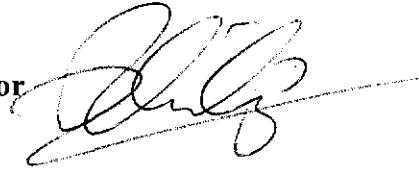


**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners
FROM: Philip Morley, County Administrator
DATE: August 26, 2013



RE: Agreement, Amendment No. 3 re: Public Defense Agreement, State v. Pierce 09-1-00058-7; in the Amount of \$7,717 per month, Except Prior to 60 Days Before Jury Selection and Sentencing Phase Amount is \$4,630.20, not to Exceed \$38,585; Jefferson County Administrator; Jefferson Associated Counsel

STATEMENT OF ISSUE: Board of County Commissioner approval is requested for Amendment No. 3 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: A new trial in State v. Pierce 09-1-00058-7 has been set for Kitsap County Superior Court later this year. Amendment No. 3 to the Public Defense Agreement between Jefferson County and Jefferson Associated Counsel (JAC) extends defense representation for Mr. Pierce through December 31, 2013 or the end of trial, whichever is first.

In 2011 Jefferson County entered into an agreement with Jefferson Associated Counsel, a non-profit corporation, to provide criminal defense and related services for indigent defendants and other persons facing commitment or incarceration in Jefferson County. The original agreement specifically excludes cases in which the State seeks a special sentencing procedure or which involves a gravely serious offense, including, but not limited to, murder or sexually violent predator which might necessitate a disproportionately large expenditure of attorney time for costs. However, the original agreement allows for the County to negotiate with JAC additional compensation for representing the defendant in such a case.

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. On January 22, 2013, the County adopted Amendment No. 1 funding representation for Mr. Pierce by JAC through June 30, 2013. Because the trial was delayed, on June 24, 2013, the County adopted Amendment No. 2, extending funding for representation for Mr. Pierce by JAC through as late as August 31, 2013.

On July 29, 2013, the Jefferson County Superior Court issued a Memorandum Opinion and Order Declaring Mistrial and Changing Venue, setting the venue for a new trial in Kitsap County. The first hearing in Kitsap County Superior Court is scheduled for September 20, 2013. An available trial date in Kitsap County may be months in the future.

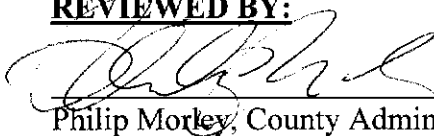
Amendment No. 3 includes funding terms for providing continued representation for Mr. Pierce for the trial in Kitsap County Superior Court through December 31, 2013 or the end of trial, whichever is first.


Under the terms of Amendment No. 3, beginning 60 days prior to the commencement of jury selection and continuing during the trial through a verdict or plea agreement, the County will compensate JAC \$ 7,717 per month for defense in State v. Pierce. For any period earlier than sixty days prior to jury selection, and also during a possible sentencing phase, the County shall compensate JAC \$4,630.20 per month.

FISCAL IMPACT: Under Amendment No. 3, the total compensation for August 1 – December 31, 2013 shall not exceed \$38,585. For the entire year of 2013 (Amendments 1, 2 & 3 combined), compensation for defense of Mr. Pierce could possibly total \$92,604. 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 unanticipated general fund revenues, 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, along with other trial expenses, will be addressed through a subsequent quarterly budget appropriation.

RECOMMENDATION: Approve Amendment No. 3 re: Public Defense Agreement, State v. Pierce 09-1-00058-7, in the amount of \$7,717 per month, except prior to 60 days before jury selection and during sentencing phase amount is \$4,630.20, the total for Amendment No. 3 not to exceed \$38,585; Jefferson County Administrator; Jefferson Associated Counsel.

REVIEWED BY:


Philip Morley, County Administrator


Date

AMENDMENT No. 3 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, JAC will, in consideration for the payment amounts outlined in Amendments #1, #2 and #3, continue to provide effective representation for Mr. Pierce; and

WHEREAS, on January 22, 2013, the County adopted Amendment No. 1 providing additional funding for providing representation for Mr. Pierce by JAC 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

**AMENDMENT NO. 3 TO PUBLIC DEFENDER AGREEMENT By and Between
Jefferson Associated Counsel and Jefferson County**

WHEREAS, on June 24, 2013, the County adopted Amendment No. 2, providing continued funding for on-going representation for Mr. Pierce by JAC for the duration of the trial through August 31, 2013; and

WHEREAS, on July 29, 2013, the Jefferson County Superior Court issued a Memorandum Opinion and Order Declaring Mistrial and Changing Venue, setting the venue for a new trial in Kitsap County; and

WHEREAS, the first hearing in Kitsap County Superior Court is scheduled for September 20, 2013, with the trial dates yet to be set; and

WHEREAS, an available trial date in Kitsap County may be months in the future and Mr. Pierce has waived his right to a speedy trial through at least the first quarter of 2014, meaning all parties understand it may be some time before prosecution and defense have to again focus on preparing for trial; and

WHEREAS, the County and JAC have negotiated funding terms for providing continued representation for Mr. Pierce for the trial in Kitsap County Superior Court, 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 further 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 December 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.

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Jefferson Associated Counsel and Jefferson County

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. For representation continuing from August 1, 2013 forward, the parties recognize there may be periods of reduced activity and hours and agree to a prorated rate as described specifically in Sub-Paragraph A.5. of Exhibit B: Compensation.

Should the case continue in Superior Court past December 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. For the period of January 1, 2013 through July 31, 2013, 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 July 31, 2013. The total compensation for this seven-month period shall not exceed \$54,019.

For the period of August 1, 2013 through December 31, 2013, beginning 60 days prior to the commencement of jury selection and continuing during the trial through a verdict or plea agreement, 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 for any period earlier than sixty days prior to the commencement of jury selection, and during a sentencing phase of the case, should there be one following a conviction or plea agreement, the County shall pay JAC \$4,630.20 per month, prorated by the number of days. Said compensation shall start August 1, 2013 and continue through December 31, 2013 or termination of defense for State v. Pierce, whichever comes first. The total compensation for this five-month period shall not exceed \$38,585.

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.

AMENDMENT NO. 3 TO PUBLIC DEFENDER AGREEMENT By and Between
Jefferson Associated Counsel and Jefferson County

3. Except as set forth in this Amendment No. 3, all other terms of the original February 22, 2011, Public Defense Agreement as amended by the January 22, 2013, Amendment No. 1 and the June 24, 2013, Amendment No. 2 remain in full force and effect.

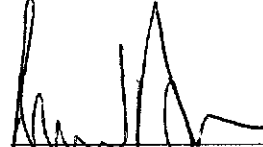
APPROVED and signed this _____ day of August, 2013.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

John Austin, Chair

Date

JEFFERSON ASSOCIATED COUNSEL



Richard Davies

8/21/13

Date

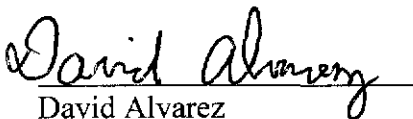
Attest:

Carolyn Avery

Deputy Clerk of the Board

Date

Approved as to Legal Sufficiency Only:



David Alvarez

Deputy Prosecuting Attorney

8/20/13

Date