

**BEFORE THE 2007 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 07-028**

**RELATIVE TO APPROVING THE AGREEMENT BETWEEN THE JUDICIARY AND THE
PUBLIC SERVICE DEFENDER CORPORATION TO PROVIDE AN ALTERNATE PUBLIC
DEFENDER OFFICE**

WHEREAS, on April 30, 2004, this Judicial Council adopted its Resolution JC04-009 thereby accepting the Public Defender Service Corporation's proposal for the establishment of the Alternate Public Defender; and

WHEREAS, an Agreement to Provide Attorney Services for Indigent Defendants was entered into between this Judicial Council and the Public Defender Service Corporation on June 15, 2004 for the term covering October 1, 2004 to September 30, 2005 which also provided for renewal prior to the Agreement's expiration date upon the written consent of both parties; and

WHEREAS, the Agreement was thereafter extended to cover the period from October 1, 2005 to September 2006, and again for the period from October 1, 2006 to September 30, 2007; and

WHEREAS, the Public Defender Service Corporation has indicated that they wish to enter into a Fourth Annual Agreement to Provide Attorney Services for Indigent Defendants, a copy of which is attached hereto; and

NOW THEREFORE BE IT RESOLVED, that the Fourth Annual Agreement to Provide Attorney Services for Indigent Defendants as attached hereto as Exhibit A was approved by the Judicial Council at the November 15, 2007, meeting, effective October 1, 2007, authorizing the Administrator of the Courts to sign the Agreement on behalf of the Judicial Council under authority of this Resolution.

DULY ADOPTED this 21st day of December, 2007 at a duly-noticed meeting of the Judicial Council of Guam.



F. PHILIP CARBULLIDO, Chairman

Date: 2-06-08

ATTEST:



JOLEEN F. RESPICIO, Secretary

Date: 2-6-08

THIRD ANNUAL AGREEMENT TO PROVIDE ATTORNEY SERVICES FOR INDIGENT DEFENDANTS

This Third Annual Agreement (2nd Renewal) is made on September _____ 2006, between the Judicial Council of Guam through the Administrator of the Courts, whose address is Judicial Center Building, 120 West O'Brien Drive, Hagåtña, Guam 96910, (referred to as "Judicial Council"), and the Public Defender Service Corporation through the Executive Director (referred to as "PDSC"), whose address is Judicial Center Annex, 110 West O'Brien Drive, Hagåtña, Guam 96910 to provide an Alternate Public Defender Office ("APD") to provide attorney services for cases which are rejected by the PDSC due to conflicts of interest.

RECITALS

- A. The Government of Guam is obligated by the United States Constitution and the Organic Act of Guam to provide legal services and representation of certain indigent criminal defendants and juvenile persons.
- B. The Government of Guam has consistently failed to provide adequate funding for indigent criminal defense.
- C. The Judiciary has undertaken steps, at its own cost, to ensure that indigent criminal defendants are appointed legal counsel in the most efficient and economical manner possible.
- D. Prior to October 1, 2004, cases appointed to the PDSC under the Rules for the Appointment of Counsel for Indigent Defendants that were rejected because of conflicts of interest were assigned to the Associated Defense Advocates ("ADA") under a Settlement Agreement with the Judicial Council, which expired on September 30, 2004.
- E. The Judiciary's Subcommittee on Indigent Defense proposed the establishment of the APD as a new, separate division of the PDSC to accept cases that are rejected by the PDSC and essentially replace the ADA. APD replaced ADA on October 1, 2004.
- F. The Alternate Public Defender (APD) acts independently for the purposes of case management. The Executive Director of the Public Defender is nominally in charge of both the PDSC and the APD, however the Executive Director is not be involved in the day to day operations of the APD and does not initiate any promotional or disciplinary actions. Only upon specific recommendations of the APD supervising attorney may the Director of the PDSC make changes in the salary or working conditions of persons working at the APD. Although the APD is formally a branch of the PDSC, it operates autonomously, with a separate supervising attorney who is responsible for directing, coordinating and evaluating the work of attorneys and staff employed by the APD.
- G. The attorney in charge of the APD reports to the Board in conjunction with the Director of PDSC and personnel decisions affecting the APD supervising attorney are reviewed by the

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FOR INDIGENT DEFENDANTS**

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Board of Trustees directly. The two offices remain physically apart, the attorneys and staff have no access to each other's files and the MIS computer case management system is completely separate from the main PDSC. Employees of the main PDSC shall not have keys to each other's offices and do have separate office letterheads. The PDSC and the APD adhere to a well known policy and this agreement's Standard Operating Procedure(SOP) of keeping all legal activities completely separate.

- H. On June 13, 2006 in Resolution No. 06-06 (attached hereto and marked Attachment "A"), the PDSC Board of Trustees approved the continuation of the APD and sought the Judicial Council's approval and funding at less than half of the annual costs associated with the previous ADA's court appointments and a slightly increased cost from the 2005 agreement.
- I. On July 20, 2006, the Judicial Council, seeking to reduce the costs of providing indigent legal defense, approved the PDSC's proposed Budget for fiscal year 2007 and authorized the Administrator of the Courts to enter into this third Agreement with the PDSC. On August 31, 2006 the Judicial Council, in Resolution No. JC06-018 (attached hereto and marked Attachment "B" without its Exhibit, the APD FY '07 budget, which can be viewed in its entirety on the Judiciary of Guam website), ratified its July 20, 2006 approval and authorization.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

**SECTION ONE
Scope of Services**

Any case that has been appointed to the PDSC by a Judge or Justice pursuant to the Rules for the Appointment of Counsel for Indigent Defendants which the PDSC reasonably believes it must reject due to a legitimate conflict of interest shall be transferred by the PDSC to the APD upon the court's approval of the PDSC's written motion to withdraw or, under exigent circumstances, withdrawal may be sought orally while on the record if allowed by the assigned judge or through an *ex parte* judge. APD shall be appointed directly by the court on cases where the court is aware that PDSC has a conflict of interest at the time of appointment. In the event that a legitimate conflict of interest prohibits the APD from accepting a case, the APD shall immediately file a notice to the appointing Judge or Justice indicating its conflict and the case will be further assigned under the Rules for Appointment of Counsel for Indigent Defendants.

**SECTION TWO
Incorporation of Proposal**

During the term of this agreement, the APD shall continue to employ support staff and

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attorneys consistent with its proposal of eight employees as outlined in the original agreement which consists of four attorneys, two secretaries, one investigator and a legal clerk, and incorporated herein by reference. Any modifications to the proposal by the PDSC shall require the prior approval of the Judicial Council.

**SECTION THREE
Cases Will be Handled to Their Conclusion**

The APD shall be required under this agreement to handle all cases assigned to APD until the conclusion of the case before the Superior Court of Guam, including remanded cases, including any appellate matters before the Supreme Court of Guam. This provision applies to all cases assigned to the APD in the same manner as cases assigned to the PDSC under the Rules for Appointment of Counsel for Indigent Defendants. Should APD lose funding or otherwise be disbanded, other counsel shall be appointed by the courts for any person entitled to appointed counsel whose case has not been completed at that time.

**SECTION FOUR
Term of Agreement and Renewal**

1. The term of this agreement shall be for one year beginning October 1, 2006 until September 30, 2007.
2. This Agreement may be renewed prior to the expiration date subject to the written consent of both parties.

**SECTION FIVE
Applicable Law**

The APD is a division of the PDSC shall be subject to the PDSC statute, Title 12 GCA Chapter 11 and specifically sections 11110 and 11111 regarding employment and the Government merit system and any personnel rules in effect for the Public Defender Service Corporation. The APD shall ensure that all applicants and employees of their division, whatever size and nature it may be, are treated equally, without regard to race, creed, color or national origin.

**SECTION SIX
No Assignment Permitted**

Assignment of any portion of this agreement by PDSC will not be permitted without prior written approval by the Judicial Council.

**THIRD ANNUAL AGREEMENT TO PROVIDE ATTORNEY SERVICES
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SECTION SEVEN

Payment

1. The Judicial Council shall pay to the PDSC for the services provided under this Agreement the sum of Five Hundred Ninety Nine Thousand Nine Hundred Thirty Eight and 00/100 (\$599,938.00).
2. Payments shall begin on October 2, 2006 with payment of \$163,961.00. The next payment shall be made by January 2, 2007 of \$145,413.00. A payment of \$147,663.00 would be due April 2nd, 2007. The last payment of \$142,901.00 would be due July 2nd, 2007.
3. The PDSC agrees that this Agreement is subject to the availability of funds.

SECTION EIGHT

Invoicing

PDSC shall prepare and submit quarterly in printed form and on floppy disk or other electronic transmission worked out between the parties' MIS representatives, an invoice for APD certified as true and correct on the printed original, in the form appended hereto with the allotment schedule, at least ten(10) days prior to the date funds are due and payable which shall additionally contain the following information after the first quarter start up period:

1. A quarterly report of number and type of cases transferred from PDSC to APD and cases to which APD is appointed by the court directly which consists of:
 - a. Case number(s) for each Defendant represented under appointment,
 - b. Name of each defendant or individual represented under the appointment,
 - c. Types of cases and number of each type of case transferred to APD by PDSC and cases to which APD is appointed by the court directly which would include but not be limited to Felony, Misdemeanor, Juvenile Delinquent, Persons in Needs of Services, Civil Commitment, Appeals etc.,
2. The Administrator of the Courts may, upon thirty (30) days advance notice to APD for any period for which such information may be required, require APD to provide such further information to be provided in the invoice as the Administrator of the Courts may reasonably and necessarily require.
3. If PDSC will incur substantial increased administrative costs to gather and report such information as the Administrator of the Courts may request, Judicial Council shall provide such further compensation to PDSC to reimburse PDSC for the additional expense.

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FOR INDIGENT DEFENDANTS**

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**SECTION NINE
Termination**

1. In the event of failure to fund APD by Judicial Council, PDSC may terminate all of APD's obligations to take court appointments and request unfinished cases have alternative counsel appointed. In the event of Judicial Council's determination that APD has failed to competently perform attorney services for indigent defendants to whom APD is appointed, Judicial Council may elect to terminate the agreement for APD to provide services and may only recover such sums paid to the date of termination as fees paid pursuant to invoices which fees are determined to not have been earned or already expended for rent or services.
2. This Agreement may be terminated by either party upon written notice of thirty (30) days.

**SECTION TEN
Relationship Between Parties**

1. The PDSC is a public corporation attached to the Judicial Branch of the Government of Guam engaged under the terms of this Agreement to provide alternative legal representation for indigent defendants.
2. Under the terms of this Agreement, the Judicial Council's role is to provide funds for the operation of the APD. The Judicial Council shall not, at any time, involve itself in the internal operation of the APD or assert any right of control over APD, its directors, officers, attorneys, employees, property or leasehold premises.

**SECTION ELEVEN
Informal Dispute Resolution**

The parties agree to engage in meetings within a reasonable time after receipt of a request for a meeting presented to one party by the other, for the purpose resolving problems experienced in the implementation, performance and interpretation of the obligations of this agreement. The parties agree that neither this informal dispute resolution process nor any resolution proposed one party to the other shall be binding upon any party, unless the parties so agree in writing. As the nature of these meetings is in furtherance of settlement of disputes, the provisions of Title 6 GCA § 408 shall apply to these meetings and the discussions between the parties during these meetings. The purpose of these meetings is not intended to be for the purpose of re-negotiation of any term of the agreement. Both parties agree to cooperate and participate in these meetings in good faith.

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**SECTION TWELVE
Statistical Information Reporting**

APD shall provide a monthly report of cases assigned to it to the Administrator of the Courts. Reports shall include defendant/client name and case number, attorney assigned to the case, and number of cases received each month. All cases rejected by the APD due to conflicts shall be included in the monthly report. The Administrator of the Courts shall reciprocate with a monthly record of cases to include case numbers and defendant/client names appointed to PDSC and APD delivered to the PDSC Administrative Director to be reconciled on a monthly basis between the Administrator of the Courts and the PDSC Administrative Director.

**SECTION THIRTEEN
Agreement Complete**

1. This agreement is a full and complete expression of the terms of agreement between the parties and no contemporaneous understanding, oral or written, not incorporated herein by express statement or reference, shall be deemed to be a part of the agreement of the parties. The proposal and organizational chart for APD submitted by PDSC to the Judicial Council shall be incorporated by reference into this agreement.
2. Any modification or alteration of the terms of this agreement shall be in writing and signed by the party against which enforcement is sought.
3. **AS THEIR EXPRESSION** of assent to be bound by the terms of this agreement, the parties hereto have executed the agreement below on the date indicated below the signature of their respective duly authorized representative.

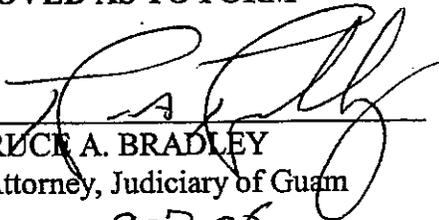
JUDICIAL COUNCIL OF GUAM


By: PERRY C. TAITANO
Administrator of the Courts
Dated: 9/8/06

**PUBLIC DEFENDER
SERVICE CORPORATION**


By: KATHLEEN E. MAHER
Executive Director
Dated: 9/8/06

APPROVED AS TO FORM


By: BRUCE A. BRADLEY
Staff Attorney, Judiciary of Guam
Dated: 9-7-06

CERTIFIED FUNDS AVAILABLE


By: 0121 07033 283
Certifying Officer
Dated: 10/9/06

**BEFORE THE BOARD OF TRUSTEES
OF THE
PUBLIC DEFENDER SERVICE CORPORATION
RELATIVE TO THE APPROVAL OF THE
ALTERNATE PUBLIC DEFENDER
FISCAL YEAR 2007 BUDGET REQUEST**

RESOLUTION NO. 06-06

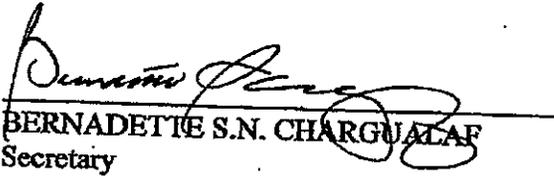
- WHEREAS,** Public Defender Service Corporation (PDSC) Board of Trustees Resolution No. 08-04 established the office of the Alternate Public Defender (APD) as a separate section/division of the PDSC, answerable to the PDSC Board of Trustees and subject to funding by the Judicial Client Service Fund under the stewardship of the Judicial Council of Guam; and
- WHEREAS,** On June 15, 2004 an Agreement to Provide Attorney Services For Indigent Defendants was executed by and between the PDSC and the Judicial Council of Guam through the Administrator of the Courts, which, among others, provided for the funding of this program from October 1, 2004 through September 30, 2005; and
- WHEREAS,** As provided for by Section Four of the above-described Agreement allowing for renewals prior to the expiration date subject to the written consent of both parties, on September 28, 2005 an Agreement To Provide Attorney Services for Indigent Defendants was executed, thereby extending funding for this program throughout Fiscal Year 2006; and
- WHEREAS,** In order to extend the services rendered by the APD into the next fiscal year, and to allow for the renewal of the Agreement to Provide Attorney Services For Indigent Defendants, a budget plan must be submitted for consideration and approval by the PDSC Board of Trustees; and
- WHEREAS,** The Alternate Public Defender, by and through its Supervising Attorney and the Director of the Public Defender Service Corporation, presented the APD's Fiscal Year 2007 Budget Request of \$599,938 to the PDSC Board of Trustees; and
- WHEREAS,** The Board of Trustees finds this budget request appropriate and adequate to carry out the APD's mission in Fiscal Year 2007; now therefore be it
- RESOLVED,** The Board of Trustees of the Public Defender Service Corporation, at its meeting of June 13, 2006, hereby approves the APD Fiscal Year 2007 Budget Request of \$599,938, with all provisions contained therein being attached hereto and made a part of this resolution.

DULY AND REGULARLY ADOPTED this 13th day of June, 2006.



DONNA MUNA QUINATA
Acting Chairman
(Upon Recusal and Appointment By
Chief Justice F. Philip Carbullido, Chairman)

ATTEST:



BERNADETTE S.N. CHARGUATAF
Secretary

ATTACHMENT A
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BEFORE THE 2006 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 06-018

RELATIVE TO RATIFICATION OF APPROVAL OF THE PUBLIC DEFENDER
SERVICE CORPORATION'S FISCAL YEAR 2007 BUDGET REQUEST FOR THE
ALTERNATIVE PUBLIC DEFENDER OFFICE

WHEREAS, On April 30, 2004, this Judicial Council adopted its Resolution JC04-009 thereby accepting the Public Defender Service Corporation's proposal for the establishment of the Alternative Public Defender; and

WHEREAS, an Agreement to Provide Attorney Services for Indigent Defendants was entered into between this Judicial Council and the Public Defender Service Corporation on June 15, 2004 for the term covering October 1, 2004 to September 30, 2005 which also provided for renewal prior to the Agreement's expiration date upon the written consent of both parties; and

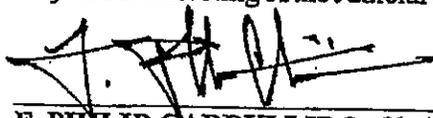
WHEREAS, the Agreement was thereafter extended to cover the period from October 1, 2005 to September 30, 2006; and

WHEREAS, the Public Defender Service Corporation, in contemplation of again extending the Agreement to cover the period from October 1, 2006 to September 30, 2007, submitted a proposed Fiscal Year 2007 Budget Request regarding the Alternative Public Defender office, a copy of which is attached hereto as Exhibit A, to this Judicial Council for its consideration at its regularly scheduled meeting on July 20, 2006; and

WHEREAS, the Judicial Council duly considered and approved the proposed Fiscal Year 2007 Budget Request at its July 20, 2006 meeting;

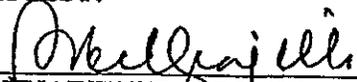
NOW THEREFORE BE IT RESOLVED, that the decision of the Judicial Council on July 20, 2006 approving the Public Defender Service Corporation's proposed Fiscal Year 2007 Budget Request for the Alternative Public Defender office, a copy of which is attached hereto as Exhibit A, is **HEREBY RATIFIED**.

DULY ADOPTED this 31st day of August, 2006 at a duly noticed meeting of the Judicial Council of Guam.


F. PHILIP CARBULLIDO, Chairman

Dated: 9/1/06

ATTEST:


ANNABELLE C. MAJILLO, Secretary

Date: 9/1/06

ATTACHMENT B