

# WINTER HAVEN

*The Chain of Lakes City*

December 16, 2011

## REQUEST FOR PROPOSALS RFP-12-17

Sealed proposals marked **"INDIGENT LEGAL DEFENSE SERVICES"** will be received by the City of Winter Haven until **2:00 P.M., January 5, 2012**, at the office of the Procurement Services Division, Central Stores Complex, 401 6<sup>th</sup> St. SW, Winter Haven, Florida 33880, for the following:

**"Attorney services to provide legal defense to indigent persons accused of violations of municipal ordinances"**

At that time, proposals will be publicly opened and read aloud in the Procurement Services Office.

The City is requesting proposals from those qualified individuals with previous experience in this type of work. Firms submitting proposals shall provide evidence of their experience and expertise in similar work performed. Bidders must submit one (1) **unbound original** and one (1) copy of their proposals.

**Questions concerning this RFP must be submitted in writing on or before 2:00 p.m., December 29, 2011, to Capt. Bird at [cbird@mywinterhaven.com](mailto:cbird@mywinterhaven.com) . Questions received after this time may not be answered.**

The proposals shall be furnished in accordance with the RFP, specifications, and any other documents prepared for this bid. **W-9** must be attached to the bid when returned by the responding vendor. Payment will be rendered to the name and ID appearing on the W-9.

The City of Winter Haven reserves the right to reject any and all proposals, to waive informalities, to re-advertise, and to enter into contracts determined to be in its best interest, in accordance with the documents referenced herein above.

Sincerely,  
CITY OF WINTER HAVEN

  
Bob Bishop  
Procurement Services Division Director

# SPECIFICATIONS

## SOLICITATION BY CITY OF WINTER HAVEN FOR PROPOSALS TO CONTRACT TO PROVIDE LEGAL DEFENSE TO INDIGENT PERSONS ACCUSED OF VIOLATIONS OF MUNICIPAL ORDINANCES

The City of Winter Haven (City) continues to seek the reasonable and meaningful punishment of those who would violate its municipal ordinances. In response to amendments to Article V of the Florida Constitution and in application of relevant statutory law and rules of criminal procedure, the City is now required to pay for the legal defense of indigents accused of violating City ordinances if judicial proceedings evolve in such a manner so as to put the accused in serious jeopardy of being placed on probation or sentenced to serve a period of incarceration.

Accordingly, the City is soliciting proposals from local members of The Florida Bar in good standing to contract with it for the provision of legal services to indigents as described herein. Those "proposals" to be considered, must be in the form of written correspondence addressed to:

RFP-12-17 / Defense Attorney Appointment List Solicitation  
City of Winter Haven Procurement Services  
401 6<sup>th</sup> Street S.W.  
Winter Haven, FL 33880

Relevant information and an outline of expected terms of the contract appear below under the heading "Specifications." Attorneys providing "proposals" to the City in compliance with this communication must specifically address items 3, 6, 7, 8, 9 and 10 of the "Specifications" in written correspondence with the City and indicate acceptance therewith.

The contract document that attorneys will be expected to execute, entitled *Indigent Defense Attorney Services Agreement* (attached), is available for viewing free of charge at the Records Division of the Winter Haven Police Department during normal office hours.

Attorneys wishing to submit a proposal may do so at any time on or before 2:00 pm, local time, January 5, 2012. **The City anticipates entering into contracts with qualified individuals on a first-in-time received basis.** Attorneys not meeting the minimum qualifications will be excluded from participating further in this solicitation. Hand deliveries of proposals must be received at the above office/address.

The City of Winter Haven reserves the right to reject any or all proposals, to contract, to determine the eligibility of attorneys to submit proposals to contract in accordance with the terms of this solicitation and to waive minor non-substantive errors or irregularities in the solicitation process not affecting its fundamental fairness.

1. The City of Winter Haven intends to contract with up to five (5) attorneys for the purpose of representing select indigent persons accused of violating, in one action, episode or connected occurrence, municipal ordinances only.
2. "Select" indigent persons means persons who, given their history of ordinance or statute violations, or, perhaps, the nature of the act of which the person stands accused is identified by the Office of State Attorney as a person against whom incarceration under applicable law may be appropriately sought.
3. Qualifying attorneys are those persons who are currently admitted to practice law in the State of Florida by the Supreme Court of Florida, are in "good standing" with The Florida Bar and who meet the minimum experience and continuing legal education requirements of F.S. §27.40, *et seq.*
4. The Office of Public Defender of the Tenth Judicial Circuit and the Office of Criminal Conflict and Civil Regional Counsel, Second District, have each declined to contract with the City of Winter Haven in this regard.

5. While the list and appointment program will be administered by the Winter Haven Police Department, the office of Court Administrator will retain the list of participating attorneys and disclose to trial judges the next attorney to be assigned on a rotation basis. Presumably the appointment would occur at arraignment, when the trial judge effectively schedules the first appointment for the assigned attorney and indigent client on and at the scheduled pre-trial conference.
6. The City of Winter Haven anticipates entering into contracts with participating attorneys at a rate of reimbursement of seventy-five dollars (\$75.00) per hour (See F.S. §27.54) with a cap of two (2) hours for those cases achieving disposition by a plea of guilty, no contest or *nolo contendere*, and a cap of five (5) hours for those cases achieving disposition by trial. Attorney billing for time spent is expected to be to the nearest tenth of an hour. Other restrictions on billable amounts appear in the contract document.
7. Only if a figure is approved by the Court after application, the City of Winter Haven anticipates also reimbursing appointed attorneys for reasonable costs incurred in representation. (The City of Winter Haven would rely, in part, on F.S. §27.54 and the contract document in order to determine said reasonableness.)
8. Billing to the City of Winter Haven would be required no later than twenty-one (21) days after the termination of the last appointed attorney service for which billing is permitted and payment is expected to occur within thirty (30) days of receipt of billing containing minimum information to be defined by contract.
9. Participating attorneys are expected to create and maintain bookkeeping and account records in support of actual billing. Bookkeeping and account records must be open for inspection by the City of Winter Haven.
10. Contract termination may be for any reason but must be preceded by a minimum of sixty (60) days written notice to a designated person of the City of Winter Haven.

## INDIGENT DEFENSE ATTORNEY SERVICES AGREEMENT

THIS AGREEMENT for the provision of defense attorney services to certain indigents charged with violations of municipal ordinance (hereafter "AGREEMENT") is made by and between the CITY OF WINTER HAVEN, a Florida municipal corporation (hereafter "CITY"), and \_\_\_\_\_, (hereafter "ATTORNEY") in his or her individual capacity.

### WITNESSETH:

**WHEREAS**, Rule 3.111(b)(1), Florida Rules of Criminal Procedure, and other substantive federal and Florida law, generally requires the appointment of legal counsel to assist indigent persons in criminal prosecutions for "offenses punishable by incarceration;" and

**WHEREAS**, certain CITY ordinances are punishable by incarceration; and

**WHEREAS**, F.S. §27.54(2) provides that Florida municipal governments may contract with the offices of the various public defenders and regional counsel to defend violations of special laws or municipal ordinances punishable by incarceration but not "ancillary to a state charge;" and

**WHEREAS**, CITY is within the geographic area served by the Office of the Public Defender of the Tenth Judicial Circuit of Florida ("PDO") and the Office of Criminal Conflict and Civil Regional Counsel, Second District ("RCO"); and

**WHEREAS**, both the PDO and RCO have declined to enter into a §27.54(2) contract with CITY; and

**WHEREAS** the CITY intends to encourage the Office of the State Attorney of the Tenth Judicial Circuit of Florida to seek, and the judiciary of the Tenth Judicial Circuit of Florida and the County Court in and for Polk County to impose, sentences of incarceration in certain cases involving a violation of certain CITY ordinances not ancillary to a state charge; and

**WHEREAS**, ATTORNEY represents he or she is a licensed "attorney-at-law" by the Supreme Court of Florida in accordance with F.S. Chapter 454, is admitted to the membership of The Florida Bar in accordance with Rule 5-11 of the Rules of the Supreme Court Relating to Admissions to the Bar and Bylaw 2-2.1 of the Bylaws of The Florida Bar, is an active member in "good standing" with The Florida Bar as per Rule 1-3.2 of the Rules Regulating The Florida Bar, and is in compliance with the minimum experience standards and continuing legal education requirements of F.S. §27.40; and

**WHEREAS**, CITY and ATTORNEY desire to enter into a contract for the provision of legal services to indigents that are charged by CITY with violations of special laws or municipal ordinances punishable by incarceration but not ancillary to a state charge, where ATTORNEY, among other contracting attorneys providing similar services in similar circumstances, as selected on a rotation basis, would defend the same and the CITY would reimburse said ATTORNEY for such services, as well as some costs as determined by the court; and

**WHEREAS**, §7 of Ordinance O-11-04 (codified at §1-15 of the *Code of Ordinances of the City of Winter Haven*) authorizes its police department to "enter into contractual arrangements with attorneys ... for the court-appointed representation" of indigents and "make those contractual arrangements and the terms thereof known to the Administrative Judge of the County Court in and for Polk County, Florida;"

**NOW, THEREFORE**, in consideration of the mutual covenants of this AGREEMENT which are hereby incorporated into this AGREEMENT, CITY and ATTORNEY hereby agree as follows:

### §1 Scope of Services

Pursuant to this AGREEMENT, ATTORNEY agrees to be placed on the rotation list of attorneys eligible for appointment by the County Court in and for Polk County to represent one or more persons determined by the Court to be indigent and under arrest for or charged with a violation of a CITY ordinance punishable by incarceration not ancillary to a state charge (each person being a "DEFENDANT"). If appointed to a matter,

ATTORNEY agrees to represent DEFENDANT in accordance with all applicable Florida Rules of Criminal Procedure, Florida Rules of Judicial Administration, Florida Rules of Traffic Court, Rules Regulating The Florida Bar and other rules of the Supreme Court of Florida. ATTORNEY shall provide competent representation and service to the DEFENDANT for each matter he or she is appointed to handle by the Court. Within twenty-four (24) hours after appointment, ATTORNEY shall forward to CITY a copy of the Court's order of appointment. If ATTORNEY files a Notice of Appeal for a DEFENDANT, ATTORNEY shall take those steps reasonably necessary to ensure that the appellate record is prepared including the filing of a designation of the record on appeal. Further, as to appeals, in designating hearings for transcription, ATTORNEY shall only designate those hearings at which ATTORNEY reasonably believes that reversible error may have occurred.

**§2 Payment for Services Rendered; CITY to be Reimbursed for Privately Paid Fees; Fees Payable Subject to Annual Appropriation**

§2.1 Whenever ATTORNEY is appointed by the Court to represent a person determined by the Court to be indigent and under arrest for or charged with a violation of a CITY ordinance punishable by incarceration not ancillary to a state charge, then ATTORNEY shall be paid a fee by CITY in satisfaction of the cost of such representation as follows:

- A. seventy-five dollars (\$75.00) per hour with a cap of two (2) hours for those cases achieving disposition by a plea of guilty, "no contest" or "*nolo contendere*," or by termination by the prosecutor or the Court, or
- B. seventy-five dollars (\$75.00) per hour with a cap of five (5) hours for those cases achieving disposition by trial.

ATTORNEY agrees and acknowledges that the compensation to be paid pursuant to this AGREEMENT shall be the sole, exclusive and full compensation to which ATTORNEY shall be entitled to receive. This AGREEMENT is not governed by F.S. §27.5304(12) and there is no local law that authorizes exceeding the compensation figures agreed upon herein regardless of whether a matter assigned to ATTORNEY by the Court requires unusual or extraordinary effort.

§2.2 Unless specifically awarded and ordered by the court as attorney's fees *supplemental*, and not *alternative*, to the fees CITY is obligated to pay to ATTORNEY under this AGREEMENT, ATTORNEY shall return or transfer to the CITY any and all compensation paid to him or her by or on behalf of his or her client for attorney services provided pursuant to this AGREEMENT ("funds"). Such payment shall be by check or money order made payable to "**City of Winter Haven**" and shall be provided the CITY no later than thirty (30) days after ATTORNEY's receipt of such funds.

§2.3 The CITY's performance and obligation to pay fees and costs under this AGREEMENT is contingent upon an annual appropriation of funds by its governing body, the City Commission of the City of Winter Haven.

**§3 ATTORNEY Billing**

§3.1 ATTORNEY agrees to submit billing to the CITY no later than twenty-one (21) days after the termination of the last attorney service provided pursuant to this AGREEMENT. ATTORNEY agrees to submit billing to the CITY that contains a faithful recitation of time spent to the nearest tenth (0.1) of an hour. ATTORNEY agrees to include in billing submitted to the CITY pursuant to this AGREEMENT, a minimum of the CITY's police department event or case number, the name of DEFENDANT, the date of ATTORNEY services provided, a brief description of the ATTORNEY services provided, and the mode of disposition of the case.

§3.2 CITY agrees to endeavor to provide payment within the thirty (30) days that follow the CITY'S receipt of ATTORNEY billing containing minimum information as stated in §3.1.

§3.3 ATTORNEY agrees that if ATTORNEY seeks reimbursement for costs, deposition costs, deposition transcript costs, due process costs, investigative costs, witness fees, expert witness fees, interpreter costs or any combination of the same, ATTORNEY will submit detailed billing describing the nature of the cost incurred, the dates and times the costs were incurred, receipts or confirming memoranda showing payment of

those costs, and the subtotals and grand totals of those costs incurred. ATTORNEY shall not seek reimbursement for out-of-state, out-of-district, out-of-circuit or out-of-county experts, investigators or mitigation specialists absent a special showing that there are no such providers with appropriate skills available within first, Polk County, second, the Tenth Judicial Circuit of Florida, third, the geographic area comprising the jurisdiction of the Second District Court of Appeal and fourth, the State of Florida. ATTORNEY shall not bill for or receive compensation under this AGREEMENT for clerical, paralegal or secretarial work, office assistance, overhead expenses, computerized research expenses for services such as or similar to Westlaw, Lexis/Nexis or Fastcase, telecommunications expenses, internet connection expenses, travel expenses of any kind other than those expenses for limited ATTORNEY travel outside of Polk County deemed reasonably necessary by the Court for the defense of the case and only then when charged in compliance with F.S. §112.061, ATTORNEY or expert travel time, business interruption and cancellation expenses, insurance expenses (including, but not limited to, malpractice, general business and automobile liability premiums), office equipment expenses, office supply expenses or expenses for clothing, personal items, haircuts, manicures or other grooming for either ATTORNEY or DEFENDANT. CITY shall not pay for transcript expenses absent a Court order. ATTORNEY understands, unless the ATTORNEY and CITY agree otherwise, the Court alone, applying Florida and federal precedent relating to representation of indigent persons, shall determine the amount of the CITY's cost obligation above fees payable pursuant to this AGREEMENT. CITY reserves the right to object to a costs determination as disallowed in accordance with this AGREEMENT. In the event that ATTORNEY disagrees with the CITY's assessment of costs due and payable under this AGREEMENT, ATTORNEY may elect to submit the matter to mediation. If ATTORNEY desires to mediate a costs dispute, ATTORNEY agrees to pay one-hundred percent (100%) of the costs incurred in such mediation.

§3.4 ATTORNEY agrees to maintain a system of bookkeeping and accounting which shall produce an adequate account and record of the services rendered pursuant to this AGREEMENT. The City Manager of the City of Winter Haven, or his designee, shall have the right to inspect and audit such books, accounts and records of ATTORNEY to determine their accuracy. If CITY determines at any time that the records of ATTORNEY do not allow for a proper audit of the services rendered to CITY, the City Manager of the City of Winter Haven shall have the right to specify additional bookkeeping and accounting requirements which are reasonably necessary for a proper audit, and ATTORNEY shall implement same as if such requirements were set forth herein.

§3.5 Billing and invoices for reimbursement shall be submitted to the City at its address for notices listed herein.

#### **§4 Term; Effective Date**

The term of this AGREEMENT shall be for one (1) calendar year, concurrent with CITY's fiscal year, commencing on October 1 of the year of date of execution (the "effective date" regardless of the date of execution) and ending on the following September 30 unless terminated in accordance with §5 herein or otherwise extended or terminated by mutual agreement of the parties expressed in a written amendment executed pursuant to §10.

#### **§5 Elective Termination**

Either party may terminate this AGREEMENT without cause upon the issuance of (60) days written notice to the other party.

#### **§6 Obligations Survive Termination**

The obligations of the parties to each other for services rendered under this AGREEMENT prior its termination shall survive such termination.

#### **§7 Reliance**

Each party acknowledges the terms, conditions, covenants and requirements on its part to be kept, as set forth herein, are material inducements to each in entering into this AGREEMENT.

**§8 Notices**

All notices required to be issued shall be sent by First Class United States Mail, except that a Notice of Termination pursuant to §6 shall either be hand delivered, mailed by First Class United States Mail, return receipt requested or sent by express delivery service with signature confirmation. Any notice hereunder shall be addressed to the party intended to receive same at the following addresses:

CITY:

Chief of Police  
Winter Haven Police Department  
125 North Lake Silver Drive NW  
Winter Haven, FL 33881

*with a copy to(which shall not constitute notice):*

Frederick J. Murphy, Jr., City Attorney  
City of Winter Haven, Florida  
C/O Boswell & Dunlap LLP  
Post Office Drawer 30  
Bartow, FL 33831

ATTORNEY:

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**§9 Public Records Compliance**

ATTORNEY acknowledges that to the extent ATTORNEY acts within the scope of this AGREEMENT, ATTORNEY acts as an "agency" within the meaning of F.S. §119.011(2) and agrees to assume the obligations imposed by F.S. Chapter 119 and the other laws of Florida applicable to "public records" but only to the extent such laws would so obligate the ATTORNEY in its capacity as a government agency.

**§10 Entire Agreement**

The terms of this AGREEMENT constitute the entire understanding and agreement of the parties with respect to its subject matter. No modification or amendment shall be effective unless in writing, executed with the same formalities as this AGREEMENT is executed.

**§11 Independent Relationships**

CITY and ATTORNEY agree that it is not the intention of this AGREEMENT to create any relationship between them, employment or otherwise, other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this AGREEMENT. The parties are not joint venturers, partners, agents or employees of one another.

**§12 Indemnification**

It is the intent of the parties that CITY should not incur liability exposure as a result of this AGREEMENT to compensate for Court appointed services provided to indigents. ATTORNEY agrees, to the extent permitted by law, to defend, indemnify and otherwise hold harmless CITY from any claim or loss for injury or damage to persons or property, including reasonable attorney's fees, costs of suit, expert witness fees and all other manner of liability or payments whatsoever, both trial and appellate, arising within or from any relationship contemplated or formed by this Agreement to include that of ATTORNEY and DEFENDANT client, and ATTORNEY and CITY.

**§13 No Assignment; Personal Performance Required**

ATTORNEY may not assign this AGREEMENT. Other than non-compensable paralegal or office assistance, no other person or attorney-at-law may provide services to persons on matters assigned to ATTORNEY by the Court under the terms and conditions of this AGREEMENT. In the event that a third-party attorney-at-law provides services to persons on matters assigned to ATTORNEY by the Court under the terms

and conditions of this AGREEMENT, including, but not limited to, associates or partners of ATTORNEY affiliated with ATTORNEY's law firm, ATTORNEY agrees to be solely responsible to compensate such attorney or attorneys for work performed and further agrees and covenants not to bill CITY for such services.

**§14 Governing Law; Venue**

This AGREEMENT shall be controlled, interpreted, construed and enforced in accordance with the laws of the State of Florida. In the event any legal action is taken in connection with this AGREEMENT, venue for said action shall lie solely in either the Circuit Court for the Tenth Judicial Circuit of Florida or the County Court in and for Polk County, Florida.

**§15 Draftsmanship.**

The fact that one of the parties to this AGREEMENT drafted or structured any provision of this AGREEMENT shall not be considered in construing the particular provision either in favor of or against such party.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument on the day and year as appears below.

**CITY OF WINTER HAVEN, FLORIDA:**

\_\_\_\_\_  
Gary Hester, Chief of Police  
Auth. Signatory, §7, Ord. O-11-04

\_\_\_\_\_  
Date of Execution

*Attest, a true copy:*

*Approved as to form and correctness:*

\_\_\_\_\_  
Dorothy Johnson, City Clerk

\_\_\_\_\_  
Frederick J. Murphy, Jr., City Attorney

**ATTORNEY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing AGREEMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("ATTORNEY") who is \_\_\_\_ personally known or \_\_\_\_ has produced an acceptable form of government issued identification.

\_\_\_\_\_  
Notary Public, State of Florida