

Subject: RES #660 – Revision to Indigent Defense Services Agreement with Pierce County 2017-18 Proposed Council Action: Adopt Resolution #660.	Dept. Origin: City Clerk's Office Prepared by: Jennifer Robertson, City Attorney For Agenda of: August 15, 2017 Exhibits: RES #660 & Agreement Concurred by Mayor: _____ Approved by City Planner: _____ Approved as to form by City Atty: <u>JSR/8-1-17</u> Approved by Finance Director: _____ Approved by Department Head: _____
--	---

INFORMATION / BACKGROUND

The City is required to provide indigent defense attorney services to defendants charged by the City with a crime that carries the penalty of incarceration. The City has contracted with Pierce County Department of Assigned Counsel for many years to provide these indigent defense services to the City. The current contract was for 2017 and was approved by the City Council by passage of Resolution No. 642 on December 20, 2016. After passage of the Agreement provided by the Department of Defense Service, the Department asked the City to make addition minor revisions. The revised contract is largely the same as the last agreement that was authorized in December 2016 with the exception of the following:

- The Agreement is extended to the end of 2018.
- The 2018 fee is substantially increased from \$25,689 for 2017 to \$36,670 for 2018. This increase is due to the City sending an increasing number of defendants for defense services. Arraignments have doubled in the past 6 months and the City may need to add a second monthly court day to handle the load. Currently the City is paying \$25,689/year for 0.25 of an attorney. The increase case load will result in the City utilizing 0.33 of an attorney and an annual payment of \$36,670 for 2018.

The Agreement expires at the end of 2018, but may be extended for additional one year periods by agreement of the parties. However, the City can terminate for any reason on 60-days' notice. The agreement also provides indemnification of the City by the County. The financial details of the Agreement are outlined below.

FISCAL CONSIDERATION

The City is obligated to pay the County \$25,689 for calendar year 2017 and \$36,670 for 2018. The fees are paid in 50% installments on June 30th and December 31st.

In addition to the “set fees”, if an “outside attorney” is needed due to a conflict of interest by the Department of Assigned Counsel (i.e. indigent co-defendants), the City will be required to reimburse the costs of that outside counsel. There is one annual \$1,000 credit for outside counsel already built into the Agreement which will be applied by the County prior to any over-charge being made to the City. Additionally, if a judge rules that an indigent defendant can hire expert witnesses or other professional service provider, then the City will be responsible for paying those expenses as well.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION / MOTION

Approve Resolution #660.

MOTION: I move to approve Resolution #660 authorizing the Mayor to execute a contract with Pierce County for indigent defense services through 2018.

RESOLUTION NO. 660

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF RUSTON, WASHINGTON, AUTHORIZING
THE MAYOR TO EXECUTE AN UPDATED
AGREEMENT WITH PIERCE COUNTY FOR THE
PURPOSE OF PROVIDING PUBLIC DEFENSE
SERVICES TO RUSTON DEFENDANTS WHO ARE
INDIGENT.**

WHEREAS, in accordance with Chapter 39.34 RCW, the “Interlocal Cooperation Act”, the City is authorized to contract with other governmental agencies to provide services that the City is authorized to perform; and

WHEREAS, the City is required by Court Rule and state law to provide legal representation to indigent defendants charged in Ruston Municipal Court with violations of City ordinances punishable by loss of liberty; and

WHEREAS, the City does not have the personnel to provide said services; and

WHEREAS, Pierce County, through its Department of Assigned Counsel, has the capability to provide the City with mandated indigent legal defense services; and

WHEREAS, the City has adopted standards for public defense service under Chapter 9.26 of the Ruston Municipal Code; and

WHEREAS, Pierce County Department of Assigned Counsel has adopted standards generally consistent with the City’s code and State law and has agreed to meet the applicable State standards in providing services to Ruston; and

WHEREAS, the City has had a contract with the Department of Assigned Counsel for a number of years and this Agreement is updated every year or two to reflect current usage and costs; and

WHEREAS, on December 20, 2016 by passage of Resolution No. 642, the City Council authorized the extension of the Agreement as proposed by the County; and

WHEREAS, following the execution of the Agreement, the County requested additional revisions which the City agreed to and were authorized on March 7, 2017 by passage of Resolution No. 648; and

WHEREAS, following the execution of the updated Agreement, the County again requested some minor revisions. Since additional revisions were requested, the City suggested that the updated Agreement extend through 2018. These revisions are contained in the attached revised Agreement; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Agreement for Public Defense Services which is attached to this Resolution as Exhibit "1";

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON,
WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the 2017-18 Agreement for Public Defense Services between the City of Ruston and Pierce County in substantially the form attached hereto as Exhibit "1".

Section 2. Posting on Website Required. The Clerk is directed to post a copy of this Agreement, once fully executed, on the City's website.

RESOLVED this 15th day of August, 2017.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: 08/03/2017
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 660 _____

Attachment “1”

2017 Revised Agreement for Indigent Defense Service

Between

City of Ruston and Pierce County

**AGREEMENT FOR
PUBLIC DEFENSE SERVICES
BETWEEN THE CITY OF RUSTON
AND
PIERCE COUNTY**

1. Parties

This Agreement is entered into between the City of Ruston, Washington, a municipal corporation, herein referred to as the “City,” and Pierce County, herein referred to as the “County.”

2. General Recitals.

- a. The City is required by Court Rule and state law to provide legal representation to indigent defendants charged in Ruston Municipal Court with violations of City ordinances punishable by loss of liberty. The City does not have the personnel to provide said services.
- b. The County, through its Department of Assigned Counsel (herein referred to as “Department”), has the capability to provide the City with mandated indigent legal defense services.
- c. The County agrees to provide the City legal services for indigent defendants upon the terms and conditions set forth herein.

3. Scope of Services.

- a. All indigent defendants charged in the Ruston Municipal Court with Ordinance violations punishable by loss of liberty and who qualify for appointed counsel shall be referred to the Department. The Department shall be provided with the name, address, and telephone number, if available, for each person referred to the Department. The Department shall provide legal representation for each of those defendants from arraignment through trial, sentencing, post trial review and any appeals. This shall include interviewing defendants in custody as needed, and providing 24-hour telephone access to an attorney for those seeking “critical stage” advice during the course of a police investigation.
- b. The scope of services shall also include the representation of indigent defendants assigned to appointed counsel prior to the effective date of this Agreement and for whom the previously assigned counsel has withdrawn as counsel of record.

- c. The scope of services shall also include standby representation to all in-custody defendants.
- d. The scope of services performed under this Agreement by the Department will comply with all standards as listed under Washington Supreme Court CrRLJ 3.1 and CrR 3.1, the Washington State Bar Association Standards for Indigent Defense (July 2011), and the Rules of Professional Conduct.

4. Compensation for Services.

The City shall pay the Department for services rendered pursuant to this agreement the sum of \$25,689.00 for calendar year 2017, and \$36,670 for calendar year 2018. This payment consists of the payment for indigent defense services and \$1,000 each year to be used for investigations and for retaining conflict counsel pursuant to RPC 1.8. Payments shall be made according to the schedule in subsection "a" below and may be adjusted from time-to-time in accordance with subsection "b" below.

- a. For 2017, the annual amount of \$25,689.00 shall be made in installments as follows: on or before June 30th, 2017, the City shall pay \$12,844.50 and on or before December 31st, 2017, the City shall pay \$12,844.50. For 2018, the annual amount of \$36,670 shall be made with an installment of \$18,335 made on or before June 30th, 2018 and an installment of \$18,335 made on or before December 31st. If the Agreement is terminated in accordance with Section 13 "Termination" below, the Department shall take reasonable steps to withdraw from any pending cases, the amount due shall be prorated, and the City shall not be responsible to compensate the Department for any services provided after such withdrawal.
- b. The parties may review the Agreement as often as quarterly to determine whether the rate of compensation is adequate to cover the costs actually incurred by the Department in covering service to the city. If at any such review it is determined that the rate of compensation is either inadequate or in excess of actual service provided to the City, then the parties shall attempt to negotiate in good faith a reasonable adjustment to the compensation rate. The rate of compensation is based upon the projected case-weighted number of cases currently anticipated for calendar year 2017, which is equivalent to .25 caseload of a full time equivalent (FTE) County Attorney. The parties further agree that should another source of funding become available to meet the costs contemplated herein, the total cost of any applicable portion thereof may be revised downward accordingly or may be eliminated entirely pursuant to mutual agreement of the parties. Nothing in this subsection requires the parties to change the rate of compensation during the term of this Agreement.

5. Conflict of Interest – Outside Counsel.

All indigent defendants determined to have a conflict of interest by the Department under RPC 1.8 will be represented by outside conflict counsel. The County will be responsible for securing counsel for “conflict defendants” but will not bear the costs for furnishing conflict counsel.

In the event that the retention of above services requires any additional funds for such outside conflict counsel (over and above the \$1,000 provided in Section 4), the City shall be responsible for reimbursing that expense for conflict counsel at the County-contract rate. All payments by the City for those conflict counsel services (over and above the \$1,000 in Section 4) shall remain separate from the contract compensation to the Department as set forth in this Agreement.

6. Applicant Screening.

Determination of indigence for eligibility for appointed counsel under this Agreement shall be determined by an independent screening process established by the City pursuant to RCW 10.101.020(3). Should the Department determine a defendant is not eligible for assigned counsel during the course of representation, the Department shall advise the Court with notice provided to the City.

7. Associated Counsel.

Any licensed attorney associated with or employed by the Department shall have the authority to perform the services called for herein, and the Department, at its own expense, may employ associate counsel to assist it. The Department and all associated attorneys (whether Department employees or independent contractors) hired pursuant to this section shall be law school graduates, admitted to practice pursuant to the rules of the Supreme Court of the State of Washington and licensed by the Washington State Bar Association. No legal intern shall perform the services called for herein.

8. Indemnification.

The County shall indemnify, defend and hold the City, its elected officials, officers, employees, and agents harmless from any and all claims whatsoever arising out of the Department's performance of obligations pursuant to the Agreement, including claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Department, its agents, associates or employees, and occurring without the fault or neglect of the City..

This section shall survive termination or expiration of this Agreement.

9. Discovery Period.

The City shall provide to the Department one copy of all discoverable material concerning such assigned case except in matters related to sentencing. Such material shall include, where relevant, a copy of the abstract of the defendant's driving record.

10. Additional Costs.

In addition to the compensation outlined in Section 4 above, the City shall provide to the Department additional compensation as outlined in this Section.

- a. If, in the opinion of the Department, an expert witness, or other professional service provider, is needed in order to adequately prepare a defense for an indigent person, or to adequately represent that defendant at trial, the Department shall discuss the matter with the City Prosecutor. Such discussion shall comply with existing Rules of Professional Conduct. After said discussion, if the Department still believes such an expert is necessary, then the Department shall petition the court for the appointment of said expert. The Court shall then determine the need for the expert, the rate of compensation to be paid, and the amount that shall be paid by the Defendant and/or the City. The rate of compensation paid to the Department under Section 4 does not include an amount for experts. When the Court appoints an expert witness, the City shall reimburse the Department for the actual cost of such expert as established by the Court. To allow for City budgeting, any time the Court appoints an expert under this Agreement, the Department shall promptly notify the City, including providing the City with the Court-established rate for the expert witness compensation. The City shall pay expert witness expenses within 60 days of receipt of an invoice from the Department.
- b. If the Department appeals a case, the actual costs of the transcript shall be borne by the City, provided, however, the Department must first advise the City which portions of the transcript are necessary to present the appeal. If the City disagrees then the determination shall be made by the Municipal Court Judge.

11. No Assignments.

Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent

12. Term of Agreement.

- a. This Agreement shall commence on January 1, 2017, and shall be in force and effect through December 31, 2018, said date being the termination date unless the Agreement is terminated earlier pursuant to provisions hereof. Services performed in 2017 prior to the date each party executed this Agreement are hereby ratified.
- b. This Agreement may be extended for additional one-year terms upon the mutual agreement of the parties.

- c. The Agreement will terminate at the end of the Term as outlined in subsection "a" above unless the parties agree to an extension. The parties may adjust the compensation prior to such extension as agreed in writing.

13. Termination.

- a. For Cause: Either party may terminate this Agreement in the event the other fails to perform its obligations as described in this Agreement, and if such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.
- b. Without Cause: Either party may terminate this Agreement without cause by giving the other party sixty (60) days written notice prior to the date of the proposed termination.
- c. Future Non-Allocation of Funds: Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for performance under this contract for any future fiscal period, the Department will not be obligated to provide services after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to Pierce County in the event this provision applies.

14. Modification.

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and County.

15. Entire Agreement.

The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City or County, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement

16. Compliance with Laws.

The Department agrees to comply with all federal, state, and municipal laws, rules, and regulations, including the Rules of Professional Conduct and Court Rules that are now effective or in the future become applicable to the Department and its employees or contractors engaged in provision of services covered by this Agreement.

17. Amendments.

No modification or amendment of the provisions of this Agreement shall be in effect unless in writing and signed by authorized representatives of the parties hereto.

18. Written Notice.

All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

City of Ruston Attn: City Clerk 5117 North Winnifred Street Ruston, WA 98407	Pierce County Attn: Michael Kawamura Department of Assigned Counsel 949 Market St. Suite 334 Tacoma, WA 98402
---	---

19. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates listed below.

CITY OF RUSTON

PIERCE COUNTY

Bruce Hopkins
Mayor of Ruston

Name: _____
Director Of Assigned Counsel

DATE: _____

DATE: _____

Attest:

Ruston City Clerk

Budget and Finance

Approved As To Form:



Jennifer Robertson
Ruston City Attorney

Deputy Prosecuting Attorney