



## GEORGIA INDIGENT DEFENSE SERVICES AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, between the Circuit Public Defender Office of the Chattahoochee Judicial Circuit (herein referred to as “**the Public Defender Office**”) and the governing authority of Columbus-Muscogee County, a body politic and a subdivision of the State of Georgia (herein referred to as “**the County**”) and is effective July 1, 2018.

### WITNESSETH:

**WHEREAS**, the Public Defender Office and the County enter into this agreement to implement the provisions of the Georgia Indigent Defense Act of 2003, as amended,

**WHEREAS**, GPDC is existing under the laws of the State of Georgia; and

**WHEREAS**, the Public Defender Office is existing under the laws of the State of Georgia 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 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 under the laws of the State of Georgia 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**, 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 its 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; and
- (5) 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 Chattahoochee 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) Criminal cases prosecuted in the Superior Courts of the Chattahoochee Judicial Circuit 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 Courts of the Chattahoochee Judicial Circuit on a revocation of probation;
- (3) Cases prosecuted in the Juvenile Courts of the Chattahoochee Judicial Circuit 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;
- (5) Columbus City Recorders Court as set out in Attachment B.

**Section 1.03 Conflicts.** The Georgia Public Defender Council agrees to provide for legal representation by an attorney who is not an employee of the Public Defender Office in cases described in Section 1.02 in which the 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. Attachment A is incorporated into this agreement by reference. The parties agree to the payment terms in Attachment A. Attachment A is incorporated into this agreement by reference. 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. Upon expiration or termination of the agreement, any unused portion of the administrative services fee may be refunded to the County in the discretion of the Georgia Public Defender Council. 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 shall serve at the pleasure of the Chattahoochee Judicial 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.

**Section 2.02 Additional County Employees.** The County agrees to provide to the Public Defender Office employees who remain employees of the County. The County is the employer for these employees for all purposes, including, without limitation, compensation and employee benefits, but the employees are under the supervision of

the circuit public defender. The circuit public defender may utilize the duties and the title of these employees found in the County Merit System. These employees include investigators and administrative personnel who are currently being paid **\$463,669** in salaries and benefits.

**Section 2.03 Office expenses.** The County agrees to pay the operational expenses in the amount of **\$59,415** which includes, but not limited to, appropriate offices, utilities, telephone expenses, materials, and supplies to equip, maintain, and furnish the office or offices of the Public Defender Office.

### ARTICLE 3

#### **PROVISION BY THE COUNTY OF ITS PRO RATA SHARE OF THE COSTS OF SALARY EXPENSE, 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 Contributions.** The parties to this agreement acknowledge that part of the total cost of the Public Defenders budget is to be reimbursed. As set out in Attachment A which is hereby incorporated into this agreement by reference.

**Section 3.02 County Fiscal Agent.** Columbus-Muscogee County is acting as fiscal agent to collect the monies from Chattahoochee, Harris, Marion, Talbot, and Taylor Counties. Installments from Chattahoochee, Harris, Marion, Talbot and Taylor Counties shall be paid to **Columbus Consolidated Government and forwarded to the Finance Director, Columbus Consolidated Government, P.O. Box 1340, Columbus GA 31902-1340.**

### 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. The County agrees to reimburse employees' travel at the current rate 0.545 per mile, subject to the budget amount set forth in Article 3.

**Section 4.02 Training.** The County agrees to reimburse the State for training employees, subject to the budget amount set forth in Article 3.

**Section 4.03 Computers.** The County agrees to provide computer equipment required to perform their duties for the county employees covered under Section 2.02, subject to the budget amount set forth in Article 3.

**Section 4.04 Legal Research.** The County agrees to reimburse the State for the actual cost, subject to the budget amount set forth in Article 3.

### ARTICLE 5

#### **MISCELLANEOUS**

**Section 5.01 Term.** The term of this agreement is 12 months beginning July 1, 2018 and ending June 30, 2019.

**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 (fiscal year 2018 or fiscal year 2019 planned budget if that budget has already been adopted) 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 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:

**OFFICE OF CHATTAHOOCHEE JUDICIAL CIRCUIT:**

Moffett Flournoy, Circuit Public Defender  
420 – 10<sup>th</sup> Street  
Columbus, Georgia 31901-2856

**GOVERNING AUTHORITY OF COLUMBUS-MUSCOGEE COUNTY, GA:**

Teresa Tomlinson, Mayor  
100 – 10<sup>th</sup> Street  
Post Office Box 1340  
Columbus, Georgia 31902-1340

**GEORGIA PUBLIC DEFENDER COUNCIL:**

Director/Acting/Interim  
104 Marietta Street, Suite 200  
Atlanta, Georgia 30303

**Section 5.06 Reallocation of Funds.** Funds budgeted as operational expenses may be reallocated by the circuit public defender for personnel costs so long as the amount to be reallocated does not exceed the total amount of the budget, subject to the express approval of the Columbus Council.

**Section 5.07 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 Standards Council, no modifications may be made without prior notice to the Director of the council.

**Section 5.08 Termination.** (a) **Due to non-availability of funds.** In the event that either of the sources of reimbursement for services under this agreement (appropriations from the General Assembly of the State of Georgia, or appropriations from the governing authority of the County) 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 Standards 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 named in Section 5.05 by the County to receive notices is conclusive. The County shall promptly notify the Public Defender Office in writing on 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 either 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 (a).

**Section 5.09 Cooperation in transition of services.** (a) **During or at the end of the agreement.** The Public Defender Office agrees upon suspension, 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-

suspension, 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 5<sup>th</sup> 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 suspension, termination, or expiration of the agreement.

**(b) 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 suspension, termination, or expiration of this agreement does not relieve either party of their responsibility under the law.

**Section 5.10 Advance of Funds.** The parties agree that advances of funds cannot remain outstanding following agreement suspension, 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:**

**Governing Authority of Columbus-Muscogee County, GA**

\_\_\_\_\_

**BY:** \_\_\_\_\_  
**Teresa Tomlinson, Mayor**

**ATTEST:**

**Chattahoochee Judicial Circuit Office of the Public Defender**

\_\_\_\_\_

**BY:** \_\_\_\_\_  
**Moffett Flournoy**  
**Circuit Public Defender**

**ATTEST:**

**APPROVED AND CONSENTED TO:**  
**Georgia Public Defender Standards Council**

\_\_\_\_\_

**BY:** \_\_\_\_\_  
\_\_\_\_\_  
**Director Acting/Interim**

**CHATTAHOOCHEE JUDICIAL CIRCUIT**  
**Attachment A**  
**July 1, 2018 – June 30, 2019**

The County agrees to pay the Public Defender Office \$1,598,542 in 12 monthly installments. Installments will be paid in advance directly to the Georgia Public Defender Council by the 15<sup>th</sup> day of each preceding month beginning on July 15, 2018.

Invoices will be sent to the following address:

**Finance Director**  
**Columbus Consolidated Government**  
**P. O. Box 1340**  
**Columbus GA 31902-1340**

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

**Georgia Public Defender Council**  
**Attn: Laurie Olney**  
**104 Marietta Street, Suite 200**  
**Atlanta GA 30303-2743**

The Public Defender Office agrees to use these funds for the purpose of paying the salary and benefits for the following positions or individuals in the amounts indicated as follows:

<u>Total salary and benefits</u>	<u>5% Admin. Fee</u>	<u>Total Amount</u>
\$1,522,421	\$76,121	\$1,598,542

The pro-rata share for the total costs for the Chattahoochee Judicial Circuit are as follows:

<u>County</u>	<u>Amount</u>
Chattahoochee	\$ 5,125
Harris	114,000
Marion	12,193
Muscogee	1,962,138
Talbot	12,220
Taylor	15,949
<b>Total</b>	<b>\$2,121,625</b>

Columbus-Muscogee County is acting as fiscal agent to collect the monies from Chattahoochee, Harris, Marion, Talbot, and Taylor Counties. Installments from Chattahoochee, Harris, Marion, Talbot and Taylor Counties shall be paid to **Columbus Consolidated Government and forwarded to the Finance Director, Columbus Consolidated Government, P.O. Box 1340, Columbus GA 31902-1340.**

**Attachment B**  
**Chattahoochee Judicial Circuit**  
**July 1, 2018-June 30, 2019**

Definition of services in Article 1 Sec 1.02 new paragraph (5)

Up to three Recorders Court Sessions daily, Monday through Friday between the hours of 8:00 A.M. to 5:30 P.M.

One Motor Squad special traffic court weekly, Monday through Friday between the hours of 8:00 A.M. to 5:30 P.M.

Saturday and Holiday Sessions at \$150.00 per session will be paid directly by the City to the Public Defender assigned attorney.

All Criminal cases to include but not limited to: Felony and Misdemeanor Preliminary Hearings. Misdemeanor, City Ordinance, And Traffic Bench Trials or Guilty Pleas. Including the Motor Squad Special Traffic Session once a week. Not to include Environmental Court.

Appeal rights to State Court shall be protected by the filing of the Appeal Notice. The Appeal must be pursued in State Court by retained counsel, State Court appointed Public Defender or pro se.

Public Defender's reserve the sole right to declare legal conflicts in any case in Recorders Court. City shall be responsible for the providing conflict attorneys and their compensation.

All representation in these matters shall meet or exceed the Standards and Requirements as set forth by the United States and Georgia Constitutions, State Law, and Standards as promulgated by the Georgia Public Defenders Council.

And other matters as the Chattahoochee Circuit Public Defender may agree to.