

ORDINANCE # O 39 -2022

AN ORDINANCE CONTRACTING WITH THE TUSCARAWAS COUNTY PUBLIC DEFENDER COMMISSION TO PROVIDE INDIGENT DEFENSE SERVICES FOR THE YEAR 2023

WHEREAS, the Village of Bolivar, Ohio, currently has a contract with the Tuscarawas County Public Defender's Commission to defend against indigent defendants which expires on December 31, 2022;

WHEREAS, the Village of Bolivar is required by law in certain circumstances to provide indigent defendants charged by the Village with an attorney;

WHEREAS, the Public Defender's Office will provide that service to the Village at a rate of Two Thousand, Five Hundred Dollars and no/100 (\$2,500.00) per year.

NOW, THEREFORE, BE IT ORDAINED by the Village Council the Village of Bolivar, Ohio, as follows:

SECTION 1. The Village Council for the Village of Bolivar hereby approves entering into a contract with the Tuscarawas County Public Defender's Commission for the necessary services for the year 2023.

SECTION 2: All prior ordinances inconsistent herewith are hereby repealed.

SECTION 3: This Ordinance shall take effect at the earliest date permitted by law.

FIRST READING: September 19, 2022

SECOND READING: October 3, 2022

THIRD READING and PASSED: November 7, 2022

Approved:



Tim Lang, Mayor

Attest:



Barb Kline, Fiscal Officer

**AGREEMENT FOR INDIGENT DEFENSE SERVICES
IN NEW PHILADELPHIA MUNICIPAL COURT
PUBLIC DEFENDER**

This Agreement is entered into by and between the Tuscarawas County Public Defender Commission, with a mailing address of 203 Fair Avenue, N.E., New Philadelphia, Ohio, 44663, (hereinafter referred to as the "COUNTY"), and the **VILLAGE OF BOLIVAR**, with a mailing address of Attorney Tara Wright-Timberlake, Village Solicitor, 122 South Wooster Avenue, Strasburg, Ohio 44680, and Barb Kline, Fiscal Officer, P.O. Box 117, Bolivar, Ohio 44621 (hereinafter referred to as the "VILLAGE").

WHEREAS, the VILLAGE 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 VILLAGE ordinance for which the penalty or any possible adjudication includes the potential loss of liberty, and

WHEREAS, the Tuscarawas County Defender Commission has been formed and has appointed a Public Defender in the County of Tuscarawas.

WHEREAS, the Tuscarawas 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, these 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 State Maximum Fee Schedule for Appointed Counsel, in conflict situations, in order for the COUNTY to obtain reimbursement for indigent defense costs pursuant to Ohio Revised Code §120.18, §120.33 and §120.35.

WHEREAS, this Agreement has been authorized by the VILLAGE, Ordinance O-39-2022 passed by the **Village of Bolivar** Council on November 7, 2022.

WHEREAS, this Agreement has been authorized by the VILLAGE Res./Ord. # _____ passed by the **Village of Bolivar** Council on _____.

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

1. REPRESENTATION

- 1.1 The COUNTY contracts with the VILLAGE to provide legal representation in **Municipal Court** on or after the commencement date and during the term of this agreement in which the defendant is indigent and charged with the commission of an offense or act which is a violation of a VILLAGE ordinance and for which the penalty or any possible adjudication includes the potential loss of liberty, except in those matters where the Public Defender, its attorneys or designees have a conflict of interest.
- 1.2 The Public Defender's Office shall assign a licensed practicing attorney, qualified to represent indigent persons in the **Municipal Court** of Tuscarawas County, and to provide qualified professional representation for that assigned indigent person during the term of this agreement. The Public Defender's Office shall select in its sole discretion the attorney to represent said indigent persons in these Courts and said attorney selection may change from time to time. The attorney selected by the Public Defender's Commission to represent indigent person shall be responsible for the representation of said indigent person in the **Municipal Court** of Tuscarawas County, and the Public Defender's Office may at its option provide additional attorneys or replacement counsel if conflicts in scheduling arise with the attorney assigned to the Court. The Courts shall not direct that other counsel be appointed or assigned without the consent of the Director of the Public Defender Commission.
- 1.3 The County Public Defender shall not be required to prosecute any appeal, post-conviction remedy, or any proceedings, unless he is first satisfied that there is arguable merit to the proceeding.
- 1.4 Indigency shall be determined in accordance with the standards of indigency and other rules and guidelines established by the Ohio Public Defender's Commission and the State Public Defender, pursuant to Ohio Revised Code §120.03 and Ohio Administrative Code §120-1-03.
- 1.5 A major purpose of this agreement is to enable the COUNTY and VILLAGE to obtain partial reimbursement of its costs to have the County Public Defender or appointed counsel in conflict situations, provide legal representation in the **New Philadelphia Municipal Court** for indigent adults charged with any violation of a VILLAGE 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 VILLAGE agrees to pay the COUNTY as follows:

The sum of **Two Thousand Five Hundred Dollars (\$2,500.00)** which shall constitute full and complete payment for all the Public Defender services during the term of this agreement. This amount does not exceed the fee schedule adopted under O.R.C. 120.33.

2.2 The sum shall be paid in annual payments of **Two Thousand Five Hundred Dollars (\$2,500.00)** by and before **March 1, 2022**.

2.3 Counsel appointed for representation in the **Municipal Court** in conflict situations shall be paid according to the schedule promulgated by the County under O.R.C. 120.33 by Tuscarawas County. At no time, shall VILLAGE be charged for assigned counsel fees in cases in which a conflict situation would prevent the Public Defender's Office from providing representation.

3. DURATION OF CONTRACT AND TERMINATION

3.1 The term of this agreement shall be **January 1, 2022 to December 31, 2022**.

3.2 If COUNTY or VILLAGE 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 is 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 forty-five (45) business 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 under the terms of Ohio Revised Code §120.05 and the Ohio Administrative Code.

4.2 Recognizing that the requests for reimbursements must be received by the State Public Defender within sixty (60) days of the end of the calendar month in which a case is finally disposed of by the Court, the **New Philadelphia Municipal Court Clerk** shall

promptly notify the COUNTY of the Municipal ordinance cases completed and pending in any month.

- 4.3 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.
- 4.4 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.
- 4.5 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. PARTICIPATION IN RECOUPMENT PROGRAM and APPLICATION FEE ASSESSMENT

The Parties agree to participate in a recoupment program for partially indigent defendants' counsel fees as provided in Ohio Administrative Code 120-1-05 and 120-1-03(J), and also the application fee program set out in ORC 120.36.

6. MODIFICATION

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

