



REQUEST FOR QUALIFICATIONS FOR STATE COURT PUBLIC DEFENDER

The Toombs County Board of Commissioners is seeking a Request for Qualifications (RFQ) for a Public Defender in Toombs County State Court.

All RFQ responses must be received in the office of the Toombs County Board of Commissioners, 100 Courthouse Square, Lyons, Georgia 30436 or P.O. Box 112, Lyons, Georgia 30436 by Noon, Thursday, December 17, 2020.

Toombs County reserves the right to reject any and all RFQ responses, re-advertise the RFQ, waive technicalities/administrative errors (as defined by Toombs County) and make awards in the best interest of the county and in compliance with state law.

The successful applicant will/have:

- Be a licensed private attorney, duly admitted to the State Bar of Georgia, to all courts in Georgia, is a member in good standing, and is competent to counsel and defend a person accused of crimes or a mental state that may result in the person being incarcerated or confined.
- Ability to enter into a contract with the Toombs County Board of Commissioners to provide Public Defender Services in Toombs County State Court. See Attachment A.
- Demonstrated experience in performing the duties of a Public Defender or comparable experience demonstrative of your ability to provide competent Public Defender Services.
- References that can attest to your competence as an attorney and moral character.

A

**STATE OF GEORGIA
COUNTY OF TOOMBS**

**AGREEMENT FOR STATE COURT
CONTRACT PUBLIC DEFENDER**

THIS AGREEMENT is effective this _ day of _____, 2021
TOOMBS COUNTY BOARD OF COMMISSIONERS, a political subdivision of the state of
Georgia, whose address is P.O. Box 112, Lyons, Toombs County, Georgia, 30436, (the "Board")
and _____ a licensed attorney, whose Georgia Bar number is
__ (the "Contractor").

WITNESSETH:

WHEREAS, the Board has identified a need for certain services of an attorney to
represent certain indigent defendants ("Assigned Defendants") in the State Court of Toombs
County ("Court"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, the Board desires
to retain Contractor to provide such services, as more fully described herein, and Contractor
desires to provide such services; and

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual
promises, covenants and agreements contained herein, and other good and valuable
consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and
Board hereby agree as follows:

1. TERM

The initial term of this agreement shall begin on _____, and 2021 extend
through _____ 2021.

- A. This contract between said parties listed above automatically renews for twelve (12) months with the same terms and conditions herein if neither party objects. Notice to terminate contract may be given at anytime by either party with thirty (30) days notice.
- B. Contractor may only represent criminal clients in State Court as public defender with the sole exception being: if Contractor is retained prior to an arraignment in State Court, Contractor may represent client in Contractor's private attorney capacity.

2. DEFINITIONS

A. PENDING CASE

As used during a "pending case" shall mean all Criminal actions as set forth in Paragraph 9, containing new charges, including petitions for revocation of probation when assigned, instituted against one individual defendant, regardless of the number of counts or the number of separate charging instruments.

B. FINAL DISPOSITION OF A PENDING CASE

The disposition of all an Assigned Defendant's charges which terminates the Contractor's obligation in paragraph 5 and 6 below by either:

- (i) plea or adjudication of guilt; or
- (ii) acquittal; or
- (iii) a dead docket that indicates a final, not a temporary or administrative disposition; or
- (iv) when the client has elected to represent himself, with the sanction of the Court that he/she is doing so intelligently and competently; and provided Counsel is no longer required by the Court to sit with the client in a pending proceeding.

3. SCOPE OF SERVICES

A. Contractor agrees to provide legal representation pursuant to this Agreement beginning when Contractor is notified of the case and extending to the final disposition of the Pending Case assigned to Contractor through dismissal, plea, or trial. If the client is convicted at trial, Contractor shall timely file a general Motion for New Trial to reserve the clients appellate review rights.

B. Contractor agrees to provide legal representation in the Court.

4. CONTRACTOR'S DUTIES

A. Contractor shall perform the services in a professional manner, in accordance with the constitutional standards for effective assistance of counsel, and in accordance with the standards of the State Bar governing the practice of law, and the policies, procedures, and guidelines adopted by the Board.

B. In representing the assigned defendants, Contractor shall:

- (i) be in attendance at any and all hearings that require the State Court Judge to be in attendance excluding only those hearings in which do not involve a public defender.
- (ii) be available to the client within three business days from the date of receipt of the case;
- (iii) be available, to keep the client reasonably apprised of the status, and developments of the case, and to answer the client's reasonable requests for information;
- (iv) exercise independent professional judgment regarding any investigations to be performed, issues to be raised, and procedures to be followed;
- (v) comply with the Scope of Services in Paragraph 3 above;
- (vi) timely file all necessary pleadings;
- (vii) exercise sound professional judgment whether to pursue discretionary remedies, such as an interlocutory appeal;
- (viii) upon the conclusion of the case, furnish the client with a copy of the final disposition and/or sentence of the court within 10 days of receipt of same if not furnished by the court or probation services;
- (ix) maintain the client's records and forward same, in the case of an appeal, as GPDSC directs;
- (x) shall not discriminate in the representation of clients on the basis of race, color, religion, national origin, age, marital status, sex, disability, or any other status prohibited by law;
- (xi) shall make all reasonable efforts to comply with the Americans with Disabilities Act (ADA); and
- (xii) shall abide by the Board's policy regarding sexual harassment.

S. COMPENSATION

- A. Board agrees to pay, and Contractor agrees to accept, Compensation of \$24,000.00 annually to be paid in twelve equal monthly installments of \$2,000.00.
- B. The parties agree that the term for Contractor to complete the services required hereunder is left open, nevertheless the parties agree that full payment to Contractor by the Board of the amount set forth in this paragraph shall constitute *payment in full* under the terms and conditions of this Agreement.
- C. The parties agree that a portion of the Compensation is payment to Contractor for travel expenses related to the performance of Contractor's services under this contract.

6. MALPRACTICE INSURANCE

- A. The Contractor must carry malpractice insurance for the duration of the term laid out in this agreement above in an amount of \$1,000,000.00 Evidence of the policy shall be provided to the Board annually in order for checks to be issued.

7. WARRANTIES BY CONTRACTOR

- A. Contractor warrants and represent to the Board that he is a licensed private attorney, duly admitted to the State Bar of Georgia, to all Courts in Georgia, is a member in good standing, and is competent to counsel and defend a person accused of crimes or a mental state that may result in the person being incarcerated or confined.
- B. Contractor warrants and represents to the Board that he will represent all Assigned Defendants in a professional manner and to the best of his ability.

8. TERMINATION

- A. This agreement may also be terminated for the following reasons:
 - A. Cause/Default. This agreement may be terminated for cause, in whole or in part, at any time by the Board for failure of either of Contractor to perform any of the provisions or to comply with any terms and conditions herein. If the Board exercises its right to terminate this Agreement under the provisions of this paragraph, the termination shall be accomplished in writing and specify the termination date. Upon termination of this agreement, the Contractor shall not cause the Board to incur any new obligations.
 - B. 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 must give written notice of its intention to do so to the other party at least thirty (30) days prior to the effective date of cancellation or termination and comply with Paragraph 17 below.
 - C. If Contractor is disbarred or suspended from the practice of law, then this agreement is terminated immediately with no advance notice necessary.

9. REPRESENTATION OF CRIMINAL CLIENTS IN STATE COURT

The Board has identified a need for certain services of an attorney to represent only indigent defendants. Therefore, attorney cannot represent a financially paying criminal client in State court, unless Contractor has been retained by said client prior to arraignment.

10. INDEPENDENT CONTRACTOR

In its relationship with the Board, and for purposes of performing this Agreement, Contractor will be an independent contractor, Contractor will therefore, be responsible for compliance with all laws, rules and regulations involving this Agreement, his or her employees and any subcontractors. Without limitation, such responsibility will include employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, or payment of wages and withholding. The Board shall not be responsible for withholding,

unemployment or other truces with respect to the Contractor's compensation hereunder. The Board shall not control or direct the time, place or manner of Contractor's performance hereunder. The Contractor shall have no claim against the Board or the State hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, malpractice insurance or employee benefits of any kind. Contractor warrants that all persons who perform services under this Contract will be employees of Contractor or, in the case of expert witnesses, independent contractors. Neither Contractor nor any of Contractor's agents, servants, or employees of the Board or the State. This Contract does not create a partnership, joint venture, agency or association between Contractor and the Board, nor does it render the Board liable as partner co-venturer agent or principal.

11. INDEMNITY

- A. Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and hold harmless the State of Georgia (including the State Tort Claims Trust Fund), the Board, their officers and employees (collectively "indemnitees") of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage for bodily injury (including but not limited to death), personal injury, property damage, financial loss, attorneys' fees caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission on the part of Contractor, his agents, employees, subcontractors, or others working at the direction of Contractor or on Contractor's behalf, or due to any breach of this Agreement by Contractor.
- B. This indemnification extends to the successors and assignees of the Contractor, and this indemnification and release survives the termination of this Agreement and the dissolution and, to the extent allowed by law, the bankruptcy of the Contractor.
- C. To the extent such damage or loss is covered by the State Tort Claims Fund of any other self-insurance funds maintained by the Department of Administrative Services (collectively, the "Funds"), Contractor agrees to reimburse the Funds for any payments. To the full extent permitted by the Constitution and laws of the state of Georgia and the terms of the Funds, the Contractor and its insurers waive any right of subrogation against the Board, the State of Georgia, the indemnitees, and the Funds and insurers participating thereunder, to the full extent of this indemnification.

12. SEVERABILITY

Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this contract that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part, and the remainder of this contract 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 contract shall not affect any

other part, and the remainder of this contract shall continue to be of full force and effect.

13. WAIVER

The waiver by a party of a breach of any provision contained in this contract shall not be deemed to be a waiver of any subsequent breach of the same or other provision contained in this contract.

14. GOVERNING LAW, JURISDICTION AND VENUE

This contract, 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 without regard to conflicts of law provisions. The parties acknowledge and agree that by law, the exclusive jurisdiction for any actions under this Agreement shall be the Superior Court of Toombs County Georgia. Contractor agrees that any fee dispute will be pursued separate and apart from Contractor's representation in the Assigned Defendant's case.

15. MODIFICATION OF CONTRACT

This agreement may be modified by mutual consent at any time, but no modification or alteration of this agreement will be valid or effective unless such modification is made in writing, signed by both parties, and affixed to this instrument.

16. PENALTY FOR NONCOMPLIANCE

- A. There shall be a reduction in payment to the Contractor for any failure to complete this Contract and failure to provide representation to the Assigned Defendants as provided herein. This shall include failure to carry cases to final disposition in the event of cancellation by Contractor.
- B. In addition to any other basis for termination and cancellation provided herein, serious or repeated failure of the Contractor to provide services required pursuant to this Contract or to comply with the terms and conditions hereunder, shall result in the cancellation of this Contract, and the discontinuance of any further use of Contractor's services.

17. NOTICES

Any notices, requests, demands and other communications which may be required hereunder shall be in writing and shall be sent by first class United States certified mail, return receipt requested or by hand-delivery to the following:

BOARD:
Toombs County Board of Commissioners
P.O. Box 112
Lyons, GA 30436

CONTRACTOR:

18. DISCLAIMER

The Board shall have no responsibility or liability for any actions, causes of action, claims, demands, costs, liabilities, expenses, or damages arising in connection with any claim relating to the Deliverables or services provided by Contractor under this Contract or for any injury or damage caused by Contractor to persons or property during the performance of this Contract or for any loss or damage arising from the Contractor's actions.

19. ASSIGNMENT

The parties will not transfer their right, title or interest hereunder or delegate any of their duties or obligations hereunder without the prior written consent of the other parties.

20. NO THIRD-PARTY BENEFICIARIES

Nothing herein shall be construed as conferring upon or giving to any other person or entity any rights or benefit hereunder or by reason of this Agreement.

21. REMEDIES CUMULATIVE

The rights and remedies of the Board under this Agreement are cumulative of one another and with those otherwise provided by law.

22. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties with regard to its subject matter and supersedes all other prior and contemporaneous agreements and understandings between the parties.

23. TIME OF THE ESSENCE

Time is of the essence in this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names as of the date hereof.

TOOMBS COUNTY BOARD
OF COMMISSIONERS

CONTRACTOR:

BY: _____

ITS: _____

BY: _____