

Meeting Date: 4/26/2011



Agenda Item #

8c

CITY COUNCIL AGENDA ITEM

Contact Name: Gregory Lariscy **Department Director:** Peter C. Thomas
Department/Contact # Police Dept. / 775-9999 **City Manager:** Jamie Croteau *J. Croteau*

Type of Item: Public Hearing Resolution
 Ordinance First Reading Discussion & Action
 Ordinance Second Reading Council Approval

Subject: State Attorney Interlocal Agreement

BACKGROUND: Numerous codes within the City of Orange City code of ordinances related to unlawful acts and punishable by incarceration require prosecution in circuit court. Section 27.02, Florida Statutes, provides the State Attorney's office shall appear in court within their judicial circuit for the purpose of prosecuting such ordinances at a regulated rate of \$50.00 an hour when the State Attorney has contracted with the municipality for prosecution services.

RECOMMENDATIONS: Staff recommends Council consent to the City Manager entering in to an interlocal agreement with the State Attorney of the 7th Judicial Circuit to prosecute those municipal ordinances relating to acts that are unlawful and punishable by incarceration.

ATTACHMENTS: Proposed interlocal agreement between the City of Orange City and the State Attorney of the 7th Judicial Circuit.

FINANCIAL IMPACT: Service fees will be a reflection of the volume of cases prosecuted and the complexity of the individual case for court preparation. Staff anticipates minimal financial impact based on anticipated cases requiring prosecution.

Reviewed by City Attorney _____
Reviewed by Finance Dept. _____
Reviewed by: _____

1st Discussion Date: date.	2nd Discussion Date: date.	Third Discussion Date: date.	Other Dates: date.
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OFFICE OF THE STATE ATTORNEY

SEVENTH JUDICIAL CIRCUIT OF FLORIDA
VOLUSIA, FLAGLER, PUTNAM & ST. JOHNS COUNTIES

R.J. Larizza
STATE ATTORNEY



251 North Ridgewood Avenue
Daytona Beach, FL 32114-7509
Phone (386)239-7710
Fax (386) 239-7716

April 6, 2011

Sergeant Greg Lariscy
Orange City Police Department
207 North Holly Avenue
Orange City, Florida 32763

RE: City Ordinances for Orange City Police Department

Dear Sergeant Lariscy,

Enclosed please find the original Interlocal Agreement as discussed in my email from April 5, 2011. Please review with your city attorney and advise of any proposed changes for further discussion. If the agreement is acceptable, please sign and return the same to my office at the above listed address.

Please feel free to contact me if you have any question or if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Foxman".

Karen Foxman
Deputy Chief
State Attorney's Office
(386)239-7710 extension 4758

Enclosure

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (hereafter referred to as "Agreement"), is entered as of this ____ day of _____, 2011, is between the **City of Orange City, Florida (hereinafter referred to as "City")**, a political subdivision of Florida, by and through its Board of City Commissioners, whose address is 207 North Holly Avenue, Orange City, Florida 32763, and R.J. Larizza, as the **State Attorney of the Seventh Judicial Circuit (hereinafter referred to as "State Attorney")**, duly elected, pursuant to Article V, Section 17, of the Florida Constitution.

RECITALS

WHEREAS, Section 27.02, Florida Statutes (2006), provides that the **State Attorney** shall appear in Circuit and County courts within his or her judicial circuit for the purpose of prosecuting violations of special laws and County ordinances punishable by incarceration if the prosecution is ancillary to a State prosecution, or if the **State Attorney** has contracted with the **City** for reimbursement for services rendered in accordance with Section 27.34(1), Florida Statutes, and both parties desire to enter into such a contract/agreement; and,

WHEREAS, Section 27.34, Florida Statutes (2006), provides for limitations on payments of salaries, and other related costs of **State Attorneys' Offices** by other than the **State**, and that a **City** may contract with, or appropriate or contribute funds to the operation of the various State Attorneys, and that a **State Attorney** prosecuting violations of special laws or **City** ordinances punishable by incarceration, and not ancillary to a State charge, shall contract with Cities to recover the full cost of services rendered on an hourly basis or reimburse the **State** for the full cost of assigning, on or more fulltime, or equivalent, attorney positions to work on behalf of the **City**; and,

WHEREAS, the **City** and the **State Attorney** desire to contract for services rendered on an hourly basis; and,

WHEREAS, an agreement/contract for reimbursement on an hourly basis shall require **Cities** to reimburse the **State Attorney** at a rate of fifty dollars (\$50.00) per hour; and,

WHEREAS, the **City** is willing to pay the **State Attorney** such sum on a quarterly basis in arrears; and,

WHEREAS, the **State Attorney** is currently providing for the prosecution of violations of special laws or **City** ordinances punishable by incarceration, and not ancillary to a State charge, when said violations are written by sworn **City** law enforcement officers, and so is able to reasonably estimate the appropriate time required; and,

WHEREAS, this **Agreement** sets forth the duration, terms and provisions, rights and responsibilities of both the **City** and the **State Attorney**; and,

WHEREAS, Section 163.01, Florida Statutes (2006) authorizes the **City** and the **State Attorney** to enter into such an **Agreement**.

NOW, THEREFORE, in consideration of mutual covenants and promises contained herein, it is agreed by and between the parties as follows:

Section 1: The above recitals are incorporated in the body of this **Agreement**, and said recitals are adopted as Findings of Fact.

Section 2: If any word, phrase, sentence, part, subsection, section, or other portion of this **Agreement** or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion or the prescribed application thereof, shall be severable, and the remaining portions of this **Agreement** and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Section 3: This **Agreement** shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this **Agreement** shall be in Volusia County, Florida.

Section 4: In light of the scope and rationale of this **Agreement**, neither the **City** nor the **State Attorney** may assign, transfer, and/or sell any of the rights noted in this **Agreement** without the express written approval of the other party. Should either the **City** or the **State Attorney** assign, transfer, or sell any of the rights noted in this **Agreement** without such prior approval of the other party, then such action on the part of either the **City** or the **State Attorney** shall result in the automatic termination of this **Agreement**, without further notice or action required on the part of the other party.

Section 5: Both the **City** and the **State Attorney** acknowledge that this **Agreement** constitutes the complete agreement and understanding of both parties. Both the **City** and the **State Attorney** acknowledge that any amendments to this **Agreement** shall be in writing, and shall be executed by duly authorized representatives of both the **City** and the **State Attorney**.

Section 6: The duration of this **Agreement** shall be from the date of execution until December 31, 2011. Either the **City** or the **State Attorney** may request a one-year extension of this **Agreement** by submitting a written request to the other party, no later than sixty (60) days prior to the termination date. Pursuant to a written request by the **City**, the **State Attorney** may approve an extension to the **Agreement**. Subsequent extensions to this **Agreement** may be handled in a manner similar to that described in

this Section. Should this **Agreement** fail to be extended within the time frame noted in this Section, then this **Agreement** will terminate on the final day of the last calendar year to which the **Agreement** was extended. Such termination requires neither party to provide written notification of termination to the other party.

Section 7: This **Agreement** may be terminated without cause upon either the **City** or the **State Attorney** giving at least thirty (30) days advance written notice to the other party. Such written notice shall indicate that either the **City** or the **State Attorney** intends to terminate this Agreement thirty (30) days from the date of notification. Consistent with other provisions of this **Agreement**, the **State Attorney** shall be compensated for any services and/or expenses that are authorized under this **Agreement** and that are performed and/or accrue up to the date of termination of this **Agreement**. The **City** will be responsible for payment of any fees, costs and expenses incurred in the performance of this **Agreement** that are accrued up to the date of termination of this **Agreement**.

This **Agreement** may be terminated by either the **City** or the **State Attorney** for cause for the following reasons:

- 1) Assignment of this **Agreement** by either party, without the prior written approval/consent of the other party;
- 2) Failure by either party to comply with any obligation noted in this **Agreement**;
- 3) Failure by the **City** to pay for a period exceeding seventy-five (75) days, any amounts due and owing, for authorized services performed by the **State Attorney** under this **Agreement**;
- 4) Failure by the **City** to budget for the services and/or expenses noted in this **Agreement**;
- 5) An exhaustion of funds budgeted for the services and/or expenses noted in this **Agreement**, without **City** approval of a subsequent increase in the amount of funds budgeted for the services and/or expenses noted in this **Agreement**;
- 6) Any subsequent revisions/change/amendment to the State law that would create an ethical conflict in funding and/or operations between the **City** and the its **Office of County Attorney** or **State Attorney**; and/or,
- 7) A subsequent revision/change/amendment to State law that would prohibit the **City** and the **State Attorney** from entering into this type of **Agreement**.

Section 8: The **State Attorney** shall appear in the Circuit and County court criminal divisions within the **State Attorney's** judicial circuit, by and through the *City-Funded Local Prosecutor*, for the purpose of prosecuting violations of special laws and **City** ordinances punishable by incarceration if the prosecution is ancillary to a State prosecution, or prosecuting violations of special laws or **City** ordinances, when said

violations are cited by a **City** law enforcement officer. The *City-Funded Local Prosecutor* will be hired by, and subject to the control of, the **State Attorney**. Consequently, for the purposes of this **Agreement**, the **State Attorney** and the *City-Funded Prosecutor* will be viewed and independent contractors, and have independent contractor status.

For purposes of this **Agreement**, *City-Funded Local Prosecutor* shall mean the person or persons assigned to prosecute violations of special laws or **City** ordinances, pursuant to this **Agreement**.

Section 9: The **City** agrees to pay all fees, costs and/or expenses in accordance with state law which are incurred during the prosecution of any violations of special laws and **City** ordinances undertaken pursuant to this **Agreement**. The **State Attorney** shall bear no expense of actions brought pursuant to this **Agreement**. The **City** further agrees to provide separate legal counsel to represent the **City** in all courts and proceedings concerning the constitutionality of enactment and enforcement of all ordinances or special laws.

For purposes of this **Agreement**, approved legal services means instances in which the *City-Funded Local Prosecutor* provides services in accordance with this **Agreement**.

The **State Attorney** shall submit to the **City** an invoice for the fifty dollar (\$50.00) per hour fee within forty-five (45) days of the services rendered. If the **State Attorney** submits an incomplete and/or incorrect invoice, and the **City** wishes to dispute the invoice in any way, the **City** will notify the **State Attorney** within fifteen (15) days of the submission of said invoice by the **State Attorney**. If there is no dispute filed within such time, the **City** has waived any dispute to the invoice. If the **City** submits a dispute, the **State Attorney** will then have an additional fifteen (15) days in which to submit a complete and/or correct invoice. The **City** will then have forty-five (45) days from the submission of the amended invoice to reimburse and/or compensate the **State Attorney** for such approved legal services.

The **City** may modify this procedure at any time with ten (10) days' notice, so long as the **State Attorney** agrees, in order to accommodate the budgetary concerns and/or procedures of the **City**.

Section 10: All notices and other correspondence to the **City** shall be delivered, either by hand (receipt of delivery is necessary) or by U.S. mail to:

City of Orange City, Florida
207 North Holly Avenue

Orange City, Florida 32763

With copy to: City Attorney
City of Orange City, Florida
207 North Holly Avenue
Orange City, Florida 32763

All notices and other correspondences to the **State Attorney** shall be delivered, either by hand (receipt of delivery is necessary) or by U.S. Mail to:

R.J. Larizza, State Attorney
Seventh Judicial Circuit
The S. James Foxman Justice Center
251 North Ridgewood Avenue
Daytona Beach, Florida 32114-7505

IN WITNESS WHEREOF, the parties have hereunto set their hand and seal on this day and year written below.

City of Orange City, Florida

Attest:

By: _____

Clerk for the City of Orange City, Florida

Date: _____

Date: _____

State Attorney, Seventh Judicial Circuit, State of Florida

By: _____

R.J. Larizza, State Attorney

Date: 4-5-11

Attest:

By: Kay Olmstead
Title: Executive Assistant