

# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R – 11 – 23 – 63

### A RESOLUTION AUTHORIZING THE CITY OF CLAYTON TO ENTER INTO A CONTRACT WITH THE MONTGOMERY COUNTY PUBLIC DEFENDER OFFICE AND MONTGOMERY COUNTY PUBLIC DEFENDER COMMISSION

WHEREAS, R.C. 120.14(E) permits the City to enter into an annual contractual arrangement with the Montgomery County Public Defender to provide legal representation for indigent persons charged with a violation of a municipal ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City is hereby authorized to enter into a contract for 2024 with the Montgomery County Public Defender Office and Montgomery County Public Defender Commission upon such terms and conditions as are substantially similar to those appended hereto as *Exhibit A* and made a part hereof.

ADOPTED BY COUNCIL ON NOVEMBER 16, 2023.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:

  
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Register Herald

Date of publication

November 23, 2023

  
CLERK

## **AGREEMENT FOR INDIGENT DEFENSE SERVICES IN MUNICIPAL COURT**

This Agreement is entered into by and between the Montgomery County Public Defender Commission and the Montgomery County Public Defender Office, with a mailing address of 117 South Main Street, 4<sup>th</sup> Floor, Dayton, Ohio 45422, (hereinafter referred to as the "COUNTY"), and the city of Clayton, with a mailing address of P.O. Box 280, 6996 Taywood Road, Clayton, Ohio 45315-0280 (hereinafter referred to as the "CITY").

WHEREAS, the CITY of Clayton recognizes its responsibility under the laws of the State of Ohio and of the United States of America to provide legal counsel to indigent persons charged with a violation of a City ordinance for which the penalty or any possible adjudication includes the potential loss of liberty, and

WHEREAS, Montgomery County has adopted a program whereby a Public Defender Commission has been formed and has appointed a Public Defender and if there is a conflict, then the court will appoint assigned counsel attorneys.

WHEREAS, the COUNTY Public Defender Commission pursuant to Ohio Revised Code §120.14 and §120.16 may enter into a contract with a municipal corporation whereby the County provides legal representation to indigent adults charged with a violation of an ordinance of a municipal corporation for which the penalty or possible adjudication includes the potential loss of liberty and under which the municipal corporation shall pay the COUNTY for these services.

WHEREAS, the contracts must contain terms in conformance with Ohio Administrative Code 120-1-09 and the parties must follow the Ohio Public Defender Commission standards and guidelines and the COUNTY Maximum Fee Schedule for Appointed Counsel, in order for the COUNTY to obtain reimbursement for indigent defense costs pursuant to Ohio Revised Code §120.18, §120.33 and §120.35, and pay the CITY its appropriate share if such has not already been calculated into the formula to determine compensation, and

NOW THEREFORE, the parties do mutually agree to bind themselves as follows:

### **1. REPRESENTATION**

- 1.1 The COUNTY, on behalf of the CITY, agrees to provide legal representation in Vandalia Municipal Court on or after the commencement date and during the term of this agreement in cases where the defendant is indigent and charged with the commission of an offense or act which is in violation of a CITY ordinance and for which the penalty or any possible adjudication includes the potential loss of liberty.

- 1.2 Indigency shall be determined in accordance with the standards of indigency and other rules and guidelines established by the Ohio Public Defender Commission and the State Public Defender, pursuant to Ohio Revised Code §120.03 and Ohio Administrative Code §120-1-03.

In addition to indigency determination, all rules, standards and guidelines issued by the Office of the Ohio Public Defender and Ohio Public Defender Commission shall be followed.

- 1.3 A major purpose of this agreement is to enable the COUNTY and CITY to obtain partial reimbursement of its costs to have the County Public Defender or appointed counsel in conflict situations, provide legal representation in Vandalia Municipal Court for indigent adults charged with any violation of CITY ordinance for which the penalty or any possible adjudication includes the potential loss of liberty. Any question regarding terms or performance of this agreement should be resolved in favor of obtaining this result.

## 2. COMPENSATION

- 2.1 CITY agrees to pay the COUNTY as follows:

- A. The City will pay the Public Defender the sum of \$168.49 (one hundred sixty-eight dollars and forty-nine cents) per case for which the Public Defender provides representation;
- B. A case shall be counted as any matter in which the City initially charges an indigent person under a City ordinance for which jail is a possible sentence and for which the Public Defender provides representation past the initial arraignment. Matters that have multiple City ordinance charges under one case number shall be counted as one case. Where a case has both ordinance charges and Ohio Revised Code charges, the municipality will be billed for the case whenever the ordinance is the highest degree charge or ties for the highest degree. Matters that are pled and sentenced at the initial arraignment shall be counted as .25 (one quarter) case. Matters that are reopened as the result of revocations, show causes, capiases, or for other reasons shall be counted as .20 (one fifth) case. There shall be no charge for the appeal of a case;
- C. The Public Defender shall issue a monthly invoice for the prior month's services and the City shall pay said invoice within 30 (thirty) days of receipt;

D. In addition to the payments for the Public Defender services, in conflict situations, where assigned counsel is appointed, the COUNTY will bill the CITY monthly for the municipal code violation cases the COUNTY paid in any particular month, based on qualifying attorney vouchers, less the amount the COUNTY is reimbursed by the State under the then current reimbursement rate. The COUNTY will issue an invoice to the CITY and the CITY will have 30 days to pay from date of receipt.

2.2 Reimbursement by the municipal corporation for representation of such indigent persons, whether by contractual amount or a fee schedule, shall not exceed the fee schedule in effect and adopted by the Montgomery County Commissioners.

### **3. DURATION OF CONTRACT AND TERMINATION**

3.1 The term of this agreement shall be for one year, January 1, 2024, to December 31, 2024 (OPTIONAL: This contract may be renewed for additional one-year terms upon proper resolution of each entity agreeing to the one-year extension and proper appropriation of funding for the new year. Copies of the resolutions are to be sent to the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215).

3.2 If COUNTY or CITY shall fail to fulfill in a reasonable, timely and proper manner its obligations under this agreement or if either party shall substantially violate any of the covenants, agreements or stipulations of this agreement, then the aggrieved party shall hereupon have the right to terminate this agreement by giving written notice to the other party of such termination and specifying an effective date thereof at least thirty (30) days before the effective date of said termination. Termination by either party shall not constitute a waiver of any other right or remedy it may have in law or in equity for breach of this agreement by the other party.

3.3 Written notice shall be considered furnished when it is sent by Certified Mail; return receipt requested or in hand delivered.

3.4 This agreement is automatically canceled, without requirement of notice, if any payment required by Section 2.1 of this agreement is not made within 60 days of the date on which it is due.

### **4. TERMS OF AGREEMENT**

4.1 Indigency and client eligibility for representation under this agreement shall be determined in conformity with the standards of indigency and other rules and standards established by the Ohio Public Defender Commission and the State Public Defender.

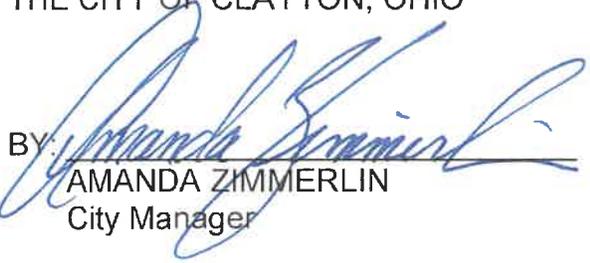
- 4.2 The Ohio Public Defender Office has established caseload standards as stated in Ohio Administrative Code. The Montgomery County Public Defender Office will maintain caseload requirements as set forth in Ohio Administrative Code (§120-1-07(B)).
- 4.3 The Montgomery County Public Defender Office shall have the sole authority to assign Assistant Public Defenders to the Vandalia Municipal Court docket. Additionally, the Montgomery County Public Defender Office shall retain sole authority to assign individual cases to the Assistant Public Defenders.
- 4.4 Recognizing that the requests for reimbursements must be received by the State Public Defender in a timely manner, the City of Vandalia Court Clerk shall promptly notify the COUNTY of the Municipal ordinance cases completed and pending in any month.
- 4.5 After approval, the County Auditor shall thereafter, process the fees and expenses approved by the Court in accordance with the procedure set forth in Ohio Revised Code §120.33.
- 4.6 There shall be no discrimination against any employee who is employed in the work covered by this agreement or against any application for such employment because of the race, color, religion, sex, age, handicap or national origin. This provision shall apply to, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, raises of pay or other forms of compensation, and selection for training, including apprenticeship. The COUNTY shall insert a similar provision in any subcontract for services covered by this agreement.
- 4.7 No personnel of the parties or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of the understanding or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

## **5. MODIFICATION**

- 5.1 This contract may not be amended orally.
- 5.2 This contract may be amended only by written addendum, signed and executed by the parties named herein, or their successors.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

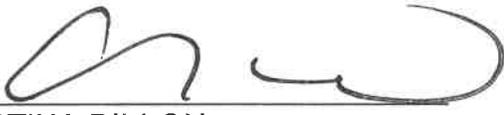
THE CITY OF CLAYTON, OHIO

BY:   
AMANDA ZIMMERLIN  
City Manager

MONTGOMERY COUNTY  
PUBLIC DEFENDER COMMISSION

BY:   
DIANNE F. MARX  
Chairman

APPROVED AS TO FORM:

BY:   
MARTINA DILLON  
Law Director, City of Clayton

BY:   
THERESA HAIRE  
Montgomery County  
Public Defender