

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

DATE SUBMITTED: 12/06/2022	PREPARED BY: Whitney Conner
Meeting Date Requested: 12/13/2022	PRESENTED BY: Office of Public Defense
ITEM: (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board Time needed:	
SUBJECT: Presentation of Professional Services Agreement with Exhibit A Investigations	
FISCAL IMPACT: None	
BACKGROUND: One of our currently contracted investigators has an employee who has decided to open his own business as an investigator. This contract is to begin a working relationship with him as a contractor for investigative services.	
RECOMMENDATION: Approve Professional Services Contract with Exhibit A Investigations	
COORDINATION: None	
ATTACHMENTS: (Documents you are submitting to the Board) ASR Resolution Contract	
HANDLING / ROUTING: (Once document is fully executed it will be imported into Document Manager. Please list <u>name(s)</u> of parties that will need a pdf) OPD	

I certify the above information is accurate and complete.

Whitney Conner, Admin. Assistant

FRANKLIN COUNTY RESOLUTION _____

BEFORE THE BOARD OF COMMISSIONERS
OF FRANKLIN COUNTY, WASHINGTON

**EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SHANE MORLAN,
EXHIBIT A INVESTIGATIONS, TO PROVIDE PUBLIC DEFENSE INVESTIGATIONS SERVICES
IN THE VARIOUS COURTS IN AND FOR FRANKLIN COUNTY.**

WHEREAS, Franklin County is obligated by law to provide indigent defense services in Franklin County District and Superior Courts (including the Juvenile Division); and

WHEREAS, from time to time it is necessary to provide and fund defense investigation services to support such indigent defense services; and

WHEREAS, it was determined that it appears to be in the best interests of Franklin County to continue to contract with Exhibit A Investigations for investigative services; and

NOW THEREFORE, BE IT RESOLVED THAT the professional services agreement with Shane Morlan, Exhibit A Investigations be approved and executed as presented.

DATED this day of, 20

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON

Chair

Chair Pro Tem

Member

ATTEST:

Clerk of the Board

CONTRACT: FCINV12312024EAI

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE INVESTIGATIVE SERVICES TO INDIGENT PERSONS CHARGED WITH CRIMES IN FRANKLIN COUNTY COURTS

CONTRACT SUMMARY			
Contract Type	Investigator		
Contract Number	FCINV12312024EAI	Contract Holder	Shane Morlan
Compensation	See Exhibit B Attached	Effective Dates	01/01/23-12/31/24

THIS AGREEMENT is entered into by and between **Shane Morlan, dba Exhibit A Investigations**, investigator, Washington State Investigator's License #4731 ("Investigator"), dba Casey Investigations, and **FRANKLIN COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Franklin County Superior Court and Franklin County District Court ("Courts").

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. The County has the legal responsibility to provide legal investigative services to support the publicly-provided legal defense of indigent persons charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Investigator is licensed in the State of Washington to engage in the business of providing private investigative services, has direct experience in investigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide such services to indigent persons subject to criminal charges in the State and local Courts of County.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Investigator hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 01, 2023**, and shall continue thereafter through and including **December 31, 2024**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **INVESTIGATOR'S OFFICE LOCATION.**

a. Investigator presently and regularly maintains (or has access to) an office adequate and appropriate for the business of providing private investigative services at **6 E Alder Street, Ste. 418, Walla Walla, Washington 99362**. Investigator current local office telephone and fax numbers are **(509) 855-8271 and none**, respectively; and Investigator's current office/work e-mail address is shane@exainvestigations.com .

b. Throughout the entire term of this Agreement, Investigator shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Investigator may relocate Investigator's office to another location within the greater Tri-Cities, Washington, and/or Investigator may change Investigator's telephone/fax

number to another greater Tri-Cities local telephone/fax number, and/or Investigator may change Investigator's e-mail address, provided that Investigator must provide immediate written notice of such change(s) to the Franklin County Public Defense Manager ("PDM") .

c. The County prefers that Investigator locate and maintain Investigator's office in a commercial/professional building. However, regardless of the location Investigator decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Investigator and persons whom Investigator is assigned to assist under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from such persons Investigator is assigned to assist hereunder.

3. **INVESTIGATOR'S QUALIFICATIONS.** Investigator acknowledges and agrees that the County has an obligation to provide competent and effective legal defense services to indigent persons subject to criminal proceedings in Courts. Investigator shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by investigators engaged in providing investigative services for persons accused of crimes in the state of Washington. Investigator acknowledges and agrees that Investigator has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Investigator is assigned to assist under this Agreement.

a. As of the date of this Agreement, Investigator represents and warrants that Investigator is unconditionally licensed to provide private investigative services within the state of Washington; has had at least one (1) year of direct experience in providing investigation services criminal defense or criminal prosecution matters; has not been a party to an agreement to provide criminal defense-related investigative services that was terminated due to Investigator's conduct, errors, or omissions; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior as an investigator that would negatively reflect on Investigator's duty and ability to effectively and competently render services hereunder; and does not have any complaints or lawsuits filed and/or pending against him/her relating to, or arising from, Investigator's past conduct or behavior as an investigator

(i) This Agreement will be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 12 below in the event that Investigator's license to provide investigative services in Washington is revoked or otherwise limited or restricted in any manner.

(ii) Investigator shall notify the County and the PDM within three (3) business days of any event specified in paragraph 3.a.(i) above occurs.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Investigator acknowledges and agrees that the County may conduct criminal history background Check(s) on Investigator. Investigator acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a noncomplying or otherwise unsatisfactory criminal history background check report.

c. During each calendar year of the term of this Agreement, Investigator shall be required to pursue and participate in such training, education, and/or other applicable actions required to maintain Investigator's license to provide investigative services within Washington in full force and effect; and Investigator shall provide the PDM with written proof and confirmation that such requirements have been met no later than by December 31st of each calendar year.

d. Investigator represents and warrants that, throughout the entire term of this Agreement, Investigator's client caseload on matters outside of this Agreement; Investigator's schedule; and Investigator's office resources, equipment, and support staff will allow Investigator to competently undertake and effectively perform all services required under this Agreement. Investigator represents and warrants that Investigator's client caseload and schedule outside this Agreement will not interfere with Investigator's ability to timely and efficiently perform such services under this Agreement.

4. **OTHER INVESTIGATIVE AGREEMENTS.** On or about the date of this Agreement, the County contemplates entering into separate and independent investigative services agreements with other licensed investigators to provide investigative services to persons accused of crimes in the Courts. Investigator agrees to fully cooperate and coordinate with such other investigators, the Courts, and the PDM, to establish a process to effectuate the efficient and equitable distribution of clients and cases requiring investigative services. The PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE ASSIGNMENTS.** During the term of this Agreement, Investigator agrees to and shall accept assignments from the PDM to provide investigative services indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Courts in which publicly provided legal defense is furnished or required by law. For each case assigned hereunder, Investigator shall provide investigative services as further described in "Exhibit A" to this Agreement. Specifically, Investigator shall provide criminal defense investigative services of the same quality as Investor provides to private clients. Optionally, whether in conjunction with an assigned case or as a separate matter, Investigator may serve subpoenas on behalf of indigent defense attorneys contracted by or employed by the County to provide public indigent defense services. **If Investigator desires to be considered for subpoena service assignments, then Investigator shall furnish to the County, through their PDM, with a written statement stating the intent to accept such assignments at the rate provided in "Exhibit B" to this Agreement, and providing a reliable means to receive any subpoenas that need to be served.**

Investigator shall not accept assignments in any other manner that as described in this section. Specifically, Investigator shall not accept "indigent defense" or "appointed" case assignments directly from indigent defense attorneys, as the indigent defense attorneys have no authority whatsoever to directly assign or appoint an investigator to any case.

a. Individual case assignment for cases other than Class A felonies, persistent offender cases, or homicide cases, shall be made by the PDM utilizing the following procedure:

(i) Upon determining that a case needs an investigator assigned, the indigent defense attorney of record will contact the PDM, request an investigator, advise of the nature of the investigation, and request a particular investigative cost expenditure limit.

(ii) Upon approval of the request for an investigator, the PDM will assign the case to an investigator from the list of approved investigators (including Investigator described herein) with due attention (at the PDM's sole and absolute discretion) to efficiency, cost-savings, matching of skill-sets to case types and attorney stated preference of investigator. While the PDM will make reasonable efforts to maintain the distribution equity of investigative case assignments, nothing in this agreement shall be interpreted as guaranteeing any level of equitable distribution of assignments.

b. Once an investigator has been assigned to a case, the PDM will provide written notice of the assignment to both the investigator and indigent defense attorney of record. Investigator shall not commence any work until written notice of assignment has been received. Such written notice will contain an expenditure limit which shall constitute the maximum compensation and cost reimbursement payable to Investigator on the particular case unless additional expenditures are requested as provided in paragraph 9(d)(iv).

c. Individual case assignments for Class A felonies, persistent offender cases, and homicide cases, shall be made by the PDM in consultation with the indigent defense attorney of record.

d. Individual subpoena service assignments or "stand-alone" subpoena service (i.e., service of subpoenas separate from investigative services on a case) will be made by the PDM utilizing the following procedure:

(i) Upon determining that subpoenas need to be served, the indigent defense attorney of record will contact the PDM and request approval to serve such subpoenas.

(ii) Upon approval of the request, the PDM will assign the service of the subpoenas to a server from a list of approved subpoena servers on a rotating basis. **Investigator may elect not to be on this list. As stated above, this agreement does not obligate Investigator to accept "stand-alone" subpoena service assignments.**

(ii) Once the subpoena service has been assigned to a particular investigator, both the investigator and the indigent defense attorney of record will receive written notification of the assignment from the PDM, which notice shall constitute authorization for the investigator to proceed.

e. Service of subpoenas in conjunction with and as assigned investigation does not need prior approval or authorization. However, compensation is limited to the amount state in Exhibit B to this Agreement.

6. CONTINUED SERVICES.

a. Investigator shall have a duty to timely and fully complete all cases assigned to Investigator under this Agreement. Without limitation in that regard, Investigator shall continue to provide investigative services for those persons whom Investigator was assigned to assist and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Investigator's obligation to continue providing post-termination services shall not in any way entitle Investigator to receive any additional compensation beyond the maximum investigative cost expenditure limit expressly specified in the written notice from the PDM authorizing Investigator's assignment to the case.

b. Investigator will be assigned to no new cases under this Agreement during the thirty (30) day period prior to its expiration date specified in paragraph 1 above if Investigator provides written notice to the County at least sixty (60) days prior to such termination date of Investigator's desire and intent to not pursue contracting with the County again to provide investigative services in the Courts after such expiration date. Investigator may belatedly provide such written notice at any time within said sixty (60) day time period, but the assignment of new

cases to Investigator will not stop until thirty (30) days after the date such notice has been received by the County.

7. **CLIENT ELIGIBILITY.** The Courts (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for assistance by Investigator under this Agreement. Investigator is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided assistance. However, if Investigator is appointed to provide services to a person and subsequently discovers that such person may not be eligible to receive publicly-provided assistance under applicable laws, rules and standards, Investigator, if able to do so within the bounds of ethical rules and professional standards applicable to investigators, shall promptly provide the indigent defense attorney(s) representing the person with such information.

8. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Investigator shall not be required to accept, and Investigator shall decline to accept, an assignment under this Agreement if the particular assignment would create a true and bona fide conflict of interest for Investigator or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to investigators in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Investigator receiving an assignment under this Agreement (or in the event Investigator's continued involvement in a pending assigned case would cause or constitute an actual violation of any such ethical or professional standards), Investigator shall immediately make the indigent defense attorney(s) representing the affected indigent person aware of such development for purposes of the attorney(s) taking immediate action to pursue the assignment of another investigator.

9. **COMPENSATION AND REIMBURSEMENT.**

a. As full and exclusive compensation for Investigator's performance and rendering of independent professional investigative services hereunder, Investigator shall be compensated as provided in "**Exhibit B**".

b. Payment of such compensation is based on time expended on the case by Investigator only. Time expended by other persons (including, without limitation, Investigator's support staff or associate investigators) on a case at Investigator's request or direction shall be part of Investigator's business overhead and shall not be billable to the County. All billing shall be submitted to Franklin County OPD within 60 days of services rendered. If investigator fails to do so within this invoices may be denied.

c. Investigator acknowledges and agrees that Investigator shall not be entitled to claim receive any reimbursement/payment from the County for any business or office-related overhead costs or expenses incurred by Investigator during the course of rendering services under this Agreement including, without limitation, costs and expenses associated with Investigator's office, office staff, office equipment/facilities, and/or other office-related resources). The County recognizes, however, that in certain circumstances the need may arise for Investigator in incur certain types of out-of-pocket expenses directly related to an indigent person's case such as costs of out-of-area travel, meals and lodging.

(i) Investigator shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Investigator shall not incur any such expense nor shall Investigator be entitled to be reimbursed for any such expense unless such expense has been pre-approved as necessary and reasonable by the PDM in accordance with applicable rules, procedures, and standards. Such authorization shall state

and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonable possible to state and provide a specific dollar amount for a particular requested expenditure, such authorization may nevertheless provide approval for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Investigator for any approved expenditures and costs pertaining to case-related out-of-area travel, meals, and lodging, any reimbursement to Investigator for such expenditures and costs shall not exceed the amounts that are set forth in the Federal General Services Administration ("GSA") reimbursement schedule existing for the locality (if applicable) and period of time when the costs are accrued.

(ii) Without limiting or expanding the preceding provisions of the paragraph 9, Investigator shall be reimbursed only for Investigator's vehicle mileage outside of the Tri-Cities (i.e., outside of the city limits of the Cities of Kennewick, Richland, West Richland and Pasco) accrued while directly engaged in investigations under this Agreement. The rate of such reimbursement shall be equivalent to the rate published by the GSA for the locality (if applicable) and period of time when the mileage is accrued. Such vehicle mileage shall be reimbursed only one time to Investigator, and Investigator shall not attempt to seek duplicative or excessive reimbursement for mileage accrued while simultaneously rendering services on more than one case (e.g., if Investigator accrues 10 miles to travel to a particular location to interview witnesses involved in two separate cases assigned to Investigator hereunder, Investigator shall only be reimbursed for that 10 miles, and not for 20 miles by attempting to claim reimbursement of 10 miles for each case). For such reimbursable case assignment travel, mileage shall be calculated beginning from the Franklin County Courthouse in Pasco to the location where the investigative services are actually rendered (e.g., witness's residence) utilizing and based on the most direct route over public roadways.

d. As a precondition to Investigator being paid the above-mentioned compensation and reimbursements for costs and expenses hereunder, Investigator shall submit a "Claim for Compensation" in such form as is prescribed by the PDM, including with such submission an invoice that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Investigator on the case and that further describes and details the particular actions taken by Investigator on such case that correspond to such expended and billed hours including the date when such actions were taken (exercising appropriate discretion to protect client confidentiality given that such documents are matters of public record unless sealed by the court at the request of the defense attorney representing the client).

(i) Investigator's administrative time expended to prepare, submit, and process Claims for Compensation shall not be billable to the County.

(ii) All Claims for Compensation under this Agreement may be subject to the PDM's review and approval for payment.

(iii) Investigator shall timely submit such Claims for Compensation within sixty (60) days of the date on this Investigator expended time for which compensation is sought, and the County shall have the right to deny payment of any Claim for Compensation that is not timely and properly submitted within said requisite sixty (60) day period or that is not properly itemized and billed in 1/10 hour intervals as required herein.

(iv) The cumulative sum of compensation and reimbursements being claimed shall be limited to the unclaimed expenditure limit stated in the written notice of assignment

unless authorization for additional expenditure is requested and granted **prior to** providing the additional services that incur such additional expenditure. Such request for authorization for additional expenditure shall be in writing and shall be directed to the PDM by email to opd@franklincounty.gov or delivered to the PDM's office. Such a request shall contain the following information:

- (a) The court case number and name,
- (b) The initial expenditure limit,
- (c) How much of the expenditure limit has been expended and whether it has been billed,
- (d) What investigation has been completed,
- (e) What investigation remains to be done, and
- (f) The requested amount of the authorization for additional expenditure.

(v) Investigator should expect processing time for requests for authorization for additional expenditures of 2-3 business days. It is Investigator's responsibility to plan investigations and the submission of requests for authorization for additional expenditure in a manner that takes into account this anticipated processing lead time.

(vi) In situations of bona fide emergency, requests for authorization for additional expenditures may be submitted after additional services have been provided. However, the amount of services provided shall be limited to that amount which is essential to address the emergency, and a request for authorization for additional expenditure shall be submitted within 2 business days detailing and specifically describing the circumstances of the emergency. For purposes of this paragraph, the term "emergency" shall be defined as any situation where critically necessary investigative work, beyond what has already been authorized, must be completed within such a short timeframe that it is not possible to obtain authorization from the PDM in advance and the inability to complete such investigative work is reasonable likely to prejudice the rights of the indigent defendant whose criminal case Investigator is assigned to provide investigative services for.

(vii) If Investigator or Investigator's staff wish to make billing inquiries, such inquiries shall be made by email directed to such email address as the PDM designates for such purpose. Investigator should expect such emailed inquiries to be responded to within 3 business days. Repeated telephone contact with the PDM or the PDM's staff, for the sole purpose of making billing inquiries, shall constitute a breach of this Agreement.

e. Claims for Compensation may be submitted throughout any given month. However, Claims for Compensation will only be processed on a weekly basis prior to Thursday each week ("Cutoff Day"). In order to facilitate the processing of claims during those two days of the month, Investigator shall, by 5:00 pm no less than two business days prior to each Cutoff Day, provide, via email to such email address as is designated by the PDM, a Billing Summary, which shall clearly and concisely set out the following as to each Claim for Compensation being submitted that the Investigator wants to be processed on the particular Cutoff Day: case name, case number, date submitted, and total amount claimed. Properly submitted Claims for Compensation that are

also properly referenced and included in an appropriate and duly-submitted Billing Summary will be paid approximately 2 weeks post submission. And provided further that all Claims for Compensation shall be accompanied by a numbered invoice itemizing Investigator's activities per the claim. Failure to provide a Billing Summary shall constitute cause to delay processing of a Claim for Compensation until a summary is received, and may result in a delay in excess of 30 days before the claim is paid.

f. The above-stated compensation to Investigator will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective May 31, 2015, the above referenced compensation to Investigator also would terminate as of such date, and Investigator would be entitled to receive any further compensation from the County; provided that, Investigator would be entitled to receive any then-accrued and unpaid compensation for services rendered hereunder prior to such termination date; and further provided that Investigator may be entitled to receive compensation for continuing post-termination services provided pursuant to paragraph 6.a. above.

10. **INDEMNIFICATION AND HOLD HARMLESS.** Investigator agrees to and shall fully indemnify the County and their elected/appointed representatives, officers, employees, and agents; and hold the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Investigator's (or any person, employee, agent, contractor, or entity acting for or on behalf of Investigator or at Investigator's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of investigative services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Investigator hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Investigator's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Investigator waives, with respect to the County only, any immunity that would otherwise be available to Investigator under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

11. **INSURANCE.**

a. Investigator shall obtain and maintain, at Investigator's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Investigator is an employer, Investigator shall obtain and maintain, at Investigator's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Courts, and the County's elected/appointed

representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 1.a shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Investigator shall continuously maintain the insurance coverage required by this paragraph 11.a. throughout the entire term of this Agreement and throughout any other longer time period during which Investigator is obligated to continue performing services and duties hereunder.

(b) Investigator shall obtain and maintain, at Investigator's sole cost and expense, a policy of professional liability or errors and omissions insurance suitable for Investigator's profession, in an amount of not less than \$1,000,000.00 per claim nor less than \$2,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) acting for or on behalf of Investigator in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Investigator (and/or such additional insureds) during the course of performing services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Investigator shall continuously maintain the professional liability insurance coverage required by this paragraph 11.b. throughout the entire term of this Agreement, throughout any other longer time period during which Investigator is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Investigator has fully completed all services and duties required hereunder.

c. Contemporaneously with Investigator's execution of this Agreement, Investigator shall provide the County and their designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 11, and Investigator shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

12. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, the County may elect to terminate this Agreement in the event Investigator fails for whatever reason to comply with any provision of this Agreement after giving Investigator ten (10)

business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Investigator's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period.

b. In addition to the foregoing provisions regarding termination, either Investigator or the County may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Investigator's obligation and duty to accept and complete cases during the last thirty (30) calendar days of said ninety (90) day notice period.

13. **INDEPENDENT CONTRACTOR.** Investigator fully understands, acknowledges, and agrees that Investigator shall not be an agent, representative, or employee of the County or the Courts for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Investigator, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Investigator's duties, responsibilities and obligations imposed under this Agreement, Investigator shall have sole and absolute discretion using Investigator's best professional legal judgment to determine the manner and means of providing the investigative services required under this Agreement; and neither the County, the PDM, nor the Courts shall have any authority or duty to directly control the actual performance of Investigator's services hereunder.

14. **NON-ASSIGNMENT; AND MILITARY LEAVE.** Investigator shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Investigator assign, subcontract out, or otherwise delegate any of Investigator's rights, responsibilities, or obligations under this Agreement. In the event Investigator is called up for active military duty or for direct civilian support of active military operations, Investigator shall provide the County and the PDM with written notice of such event within five (5) business days of Investigator being called up so that the PDM and Investigator can coordinate and arrange for an appropriate substitute to handle Investigator's duties under this Agreement while Investigator is on military leave and any reasonable back-to-civilian-life transition time requested by Investigator upon return. Investigator shall receive no compensation under this Agreement while on leave or during any such transition time.

15. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified Investigator to replace and succeed Investigator in representing indigent persons in the Courts.

16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

17. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time,

unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

18. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

19. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Investigator's heirs, legal/personal representatives, successors, and assigns.

20. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

21. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

22. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Investigator shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Investigator shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the notice of arbitration, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Franklin County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Franklin County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable Investigators' fees, costs and expenses from the other party.

23. **NOTICES.**

a. Any notices required or permitted to be given by Investigator to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address or mailed to the County's PDM at his below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

Larry Zeigler, Public Defense Manager
Franklin County Office of Public Defense
1016 N 4th Ave, Pasco, WA 99301
OPD@franklincountywa.gov

b. Any notices required or permitted to be given by the County to Investigator under this Agreement shall be in writing and shall be personally delivered to Investigator or mailed to Investigator via certified U.S. mail, postage prepaid, at Investigator's office address specified and set forth in paragraph 2.a above; or emailed to Investigator at his/her business email address set forth in paragraph 2.a.

c. Any notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the above provisions of this paragraph for the giving of notice.

24. **LEGAL COMPLIANCE.** Investigator agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Investigator's pursuit and performance of activities under this Agreement. Without limitation in that regard, Investigator shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Investigator shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or its contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.


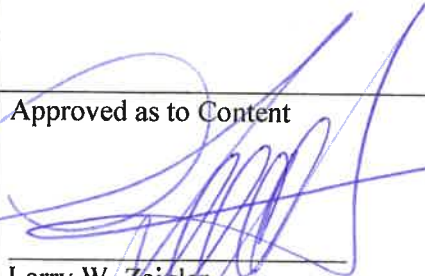
 Shane Morlan Exhibit A Investigation License # 4731	12/2/22 Date	Chair	Date
		Chair Pro Tem	
Approved as to Content		Member	
 Larry W. Zeigler Public Defense Administrator	12/6/22 Date	Constituting the Board of Commissioners for Franklin County, WA	

EXHIBIT A – SCOPE OF SERVICES

INVESTIGATOR shall provide, as assigned and approved on a case by case basis, professional quality criminal defense investigation services to defense attorneys assigned to represent indigent defendants with criminal cases pending in Franklin County Superior Court (including its Juvenile Division) and Franklin County District Court.

The services to be provided under this agreement may include, but are not limited to:

- Attempting to locate witnesses
- Interviewing witnesses
- Interviewing victims
- Researching the criminal history or backgrounds of witnesses or victims
- Conducting surveillance of witnesses
- Diagramming crime scenes or other locations associated with a criminal case
- Photographing items, locations, persons or anything else relevant to defense of a criminal case
- Cataloging and tracking evidence (only permitted in cases with large amounts of evidence)
- Serving subpoenas

INVESTIGATOR may provide, as assigned, and only if CONTRACTOR elects to do so, subpoena service. Provided, however, that the maximum compensation for such subpoena services shall be as stated in Exhibit B – Compensation.

Absent **specific written instruction to do so from FCOPD**, CONTRACTOR shall not be compensated for any of the following services:

- (e) "Evaluating" any legal document including search warrants
- (f) Reviewing police reports or any other discovery for purposes of evaluating their sufficiency or for the purposes of determining what, if any, investigation needs to be done
- (g) Spending time at any hearing or trial except when appearing for the purpose of testifying as a witness
- (h) Appearing at or waiting during any criminal pre-trial docket

Furthermore, INVESTIGATOR shall not arrange for or bill for, the services of third-party experts since these experts are to be coordinated through the attorney of record with authorization from FCOPD. Experts include, but are not limited to:

- Polygraph examiners
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- DNA, fingerprint, firearms experts
 - Experts on the identification of substances including controlled substances
 - Handwriting or document analysis experts
 - Arson experts
-

EXHIBIT B – COMPENSATION

Service	Rate	Comments
Investigator time	\$66 per hour	Must be billed in increments of 1/10 th of an hour together with date and description of services rendered.
Mileage	Published US GSA rate	Only for investigations outside of Tri-Cities area. Starts from respective County Courthouse (ie Benton County Kennewick Justice center for Benton County cases, Franklin County Courthouse for Franklin County cases).
Standard locate	\$20 per locate	For locating addresses using subscription database services
Background investigation	\$50 each	Only for background investigations that involve more than a WATCH inquiry. WATCH inquiry cases are compensated on a reimbursement basis only
Transcription	\$5/page	Only upon specific advance written authorization
Subpoena service	\$25 each service	Contractors are not required to accept subpoenas for service. However, if they do serve subpoenas, this is the maximum compensation for doing so.
Video and photo DVD	\$35 each, \$10 for extra copies	With menu, ready for trial format.
Photo CD	\$10 each	
Photocopies	\$0.13 per page	