



OFFICE OF THE PUBLIC DEFENDER  
CORDELE JUDICIAL CIRCUIT

Tracy J. Mullis, Circuit Public Defender

716 16<sup>th</sup> Avenue East, Suite B  
Cordele, Georgia 31015

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March 26, 2020

Steve Taylor, Chairman  
Ben Hill County Board of Commissioners  
402 A East Pine Street  
Fitzgerald, Georgia 31750

Mr. Taylor,

Please find enclosed the Budget & Contract for the Fiscal Year 20-21. The Operating Budget is based upon the population of the county with figures obtained from [www.census.gov](http://www.census.gov) as required by Georgia Law (O.C.G.A. § 17-12-34). There were no population changes from last fiscal year.

The Personnel Budget is based upon the county's pro-rata share of the current caseload. The percentage decreased by 2 percent based upon the county's cases at this time. The only other change to the personnel budget from last year was a 2 percent raise for the Investigator. The State employees normally receive a 2 percent raise yearly. Due to the health insurance rate decreasing, the Investigators total salary only increased by \$539.77.

We appreciate your support. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tracy J. Mullis". The signature is fluid and cursive.

Tracy J. Mullis

Encl.

## AGREEMENT

Between the Georgia Public Defender Council and the Ben Hill County Board of Commissioners

For the fiscal period of July 1, 2020 – June 30, 2021

**THIS AGREEMENT** is entered into the 1st day of July 2020, among the Georgia Public Defender Council (herein referred to as **GPDC**), the Circuit Public Defender Office of Cordele Judicial Circuit (herein referred to as “**the Public Defender Office**”), and the governing authority of **Ben Hill County**, a body politic and a subdivision of the State of Georgia (herein referred to as “**the County**”). This agreement is effective July 1, 2020.

### WITNESSETH:

**WHEREAS**, GPDC, 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; and

**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**, GPDC is the fiscal officer for the Public Defender Office; 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**, it is the intent of the parties to this agreement to provide for the operation of an indigent defense system to assure 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 GPDC. 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 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;
- 3) Optional provisions; 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 Cordele 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) Felony and misdemeanor cases prosecuted in the Superior Court of Ben Hill 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 Ben Hill County on a revocation of probation;
- 3) Cases prosecuted in the Juvenile Court of Ben Hill 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 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

### **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 2.01 Office Expenses.** The County agrees to pay its pro rata share of the budget provided in Attachment A, 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 plus a 5% administration fee to GPDC. The 5% administration fee is determined by the total amount of the County's pro rata share of the operating expenses. Attachment A is incorporated into this agreement by reference. The County agrees to pay in monthly installments by the first of each month to GPDC.

**Section 2.02 Administration of office expenses.** GPDC agrees to be the fiscal agent for the administration of office expenses. GPDC 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 GPDC in its normal course and procedure and its mailing in properly addressed envelope with sufficient postage by deposit into the United States Mail.

**Section 2.03 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 GPDC. GPDC 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 GPDC for the sole purpose of paying for office expenses.

**Section 2.04 Responsibility.** The County will deliver funds to GPDC at its own risk until receipt is acknowledged by GPDC. GPDC's sole duty with regard to County funds, other than their proper



expenditure, will be their deposit into a state depository demand account. Interest, if any, will accrue to the general fund of the state treasury. GPDC bears responsibility for properly remitting payment for invoices approved by the Circuit Public Defender provided sufficient funds from the County exist. The County bears the legal responsibility for any claim that arises from the GPDC's inability to remit payment due to insufficient funds for said office expenses.

**Section 2.05 Limitation of liability.** Under no circumstances shall GPDC be obligated to pay for the office expenses out of funds other than those provided by the County for that purpose. Without limiting the foregoing, GPDC is not obligated to pay for office expenses out of state funds or other funds available to GPDC. GPDC undertakes only to receive funds from the County and to process and mail checks in payment of invoices approved by the Circuit Public Defender. GPDC shall have no further legal obligation in any circumstance or event beyond the amount of funds received from the County for the purpose of paying for office expenses under this agreement. In the event that GPDC fails to make payment on an invoice that has been properly processed and county funds are available, the exclusive remedy for any tort claim against GPDC will be the Georgia Tort Claims Act.

**Section 2.06 Taxes.** The County will pay all taxes lawfully imposed upon it with respect to the office expenses. GPDC makes no representation whatsoever as to the liability or exemption from liability of the County to any tax imposed by any governmental entity.

### ARTICLE 3

#### OPTIONAL PROVISIONS

**Section 3.01 Additional State-Funded Personnel.** Because of the unique needs of the Cordele Judicial Circuit, GPDC agrees to create and fund two additional assistant public defender positions in the Public Defender Office for the 2020–21 fiscal year. These positions are in addition to the state-funded positions specifically mandated by the Indigent Defense Act of 2003. Authority to create and fund this position flows from OCGA § 17-12-27(a)(2).

**Section 3.02 Additional County-Funded Personnel.** Because of the unique needs of the Cordele Judicial Circuit, the County agrees to fund a pro rata share of two additional positions in the Public Defender Office for the 2020–21 fiscal year, as described in Attachment A. These are in addition to the positions described in Article 1 and Section 3.01 above. This position will be funded by the County along with the other counties in the Cordele Judicial Circuit and will be administered by GPDC as contemplated in OCGA § 17-12-32.

### ARTICLE 4

#### MISCELLANEOUS

**Section 4.01 Term.** The term of this agreement is 12 months beginning July 1, 2020 and ending June 30, 2021.

**Section 4.02 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 as part of this support each county agrees to provide space, equipment and operating expenses necessary to effectively operate the circuit public defender office.

**Section 4.03 Severability.** Any section, subsection, paragraph, term, condition, provision or other part (herein after collectively referred to as "part") of this agreement that is judged, held, found, or declared to 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 4.04 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 4.05 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 the Public Defender Cordele Judicial Circuit  
Tracy J. Mullis, Circuit Public Defender  
716-B 16<sup>th</sup> Ave. East  
Cordele, GA 31015**

**Ben Hill County Board of Commissioners  
Steve Taylor, Chairman  
402 A East Pine Street  
Fitzgerald, Georgia 31750**

**Georgia Public Defender Council  
Omotayo Alli, Executive Director  
104 Marietta Street, Suite 200  
Atlanta, GA 30303**

**Section 4.06 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 letter



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. No modifications may be made without prior notice to and approval from all parties to this agreement.

#### **Section 4.07 Termination.**

**(a) Due to non-availability of funds.** In the event that either 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 occurrence of the reduction in county funds by the person named in Section 4.05 by the County to receive funds 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 4.08. 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 4.06.

**(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 of 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 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 termination, except as required under Section 4.08. 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 4.08 (b).

#### **Section 4.08 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 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 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 this agreement.

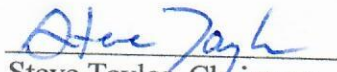
(c) **Statutory responsibility continuation.** The Public Defender Office and the county acknowledge that both have responsibilities for indigent defense costs under the Georgia Indigent Defense Act of 2003, as amended and that the termination or expiration of this agreement does not relieve either party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

**Section 4.09 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 4.10 Time.** Time is of the essence.



Tracy J. Mullis  
Circuit Public Defender  
Cordele Judicial Circuit



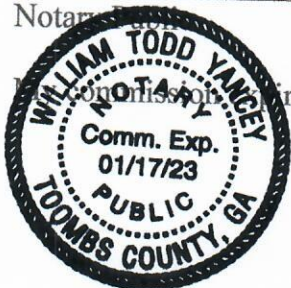
Steve Taylor, Chairman  
Ben Hill County Commission

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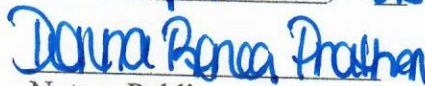
Sworn to and subscribed  
before me this 26<sup>th</sup>  
day of March, 2020



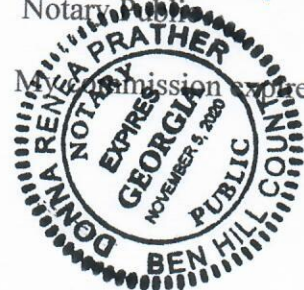
Notary Public  
My commission expires:



Sworn to and subscribed  
before me this 28<sup>th</sup>  
day of April, 2020



Notary Public  
My commission expires:



Sworn to and subscribed  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My commission expires: