

# OFFICE OF THE PUBLIC DEFENDER

## Cherokee Judicial Circuit

*Christopher G. Paul*  
Circuit Public Defender

*Kelley A. Dial*  
*Edward P. Dettmar*  
*Jennifer R. Ennerberg*  
*Samir J. Patel*  
*Marc A. Clark*  
*Kearston M. Gill*  
*Lance Dutton*  
*Timothy L. Kimble*



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**Gordon County**  
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June 13, 2013

Mr. Randy Dowling  
Gordon County Administrator  
P.O. Box 580  
Calhoun, GA 30703-0580

RE: '13-'14 Public Defender's Office Contract

Dear Randy:

Enclosed, please find the proposed Indigent Defense Services Agreement for Fiscal Year '13-'14. Please note that "Attachment A" reflects the salaries, benefits, and administrative fee associated with our county-funded/ State contracted personnel. As with last year's Agreement, the State is asking that we attach as "Exhibit B" the operating budget as approved by the County Commissioners.

Assuming that everything meets with approval, please have a representative of the Commissioners execute the contract and return the original to me. I will then forward the contract on to the State and return a fully executed copy to the County. Thank you for your attention to this matter and please let me know if you have any questions.

Sincerely,

Christopher Paul

Enc:



## GEORGIA INDIGENT DEFENSE SERVICES AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, between the Circuit Public Defender Office of the Cherokee Judicial Circuit (herein referred to as “**the Public Defender Office**”) and the governing authority of **Gordon** County, a body politic and a subdivision of the State of Georgia (herein referred to as “**the County**”) and is effective \_\_\_\_\_, 2013.

### 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**, 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 Standards 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; and
- (4) 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 Cherokee 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 2 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) Cases prosecuted in the Superior Court of Gordon 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 Gordon County on a revocation of probation;
- (3) Cases prosecuted in the Juvenile Court of Gordon County in which a child may face a disposition in a delinquency case of confinement, commitment or probation, subject to the provisions of Article 2, Section 2.02; 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 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. The parties agree to the 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 Standards 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 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 personnel and services for Juvenile Court.** In recognition of the need to provide constitutionally adequate and effective legal representation to individuals charged with acts of delinquency and/or unruliness in Juvenile Court, the County agrees to maintain a panel of qualified attorneys ("panel attorneys") to assist the Public Defender Office in providing such services. The County agrees that such panel attorneys must meet all qualifications for competency as established by the Georgia Public Defender Standards Council. The parties agree that the panel attorneys are independent contractors (not employees of either the County or Public Defender Office) and any such panel attorney and the Public Defender Office shall insure that the attorney-client relationship is protected among defendants when a panel attorney and the Public Defender Office represent different clients in a conflict situation. It is understood, however, that panel attorneys are under the administrative supervision of the Public Defender Office. The Public Defender Office shall define the duties and responsibilities of the panel attorneys (in consultation with the Juvenile Court of Gordon County) and they serve at the pleasure of the Public Defender Office. The panel attorneys shall be compensated by the County for legal services rendered in connection with this agreement at a rate not less than that established by the Georgia Public Defender Standards Council. The County agrees that all such panel attorneys employed shall be subject to certain minimum continuing education and training requirements as may be established by the Georgia Public Defender Standards Council.

### ARTICLE 3

#### **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.**

**Section 3.01 Office expenses.** The County agrees to pay its pro rata share of the budget provided in Attachment B, which is the budget for appropriate offices, utilities, telephone expenses, materials, 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 stated in the budget. The County agrees to the payment terms. Attachment B is incorporated into this agreement by reference.

## ARTICLE 4

### OPTIONAL PROVISIONS

(RESERVED)

## ARTICLE 5

### MISCELLANEOUS

**Section 5.01 Term.** The term of this agreement is twelve (12) months beginning July 1, 2013 and ending June 30, 2014.

**Section 5.02 [RESERVED]**

**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:

Circuit Public Defender Office of  
Cherokee Judicial Circuit:

\_\_\_\_\_  
Circuit Public Defender

\_\_\_\_\_  
Street

\_\_\_\_\_, GA, \_\_\_\_\_  
City, Zip Code

Governing Authority of  
\_\_\_\_\_ County:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street

\_\_\_\_\_, GA, \_\_\_\_\_  
City, Zip Code

Director  
Georgia Public Defender Standards Council:  
104 Marietta Street, Suite 200  
Atlanta, GA 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 Standards 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 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 (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 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 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 Rollover of Funds.** The County acknowledges that state agencies have a fiscal year from July 1 to June 30. The County agrees to authorize the Administrative Office of the Courts to roll over remaining county funds from the end of one fiscal year to the start of the new fiscal year.

**Section 5.11 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.

**CIRCUIT PUBLIC DEFENDER OFFICE  
CHEROKEE JUDICIAL CIRCUIT**

\_\_\_\_\_ COUNTY

By: \_\_\_\_\_ (SEAL)  
Signature

By: \_\_\_\_\_ (SEAL)  
Signature

\_\_\_\_\_  
Name

Circuit Public Defender

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**ATTEST:**

\_\_\_\_\_ (SEAL)

**ATTEST:**

\_\_\_\_\_ (SEAL)

**ATTEST:**

\_\_\_\_\_ (SEAL)

**APPROVED AND CONSENTED TO:**

**GEORGIA PUBLIC DEFENDER  
STANDARDS COUNCIL**

BY: \_\_\_\_\_ (SEAL)  
SIGNATURE  
DIRECTOR

ATTACHMENT A

The County agrees to pay the Public Defender Office \_\_\_\_\_ (\$ 17,145.00) in twelve (12) installments. Installments are due within \_\_\_\_ days of receipt of invoice from the Georgia Public Defender Standards Council (GPDSC). Installments will be paid directly to the AOC with the first installment paid in advance. The Public Defender Office agrees to use these funds for the purpose of paying the salary, benefits, and administrative costs for the following positions in the amounts indicated as follows:

<u>Position</u>	<u>Annual Salary</u>	<u>Salary &amp; Benefits</u>	<u>Admin. Fee</u>
Asst Pub. Def., I	\$51,440	\$80,736	\$4,037
Asst Pub. Def., II (co-funded)	\$19,784	\$31,070	\$1,554
Admin. Asst.	\$39,455	\$61,932	\$3,097
Admin. Asst. (co-funded)	\$14,133	<u>\$22,204</u>	<u>\$1,110</u>
Annualized Total:		\$195,942	\$9,798
Sub-Total:			<b>\$205,740</b>
<b>GPDSC Credit from '12:</b>			<b>(\$0)</b>
<b>Total:</b>			<b>\$205,740</b>

Co-funded positions split with Bartow County at a 36% vs. 64% split, based on most recently available census date

# PUBLIC DEFENDERS OFFICE

436

Account Number	Expenditure Description	FY 2011-12 Actual	FY 2012-13 Budget	FY 2013-14 Department's Requested Budget	FY 2013-14 Administrator's Recommended Budget	FY 2013-14 Commission Approved Budget
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## PERSONAL SERVICES

436	511100	REGULAR EMPLOYEES SALARIES	6,715.50	6,660.00	6,660.00	6,660.00
436	512200	FICA CONTRIBUTIONS	513.77	510.00	510.00	510.00
<b>TOTAL PERSONAL SERVICES</b>			<b>7,229.27</b>	<b>7,170.00</b>	<b>7,170.00</b>	<b>7,170.00</b>

## PURCHASED SERVICES

436	521301	COURT REPORTING	-	835.00	835.00	835.00
436	522250	R&M-VEHICLES	521.93	450.00	450.00	450.00
436	522320	RENTAL OF EQUIPMENT & VEHICLES	767.40	1,200.00	1,200.00	1,200.00
436	523201	COMM.-TELEPHONE	4,831.40	4,800.00	4,800.00	4,800.00
436	523220	COMM.-POSTAGE	208.83	600.00	600.00	600.00
436	523220	COMM.-POSTAGE	416.00	1,000.00	1,000.00	1,000.00
436	523400	PRINTING AND BINDING	700.00	1,050.00	1,050.00	1,050.00
436	523601	DUES	300.00	380.00	380.00	380.00
436	523700	EDUCATION AND TRAINING	181,920.00	195,848.00	205,740.00	205,740.00
436	523902	CONTRACT LABOR-GENERAL			216,055.00	216,055.00
<b>TOTAL PURCHASED SERVICES</b>			<b>189,665.56</b>	<b>206,163.00</b>	<b>216,055.00</b>	<b>216,055.00</b>

## SUPPLIES

436	531101	OFFICE SUPPLIES	2,119.14	3,700.00	3,700.00	3,700.00
436	531400	BOOKS AND PERIODICALS	2,605.14	1,335.00	2,200.00	2,200.00
<b>TOTAL SUPPLIES</b>			<b>4,724.28</b>	<b>5,035.00</b>	<b>5,900.00</b>	<b>5,900.00</b>

## CAPITAL OUTLAY

<b>TOTAL CAPITAL OUTLAY</b>			<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
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<b>TOTAL PUBLIC DEFENDERS OFFICE</b>			<b>201,619.11</b>	<b>218,368.00</b>	<b>229,125.00</b>	<b>229,125.00</b>
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