- b. Grantee agrees to obtain OPD's written permission before funds are used for any purpose other than those listed in Section 4a above. Permission issued by electronic mail shall be sufficient for purposes of identifying other uses of grant funds not listed in section a.
- c. Grantee agrees to use the first disbursement of funds in calendar year 2022, and the second disbursement of funds in calendar year 2023. If Grantee is unable to use the funds in the year for which the funds are disbursed, the Grantee agrees to notify OPD to determine what action needs to be taken.
- d. Grantee agrees to deposit the grant check within fourteen days of receipt.

5. **OVERSIGHT**

- a. Grantee agrees to submit written reports to OPD. The first report shall be submitted to OPD no later than June 1, 2022 using the template found in Exhibit A. The second report shall be submitted to OPD no later than December 1, 2022 using the template found in Exhibit B. The third report shall be submitted to OPD no later than June 1, 2023 using the template found in Exhibit C. The final report shall be submitted to OPD no later than December 1, 2023 using the template found in Exhibit D. Where indicated, reports must be submitted along with the Grantee City's public defense attorneys' contracts, certifications of compliance, and other required documentation.
- b. Over the duration of the grant term, OPD may conduct site visits for purposes of addressing improvements to public defense and ensuring the use of grant funds for their specified purposes. At OPD's request, Grantee will assist in scheduling such site visits and inviting appropriate attendees such as, but not limited to: public defense attorneys, judicial officers, and city representatives.

6. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Grant, 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 of the City Grant
- General Terms and Conditions of the City Grant

GENERAL TERMS AND CONDITIONS OF THE CITY GRANT AGREEMENT

1. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

2. AMENDMENTS

This Grant 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 Grantee 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 Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of OPD.

5. ATTORNEY'S FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

6. CONFORMANCE

If any provision of this Grant 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 Grant, the Grantee 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 Grant 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 Grantee 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 Grant.

10. LAWS

The Grantee 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 Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part.

12. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of the Grant, 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 Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant. Grantee shall retain such records for a period of six (6) years following the end of the grant 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 Grantee's performance under this Grant 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 Grant. The Grantee shall provide access to its facilities for this purpose.

15. SEVERABILITY

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

16. SUBJECT TO THE AVAILABILITY OF FUNDS

Any full or partial allocation of funds under this Grant is subject to the appropriation of funds by the Washington Legislature to OPD.

17. 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 Grant unless stated to be such in writing.

Exhibit A

Washington State Office of Public Defense
Public Defense Improvement Program
City Grant Report #1

All City grant recipients are required to submit a completed copy of this report, along with corresponding documentation, to the Washington State Office of Public Defense by June 1, 2022.

City: _____

Date Completed: _____

Contact Name: _____

Title: _____

Mailing Address: _____

Phone: _____

Email Address: _____

Section I: Public Defense Expenditures/Budget

1.1 In 2021, the city paid indigent defense expenses as follows:

	City Funds	Chapter 10.101 RCW State Grant Funds	Other Funds
Attorney salaries and benefits, contract and conflict attorney compensation	\$	\$	\$
Investigators, experts, interpreters, social workers, and other professional services	\$	\$	\$
Other public defense expenses	\$	\$	\$
Total	\$	\$	\$

1.2 For 2022, the city has *budgeted* indigent defense expenses as follows:

	City Funds	Chapter 10.101 RCW State Grant Funds	Other Funds
Attorney salaries and benefits, contract and conflict attorney compensation	\$	\$	\$
Investigators, experts, interpreters, social workers, and other professional services	\$	\$	\$
Other public defense expenses	\$	\$	\$
Total	\$	\$	\$

1.3 What amount of the 2022 state grant funds has been spent to date? _____ \$ _____

Section II: Case Assignments

2.1 Provide the following data for the total number of public defense cases assignments in 2021:

Fill in section 2.1(a) if the city has a public defender agency or contracts with a county public defender agency or non-profit public defense firm. Fill in section 2.1(b) for list appointments or contracts with private attorneys.

a. Cities using public defender agencies.

Number of cases assigned to public defender agency (not including conflict counsel): _____

Number of probation violations and other miscellaneous post sentencing hearings assigned: _____

Number of full-time-equivalent public defenders: _____

Average per-attorney caseload, if available: _____

b. Cities using list appointments or contracts with private firms.

Number of cases assigned to public defense attorneys: _____

Number of probation violations and other miscellaneous post sentencing hearings assigned: _____

Number of attorneys with public defense contracts or on court’s appointment list: _____

Section III: Grant Funds

3.1 Permissible Use(s) of Grant Funds (See Section 4 of Grant Agreement <i>Special Terms and Conditions</i>):	
3.2 Description of How Grant Funds Have Been Used to Date:	
3.3 Plans for Utilizing Remaining Funds by End of Calendar Year (If Applicable):	
3.4 Description of Impact State Funds Have Had on Local Public Defense Services:	

Section IV: Attachments and Tables

- 4.1** If the city has public defense contracts, fill out the Table of Public Defense Contracts (*Table I*), and attach a copy of each *current contract* in alphabetical order by attorney name. Failure to provide current contracts could result in an incomplete report.

- 4.2** If the court appoints public defense attorneys from a list, provide the name of each attorney and the compensation paid per case or per hour in the Table of List-Appointed Public Defense Attorneys (*Table II*).

- 4.3** If the City has adopted any new public defense policies, ordinances, or resolutions within the last year, please attach them to this report.

- 4.4** Provide copies of attorneys' 2022 second quarter Certificates of Compliance.

Exhibit B

Washington State Office of Public Defense
Public Defense Improvement Program
City Grant Report #2

All City grant recipients are required to submit a completed copy of this report to the Washington State Office of Public Defense by December 1, 2022. Failure to timely submit this report could delay disbursement of 2023 grant funds.

City:	
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Report Date:	
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Contact – Name/Title:	
Email:	
Phone:	
Address:	

1. As of the date of this report, the city has paid indigent defense expenses as follows in 2022:

	City Funds	Chapter 10.101 RCW State Grant Funds	Other Funds
Attorney salaries and benefits, contract and conflict attorney compensation	\$	\$	\$
Investigators, experts, interpreters, social workers, and other professional services	\$	\$	\$
Other public defense expenses	\$	\$	\$
Total	\$	\$	\$

Will all 2022 grant funds be expended by the end of the calendar year? Yes _____ No _____ Unsure _____

<p>2. Permissible Use(s) of Grant Funds (See Section 4 of Grant Agreement <i>Special Terms and Conditions</i>):</p>	
<p>3. Description of How Grant Funds Have Been Used in 2022:</p>	
<p>4. Plans for 2023 Grant Funds:</p>	
<p>5. Description of Impact State Funds Have Had on Local Public Defense Services</p>	

Exhibit C

Washington State Office of Public Defense
Public Defense Improvement Program
City Grant Report #3

All City grant recipients are required to submit a completed copy of this report, along with all public defense attorneys' 2023 quarterly Certificates of Compliance to the Washington State Office of Public Defense by June 1, 2023.

City:	
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Report Date:	
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Contact – Name/Title:	
Email:	
Phone:	
Address:	

1. For 2023, the city has *budgeted* indigent defense expenses as follows:

	City Funds	Chapter 10.101 RCW State Grant Funds	Other Funds
Attorney salaries and benefits, contract and conflict attorney compensation	\$	\$	\$
Investigators, experts, interpreters, social workers, and other professional services	\$	\$	\$
Other public defense expenses	\$	\$	\$
Total	\$	\$	\$

2. What amount of the 2023 state grant funds has been spent to date? _____ \$ _____

<p>3. Permissible Use(s) of Grant Funds (See Section 4 of Grant Agreement <i>Special Terms and Conditions</i>)</p>	
<p>4. Description of How Grant Funds Have Been Used to Date:</p>	
<p>5. Plans for Utilizing Remaining Funds by End of Calendar Year (If Applicable)</p>	
<p>6. Description of Impact State Funds Have Had on Local Public Defense Services</p>	

Exhibit D

Washington State Office of Public Defense
 Public Defense Improvement Program
 City Grant Report #4

All City grant recipients are required to submit a completed copy of this report to the Washington State Office of Public Defense by December 1, 2023.

City:	
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Report Date:	
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Contact – Name/Title:	
Email:	
Phone:	
Address:	

1. As of the date of this report, the city has paid indigent defense expenses as follows in 2023:

	City Funds	Chapter 10.101 RCW State Grant Funds	Other Funds
Attorney salaries and benefits, contract and conflict attorney compensation	\$	\$	\$
Investigators, experts, interpreters, social workers, and other professional services	\$	\$	\$
Other public defense expenses	\$	\$	\$
Total	\$	\$	\$

Will all 2023 grant funds be expended by the end of the calendar year? Yes _____ No _____ Unsure _____

<p>2. Permissible Use(s) of Grant Funds (See Section 4 of Grant Agreement <i>Special Terms and Conditions</i>):</p>	
<p>3. Description of How Grant Funds Have Been Used in 2023:</p>	
<p>4. Description of Impact State Funds Have Had on Local Public Defense Services</p>	