

**RESOLUTION NO. 516**

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

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

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

WHEREAS, the Town 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 Town with mandated indigent legal defense services; and

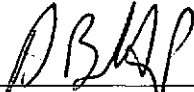
WHEREAS, the Town Council finds it in the public interest to authorize the Mayor to execute the proposed Agreement for Public Defense Services which is attached to this Resolution as Exhibit “A”;

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

Section 1. The Mayor is hereby authorized to execute the Agreement for Public Defense Services between the Town of Ruston and Pierce County. The authorized Agreement is attached hereto as Exhibit “A”.

RESOLVED this 3<sup>rd</sup> day of July, 2012.

APPROVED:

  
\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Judy Grams, Town Clerk

FILED WITH THE TOWN CLERK: \_\_\_\_\_  
PASSED BY THE TOWN COUNCIL: \_\_\_\_\_  
RESOLUTION NO.: 516 \_\_\_\_\_

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

1. Parties

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

2. General Recitals.

- a. The Town is required by Court Rule and state law to provide legal representation to indigent defendants charged in Ruston Municipal Court with violations of Town ordinances punishable by loss of liberty. The Town 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 Town with mandated indigent legal defense services.
- c. The County agrees to provide the Town 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.

4. Compensation for Services.

The Town shall pay the Department the sum of \$17,758 each year for indigent defense services. This payment consists of \$16,758 for legal services and \$1,000 be used for expert services, 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. The Town shall pay to the County for services rendered under this Agreement the maximum annual amount of \$17,758. The payment shall be made in installments as follows: on or before June 30<sup>th</sup> the Town shall pay \$8,879 and on or before December 31<sup>st</sup> the Town shall pay \$8,879. If the Agreement is terminated in accordance with Section 13 "Termination" below, the Department shall take reasonable steps to withdraw from any pending cases and the Town 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 Town. 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 Town, then the parties shall attempt to negotiate a reasonable adjustment to the compensation rate. 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 the RPC's 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 Town shall be responsible for reimbursing that expense for conflict counsel at the County-contract rate. All payments by the Town 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 Town. 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 Town.

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 Town, 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 Town.

This section shall survive termination or expiration of this Agreement.

9. Discovery Period.

The Town 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 Town shall provide to the Department additional compensation as outlined in this Section.

- a. If, in the opinion of the Department, an expert witness 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 Town Prosecutor. 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 Town. 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 Town shall reimburse the Department for the actual cost of such expert as established by the Court. To allow for Town budgeting, any time the Court appoints an expert under this Agreement, the Department shall promptly notify the Town, including providing the Town with the Court-established rate for the expert witness compensation. The Town 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 Town, provided, however, the Department must first advise the Town which portions of the transcript are necessary to present the appeal. If the Town 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, 2012, and shall be in force and effect through December 31, 2012, said date being the termination date unless the Agreement is terminated earlier pursuant to provisions hereof. Services performed in 2012 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.

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 Town 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 Town 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.

Town of Ruston Attn: Town 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
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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.

TOWN OF RUSTON

PIERCE COUNTY

  
\_\_\_\_\_  
Bruce Hopkins  
Mayor Of Ruston

\_\_\_\_\_  
Name: \_\_\_\_\_  
Director Of Assigned Counsel

DATE: 7-3-2012

DATE: \_\_\_\_\_

Attest:

  
\_\_\_\_\_  
Ruston Town Clerk

\_\_\_\_\_  
Budget and Finance

Approved As To Form:

\_\_\_\_\_  
Ruston Town Attorney

\_\_\_\_\_  
Deputy Prosecuting Attorney