COUNTY DEPARTMENT AGENDA REQUEST

Department:	County Attorney	Presenter(s):	Scott Bennett
Meeting Date:	Thursday, August 26, 2010	Type of Request:	New Business

Wording for the Agenda:

Consideration of staff's recommendation that the County enter into an annual "Agreement for Indigent Defense Services provided by the Griffin Judicial Circuit Public Defender's Office in Fayette County".

Background/History/Details:

Each year when funding is allocated for the Public Defender's Office by the County, a new contract between the two parties is executed.

What action are you seeking from the Board of Commissioners?

Vote to enter into the Agreement and authorize execution of the Agreement, pending approval of the document by the County Attorney.

If this item requires funding, please describe:

Funds were budgeted in the FY 2011 budget to meet the terms of this contract.

Has this issue come before the Commissioners in the past?	No	If so, when?	
Do you need audio-visual for the presentation?	No	Back-up Material Submitted?	

STAFF USE ONLY

Approved by Finance		Reviewed by Legal	
Approved by Purchasing		Approved by County Clerk	Yes
Administrator's Approval	Yes		

Staff Notes:

AGREEMENT FOR INDIGENT DEFENSE SERVICES PROVIDED BY THE GRIFFIN JUDICIAL CIRCUIT PUBLIC DEFENDER'S OFFICE IN FAYETTE COUNTY

This is an agreement between the Circuit Public Defender Office of the Griffin Judicial Circuit (hereinafter referred to as Public Defender Office) and the Board of Commissioners, as the governing authority of Fayette County, a body politic and subdivision of the State of Georgia (hereinafter referred to as the County) and is effective July 1, 2010.

WITNESSETH:

WHEREAS, the Public Defender Office is established to provide representation to indigent persons in criminal prosecutions in the Griffin Judicial Circuit which includes Fayette County, Georgia, all in accordance with the statutory requirements of the Georgia Indigent Defense Act of 2003, as amended.

WHEREAS, the Public Defender Office and the County have an agreement about the services to be provided for FY 2011, which are the same services as provided in past years. The services provided by the Public Defender Office to the County include: (a) the representation of indigent persons in criminal prosecutions in the Superior Court of Fayette County, Georgia, the representation of indigent juveniles in actions in the Juvenile Court of Fayette County, Georgia where the disposition of the juvenile involves confinement, commitment or probation, and the representation of indigent persons and juveniles in direct appeals as a matter of right of such actions, all as mandated by O.C.G.A. 17-12-23(a); and, (b) the representation of indigent persons charged with violations of state law or county ordinances in the State Court of Fayette County, Georgia, the representation of indigent persons charged with a criminal offense of deposit account fraud in the Magistrate Court of Fayette County, Georgia, and the representation of indigent parents in actions involving deprivation or termination of parental rights brought by the Department of Family and Children Services in the Juvenile Court of Fayette County, Georgia, all pursuant to the authority and right of contract provided by O.C.G.A. Section 17-12-23(d).

WHEREAS, the County acknowledges that O.C.G.A. Section 17-12-23(d) requires it to comply with all applicable rules, regulations, policies, and standards adopted by the council for representation of indigent persons in criminal prosecutions and certain other actions in the courts of this state, especially to any extent that there may be criminal prosecutions or other actions against indigent persons in the courts of Fayette County, Georgia that are not covered by the Public Defender Office under this agreement.

WHEREAS, the County has approved the budget for the operation of the Public Defender Office for FY 2011 in the total amount of $484,512.00, which amount is appropriated for the payment of: (a) any supplemental or additional compensation paid to state-funded employees for the additional services; (b) all salaries and/or other compensation of county-funded employees of the Public Defender Office, including certain attorneys, administrative assistants, and investigators employed as additional personnel under

O.C.G.A. 17-12-31; and (c) the pro rata portion for the County of certain operating expenses itemized in the budget.

WHEREAS, the County provides an office to the Public Defender Office and pays all rent, utilities, telephone expenses and certain other expenses related to the necessary and efficient operation of the office in said County, all as provided by O.C.G.A. Section 17-12-34, and it is understood that this is paid in addition to the above-stated amount and is done in conjunction and cooperation with the other counties in the judicial circuit and as part of its pro rata share according to the population of each county.

WHEREAS, the Public Defender Office and the County acknowledge that it is the intent of the parties that the representation of indigent persons and other services contemplated by this agreement will meet the standards for adequate and effective legal representation adopted by the Georgia Public Defender Standards Council and intended by the provisions of the Georgia Indigent Defense Act of 2003, as amended; or otherwise required by the Constitution of the State of Georgia and the Constitution of the United States.

NOW THEREFORE, for and in consideration of the promises, covenants, agreements, provisions, and conditions stated herein concerning the services to be provided by the Public Defender Office and the payment for same to be made by the County, and for other good and valuable considerations, in hand paid, the receipt and delivery of which is acknowledged, the parties agree, as follows:

1. The Public Defender will provide representation to: (a) indigent persons charged with violations of state laws or county ordinances in the State Court of Fayette County, Georgia and the Superior Court of Fayette County, Georgia in which there is a possibility that a sentence of imprisonment or probation or suspension of sentence of imprisonment may be adjudged; (b) indigent persons in all hearings of probation revocations in the State Court of Fayette County, Georgia and the Superior Court of Fayette County, Georgia; (c) juvenile indigents in the Juvenile Court of Fayette County, Georgia in actions wherein the juvenile may face a disposition of confinement, commitment or probation; (d) indigent parents in all actions involving deprivation or termination of parental rights brought by the Department of Family and Children Services in the Juvenile Court of Fayette County, Georgia; (e) indigent persons charged with a criminal offense of deposit account fraud in the Magistrate Court of Fayette County, Georgia, where such offense may result in imprisonment or probation or suspension of sentence; and, (f) indigent persons in direct appeals of any proceedings in which representation is state-mandated under O.C.G.A. Section 17-12-23(a)(4).

2. The parties understand that conflicts of interest may arise in some instances which conflicts prevent representation by the Public Defender Office. When a conflict exists in a matter in which the Public Defender Office is mandated to provide representation under O.C.G.A. Section 17-12-23(a), then the Public Defender Office shall provide for legal representation by an attorney who is not an employee of the Public Defender Office and the expenses for such representation will be paid through the state system. As to conflicts that occur with respect to

representation of indigent persons in all other matters provided in paragraph (1), including representation of indigent persons in the State Court and Magistrate Court of Fayette County, Georgia and of indigent parents in certain actions in the Juvenile Court of Fayette County, Georgia, a specified amount has been budgeted for such conflicts. The County shall be responsible for payment of any conflicts not covered by the state or not otherwise specifically contemplated as part of the conflict system for State, Magistrate and Juvenile Courts of Fayette County, Georgia; and otherwise, the County shall be responsible for all conflicts that exceed the amount of the budget for conflicts.

3. The Public Defender shall maintain and employ the statutory staffing as required by O.C.G.A. 17-12-26 for the Griffin Judicial Circuit in order to perform the services intended under this agreement. In addition thereto, the Public Defender office has certain additional personnel hired pursuant to O.C.G.A. 17-12-31, which personnel was separately listed in the budget. The County approves the employment and compensation of these additional personnel and understands and agrees that the amount paid and budgeted as salaries or compensation for all additional personnel includes a 5% administrative fee, which fee is determined by the total amount for all of the budgeted positions. The additional personnel employed by the Public Defender Office under O.C.G.A. 17-12-31 are full-time state paid employees in the unclassified service of the State Merit System of Personnel Administration with all benefits of such appointed state employees as provided by law. These additional personnel serve at the pleasure of the Circuit Public Defender of the Griffin Judicial Circuit. Upon expiration or termination of this 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. 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.

4. The County shall pay the total sum $484,512.00 toward the maintenance and operation of the Public Defender Office, including for payment of salaries, benefits and other compensation of the personnel of the Public Defender Office and for payment of certain operating expenses, all as itemized in the FY 2011 budget. The County shall pay the Public Defender Office in quarterly installments. The quarterly payments shall be submitted to Christopher H. Daniel and Associates, P.C., 317-B South Hill Street, P. O. Box 1585, Griffin, Georgia 30224, as the accountant for the Public Defender Office, for appropriate disbursement. The County agrees to pay the quarterly installments immediately upon receiving an invoice from said accountant.

5. The County shall continue to maintain an office for the Public Defender Office, as it has done in prior years, and the County will pay any and all rent, repairs and maintenance, utilities, telephone, and internet expenses associated with the office. The payment of these office related expenses is in addition to the amount set out to be paid in paragraph 4 above.

6. The County may, but is not required to, advance or reimburse employees of the Public Defender Office for travel and other expense incurred in the performance of the employee's official duties under this agreement, but only if: (a) the expenses are not reimbursed by the state; and, (b) the expenses are pre-authorized by the County and the Circuit Public Defender upon special request. If the County chooses to make any travel advancements or reimbursements under this agreement of understanding, the County will provide the Public Defender Office with the information concerning the travel advances and expense reimbursements required by the State Auditor.

7. This agreement is effective for a period of 12 months beginning July 1, 2010 and ending June 30, 2011.

8. If any term, condition, provision or other part of this agreement between the parties hereto is adjudged, held, found, or declared to be voidable, void, invalid, illegal or unenforceable, it shall not affect the remainder of this agreement, and the remainder of this agreement shall continue to be of full force and effect.

9. If the parties amend, modify, eliminate, or otherwise change any term, condition, provision or other part of this agreement, it shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect.

10. The parties acknowledge that this agreement may need to be revised periodically to address new or unforeseen matters.

11. The parties agree to cooperate with the other party to effectuate and carry out the intent of this agreement.

12. This agreement, and the rights and obligations of the parties under its terms and provisions, shall be governed by, subject to, and interpreted in accordance with the laws of the State of Georgia. If any dispute arises the parties agree to submit same to mediation or arbitration, if the parties cannot otherwise resolve the dispute among themselves; provided however, this in no way prohibits any party from taking other legal action or pursuing other legal remedies provided by law.

13. All notices required to be served under this agreement shall be made in writing and delivered by first class mail or personally to the party being noticed. Notices served on the Public Defender Office shall be mailed or personally delivered to Joseph Saia, Circuit Public Defender, 145 Johnson Avenue, Fayetteville, Georgia, 30214. All notices to the County shall be served on Jack Krakeel, County Administrator, 140 Stonewall Avenue West, Fayetteville, Georgia 30124. All notices to the Georgia Public Defender Standards Council shall be addressed and served on the Director of the Georgia Public Defender Standards Council, 104 Marietta Street, Suite 200, Atlanta, GA 30303.

14. This agreement and any attachments are intended to constitute the entire understanding of the parties with regard to the operation of the Public Defender

Office and the payment by the County for the services provided by the Public Defender Office. This agreement supersedes any other oral or written communication, negotiation, memorandum of understanding or agreement.

15. In the event of any reduction in the amount of state or county funding appropriated for FY 2011 for the services contemplated under this agreement, the Public Defender Office may make financial and other adjustments to this agreement and notify the County accordingly. The adjustments may amount to an amendment or may amount to a termination. The certification by the Director of the Georgia Public Defender Standards Council of the occurrence of a reduction in state funds shall be conclusive evidence of same. The certification by the Chairman of the County Commission or the County Manager of the occurrence of a reduction in county funds is conclusive evidence of same. The County shall promptly notify the Public Defender Office in writing of the non-existence or insufficiency of funds and any date of intended termination. The Public Defender Office shall then immediately cease providing the services required hereunder except for any necessary winding down and transition services hereafter defined. In lieu of terminating this agreement, the County and the Public Defender Office may make financial and other adjustments to this agreement in writing.

16. 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 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. The County shall pay the amount due within 15 days of the receipt of the final 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 in paragraph 18. The above remedies contained in this subsection are in addition to any other remedies provided by law or the terms of this agreement.

17. 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.

18. Upon termination, suspension, or expiration of this agreement in whole or in part for any reason, the Public Defender Office and the County agree 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 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 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 5th day of each month. The County shall pay the amount due within 15 days of the receipt of the monthly expenditure report. This subsection survives the suspension, termination or expiration of this agreement.

19. The Public Defender Office and the County acknowledge that both parties have obligations and responsibilities for providing indigent defense services and paying 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 respective obligations or responsibilities under the law.

20. The County and the Public Defender Office acknowledge that payments of salaries and expense under this agreement are to be made in advance by the County. The parties agree that advances of funds cannot remain outstanding once this agreement is terminated or expired and such funds must 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.

21. The County acknowledges that state agencies have a fiscal year from July 1 to June 30 of each year. The County agrees to authorize the Georgia Public Defender Standards Council to roll over remaining county funds from the end of one fiscal year to the start of the new fiscal year.

22. TIME IS OF THE ESSENCE.

IN WITNESS WHEREOF, the parties have affixed their signatures to this agreement to be effective as of July 1, 2010.

CIRCUIT PUBLIC DEFENDER OFFICE
GRIFFIN JUDICIAL CIRCUIT:

_____(SEAL)
Circuit Public Defender or Authorized
Agent of Public Defender Office
Date Signed: 8/16/10

Witnessed and Attested by:

_____(SEAL)

FAYETTE COUNTY:

_____(SEAL)
Chairman of Board of County Commission
or County Administrator as Agent
Date Signed:_____

Witnessed and Attested by:

_____(SEAL)

THIS AGREEMENT IS APPROVED BY THE GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL:

_____(SEAL)
Executive Director, GPDSC
Date Signed:_____