

REQUESTED BY:
COLBERT

LAW DEPARTMENT
DRAFT NO. 3744

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND THE DIRECTOR OF PUBLIC SERVICE AND SAFETY, FOR AND ON BEHALF OF THE CITY OF WARREN, TO ENTER INTO AN AGREEMENT WITH THE TRUMBULL COUNTY COMMISSIONERS FOR THE PURPOSE OF PROVIDING, DURING THE YEAR 2018, LEGAL REPRESENTATION, THROUGH THE OFFICE OF THE PUBLIC DEFENDER, TO QUALIFYING INDIGENT DEFENDANTS CHARGED IN THE WARREN MUNICIPAL COURT WITH VIOLATIONS OF WARREN CITY ORDINANCES WHERE THERE IS A POSSIBILITY OF INCARCERATION AND THE LEGAL RIGHT TO REPRESENTATION HAS NOT BEEN WAIVED, AND DECLARING AN EMERGENCY.

ORDINANCE NO. 12767/17

WHEREAS, the City Of Warren recognizes its responsibility under the laws of the State of Ohio and of the United States of America to provide legal counsel to an indigent person charged with a violation of a Warren City Ordinance for which the penalty or any possible adjudication includes the potential loss of liberty; and

WHEREAS, Trumbull County has adopted a program whereby the County Commissioners have contracted with the State to provide indigent defense services in the County of Trumbull, by and through the Public Defender's office; and

WHEREAS, the County Commissioners, pursuant to Ohio Revised Code Section 120.14 and Section 120.16, may enter into a contract with a municipal corporation whereby the County provides legal representation to indigent adults charged with violations of Ordinances of a municipal corporation for which the penalties or possible adjudication include the potential loss of liberty, and under which the municipal corporation shall pay the County for these services; and

WHEREAS, the City of Warren deems it in its best interests to meet the requirements of the law that qualifying indigent Defendants appearing before the Municipal Court of Warren be represented by the Office of the Ohio Public Defender; and

WHEREAS, the Mayor and the Director of Public Service and Safety are authorized to enter for and on behalf of the City of Warren to enter into an agreement with the Trumbull County Commissioners for the purpose of providing, during 2018, legal representation, through the office of the Public Defender, to qualifying indigent defendants in the Warren Municipal Court; and

WHEREAS, such an agreement provides that it may be renewed for a one year term (i.e. 2019) upon resolution or Ordinance of this Council and approval of the Trumbull County Commissioners; and

WHEREAS, this Council desires that said agreement be so renewed; NOW THEREFORE

BE IT ORDAINED by the Council of the City of Warren, State of Ohio:

Section 1: That the Mayor and the Director of Public Service and Safety be, and hereby are, authorized, for and on behalf of the City of Warren to enter into an agreement with the Trumbull County Commissioners for the purpose of providing, during 2018, legal representation, through the office of the Public Defender, to qualifying indigent defendants in the Warren Municipal Court. A copy of said Agreement is attached hereto as "EXHIBIT A".

Section 2: That the funds for payment of said agreement shall come from Account Number 100-250-533-900 Legal Fees.

Section 3: That the City Auditor be, and hereby is, authorized to disburse said funds upon receipt of proper vouchers, signed by the proper person, for the stated purpose and for no other purpose.

Section 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason that the agreement needs to be in effect without undue delay for 2018. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 27th day of December 2017.

SIGNED: [Signature] ATTEST: [Signature]
PRESIDENT OF COUNCIL CLERK

FILED WITH THE MAYOR: 12-27-17

DATE APPROVED: 12-27-17

[Signature]
MAYOR, CITY OF WARREN, OHIO

**AGREEMENT FOR INDIGENT DEFENSE SERVICES
IN MUNICIPAL COURT
(Public Defender)**

This Agreement is entered into by and between the Trumbull County Commissioners, with a mailing address of 160 High Street N.W., (hereinafter referred to as the "COUNTY"), and the City of Warren, with a mailing address of 391 Mahoning Avenue N.W., (hereinafter referred to as the "CITY").

WHEREAS, the CITY 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.

WHEREAS, Trumbull County has adopted a program whereby the County Commissioners have contracted with the State to provide indigent defense services in the County of Trumbull.

WHEREAS, the County Commissioners 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 and juveniles 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 COUNTY 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 CITY by Ord. # _____, passed by the _____ CITY Council on _____, and by Resolution # _____, passed by the Board of Commissioners of Trumbull County on _____.

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 the Warren 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 any violation of a CITY ordinance 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's 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 State Public Defender or appointed counsel in conflict situations, provide legal representation in the Warren Municipal Court for indigent adults charged with any violation of a 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 The sum of Forty Five Thousand Dollars (\$45,000) which shall constitute full and complete payment for all the Public Defender counsel services during the term of this agreement.
- 2.2 The sum shall be paid in annual/quarterly/monthly payments of \$11,250.00 dollars on the following dates: January 1, April 1, July 1, and October 1, 2018.;
- 2.3 Amounts paid by the Municipality for representation of such indigent persons, whether by a contractual amount or fee schedule, shall not exceed the fee schedule in effect and adopted by the County Commissioners.

3. DURATION OF CONTRACT and TERMINATION

- 3.1 The term of this agreement shall be for one year, from January 1, 2018 thru December 31, 2018. *This contract may be renewed for an additional one year term, i.e.: 2019, upon proper resolution, or ordinance, of each entity agreeing to the one year extension and proper appropriation of funding for the new year. Copies of the resolutions, or ordinances, are to be sent to the Ohio Public Defender, 250 East Broad St., 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, which shall be at least thirty (30) days after such notice. 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 2.2 of this agreement is not made within 30 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 Section 120.05 and the Ohio Administrative Code

- 4.2 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 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.
- 4.3 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.
- 4.4 The COUNTY and CITY certify that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. 3517.13, or are excluded, relative to campaign contributions.

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.

CITY OF WARREN

Doug Franklin
Mayor

Date

Enzo Cantalamessa
Director of Public Service and Safety

Date

Gregory Hicks
City Law Director

Date

