

**JEFFERSON COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA REQUEST**

**TO:** Board of County Commissioners  
Philip Morley, County Administrator  
**FROM:** Leslie Locke, Deputy Clerk of the Board  
**DATE:** June 24, 2013  
**SUBJECT:** AGREEMENT, Amendment No. 2 re: Public Defense Agreement, State v. Pierce 09-1-00058-7; In the Amount of \$7,717 per Month, Except During Sentencing Phase Amount is \$4,630.20, not to Exceed \$61,736; Jefferson County Administrator; Jefferson Associated Counsel

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**STATEMENT OF ISSUE:**

Board of County Commissioner approval is requested for Amendment No. 2 to the Public Defense Agreement with Jefferson Associated Counsel for indigent defense to provide for the defense of Michael Pierce in State v. Pierce (case 09-1-00058-7).

**ANALYSIS:**

On February 22, 2011 the County entered into an agreement with Jefferson Associated Counsel (JAC) to provide indigent defense services. On January 4, 2013, the Jefferson County Superior Court appointed JAC to represent Mr. Pierce as an indigent defendant in State v. Pierce, 09-1-00058-7. On January 22, 2013 the Board approved Amendment No. 1 to extend the Public Defense Agreement through June 30, 2013.

Amendment No. 2 extends representation through August 31, 2013 or end of trial, whichever is first; and continues compensation in the amount of \$7,717 per month, except during the sentencing phase where compensation is set at 60% (\$4,630.20).

**FISCAL IMPACT:**

The cost for this case is not currently in the 2013 County Budget, and will require a future budget amendment. The costs may be paid from excess general fund revenues, if any, or pursuant to Jefferson County Resolution No. 048-12, extraordinary justice costs may be paid as a loan for repayment over time so as to avoid a concentrated single-year impact on the general fund. Costs for this extraordinary case will be addressed through a subsequent quarterly budget appropriation, likely in the budget extension for the 3<sup>rd</sup> quarter of 2013, along with other trial expenses.

**RECOMMENDATION:**

Approve AGREEMENT, Amendment No. 2 re: Public Defense Agreement, State v. Pierce 09-1-00058-7; In the Amount of \$7,717 per Month, Except During Sentencing Phase Amount is \$4,630.20, not to Exceed \$61,736; Jefferson County Administrator; Jefferson Associated Counsel

**REVIEWED BY:**

  
Philip Morley, County Administrator

  
Date

**AMENDMENT No.2 To The PUBLIC DEFENSE AGREEMENT**  
**By and Between**  
**JEFFERSON ASSOCIATED COUNSEL**  
**And**  
**JEFFERSON COUNTY**

**Purpose:** The purpose of this amendment is to adjust the contract price for 2013 based on the increased workload required to represent the defendant, Mr. Pierce, in State v. Pierce, 09-1-00058-7, which involves gravely serious offenses.

**WHEREAS**, on February 22, 2011, Jefferson County, a municipal corporation (herein known as "County") entered into an agreement ("original agreement") with Jefferson Associated Counsel, a non-profit corporation (herein known as "JAC") to provide criminal defense and related services for indigent defendants and other persons facing commitment or incarceration in Jefferson County; and

**WHEREAS**, the Scope of Services of the original agreement specifically excludes cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10,95,040, or which involves a gravely serious offense, including, but not limited to, murder, sexually violent predator which might necessitate a disproportionately large expenditure of attorney time for costs, but Paragraph T of Exhibit A Scope of Services of the original agreement allows for the County to negotiate with JAC regarding the compensation for representing the defendant in such a case; and

**WHEREAS**, RCW 10.101.005 mandates effective legal representation of indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process; and

**WHEREAS**, on January 4, 2013, Jefferson County Superior Court appointed JAC to represent Mr. Pierce as an indigent defendant in State v. Pierce, 09-1-00058-7, which includes two counts of Aggravated Murder and other serious violent felonies; and

**WHEREAS**, in order to provide effective representation for Mr. Pierce, additional funding is appropriate to provide JAC the resources to represent Mr. Pierce; and

**WHEREAS**, on January 22, 2013, the County adopted Amendment No. 1 providing additional funding for providing representation for Mr. Pierce through June 30, 2013, said representation consistent with Standards 3.2, 3.4 and 3.6 of Washington State Supreme Court Order No. 25700-A-1004 and Order No. 25700-A-1008 regarding cases involving serious offenses; and

**WHEREAS**, jury selection for the case will commence in July 2013, with the rest of the case ensuing, and an extension of funding and representation for Mr. Pierce is therefore necessary; and

AMENDMENT NO. 2 TO PUBLIC DEFENDER AGREEMENT By and Between  
Jefferson Associated Counsel and Jefferson County

**WHEREAS**, the County and JAC have negotiated funding terms for providing continued representation for Mr. Pierce consistent with Standards 3.2, 3.4 and 3.6 of Washington State Supreme Court Order No. 25700-A-1004 and Order No. 25700-A-1008 regarding cases involving serious offenses;

**NOW, THEREFORE, the parties agree as follows:**

1. Paragraph U. in Exhibit A Scope of Services is amended to read, as follows:

U. Defense In State v. Pierce, 09-1-00058-7. Pursuant to Paragraph T above regarding cases which involve a gravely serious offense and pursuant to Court appointment, JAC shall provide defense for Mr. Pierce in State v. Pierce, 09-1-00058-7 through August 31, 2013, or through termination of defense by JAC, whichever is earlier. The date for "termination of defense" by JAC in State v. Pierce, 09-1-00058-7 is defined for the purposes of this Amendment to the original agreement as the earliest of the following: 1) sentencing of Mr. Pierce based upon entry of a guilty plea by him in the court record, 2) completion of a trial in Superior Court, including, but not limited to, resolution of the criminal charges by a jury or, if convicted, sentencing of Mr. Pierce, or 3) the date when JAC's representation of Mr. Pierce ends. This case shall not be counted against JAC's contracted caseload points under the original agreement.

At a minimum, defense provided by JAC shall include Mr. Richard Davies dedicated as first chair attorney at half time, a second chair attorney position at quarter time, the equivalent of half time position combined between support and in-house investigator services, and attendant office support/supplies. Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate. Should the case continue in Superior Court past August 31, 2013, the parties will negotiate and execute an appropriate amendment to extend this agreement, including an appropriate level of compensation. Defense in State v. Pierce provided by JAC on or after January 4, 2013, is hereby ratified and considered to be work performed pursuant to this Agreement.

Any additional outside investigative services approved by the Court in State v. Pierce, 09-1-00058-7 shall be paid separately from the terms of this agreement.

2. A new Sub-Paragraph A.5. is added to Exhibit B: Compensation, as follows:

5. Compensation for Defense In State v. Pierce, 09-1-00058-7. The County shall pay JAC \$ 7,717 per month for defense in State v. Pierce to provide the services and support listed in Paragraph U of Exhibit A of this Agreement, except that should there be a sentencing phase of the case following a conviction or plea agreement, the County shall pay JAC \$4,630.20 per month for the sentencing phase, prorated by the number of days of the sentencing phase. Said compensation shall start January 1,

AMENDMENT NO. 2 TO PUBLIC DEFENDER AGREEMENT By and Between  
Jefferson Associated Counsel and Jefferson County

2013 and continue through August 31, 2013 or termination of defense for State v. Pierce, whichever comes first. The total compensation for this eight-month period shall not exceed \$61,736.

Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate.

Invoicing for defense in State v. Pierce shall be pursuant to Paragraph C, below.

3. Except as set forth in this Amendment No. 2, all other terms of the original February 22, 2011, Public Defense Agreement as amended by the January 22, 2013, Amendment No. 1 remain in full force and effect.

**APPROVED** and signed this \_\_\_\_\_ day of June, 2013.

**JEFFERSON COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
John Austin, Chair

\_\_\_\_\_  
Date

**JEFFERSON ASSOCIATED COUNSEL**

  
\_\_\_\_\_  
Richard Davies

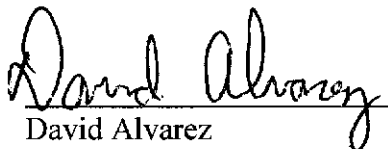
6/19/13  
\_\_\_\_\_  
Date

**Attest:**

\_\_\_\_\_  
Carolyn Avery  
Deputy Clerk of the Board

\_\_\_\_\_  
Date

**Approved as to Legal Sufficiency Only:**

  
\_\_\_\_\_  
David Alvarez  
Deputy Prosecuting Attorney

6/18/13  
\_\_\_\_\_  
Date

1/14/13  
cc: And.  
PA.

ROBIN - JAC

**AMENDMENT No.1 To The PUBLIC DEFENSE AGREEMENT  
By and Between  
JEFFERSON ASSOCIATED COUNSEL  
And  
JEFFERSON COUNTY**

**Purpose:** The purpose of this amendment is to adjust the contract price for 2013 based on the increased workload required to represent the defendant, Mr. Pierce, in State v. Pierce, 09-1-00058-7, which involves gravely serious offenses.

**WHEREAS**, on February 22, 2011, Jefferson County, a municipal corporation (herein known as "County") entered into an agreement ("original agreement") with Jefferson Associated Counsel, a non-profit corporation (herein known as "JAC") to provide criminal defense and related services for indigent defendants and other persons facing commitment or incarceration in Jefferson County; and

**WHEREAS**, the Scope of Services of the original agreement specifically excludes cases in which the State seeks a special sentencing procedure pursuant to RCW 9.94A.030(33); 9.94A.570, or RCW 10,95,040, or which involves a gravely serious offense, including, but not limited to, murder, sexually violent predator which might necessitate a disproportionately large expenditure of attorney time for costs, but Paragraph T of Exhibit A Scope of Services of the original agreement allows for the County to negotiate with JAC regarding the compensation for representing the defendant in such a case; and

**WHEREAS**, RCW 10.101.005 mandates effective legal representation of indigent persons consistent with the constitutional requirements of fairness, equal protection, and due process; and

**WHEREAS**, on January 4, 2013, Jefferson County Superior Court appointed JAC to represent Mr. Pierce as an indigent defendant in State v. Pierce, 09-1-00058-7, which includes two counts of Aggravated Murder and other serious violent felonies; and

**WHEREAS**, in order to provide effective representation for Mr. Pierce, additional funding is appropriate to provide JAC the resources to represent Mr. Pierce; and

**WHEREAS**, the County and JAC have negotiated funding terms for providing representation for Mr. Pierce consistent with Standards 3.2, 3.4 and 3.6 of Washington State Supreme Court Order No. 25700-A-1004 and Order No. 25700-A-1008 regarding cases involving serious offenses;

AMENDMENT NO. 1 TO PUBLIC DEFENDER AGREEMENT By and Between  
Jefferson Associated Counsel and Jefferson County

**NOW, THEREFORE, the parties agree as follows:**

1. A new Paragraph U. is added to Exhibit A Scope of Services of the original agreement, as follows:

U. Defense In State v. Pierce, 09-1-00058-7. Pursuant to Paragraph T above regarding cases which involve a gravely serious offense and pursuant to Court appointment, JAC shall provide defense for Mr. Pierce in State v. Pierce, 09-1-00058-7 through June 30, 2013, or through termination of defense by JAC, whichever is earlier. The date for "termination of defense" by JAC in State v. Pierce, 09-1-00058-7 is defined for the purposes of this Amendment to the original agreement as the earliest of the following: 1) sentencing of Mr. Pierce based upon entry of a guilty plea by him in the court record, 2) completion of a trial in Superior Court, including, but not limited to, resolution of the criminal charges by a jury or, if convicted, sentencing of Mr. Pierce, or 3) the date when JAC's representation of Mr. Pierce ends. This case shall not be counted against JAC's contracted caseload points under the original agreement.

At a minimum, defense provided by JAC shall include Mr. Richard Davies dedicated as first chair attorney at half time, a second chair attorney position at quarter time, the equivalent of half time position combined between support and in-house investigator services, and attendant office support/supplies. Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate. Should the case continue in Superior Court past June 30, 2013, the parties will negotiate and execute an appropriate amendment to extend this agreement, including an appropriate level of compensation. Defense in State v. Pierce provided by JAC on or after January 4, 2013, is hereby ratified and considered to be work performed pursuant to this Agreement.

Any additional outside investigative services approved by the Court in State v. Pierce, 09-1-00058-7 shall be paid separately from the terms of this agreement.

2. A new Sub-Paragraph A.5. is added to Exhibit B: Compensation, as follows:

5. Compensation for Defense In State v. Pierce, 09-1-00058-7. The County shall pay JAC \$ 7,717 per month for defense in State v. Pierce to provide the services and support listed in Paragraph U of Exhibit A of this Agreement. Said compensation shall start January 1, 2013 and continue through June 30, 2013 or termination of defense for State v. Pierce, whichever comes first. The total compensation for this six-month period shall not exceed \$46,302.

Should the hours necessary for defense in State v. Pierce change significantly, either party may seek additional amendment(s) to reflect the changed workload in an amount adjusted at a prorated rate.

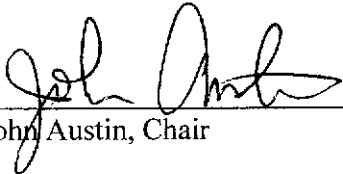
AMENDMENT NO. 1 TO PUBLIC DEFENDER AGREEMENT By and Between  
Jefferson Associated Counsel and Jefferson County

Invoicing for defense in State v. Pierce shall be pursuant to Paragraph C, below.

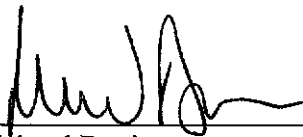
3. Except as set forth in this Amendment, all other terms of the original February 22, 2011, Public Defense Agreement remain in full force and effect.

APPROVED and signed this 22 day of January, 2013.

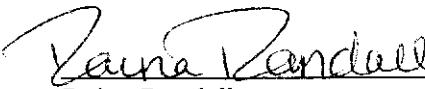
JEFFERSON COUNTY  
BOARD OF COMMISSIONERS

  
John Austin, Chair      1/22/13  
Date

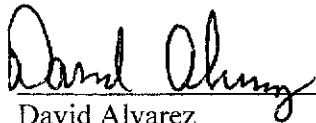
JEFFERSON ASSOCIATED COUNSEL

  
Richard Davies      1/16/13  
Date

Attest:

  
Raina Randall      1/22/13  
Deputy Clerk of the Board      Date

Approved as to Legal Sufficiency Only:

  
David Alvarez      1/16/13  
Deputy Prosecuting Attorney      Date