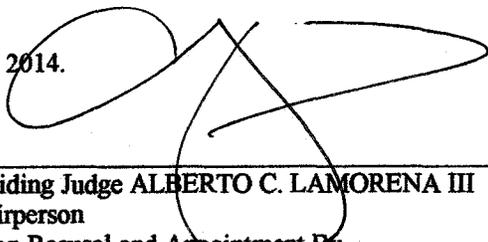


**BEFORE THE
BOARD OF TRUSTEES OF THE
PUBLIC DEFENDER SERVICE CORPORATION (PDSC)
RELATIVE TO THE APPROVAL OF THE
ALTERNATE PUBLIC DEFENDER
FISCAL YEAR 2015 BUDGET REQUEST**

RESOLUTION NO. PDSC 14-14

- 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 Services 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, providing funding for this program through Fiscal Year 2004; and
- WHEREAS,** as provided by Section Four of the above-described Agreement, subsequent instruments were executed by the PDSC and the Judicial Council of Guam thereby funding the office of the APD through Fiscal Year 2014; 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, presented the APD's Fiscal Year 2015 Budget Request of \$1,018,412 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 for Fiscal Year 2015; now therefore be it
- RESOLVED,** the Board of Trustees of the Public Defender Service Corporation, in its meeting of June 04, 2014 hereby approves the **APD Fiscal Year 2015 Budget Request of \$1,018,412** with all its provisions contained therein being attached hereto and made a part of this resolution.

DULY AND REGULARLY ADOPTED this 4th day of June, 2014.



Presiding Judge ALBERTO C. LAMORENA III
Chairperson
(Upon Recusal and Appointment By
Chief Justice Robert J. Torres, Jr., Chairman)

ATTEST:



BERNADETTE S.N. CHARGUALAF
Secretary

**AGREEMENT TO PROVIDE ATTORNEY SERVICES
FOR INDIGENT DEFENDANTS**

This Eleventh Annual Agreement (Tenth Renewal) is made on this 15th day of October, 2014 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 779 Route 4, Unit B, Sinajana, Guam 96910 to provide an Alternate Public Defender office ("APD") to supply 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 PDSC is nominally in charge of both the PDSC and the APD, however the Executive Director is not 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 PDSC Board of Trustees in conjunction with the Director of PDSC and personnel decisions affecting the APD Supervising Attorney are reviewed by the 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 04, 2014 through PDSC Board Resolution No. 14-14 (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 for the operations of the APD throughout Fiscal Year 2015.
- I. On July 17, 2014 at a duly-noticed meeting held by the Judicial Council, the APD's Fiscal Year 2015 Budget Request of \$1,018,412.00 was approved, thereby authorizing the Administrator of the Courts to enter into this Tenth Agreement with the PDSC. (Page 5 of the Minutes of this meeting reflecting this approval is attached hereto and marked Attachment "B").

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 **Staffing**

During the term of this Agreement, the APD will retain its current staffing level. Therefore, APD's Fiscal Year 2015 Staffing Pattern will reflect eleven (11) employees: Five (5)

attorneys, two (2) Legal Secretaries, two (2) Investigators, and two (2) Legal Clerks. Any modifications 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, and/or 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 (1) year beginning October 1, 2014 until September 30, 2015.
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 and shall be subject to the PDSC statute (Title 12 GCA Chapter 11), and specifically sections 11110 and 11111 regarding employment and the Government of Guam's merit system and any Personnel Rules in effect for the PDSC. 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.

SECTION SEVEN
Payment

1. The Judicial Council shall pay to the PDSC for the services provided under this Agreement the sum of One Million, Eighteen Thousand, Four Hundred Twelve Dollars (\$1,018,412.00).
2. The following Payment Schedule will be followed:

Amount of Payment:	Due Date:
\$275,738.00	October 20, 2014
\$240,414.00	January 16, 2015
\$251,478.00	April 17, 2015
\$250,782.00	July 16, 2015
TOTAL: \$1,018,412.00	

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/jump drive 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 the 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 the number of each type of case transferred to the APD by the 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 Need of Services, Civil Commitment, Appeals, etc.
2. The Administrator of the Courts may, upon thirty (30) days advance notice to the APD for any period for which such information may be required, require the APD to provide such further information to be included on the invoice as the Administrator of the Courts may reasonably and necessarily require.

3. If the PDSC will incur substantial increased administrative costs to gather and report such information as the Administrator of the Courts may request, the Judicial Council shall provide such further compensation to the PDSC to reimburse the PDSC for the additional expense.

SECTION NINE Termination

1. In the event of failure to fund the APD by the Judicial Council, the PDSC may terminate all of the APD's obligations to take court appointments and request that unfinished cases have alternative counsel appointed. In the event of the Judicial Council's determination that the APD has failed to competently perform attorney services for indigent defendants to whom the APD is appointed, the Judicial Council may elect to terminate the Agreement for the APD to provide services, and may only recover such sums paid to the date of termination as fees paid pursuant to invoices if such 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 the 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 of 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 by 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.

SECTION TWELVE
Statistical Information Reporting

The APD shall provide a monthly report of cases assigned to it to the Administrator of the Courts. Reports shall include Defendant's/Client's name and case number, the attorney assigned to the case, and the 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's/Client's names appointed to the PDSC and the 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.

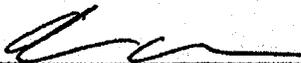
SECTION THIRTEEN
Agreement Complete

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 the APD submitted by the 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 under the signature of their respective duly authorized representative.

JUDICIAL COUNCIL OF GUAM

**PUBLIC DEFENDER
SERVICE CORPORATION**

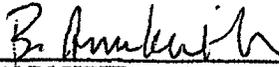

By: JOSHUA F. TENORIO
Administrator of the Courts (Acting)


By: ERIC D. MILLER
Executive Director

Date: 10/30/14

Date: 10/15/14

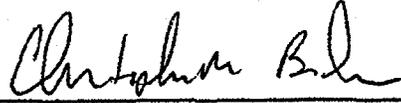
APPROVED AS TO FORM



By: B. ANN KEITH
Staff Attorney, Judiciary of Guam

Date: 10-29-14

CERTIFIED FUNDS AVAILABLE



By: CHRISTOPHER BUDASI,
Controller and
Certifying Officer

Date: 10/30/2014

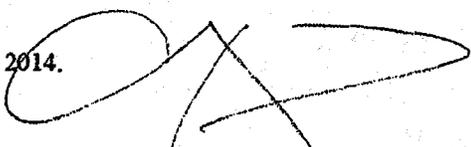
ATTACHMENT "A"

BEFORE THE
BOARD OF TRUSTEES OF THE
PUBLIC DEFENDER SERVICE CORPORATION (PDSC)
RELATIVE TO THE APPROVAL OF THE
ALTERNATE PUBLIC DEFENDER
FISCAL YEAR 2015 BUDGET REQUEST

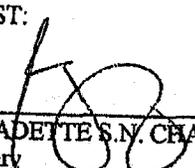
RESOLUTION NO. PDSC 14-14

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- 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, presented the APD's Fiscal Year 2015 Budget Request of \$1,018,412 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 for Fiscal Year 2015; now therefore be it
- RESOLVED, the Board of Trustees of the Public Defender Service Corporation, in its meeting of June 04, 2014 hereby approves the APD Fiscal Year 2015 Budget Request of \$1,018,412 with all its provisions contained therein being attached hereto and made a part of this resolution.

DULY AND REGULARLY ADOPTED this 4th day of June, 2014.


Presiding Judge ALBERTO C. LAMORENA III
Chairperson
(Upon Recusal and Appointment By
Chief Justice Robert J. Torres, Jr., Chairman)

ATTEST:


BERNADETTE S.N. CHARGUALAF
Secretary

B. JUDICIARY OF GUAM REVISED PERFORMANCE EVALUATIONS

Ms. Perez explained that updating the performance evaluations was a project from the Strategic Plan. She submitted to the Council for review a draft performance management system with the policy, form, and a rating guide. Ms. Perez informed the members that she will be posting these on the intranet and provide copies to division managers and employees so that they would be able to provide feedback. Chief Justice stated that he hopes to take action at the next meeting. Justice Maraman added that there are two approaches recommended – one for line staff and another for top management. However, she stated that this would apply to all employees until one is drafted for management. Justice Maraman also commended HR and the committee for working on this.

C. ALTERNATE PUBLIC DEFENDER'S FY2015 BUDGET REQUEST

Chief Justice Torres clarified that the APD budget is usually submitted prior to the JOG's budget is submitted, but it did not occur this year. He also informed the Council members that the APD Board of Trustees approved this budget, and that he recused himself from that vote so that he is able to vote at this meeting. Mr. Moreno stated that there were two major increases – the Competitive Wage Act implementation, which raises the salaries of the attorneys and staff, and the transitioning of software and hardware equipment for their computer systems. Justice Carbullido asked that, if the Legislature does not approve the APD budget, is the JOG going to reduce it or subsidize using the Court's operational funds. Chief Justice Torres answered that it will probably be approved subject to the availability of funds. Mr. Moreno noted that there is an \$80,000 difference between what the JOG submitted and what the APD submitted today. Judge Barcinas inquired re: vacancies. Ms. Gayle answered that they have two vacancies and have just completed interviews. Judge Barcinas moved to approve subject to availability of funds. Justice Maraman seconded. The APD Budget was approved.

D. APPROVAL OF EXPENDITURES FROM JBF BUDGET FY2014

Mr. Tenorio reported that are two urgent expenditures that he asked the Council for approval: 1) Network Analyzer (\$10,000), which is a tool that MIS needs to identify areas that need required attention, and 2) Security Systems (\$8,000), which is to replace or fix the security access at the clerk's office. Presiding Judge Lamorena moved to approve. It was seconded by Judge Barcinas. The expenditures was duly approved.

VII. COMMUNICATIONS: None.

VIII. PUBLIC COMMENT

A. GUAM BAR ASSOCIATION – PRESIDENT'S REPORT: None.

B. COURT EMPLOYEES ASSOCIATION:

Ms. Cruz reported that they are in the process of setting a date to present their donation to the three beneficiaries of the Race Judicata. She also announced an upcoming movie fundraiser featuring Teenage Mutant Ninja Turtles at the Micronesia Mall on Saturday for \$10.00.

Public Defender Service Corporation
 Alternate Public Defender
 FY 2015 Allotment Schedule

	Appropriation	Reserve	Release								
111 Regular Salaries	646,200			Oct	57,164	Jan	54,678	Apr	54,678	Jul	57,164
				Nov	49,708	Feb	49,708	May	52,193	Aug	52,193
				Dec	57,164	Mar	52,193	Jun	54,678	Sep	54,678
113 Benefits	252,544			Oct	22,340	Jan	21,369	Apr	21,369	Jul	22,340
				Nov	19,426	Feb	19,426	May	20,398	Aug	20,398
				Dec	22,340	Mar	20,398	Jun	21,369	Sep	21,369
Sub-Total Personnel	898,744				228,143		217,773		224,686		228,143
220 Off-Island Travel/Local Mileage Reimburs	0			Oct	0	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
230 Contractual	25,156			Oct	6,429	Jan	1,325	Apr	1,325	Jul	1,325
				Nov	1,325	Feb	1,325	May	5,325	Aug	1,325
				Dec	1,325	Mar	1,325	Jun	1,475	Sep	1,325
240 Supplies	5,000			Oct	1,250	Jan	1,250	Apr	1,250	Jul	1,250
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
250 Equipment<\$5000	12500			Oct	12,500	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
271 Drug Testing	1000			Oct	250	Jan	250	Apr	250	Jul	250
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
290 Misc	7,350			Oct	5,600	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	1,750	Mar	0	Jun	0	Sep	0
Sub-Total Operating Exp	51,006				30,430		5,476		9,626		5,476

Public Defender Service Corporation
 Alternate Public Defender
 FY 2015 Allotment Schedule

233 Rental	65,602			Oct	5,467	Jan	5,467	Apr	5,467	Jul	5,467
				Nov	5,467	Feb	5,467	May	5,467	Aug	5,467
				Dec	5,467	Mar	5,467	Jun	5,467	Sep	5,465
Sub-Total Rental	65,602				16,401		16,401		16,401		16,399
361 Power	0			Oct	0	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
362 Water	0			Oct	0	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
363 Telephone/Toll	3,060			Oct	255	Jan	255	Apr	255	Jul	255
				Nov	255	Feb	255	May	255	Aug	255
				Dec	255	Mar	255	Jun	255	Sep	255
Sub-Total Utilities	3,060				765		765		765		765
450 Capital Outlay>\$5000.01	0			Oct	0	Jan	0	Apr	0	Jul	0
				Nov	0	Feb	0	May	0	Aug	0
				Dec	0	Mar	0	Jun	0	Sep	0
Sub-Total Capital Outlay	0				0		0		0		0
Grand Total	1,018,412				275,738		240,414		251,478		250,782
				Oct	111,255	Jan	84,595	Apr	84,595	Jul	88,051
				Nov	76,181	Feb	76,181	May	83,638	Aug	79,638
				Dec	88,301	Mar	79,638	Jun	83,245	Sep	83,093
					275,738		240,414		251,478		250,782