

## INTERLOCAL AGREEMENT

This Interlocal Agreement (the Agreement) is made by and between DICKENS COUNTY, TEXAS (DICKENS COUNTY), a political subdivision of the State of Texas, regarding the Caprock Regional Public Defender Office (the CRPDO), and Floyd COUNTY, TEXAS (PARTICIPANT), a political subdivision of the State of Texas, (also, individually, a Party or, collectively, the Parties). This Agreement is made pursuant to the Fair Defense Act, Texas Code of Criminal Procedure 26.044(b), and Texas Government Code Chapter 791.

### RECITALS

WHEREAS, each Party finds: (1) that this Agreement will benefit the public through the provision of efficient and effective governmental services; and (2) that it has the legal authority to perform and to provide the government function or service which is the subject matter of this Agreement; and,

WHEREAS, the performance of this Agreement by DICKENS COUNTY and PARTICIPANT will be in the common interest of the Parties;

NOW, THEREFORE, the Parties agree as follows:

### ARTICLE I

#### PROGRAM

1.01 **Program Purpose and Term.** The CRPDO, funded by the Texas Indigent Defense Commission Multi-Year Discretionary Grant Program Funds (the Indigent Defense Commission), will provide court-appointed counsel for defendants or juvenile respondents based on participating local courts' self-selection. Only participating counties in the 7th and 9th Administrative Judicial Regions are eligible for all services provided by the CRPDO. Non-participating counties in the 7<sup>th</sup> and 9<sup>th</sup> Administrative Judicial Regions may be eligible under some circumstance indicated in Section 1.06 for services. Pursuant to Article 26.044, Code of Criminal Procedure, Dickens County has issued a Solicitation for Proposals for the Caprock Regional Public Defender Office. Said solicitation and any subsequent contracts to create the CRPDO are hereby fully incorporated herein by reference.

The Indigent Defense Commission provided funding to hire staff for the CRPDO office, as well as start-up costs, during Fiscal Year 2011 (October 1, 2010-September 30, 2011). Based on success of the program and participation of the counties the Indigent Defense Commission continued a second year of funding.

Subsequent years are proposed to allow a gradual reduction of Indigent Defense Commission funds pursuant to an estimated plan. The Indigent Defense Commission is anticipated to provide funds to operate the CRPDO office on a cost-sharing basis (Fiscal Year 2013 and 2014: 80%, Fiscal Year 2015 and 2016: 60%, Fiscal Year 2017 and 2018: 40%, Fiscal Year 2019 and 2020: 20%). The Indigent Defense Commission may promote and consider additional funding mechanisms during Fiscal Years 2013 through 2021; however, the funding is not anticipated to be less than detailed above. Participating counties shall provide match funding or the remaining operating costs based upon a formula taking into account the population of the county (50%) and the average number of cases filed over the past ten years (50%) (Note: The ten-year average will be a rolling ten-year average over the period of this agreement). Such cost share payments shall be made from current funds available to the PARTICIPANT at that time, subject to an annual appropriation. (A detailed funding plan is provided in Attachment 1 and is incorporated herein for all purposes). The Oversight Board of the CRPDO will develop a plan to share costs among the counties beyond the grant period; however, the CRPDO's obligation to perform after the grant period is contingent upon receipt of the funds from the Indigent Defense Commission.

- 1.02 **Duties and Responsibilities of the CRPDO.** The CRPDO will represent indigent defendants in all aspects of the criminal proceedings. All decisions pertaining to the presentation of the case will be at the sole discretion of the CRPDO. Attorneys working for the CRPDO will at all times be guided by and comply with their duties as licensed attorneys in the State of Texas and the Texas Disciplinary Rules of Professional Conduct in making these determinations.
- 1.03 **CRPDO Oversight Board.** PARTICIPANT may participate in an Oversight Board responsible for monitoring the caseload and activities of the CRPDO and the Chief Public Defender. The composition of the Oversight Board will consist of:
- (1) two County Commissioners Courts Representatives selected by the participating Commissioners Courts;
  - (2) two Constitutional County Judges selected by the participating Constitutional County Court Judges;
  - (3) two District Judges or Statutory Court Judges selected by the participating District Judges and statutory Court Judges;
  - (4) one of the Presiding Judges from the 7th or 9th Administrative Judicial Regions as determined by the Presiding Judges;
  - (5) two representatives from the area criminal defense bar selected by the President of the Lubbock County Bar Association; and

(6) two area attorneys chosen by the chairperson of the Texas State Bar Legal Services to the Poor in Criminal Matters Standing Committee who are not employed as prosecutors, members of the judiciary, or law enforcement officials, both of whom must have criminal defense experience.

At minimum, the CRPDO Oversight Board will set optimum caseloads for the office, based on standards set by the National Advisory Commission on Criminal Justice Standards and Goals. A simple majority of the members of the Oversight Board shall constitute a quorum and official business may be conducted via video conferencing or telephonic participation, pursuant to the Texas Open Meetings Act. The Chief Public Defender serves at the will of the Public Defender with the advice and consent of the Caprock Regional Public Defender's Oversight Board and the Dickens County Commissioners Court. Policies that govern the removal of the Chief Public Defender will be established by the Public Defender with the advice and consent of the Oversight Board and will be consistent with standard personnel policies and procedures of the Public Defender.

- 1.04 **Caseload Standards and Staffing the CRPDO.** Staffing the CRPDO with attorneys and support personnel will be incremental, beginning with the selection of a Chief Public Defender. In addition to responsibility for the setup of the Program in the first year, the Chief Public Defender is expected to maintain a misdemeanor caseload. The Chief Public Defender will review actual caseloads and provide the Oversight Board with a report on the caseloads at least quarterly. The opening for the Assistant Chief Public Defender position may be posted once the Chief Public Defender's caseload reaches 80% of capacity for three consecutive months. The opening for the Assistant Public Defender position may be posted once caseloads for both the Chief Public Defender and the Assistant Chief Public Defender reaches at least 80% of capacity for more than two consecutive months. Openings for support personnel may be posted at the discretion of the CRPDO. However, no full time positions will be publicly posted until the Chief Public Defender provides a full job description and the minimum job requirements to the Indigent Defense Commission.
- 1.05 **Caseload Contingency Based on Actual Appointments.** The CRPDO Oversight Board will create published contingency plans for Caseload Standards in the event that caseloads from participating counties are not sufficient to occupy the full capacity of the Chief Public Defender.

- 1.06 **Judges Authorized to Appoint CRPDO.** The County and District Courts in the 7th and 9th Administrative Judicial Regions are eligible to participate in the Program as long as the CRPDO is included in the attorney appointment method of the local indigent defense plans. The Program allows the Honorable Judge(s) of the County and Judicial District Courts having jurisdiction within PARTICIPANT's geographic boundaries (so long as the jurisdiction lies within the 7th or 9th Administrative Judicial Regions) to appoint the CRPDO for the defense of indigent persons accused of crime, including juvenile respondents and appeals. In the event of a conflict of interest among defendants or a legal liability for the CRPDO to accept appointment, the trial court shall appoint an attorney or attorneys other than the CRPDO at the PARTICIPANT's expense.

The CRPDO may accept appellate appointments from non-participating counties within the 7th and 9th Administrative Judicial Districts on a case-by-case basis. The fees for these appointments will be as negotiated between the appointing county and the CRPDO. Non-participating counties will pay the CRPDO directly. The CRPDO will deduct any funds received from non-participating counties for appellate appointments from the monthly statement sent to the county. Participating counties will not incur any additional expenses because of appellate appointments by nonparticipating counties. The CRPDO will only accept an appellate appointment from nonparticipating counties when the appellate appointment will not interfere with the CRPDO's duties to the participating counties.

- 1.07 **Program Analysis.** At least quarterly throughout the period of the grant and at the end thereof, the CRPDO will distribute an analysis of the Program, as well as an estimated cost for PARTICIPANT's continued participation after all grant funds are expended. The analysis will consist of a fiscal analysis and an analysis of the effectiveness of the CRPDO in meeting pre-established goals and objectives. The analysis will also include an accounting of all funds received from non-participating counties for appellate appointments. The CRPDO will provide copies of the analysis to the Oversight Board, PARTICIPANT's Commissioners Court, and the Honorable Judges of the 7th and 9th Administrative Judicial Regions that are participating in the Program. After all grant funds are expended, PARTICIPANTS shall have three months from the date the estimated cost analysis is provided to the Commissioners Courts to consider the analysis and determine whether it will continue to participate in the Program. If PARTICIPANT requests to continue participating in the Program, a new interlocal agreement as to funding and the funding cycle will be executed.
- 1.08 **Data for the Analysis.** As consideration for its participation in the Program, PARTICIPANT agrees to provide the CRPDO information as needed to conduct the analysis, including the current payment schedule for court-appointed counsel, and the previous five fiscal years' data on the amount PARTICIPANT paid for appointed counsel, if available.

- 1.09 **Confidential Videoconferencing.** The program will utilize confidential videoconferencing communication at both locations of the communication. In order to maintain attorney client privileged communications, no recording of the communication shall be made, unless such communication is conducted as part of a Texas Code of Criminal Procedure Article 15.17 hearing.
- 1.010 **Additional Experts.** PARTICIPANT will continue to incur the expense of additional experts as approved by the local court.
- 1.011 **Fact Investigators.** The CRPDO will provide fact investigators to cases assigned to the office.
- 1.012 **No other Costs Incurred.** Neither the Indigent Defense Commission nor the CRPDO will assume any additional costs associated with representation of indigent defendants. Costs of translators or any other collateral cost must be absorbed by PARTICIPANT.

**ARTICLE II**

**OTHER TERMS AND CONDITIONS**

- 2.01 **Notice and Addresses.** Unless otherwise specifically provided herein, all notices, reports, and invoices required under this Agreement shall be given in person or by certified or registered mail, addressed to the proper Party, at the following address:

If to DICKENS COUNTY:

Honorable Lesa Arnold  
 County Judge  
 Dickens County  
 PO Box 179  
 Dickens, Texas 79229

If to PARTICIPANT:

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- 2.02 **No Partnership.** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. This Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other Party, for any purpose whatsoever.

2.03 **Waiver.** The failure of any Party to insist upon the performance of any terms or provisions of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

2.04 **Benefit of the Parties.** The terms and conditions of this Agreement are solely for the benefit of the Parties and are not intended to create any rights, contractual or otherwise, for any other person or entity, including but not limited to non-participating counties.

2.05 **Force Majeure.** If the performance of any obligation under this Agreement is delayed by something reasonably beyond the control of the Party obligated to perform ("Force Majeure"), that Party shall be excused from performing the obligation during that period, so that the time period applicable to the performance shall be extended for a period of time equal to the period that Party was delayed due to the event of Force Majeure.

2.06 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

2.07 **Prior Agreements Superseded.** This Agreement constitutes the only agreement of the Parties and supersedes any prior understanding or written or oral agreements between the Parties respecting the within subject matter.

2.08 **Amendments.** In order to be binding, an amendment to this Agreement must be in writing, dated subsequent to the date of this Agreement, and executed by the Parties.

2.09 **Withdrawal by Party.**


(a) *Voluntary Withdrawal.* Voluntary withdrawal by PARTICIPANT from the Agreement shall occur upon the affirmative decision by PARTICIPANT's Commissioners Court to withdraw from the Agreement. The effective date of voluntary withdrawal shall be 180 calendar days after the withdrawing Participant gives notice to DICKENS COUNTY and the CRPDO.

(b) *Involuntary Withdrawal.* PARTICIPANT shall be deemed to have involuntarily withdrawn from the Agreement upon the failure by the PARTICIPANT to pay any cost-sharing payment by the due date, as provided in a notice to the PARTICIPANT. PARTICIPANT shall be given written notice of non-payment by DICKENS COUNTY and shall not be deemed to be in default until the expiration of thirty (30) days after receipt of the written notice. Upon failure to cure any such default, DICKENS COUNTY and the CRPDO may suspend services to the PARTICIPANT and may institute legal proceedings to recover any sums owed by PARTICIPANT. The defense of governmental immunity is specifically waived by PARTICIPANT in any proceeding to enforce this provision.

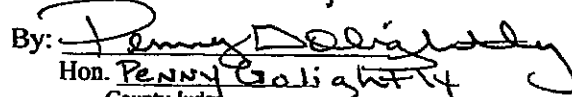
2.010 **Duration.** Unless PARTICIPANT has or is withdrawn, this Agreement shall be effective on the 1st day of October 2010 or on the date signed below, whichever is later, and shall automatically renew on September 30, 2011 and/or each September 30 thereafter.

SIGNED AND EXECUTED this 8 day of April, 2013.


COUNTY OF DICKENS

By:   
Hon. Lesa Arnold  
County Judge

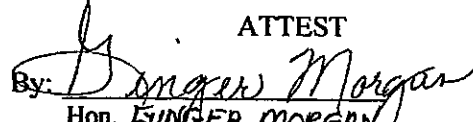
COUNTY OF Floyd

By:   
Hon. Penny Galightly  
County Judge

ATTEST

By:   
Hon. Winona Humphreys  
County Clerk

ATTEST

By:   
Hon. LINGER MORGAN  
County Clerk