

**INDIGENT DEFENSE SERVICES AGREEMENT
BETWEEN THE CIRCUIT PUBLIC DEFENDER OFFICE OF THE WESTERN
JUDICIAL CIRCUIT, THE OCONEE COUNTY BOARD OF COMMISSIONERS,
AND THE UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY**

THIS AGREEMENT is entered into this 26th day of June, 2020, between the Circuit Public Defender Office of the Western Judicial Circuit (herein referred to as "the Circuit Public Defender Office"), the Georgia Public Defender Council (hereinafter "GPDC"), the Oconee County Board of Commissioners, a body politic and corporate, and a political subdivision of the State of Georgia and the Unified Government of Athens-Clarke County, a body politic and corporate, and a political subdivision of the State of Georgia (herein referred to as "the Unified Government") and is effective July 1, 2020, except as provided in Section 5.10.

WITNESSETH:

WHEREAS, the Circuit Public Defender Office, the Oconee County Board of Commissioners and the Unified Government 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), which is effective January 1, 2005, provides as follows:

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

WHEREAS, O.C.G.A. § 17-12-34, which is effective January 1, 2005, 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, which is effective January 1, 2005, 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 Oconee County Board of Commissioners 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 Unified Government 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, 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 Circuit Public Defender Office of the statutorily required services to the Oconee Board of Commissioners and the Unified Government;

(2) The payment for additional personnel and services by the Oconee Board of Commissioners and the Unified Government;

3) The provision by the Oconee Board of Commissioners and the Unified Government 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 Circuit Public Defender Office agrees to provide for the Western 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 Circuit Public Defender Office agrees to provide representation to indigent defendants in the following cases:

1) Cases prosecuted in the Superior Courts of the Western 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 Western Judicial Circuit on revocation of probation;

3) Cases prosecuted in the Juvenile Courts of Oconee County and Athens-Clarke 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. GPDC 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 Oconee County Board of Commissioners and the Unified Government agrees to pay for the services and personnel described in Attachment A. The parties agree to the terms of Attachment A. Attachment A is incorporated into this agreement by reference. The amount to be paid in Attachment A includes a 5% administration fee. 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. Such employees shall not be deemed to be employees of the Oconee County Board of Commissioners or the Unified Government.

ARTICLE 3

PROVISION BY THE OCONEE COUNTY BOARD OF COMMISSIONERS AND THE UNIFIED GOVERNMENT 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. The Oconee Board of Commissioners and the Unified Government agrees to pay their 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 Oconee Board of Commissioners and the Unified Government's pro rata shares based on population are stated in Attachment B and are payable in twelve payments due as provided hereafter. Attachment B is incorporated into this agreement by reference. The first such monthly payment is due on July 1, 2020 and shall be 1/12 of the amount of the contract. The remaining eleven payments shall be due on the first day of each month beginning on August 1, 2020, and said remaining payments shall each be for 1/12 of the contract amount. The recipient of said payment shall be: The Georgia Public Defender Council, 104 Marietta Street NW, Suite 600, Atlanta, Georgia 30303.

Section 3.02 Office rent. The Oconee Board of Commissioners and the Unified Government acknowledge that the public defender will lease appropriate office space at 440 College Avenue, Athens for no longer than the duration of this contract. The public defender will make rent payments with funds provided for that purpose under Attachment "B" of this contract. If this contract is terminated for any reason the Oconee Board of Commissioners agrees to pay its pro rata share of 22% of any remaining rent obligation owed under said lease and the Unified Government agrees to pay its pro rata share, to wit 78%, any remaining rent obligations owed under said lease.

ARTICLE 4

OPTIONAL PROVISIONS

(RESERVED)

ARTICLE 5

MISCELLANEOUS

Section 5.01 Term. The term of this agreement is 12 months, beginning July 1, 2020 and ending June 30, 2021.

Section 5.02 Maintenance of effort. The Oconee Board of Commissioners and the Unified Government agree that they will continue to fund indigent defense for the term of this agreement, at a minimum, at the levels specified in Attachments A and B of this contract for indigent defense and as part of this support each county agrees to provide the space, equipment and operating expenses necessary to continue to operate the circuit public defender office on and after July 1, 2020.

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 Circuit Public Defender Office, the Oconee Board of Commissioners, and the Unified Government acknowledge that they continue to engage in a new venture and 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.

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:

Western Judicial Circuit Public Defender Office:

John W. Donnelly
Circuit Public Defender
440 College Avenue, suite 220
Athens, GA, 30601

Georgia Public Defender Council:

Omotayo Alli, Director
Georgia Public Defender Council
104 Marietta Street NW, Suite 600
Atlanta, Georgia 30303

County Commission of Oconee County:

Chairman John Daniell
Oconee County Board of Commissioners
23 North Main Street
Post Office Box 145
Watkinsville, GA 30677

Unified Government of Athens-Clarke County:

Blaine Williams, Manager
Unified Government of Athens-Clarke County
301 College Avenue
Suite 303
Athens, GA 30601

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.

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 the Oconee Board of Commissioners or the governing authority of the Unified Government) is reduced during the term of this agreement, the Circuit Public Defender Office may make financial and other adjustments to this agreement and notify the Oconee Board of Commissioners and the Unified Government 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 named in

Section 5.05 by the counties to receive notice is conclusive. Either the Oconee Board of Commissioners or the Unified Government shall promptly notify the Circuit Public Defender Office in writing of the non-existence or insufficiency of funds and the date of termination. The Circuit 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 Oconee Board of Commissioners and Unified Government and the Circuit 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 Circuit Public Defender Office shall submit a final agreement expenditure report containing all charges incurred through and including the termination date to the Oconee Board of Commissioners and the Unified Government no later than 30 days after the effective date of written notice of termination and the Oconee Board of Commissioners and the Unified Government shall pay the amounts due within 15 days of the receipt of the final agreement expenditure report. Upon termination of this agreement, the Circuit 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) Post-termination obligations. After termination of this agreement pursuant to this Section, the Circuit Public Defender Office, the Oconee Board of Commissioners, and the

Unified Government agree to comply with the provisions of Section 5.08 (b).

Section 5.08 Cooperation in transition of services.

(a) During or at the end of the agreement. The Circuit 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 Oconee Board of Commissioners and the Unified Government to effectuate the smooth and reasonable transition of services for existing clients. This includes but is not limited to the continuation of representation by the 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 counties of the client records. The Oconee Board of Commissioners and the Unified Government shall compensate the Circuit Public Defender for all post-termination or post-expiration services under this subsection, each county being responsible for costs associated with cases in their respective courts. The Circuit 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 Oconee Board of Commissioners and the Unified Government shall pay the amounts due within 15 days of the receipt of the monthly expenditure reports. This subsection survives the termination or expiration of the agreement.

(b) Statutory responsibility continuation. The Circuit Public Defender Office, the Oconee Board of Commissioners, and the Unified Government acknowledge that each 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 any 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.

Unified Government of
Athens-Clarke County

BY: _____
Kelly Girtz, Mayor

ATTEST:

Clerk

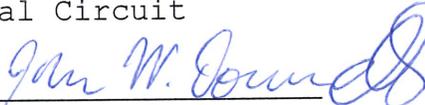
Oconee County Board
of Commissioners



BY: John Daniell
John Daniell
Chairman

ATTEST:
Kathy Hays
Clerk

Circuit Public Defender
Office of Western
Judicial Circuit

BY: 
John W. Donnelly
Circuit Public Defender

ATTEST:



Consented to:

Georgia Public Defender
Council

BY: _____
Omotayo Alli
Director

ATTEST:

ATTACHMENT A

Definition. For the purposes of this agreement and this attachment the term "Additional Services" means services provided by the Circuit Public Defender Office in addition to those services that the Circuit Public Defender Office is required by law to provide, and as set forth in Section 1.02 of this contract above.

Additional Services. The Circuit Public Defender Office agrees to provide and the Oconee Board of Commissioners and the Unified Government agree to pay for the "additional services" described in this attachment. The parties agree to the terms of this attachment and this attachment is incorporated into this agreement by reference. The amount to be paid in this attachment includes a 5% administration fee. Any additional personnel employed by the Circuit Public Defender Office pursuant to this attachment are full-time state paid employees of the Circuit 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.

Compliance with Standards. Subject to the availability of resources, the Circuit Public Defender Office agrees to provide the additional services provided for in this attachment in a professional manner consistent with the standards adopted by the Georgia Public Defender Council. In the event the Circuit Public Defender's caseload reaches a size that prevents the Circuit Public Defender from providing the additional services in a manner which meets the standards adopted by the Georgia Public Defender Council, the Circuit Public Defender may give the Oconee Board of Commissioners and the Consolidated Government 30 days written notice of its intent to suspend taking new additional services cases pursuant to this attachment. The provisions of Section 5.08 shall apply during the period of the suspension. The Circuit Public Defender

Office shall give the Oconee Board of Commissioners and the Unified Government 10 days written notice of its intent to lift the suspension of the additional services. At any time during a period of suspension of the additional services up to and including the 5th calendar day after the Oconee Board of Commissioners and the Unified Government receive notice from the Circuit Public Defender Office of its intent to lift the suspension, the Oconee Board of Commissioners and the Unified Government may elect to terminate their obligations under this attachment by giving the Public Defender Office written notice thereof; in which event the parties' obligations under this attachment shall immediately terminate subject to the provisions of Section 5.08.

SERVICES TO BE PROVIDED BY THE CIRCUIT PUBLIC DEFENDER OFFICE:

The Circuit Public Defender shall provide **initial interviews** for all persons who request such interviews, and are accused of violating the criminal laws of the State of Georgia in Athens-Clarke County, Georgia or Oconee County, Georgia, or are charged with a delinquent act in either county. A determination shall be made as to whether said persons meet the financial eligibility guidelines for a court appointed attorney, as established by the Georgia Public Defender Council.

The Circuit Public Defender shall provide **representation** to persons who meet the financial eligibility guidelines and who are charged as set forth in Section 1.02 above, and also in non-statutory cases in the juvenile courts, State Court of ACC, Municipal Court of ACC, and Probate Court of Oconee County as outlined below.

Further, as part of "Additional Services" the Circuit Public Defender shall provide legal representation for indigent persons who are accused of a violation of the criminal laws of the State of Georgia or local ordinance violations, or are a named party in a dependency case in which DFCS is involved in Oconee County; who are required to appear before the State or Municipal Courts of Athens-Clarke County; as well as the

Probate Court of Oconee County; and for whom legal representation is required under either the Constitution of the State of Georgia or the Constitution of the United States.

Municipal Court of Athens-Clarke County As part of "Additional Services" the Circuit Public Defender shall assign attorneys to handle certain indigent cases in the Municipal Court of Athens-Clarke County (hereafter "Municipal Court"). The Circuit Defender will represent all indigent persons in custody who are brought before the Municipal Court during jail call, and the Circuit Defender will represent all indigent persons who are answerable to the Municipal Court and are charged with at least one of the following offenses: Driving Under the Influence, Fleeing or Attempting to Elude, Possession of Marijuana, Aggressive Driving, Racing, Leaving the Scene of an Accident, Underage Possession of Alcohol, Sale of Alcohol to a Person under 21, Unlawful/ Fictitious Use of License, Driving without a license and Shoplifting. The Circuit Public Defender will represent defendants under 21 who are charged with an offense that would result in license suspension pursuant to O.C.G.A. 40-5-125. The Circuit Public Defender will not represent defendants charged with animal control, litter, nuisance, noise, garbage disposal, abandoned vehicles, or any other "Quality of Life" ordinance violations. This representation shall be consistent with the standards of the Georgia Public Defender Council.

Probate Court of Oconee County As part of "Additional Services" the Circuit Defender will represent (beginning October 1, 2013) all indigent persons in custody who are brought before the Probate Court and the Circuit Defender will represent all indigent persons who are answerable to the Probate Court and are charged with at least one of the following offenses: Driving Under the Influence, Fleeing or Attempting to Elude, Possession of Marijuana, Aggressive Driving, Racing, Leaving the Scene of an Accident, Underage Possession of Alcohol, Sale of Alcohol to a Person under 21, Unlawful/ Fictitious Use of License, and Driving While License Suspended. The Circuit Defender shall represent defendants in Probate Court probation revocation hearings upon appointment of the Probate Court Judge,

or upon a determination being made that the complexity of the factual allegations or severity of the consequences require representation. This representation shall be consistent with the standards of the Georgia Public Defender Council.

At the funding level specified in this agreement it is contemplated that the Public Defender shall have one full-time attorney assigned to Municipal Court of Athens-Clarke County, one full-time attorney assigned to Magistrate's Court (in both counties) and appeals, one full-time attorney assigned to Municipal and Magistrate Court (ACC), one attorney assigned to Juvenile Court (in both counties), four attorneys assigned to Athens-Clarke County State Court and Oconee Probate Court, and two attorneys assigned to each (of four) Superior Courts.

Excluded from the "Additional Services" to be provided by the Circuit Defender are cases that would create a conflict of interest for the Circuit Defender. The Circuit Defender will inform the appropriate Court as to whether or not the defendants in such cases are eligible for a court-appointed attorney and the Court shall make arrangements for appointing and funding conflict-free counsel.

For the purposes of this agreement a conflict of interest will be deemed to exist in the following circumstances: i) cases where the representation of multiple defendants in regard to a single incident presents a conflict between defendants; ii) cases where the Circuit Defender represents a defendant in one case and the victim in that case is the defendant in another case and seeking representation from the Circuit Defender; iii) where the Circuit Defender represents a defendant in one case and a prosecution witness in that case is the defendant in another case and seeking representation from the Circuit Defender; iv) where an employee of the Circuit Defender is a material witness to the crime or a victim of the crime; v) where the representation of a defendant would cause the attorney to be in violation of any canon or standard set by the Supreme Court of Georgia, the Georgia State Bar, the Georgia Public Defender Council, or any other regulatory agency; or vi) where the presiding judge determines in an individual case that a conflict exists.

Also **not to be included** among those persons eligible for the services of the Circuit Defender are those individuals who are charged with the offense of misdemeanor bad check; who are required to answer this charge before the Magistrate Court of Oconee County or Athens-Clarke County; and for whom a conviction would not result in confinement.

PAYMENT FOR ADDITIONAL SERVICES

The Oconee County Board of Commissioners agrees to pay the Public Defender Office one hundred seventy-nine thousand and three hundred eighty-six **dollars (\$179,386)** and the **Unified Government** agrees to pay the Public Defender Office **one million, eight hundred and sixty-five thousand, two hundred and eighty-four dollars (\$1,865,284)** in twelve installments. Payments will be made directly to the GEORGIA PUBLIC DEFENDER COUNCIL, 104 Marietta Street NW, Suite 600, Atlanta, Georgia 30303, with the first installment due on July 1, 2020 in an amount equal to one twelfth of the amount of the total. The remaining eleven payments shall be due on the first day of each month beginning on August 1, 2020, and said remaining payments shall be for one twelfth of the contract amount. The recipient of said payment shall be "The Georgia Public Defender Council". The Public Defender Office agrees to use these funds for the purpose of paying the **salary, benefits, and administrative costs** for the **staff** involved in providing services in Paragraph 1.02 and "Attachment A" above. The above amount is in addition to the Administrative Costs described in Section 3.1 above and denominated in ATTACHMENT B below.

The Unified Government and the Oconee Board of Commissioners agree to continue to **supplement** the salary of the Circuit Public Defender in the amount of **five thousand dollars (\$5000)**. The Unified Government will contribute \$4,500 toward the supplement and will pay this amount by August 1, 2020 to the finance department of Oconee County. Oconee County shall pay the Circuit Public Defender the supplement in twelve equal monthly payments, and all payroll taxes and benefits associated with the salary supplement are paid by the County. The County shall provide the Public Defender Office with the information concerning the salary supplement required by the State Auditor.

ATTACHMENT B "ADMINISTRATIVE COSTS"

Administrative Costs

This includes office rent, phone, office supplies, part-time labor, bar dues, continuing legal education, etc. Covered Costs are those incurred in providing services in Superior Court and Juvenile Delinquency Cases. Non-covered Costs are incurred in providing services in State, Municipal, and Magistrates Courts, as well as Juvenile Dependency Cases in Oconee County.

The Oconee Board of Commissioners agrees to pay forty-six thousand, and three-hundred and forty-five dollars **(\$46,345)** in administrative costs. The Unified Government agrees to pay one hundred eighty-six thousand, eight hundred and forty-five dollars **(\$186,845)** in administrative costs.

ATTACHMENT "C"

CONTRACT TOTALS

	Unified Government of Athens-Clarke County	Oconee County Board of Commissioners
Attachment A Salary Expenses	1,673,939	132,541
CPD salary supplement	4,500	500
Attachment B Admin Costs	186,845	46,345
CONTRACT TOTALS	<u>1,865,284</u>	<u>179,386</u>