

Request for Board of Commissioners' Action

From: Faye Hughes, County Administrator **Date:** May 30, 2017

Subject: Public Defender's Contract **Item Number:** VIII-E

Please see attached the public defender's contract. Daniel Connell has approved the contract for signing.

Chairman will need a motion to approve the contract with the Alapaha Judicial Public Defender's Council and authorize the Chairman to endorse the same.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed



ALAPAHA JUDICIAL CIRCUIT PUBLIC DEFENDER OFFICE

105 North Parrish Ave • Adel, Georgia 31620 • Telephone 229-896-2858 • Facsimile 229-896-2875

Janice W. Prince
Circuit Public Defender

May 25, 2017

Dear Commissioners:

I have recently been contacted by the Georgia Public Defender Council and made aware of the fact that we are supposed to have an annual contract with each of the counties in the Alapaha Judicial Circuit. It appears that the last time there was an actual contact with your county was FY08.

I have enclosed a copy of the proposed contract for FY18. Please review the document and if you are in agreement with the terms, execute the signature page and return to me at the above address.

If you have any questions or concerns, please do not hesitate to contact me at the above address or by phone at (229) 896-2858 office or (229) 507-6228 mobile.

Thank you,


Janice Prince
Circuit Public Defender

In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.

U.S. Constitution, Amendment VI- December 15, 1791



GEORGIA INDIGENT DEFENSE SERVICES AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2017, among the Georgia Public Defender Council (herein referred to as “GPDC”), the Circuit Public Defender Office of the Alapaha Judicial Circuit (herein referred to as “the Public Defender Office”), and the governing authority of Cook County, body politic and a subdivision of the State of Georgia (herein referred to as “the County”) and is effective July 1, 2017.

WITNESSETH:

WHEREAS, the Public Defender Office, the County, and GPDC enter into this agreement to implement the provisions of the Georgia Indigent Defense Act of 2003, as amended, including the provisions quoted below; and

WHEREAS, O.C.G.A. § 17-12-23 (d) provides as follows:

(d) A city or county may contract with the circuit public defender office for the provision of criminal defense for indigent persons accused of violating city or county ordinances or state laws. If a city or county does not contract with the circuit public defender office, the city or county shall be subject to all applicable rules, regulation, policies, and standards adopted by the council for representation of indigent persons in this state; and

WHEREAS O.C.G.A. § 17-12-25 (b) provides as follows:

The county or counties comprising the judicial circuit may supplement the salary of the circuit public defender in an amount as is or may be authorized by local Act or in an amount as may be determined by the governing authority of the county or counties, whichever is greater; and

WHEREAS O.C.G.A. § 17-12-30 (c) (7) provides as follows:

The governing authority of the county or counties comprising a judicial circuit may supplement the salary or fringe benefits of any state paid position appointed pursuant to this article; and

WHEREAS O.C.G.A. § 17-12-34 provides as follows:

The governing authority of the county shall provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner. The provisions of an office, utilities, telephone expenses, materials, and supplies shall be subject to the budget procedures required by Article 1 of Chapter 81 of Title 36; and

WHEREAS O.C.G.A. § 17-12-35 provides as follows:

A circuit public defender office may contract with and may accept funds and grants from any public or private source; and

WHEREAS, the County is a body politic, existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other political entities; and

WHEREAS, the Public Defender Office is existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other entities; and

WHEREAS, the GPDC is existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other entities; and

WHEREAS, GPDC is the fiscal officer for the Public Defender Office; and

WHEREAS, it is the intent of the parties to this agreement to provide for the operation of an indigent defense system to assure that adequate and effective legal representation is provided, independent of political considerations or private interests, to indigent defendants in criminal cases consistent with the standards adopted by the Georgia Public Defender Council. This system and this agreement include the following:

- (1) The provision by the Public Defender Office of the statutorily required services to the County;
- (2) The payment for additional personnel and services by the County;
- (3) The provision by the County of their pro rata share of the costs of appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner;
- (4) Travel advances and reimbursement of expenses;
- (5) Salary supplements; and
- (6) The provision for other matters necessary to carry out this agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in the agreement and for Ten Dollars (\$10) and other good and valuable consideration, **IT IS AGREED AS FOLLOWS:**

ARTICLE 1

STATUTORY PERSONNEL

Section 1.01 Statutory Staffing. The Public Defender Office agrees to provide for the Alapaha Judicial Circuit full-time staff for a circuit public defender office or offices consisting of a circuit public defender; an assistant public defender for each superior court judge authorized for the circuit, excluding the chief judge and senior judges; an investigator; and two additional persons to perform administrative, clerical or paraprofessional services.

Section 1.02 Statutory Services. The Public Defender Office agrees to provide representation to indigent defendants in the following cases:

- (1) Felony and misdemeanor cases prosecuted in the Superior Court of Cook County under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or suspension of sentence of imprisonment may be adjudged;
- (2) Hearings in the Superior Court of Cook County on a revocation of probation;

(3) Cases prosecuted in the Juvenile Courts of Berrien County in which a child may face a disposition in a delinquency case of confinement, commitment or probation; and

(4) Direct appeals from a decision in cases described in (1), (2), and (3) above.

Section 1.03 Conflicts. The Public Defender Office agrees to provide for legal representation by a qualified attorney who is not an employee of the Public Defender Office in cases described in Section 1.02 in which a Public Defender Office has a conflict of interest.

ARTICLE 2

ADDITIONAL PERSONNEL AND SERVICES

Section 2.01 Additional personnel and services. The Public Defender Office agrees to provide and the County agrees to pay for the services and personnel described in Attachment A. These positions will be funded by the County along with the other counties in the Alapaha Judicial Circuit and will be administered by GPDC as contemplated in OCGA § 17-12-32. The parties agree to the terms in Attachment A. Attachment A is incorporated into this agreement by reference. The parties also agree to the payment terms in Attachment A. The amount to be paid includes a 5% administrative services fee. This fee is determined by the total amount for all of the budgeted positions. Any changes to Attachment A shall be made in accordance with Section 5.06 of this agreement. Any additional personnel employed by the Public Defender Office pursuant to this section are full-time state paid employees of the Public Defender Office in the unclassified service of the State Merit System of Personnel Administration with all the benefits provided by law to employees in the unclassified service. The additional personnel serve at the pleasure of the Circuit Public Defender. The parties agree that the employment of additional personnel employed by the Public Defender Office pursuant to this section may be terminated by the Public Defender Office if the County does not pay for the cost of these personnel in advance in accordance with this agreement.

ARTICLE 3

PROVISION BY THE COUNTY OF THEIR PRO RATA SHARE OF THE COSTS OF APPROPRIATE OFFICES, UTILITIES, TELEPHONE EXPENSES, MATERIALS, AND SUPPLIES AS MAY BE NECESSARY TO EQUIP, MAINTAIN, AND FURNISH THE OFFICE OR OFFICES OF THE CIRCUIT PUBLIC DEFENDER.

Section 3.01 Office expenses. In addition to the personnel expenses described in Article 2 and Attachment A, each County agrees to pay its pro rata share of the county funded non-personnel portion of the budget provided in Attachment B, which is the budget for appropriate offices, utilities, telephone expenses, materials, technical support, and supplies to equip, maintain, and furnish the office or offices of the Public Defender Office. The amount of the County's pro rata share based on population is reflected in Attachment B. The amount to be paid includes a 5% administrative services fee. The funds shall be disbursed in accordance with the procedures outlined in Section 4.01 of this agreement. Attachment B is incorporated into this agreement by reference. The parties agree to the payment terms in Attachment B.

Section 3.02 Administration of Office Expenses. Cook County agrees to be the fiscal agent for the administration of office expenses. Cook County will process and mail checks in payment of invoices approved by the Circuit Public Defender, drawn on those County funds made payable to vendors at the addresses shown on the invoices. "Payment" for purposes of this agreement means preparation of a check by Cook County in its normal course and procedure and its mailing in properly addressed envelopes with sufficient postage into the United States Mail.

Section 3.03 Procedure for payment. The County or the Public Defender Office, or both, will make purchases and enter into financial obligations for office expenses. Upon approval by the Circuit Public Defender, an invoice will be transmitted to Cook County. Cook County shall pay the amount stated on the invoice with funds provided by the County for the purpose of paying for such expenses. The payment of the office expenses under this agreement will be paid only out of County funds supplied to Cook County for the sole purpose of paying for office expenses.

Section 3.04 Responsibility. The County will deliver funds to Cook County at its own risk until receipt is acknowledged by Cook County. Cook County's sole duty with regard to County funds, other than their proper expenditure, will be their deposit into a county depository demand account. Interest, if any, will accrue to the general fund of Cook County. Cook County bears responsibility for properly remitting payment for invoices approved by the Circuit Public Defender provided sufficient from the County exist. The County bears the legal responsibility for any claim that arises from Cook County's inability to remit payment due to insufficient funds for said office expenses.

Section 3.05 Taxes. The County will pay all taxes lawfully imposed upon it with respect to the office expenses. Cook County makes no representation whatsoever as to the liability or exemption from liability of the County to any tax imposed by any governmental entity.

ARTICLE 4

TRAVEL AND REIMBURSEMENT OF EXPENSES

Section 4.01 Travel and expense reimbursement. The County agrees to provide travel advances and to reimburse expenses which may be incurred in the performance of the employee's official duties under this agreement by an employee of the Public Defender Office to the extent the expenses are not reimbursed by the state and to the extent the expenses are authorized by the circuit public defender and the County. The County shall provide the Public Defender Office with the information concerning the travel advances and expense reimbursements required by the State Auditor.

ARTICLE 5

MISCELLANEOUS

Section 5.01 Term. The term of this agreement is one (1) year beginning July 1, 2017 and ending June 30, 2018.

Section 5.02 Maintenance of effort. The County agrees that it will continue to fund indigent defense for the term of this agreement, at a minimum, at the level of its most recent budgeted level of funding (the current fiscal year or the planned budget for the next fiscal year if that budget has already been developed) for indigent defense and as part of this support each county agrees to provide the space, equipment and operating expenses necessary to effectively operate the circuit public defender office.

Section 5.03 Severability. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this agreement shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect.

Section 5.04 Cooperation, dispute resolution and jurisdiction. (a) The Public Defender Office and the County collectively and individually acknowledge that this agreement may need to be revised periodically to address new or unforeseen matters.

(b) Each party to this agreement agrees to cooperate with the other party to effectuate and carry out the intent of this agreement.

(c) This agreement, and the rights and obligations of the parties, are governed by, and subject to and interpreted in accordance with the laws of the State of Georgia. The parties acknowledge and agree that by law, the exclusive jurisdiction for contract actions against the state, departments and agencies of the state, and state authorities is the Superior Court of Fulton County, Georgia. The parties further acknowledge that the Fulton Superior Court has a Court sponsored Arbitration and Mediation Program in which the parties agree to fully participate.

Section 5.05 Notice. A notice to a party to this agreement shall be made in writing and shall be delivered by first class mail or personally to the person and at the address indicated below:

Circuit Public Defender Office of the Alapaha Judicial Circuit:

Janice Prince
Circuit Public Defender
105 North Parrish Avenue
Adel, Georgia 31620

Cook County:

Cook County Board of Commissioners
1200 South Hutchinson Ave
Adel, Georgia 31620

Georgia Public Defender Council:

Bryan Tyson, Director
104 Marietta Street, Suite 400
Atlanta, Georgia 30303

Section 5.06 Agreement modification. This agreement, including all Attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter of this agreement and may be altered or amended only by a subsequent written agreement of equal dignity; provided, however, that the parties' representatives identified in Section 5.05 may agree in writing by an exchange of letters or emails prior to the budget revision becoming effective to budget revisions which do not increase or decrease the total dollar value of the agreement. This agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter of this agreement. After the agreement has been approved by the Director of the Georgia Public Defender Council, no modifications may be made without prior notice to the Director of the council.

Section 5.07 Termination. (a) **Due to non-availability of funds.** In the event that any of the sources of reimbursement for services under this agreement (appropriations from the General Assembly of the State of Georgia, or appropriations from a county governing authority) is reduced during the term of this agreement, the Public Defender Office may make financial and other adjustments to this agreement and notify the County accordingly. An adjustment may be an agreement amendment or may be the termination of the agreement. The certification by the director of the Georgia Public Defender Council of the occurrence of reduction in State funds is conclusive. The certification of the occurrence of the reduction in county funds by the person designated in Section 5.05 for the receipt of notice for the County of the occurrence of the reduction in county funds is conclusive. The County agrees to promptly notify the Public Defender Office in writing of the non-existence or insufficiency of funds and the date of termination. The Public Defender Office shall then immediately cease providing the services required hereunder except for any necessary winding down and transition services required under Section 5.08. In lieu of terminating this agreement, the County and the Public Defender Office may make financial and other adjustments to this agreement by amending it pursuant to Section 5.06 .

(b) For cause. This agreement may be terminated for cause, in whole or in part, at any time by any party for failure by the other party to substantially perform any of its duties under this agreement. "Cause" means a breach or default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Should a party exercise its right to terminate this agreement under this subsection, the termination shall be accomplished in writing and specify the reason and the termination date. In the event of termination under this subsection the Public Defender Office shall submit a final agreement expenditure report containing all charges incurred through and including the termination date to the County no later than 30 days after the effective date of written notice of termination and the County shall pay the amount due within 15 days of the receipt of the final agreement expenditure report. Upon termination of this agreement, the Public Defender Office shall not incur any new obligations after the effective date of the termination, except as required under Section 5.08. The above remedies contained in this subsection are in addition to any other remedies provided by law or the terms of this agreement.

(c) For Convenience. This agreement may be cancelled or terminated by either of the parties without cause; however, the party seeking to terminate or cancel this agreement shall give written notice of its intention to do so to the other party at least 60 days prior to the effective date of cancellation or termination.

(d) Post-termination obligations. After termination of this agreement pursuant to this Section, the Public Defender Office and the County agree to comply with the provisions of Section 5.08 (b).

Section 5.08 Cooperation in transition of services. **(a) At the beginning of the agreement.** The County agrees upon the beginning of this agreement to cooperate as requested by the Public Defender Office to effectuate the smooth and reasonable transition of services for existing clients, if applicable. This includes but is not limited to the payment for the continuation of representation by current counsel where appropriate or required by law, court rule or the State Bar of Georgia ethical standards or the facilitation of the timely transfer to the Public Defender Office of the client records.

(b) During or at the end of the agreement. The Public Defender Office agrees upon termination or expiration of this agreement, in whole or in part, for any reason to cooperate as requested by the County to effectuate the smooth and reasonable transition of services for existing clients. This includes but is not limited to the continuation of representation by Public Defender Office where appropriate or required by law, court rule or the State Bar of Georgia ethical standards or the facilitation of the timely transfer to the County of the client records. The County shall compensate the Public Defender for all post-termination or post-expiration services under this subsection. The Public Defender Office shall submit a monthly expenditure report containing all charges incurred during the preceding month on or before the 5th day of each month. The County shall pay the amount due within 15 days of the receipt of the monthly expenditure report. This subsection survives the termination or expiration of the agreement.

(c) Statutory responsibility continuation. The Public Defender Office and the County acknowledge that both have responsibilities for indigent defense costs under the Georgia Indigent Defense Act of 2003, as amended and that the termination or expiration of this agreement does not relieve either party of their responsibility under the law.

Section 5.09 Advance of Funds. The parties agree that advances of funds cannot remain outstanding following agreement termination or expiration and will be reclaimed. The parties agree that upon termination of this agreement, for any reason, all unexpended and unobligated funds held by the parties revert to the party entitled to the funds. The parties agree to reconcile expenditures against advances of funds within 30 days of termination of this agreement.

Section 5.10 Time. Time is of the essence.

IN WITNESS WHEREOF, the parties have each here unto affixed their signatures the day and year first written above.

ATTEST:

Cook County

BY: _____
Signature

Title

ATTEST:

Circuit Public Defender

BY: _____
Signature
Circuit Public Defender

ATTEST:

Consented to:

Georgia Public Defender Council

BY: _____
Signature
Director

Alapaha Judicial Circuit
ATTACHMENT A – Personnel Expenditures
Cook County
July 1, 2017 – June 31, 2018

The County agrees to pay the Public Defender Office **\$91,826.10** in 12 monthly installments of **\$7652.17**. Installments are due to the Georgia Public Defender Council (GPDC) on the 15th of the preceding month beginning on June 15, 2017. Invoices will be sent to the following address:

Cook County
Board of Commissioners
1200 South Hutchinson Ave.
Adel, GA 31620

Installments will be paid directly to GPDC at the following address:

GPDC
Attn: Jason Ring
104 Marietta Street
Suite 400
Atlanta, GA 30303

The Public Defender Office agrees to use these funds for the purpose of paying the salary and benefits for county funded public defenders and assistants (Article 2) in addition to the expenditures necessary to equip, maintain, and furnish the Public Defender Office (Article 3).

Alapaha Judicial Circuit
ATTACHMENT B – Operating Expenditures
Cook County
July 1, 2017 – June 31, 2018

The County agrees to provide the Public Defender's Office up to **\$25,320.40** to cover the cost of operating the office. Expenses would include appropriate offices, utilities, telephone expenses, materials, technical support, and supplies to equip, maintain, and furnish the office or offices of the Public Defender Office. Payments are to be sent to the fiscal agent for the administration of office expenses, Cook County Board of Commissioners as requested. Invoices will be sent to the following address:

Cook County
Board of Commissioners
1200 S. Hutchinson Ave
Adel, GA 31620

The Public Defender Office agrees to use these funds for the purpose of paying the monthly expenses incurred in the operation of the Public Defender's Office.