


**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Philip Morley, County Administrator 

DATE: July 7, 2014

RE: Agreement, Amendment No. 5 to the Public Defense Agreement, in the Amount of up to \$42,057.65 plus reimbursed costs for defense in State v. Pierce in 2014; Jefferson County Administrator; Jefferson Associated Counsel

STATEMENT OF ISSUE: Board of County Commissioner approval is requested for Amendment No. 5 to the Public Defense Agreement with Jefferson Associated Counsel. This will provide for continued indigent defense of Michael Pierce in State v. Pierce (case 09-1-00058-7) in 2014.

ANALYSIS: A new trial in State v. Pierce 09-1-00058-7 has been set to start in Kitsap County Superior Court in October. Amendment No. 4 to the Public Defense Agreement between Jefferson County and Jefferson Associated Counsel extends defense representation for Mr. Pierce through May 31, 2014 or the end of trial, whichever came first, so representation for Mr. Pierce must now be extended. Because the trial venue is Kitsap County, provisions are made to reimburse for eligible mileage, lodging and meal costs for the defense team pursuant to County policies in the adopted Jefferson County Personnel Administration Manual.

FISCAL IMPACT: Compensation in 2014 for defense in State v. Pierce shall not exceed \$42,057.65 plus eligible reimbursed mileage, lodging and meal costs. The criminal charge in this case is considered a gravely serious offense, and the actual costs for this case will be addressed through a supplemental budget request after the third and/or fourth quarter of 2014.

RECOMMENDATION: Approve Amendment No. 5 to the Public Defense Agreement as proposed.

REVIEWED BY:


Philip Morley, County Administrator

6/27/14
Date

AMENDMENT NO. 5 TO THE PUBLIC DEFENSE AGREEMENT

**By and Between
JEFFERSON ASSOCIATED COUNSEL And
JEFFERSON COUNTY**

Purpose: The purpose of this Amendment No. 5 is to adjust the contract price through December 31, 2014, for increased workload required to represent the defendant, Michael 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, #3, #4 and #5, 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

WHEREAS, on June 24, 2013, the County adopted Amendment No. 2, providing continued funding for on-going representation for Mr. Pierce by JAC 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, on August 26, 2013, the County adopted Amendment No. 3, providing continued funding for on-going representation for Mr. Pierce by JAC through November 30, 2013; and

WHEREAS, on January 27, 2014 the County adopted Amendment No. 4, to extend for 2014 and 2015 the public defense Agreement with Jefferson Associated Counsel, and to adjust the contract price for increased workload required to continue representing through June 30, 2014, the defendant, Michael Pierce, in State v. Pierce, 09-1-00058-7, as the trial was scheduled by Kitsap County Superior Court for early 2014; and

WHEREAS, in March, 2014, that trial of Mr. Pierce ended in a mistrial as affirmed in a written court order on April 18, 2014; and

WHEREAS, a new trial has been scheduled by Kitsap County Superior Court to start in October, 2014; 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, 2014, 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. 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, 2014, the parties will negotiate and execute an appropriate amendment to extend representation, 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. Paragraph A.5 in Exhibit B Compensation is further amended to read 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 months of August and December, 2013, , the County shall pay JAC \$ 4,630.20 per month for defense in State v. Pierce. For the months of September, October and November, 2013, the County shall pay JAC \$1,929.25 per month for defense in State v. Pierce. The total compensation for this five-month period shall not exceed \$15,047.75.

For the months of January through May, 2014, the County shall pay JAC \$7,717 per month plus eligible mileage, lodging and meal costs 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 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. Eligible mileage, lodging and meal costs shall be documented and paid at rates pursuant to Appendix D – Travel & Transportation Policy & Procedures of the adopted Jefferson County Personnel Administration Manual. As such,

- Mileage may be claimed for all travel in the conduct of this case from JAC offices to and within Kitsap County (54.9 miles one-way from JAC offices to Kitsap County Superior Court), consistent with Section 13.0 and Section 15.2 of the County's Travel & Transportation Policy & Procedures. Mileage shall be reimbursed at the standard county rate of \$0.56 per mile;
- Reasonable lodging costs shall be reimbursed at cost, not to exceed \$83.00 per night per room;

- Actual meal costs are eligible for reimbursement when eaten while on Travel Status, consistent with Section 8.0 of the County's Travel & Transportation Policy & Procedures. Reimbursement for actual costs shall not to exceed the following rates: \$11.00 for Breakfast, \$14.00 for Lunch and \$21 for Dinner. Reimbursement for alcoholic beverages is prohibited. Breakfast and/or Dinner typically are eligible for reimbursement only when part of an overnight stay, or when work hours extend more than three (3) hours beyond a normal work day;
- Requests for reimbursement for mileage, lodging and meal expenses shall be documented and submitted using the appropriate Travel Expense Claim Forms pursuant to Section 10.0 and 11.0 of the County's Travel & Transportation Policy & Procedures.

Said compensation shall start January 1, 2014, and continue through May 31, 2014, or termination of defense for State v. Pierce, whichever comes first. The total compensation for this four-month period shall not exceed \$38,585 plus reimbursed mileage, lodging and meal costs.

For the months of June and August, 2014, the County shall pay JAC \$4,630.20 per month for defense in State v. Pierce. For the month of July, 2014, the County shall pay JAC \$1,929.25 for defense in State v. Pierce. For the months of September through December, 2014, the County shall pay JAC \$7,717 per month plus eligible mileage, lodging and meal costs for defense in State v. Pierce, except that for any period 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 June 1, 2014, and continue through December 31, 2014, or termination for defense for State v. Pierce, whichever comes first. The total compensation for this seven-month period shall not exceed \$42,057.65, plus eligible mileage, lodging and meal costs for defense in State v. Pierce to provide the services and support listed in Paragraph U of Exhibit A of this Agreement. Eligible mileage, lodging and meal costs shall be documented and paid as set forth above.

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.

