

**RFP 2024-10**

**UTAH COUNTY**

**REQUEST FOR PROPOSALS**

**FOR**

**INDIGENT DEFENSE SERVICES**

**Proposal Submission Deadline: Friday, November 8<sup>th</sup> at 3:00 pm (MT)**

**Submit Proposals via email to:**

**Utah County Purchasing Manager**  
**[RobertB@utahcounty.gov](mailto:RobertB@utahcounty.gov)**

## **SECTION 1 ADMINISTRATIVE OVERVIEW**

### **1.1 GENERAL DESCRIPTION**

Utah County is seeking proposals from qualified attorneys, law firms, or groups of attorneys to provide indigent defense and other applicable services under contract with the County. The Fourth District Court of Provo consists of ten separate district court judges. Proposals may be submitted to provide indigent defense services for a single district court judge, more than one district court judge, or for all ten district court judges. In addition, proposals may be submitted for indigent defense in cases before the Fourth District Juvenile Court and the Utah County Justice Court. Proposals may also be submitted to provide indigent services for appeals in criminal and juvenile delinquency cases and for Fourth District Civil Commitment hearings. In addition, proposals may be submitted for individuals interested in being included in a pool of attorneys willing to provide indigent defense in the district courts for individuals charged with aggravated murder that carries the potential for the death penalty. The County may enter a contract with a single firm or with multiple attorneys or firms for indigent defense services for the following courts or assignments:

- Fourth District Court, Provo
- Fourth District Juvenile Court
- Utah County Justice Court
- Fourth District Civil Commitments Hearings
- Appeals in criminal and juvenile delinquency cases
- Aggravated Murder (member in a pool of attorneys who wish to be considered for appointment in cases involving aggravated murder that carries the potential for the death penalty)

### **1.2 SCOPE OF WORK**

The Contracting attorney(s) or firm(s) (“Contractor(s)”) shall, together with other contracting attorneys, provide criminal defense services to all eligible persons in Utah County court actions or proceedings, except where a legal conflict of interest exists, and conflict counsel must be appointed or representation by a different attorney is otherwise legally required. The following information identifies the types of cases and proceedings the Contractor agrees to participate in for each court when the Contractor is appointed to represent an indigent person:

**Fourth District Court, Provo:** All felony and class A misdemeanors cases, excluding aggravated murder. The proceedings include, but are not limited to, felony first appearances; waiver hearings; preliminary hearings; suppression or evidentiary hearings; bench trials; jury trials; sentencing hearings; orders to show cause involving probationers; extradition hearings; attendance as required in specialty courts (e.g., drug court, veterans court, and mental health court); all other miscellaneous hearings where the Contractor is appointed to represent an

individual. The Contractor will not be responsible to handle any direct appeals from a final conviction.

**Fourth District Juvenile Court:** The proceedings include detention hearings; delinquency defense for felonies and misdemeanors; attend and participate in hearings for delinquency recovery/drug court; defense for parents/guardians/custodians on petitions for abuse, neglect, and dependency filed by the Attorney General’s Office, on behalf of DCFS; attend and participate in recovery/drug court for adult clients in dependency/DCFS cases; all other miscellaneous hearings where the Contractor is appointed to represent an individual. The Contractor will not be responsible to handle any direct appeals.

**Utah County Justice Court:** All misdemeanor and infraction cases; the proceedings include but are not limited to arraignments; suppression or evidentiary hearings; bench trials; jury trials; sentencing hearings; orders to show cause involving probationers; all other miscellaneous hearings where the Contractor is appointed to represent an individual. Contractor agrees to provide criminal defense services for those cases in which the Contractor seeks appeals.

**Fourth District Civil Commitment Hearings:** Represent individuals subject to involuntary commitment hearings in the Fourth District Court in accordance with Utah Code 26B-5-332. (This excludes matters originating in Salt Lake County which are governed by a separate contract.)

**Appeals from Fourth District Court and Fourth District Juvenile Court in Provo:** Represent individuals seeking to appeal felony, class A misdemeanor, and juvenile delinquency cases.

**Aggravated Murder:** Attorneys who are interested in being a member of a pool of attorneys to represent individuals charged with aggravated murder that carries the potential of the death penalty. The attorney must be qualified in accordance with Rule 8 of the Utah Rules of Criminal Procedure when the charged offense may include the punishment of death.

Contractor shall provide the names and bar numbers of all attorneys providing representational services under the Contract to the Courts and the County, and the County shall have the right to reject any attorney who is not qualified to provide the services.

### **1.3 PROPOSAL REQUIREMENTS**

For consideration, Applicants must submit a written proposal that describes the Applicant’s professional qualifications, relevant experience, and ability to perform the proposed services in the following format:

#### **A. Bid Sheet, RFP 2024-10 – Indigent Defense Services**

#### **B. Applicant Summary**

1. Summary information for the attorney, law firm, or group of attorneys submitting the proposal, to include: The number of full-time attorneys; the number of staff; the nature of

practice; how long the firm has been in existence; physical business address, mailing address, phone number(s).

2. Summary information for each attorney who would provide services under the Contract and any contemplated attorney with whom you may subcontract: Please include the attorney's name, bar number, year admitted to the Utah Bar, and total years/months of relevant experience.
3. Summary of bid amount, broken down into sub-categories showing amounts for compensation of attorneys, compensation for other staff, personnel fees and costs, and legal costs and expenses, including those for investigator fees, laboratory costs, transcripts, and defense witness fees.

### **C. Management Narrative and Contents**

1. General Qualifications: This section should include a summary of the managing attorney(s) overall experience, training, and availability to assume the duties under the proposed Contract.

2. Public Defense Qualifications: A description of experience which qualifies the managing attorney(s) to provide services under the Contract and any contemplated subcontract. Please include names and phone numbers of at least three (3) persons to be contacted as references. Letters of recommendation may also be provided.

3. Contract Understanding: A statement of assurance that the proposing parties have read the proposed Contract. If the parties are proposing modifications, include all that would be required by the parties. Additionally, the proposing parties must include an assurance that they will not accept employment or provide legal services that would conflict with the services provided under the proposed Contract.

4. Conflict Counsel: Include a plan to provide defense services in cases where a conflict of interest exists.

5. Practical Approach: A description of the practical approach to providing the services described in the proposed Contract which includes at least the following:

a. A brief narrative of the proposal for delivery of services under the Contract. Include the proposal for facilities, staff, division of workload, utilization of experts, investigators, support staff etc.

b. A description of how the Applicant will provide Spanish speaking services for their clients.

c. A plan for backup services in the event the assigned attorney is unavailable.

6. Start Date: The anticipated start date is January 1, 2025. If the attorney is unable to commence services on that date, please provide an explanation. Also include a summary of how Applicant will accomplish a transition from existing defense counsel to contract attorneys by the start date.

7. Acknowledgment: The proposal must be signed by the individual(s) with authority to bind the organization.

## **SECTION 2 PROCUREMENT RULES AND PROCEDURES**

### **2.1 PROCEDURE**

The Procedure for the issuance of this RFP, evaluation of proposals, and selection of an Applicant(s) is as follows:

- A. Interested entities will prepare and submit their proposal according to the Procurement Timetable contained in Subsection 2.3.
- B. Utah County and/or its representatives will evaluate all submitted proposals to determine acceptance or rejection of the proposals. The evaluation process may include an invitation by Utah County to meet with the Applicant in person to discuss the Applicant's proposal.
- C. The selected Applicant will be required to sign an agreement with Utah County which contains the terms and conditions agreed upon between Utah County and the Applicant.

### **2.2 RULES OF PROCUREMENT**

This RFP shall conform to and is governed by and subject to the Utah County Procurement Policy. All materials submitted in response to this RFP becomes the property of Utah County and will not be returned. Proposals submitted may be reviewed and evaluated by any person at the discretion of Utah County.

Utah County reserves the right to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of Utah County.

Utah County reserves the right to reject any or all proposals or waive minor irregularities when to do so would be in the best interests of Utah County. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.

Utah County may not award an agreement solely based on a proposal and will not pay for the information solicited or obtained. The information obtained will be used in determining the proposal that best meets Utah County's needs and is the most advantageous proposal received. No oral, telephonic, or electronic proposals or modifications will be considered.

Applicant agrees that Utah County may terminate this procurement procedure at any time, and Utah County shall have no liability or responsibility to an Applicant for any costs or expenses incurred in connection with this RFP or Applicant's response.

### 2.3 PROCUREMENT TIMETABLE

Below is the Procurement Timetable for this RFP.

| <b>REQUIRED ACTIVITY</b>              | <b>SCHEDULED DATE</b>                      |
|---------------------------------------|--|
| RFP Issue Date                        | October 11, 2024                           |
| Closing Date for Receipt of Proposals | November 8, 2024, at 3:00 pm Mountain Time |

### 2.4 INSTRUCTIONS FOR PROPOSAL SUBMISSION

Applicant's proposal must be submitted electronically to the Utah County Purchasing Manager:

Robert Baxter  
Utah County Purchasing Manager  
RobertB@utahcounty.gov

Subject line of email must be clearly marked, "RFP 2024-10 – Indigent Defense Services".  
Late proposals will not be accepted, except as set forth in the Utah County Procurement Policy.

### 2.5 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP should be directed prior to the submission deadline date to:

Robert Baxter  
Utah County Purchasing Manager  
Email: RobertB@utahcounty.gov

### 2.6 EVALUATION CRITERIA

The following criteria will be used to evaluate each proposal and to make a final selection.

**60%**            **Applicant(s) qualifications, legal and managerial experience, references, and ability to provide the relevant services**

**40%**            **Cost**

Utah County may develop a short list of Applicants that will make a presentation to the committee before the formal evaluation is completed.

The award recommendation will be based on the best evaluated proposal(s) and shall constitute only a recommendation to the Board of County Commissioners. All proposals are subject to the final review, evaluation, and decision by the Board of County Commissioners of Utah County.

The Board of County Commissioners may approve the award recommendation of the evaluation committee or may elect to reject all proposals.

Utah County will make all inquiries necessary to evaluate each Applicant's proposal. In the submission of Applicant's proposal, Applicant is agreeing that the final decision will not be challenged. Utah County reserves the right to reject any or all proposals pursuant to this RFP.

### **SECTION 3 ACCEPTANCE OF PROPOSAL**

Pursuant to this RFP an agreement will be executed. The agreement period will be for a term of three years, commencing January 1, 2025. Utah County shall have an option, pursuant to that agreement, to renew the agreement for two additional one-year periods, upon the same terms and conditions. The agreement with Utah County will include, among other terms and conditions, terms substantially like those attached hereto as "Attachment A. Utah County Standard Terms and Conditions for Services". Additionally, the Applicant's responses to this RFP may become contractually binding by attachment to a signed agreement.

### **SECTION 4 DISQUALIFICATION OF PROPOSAL**

The occurrence of any of the following may result in disqualification of an Applicant:

- A. Failure to respond by the established submission deadline.
- B. Failure to completely answer all questions posed in the RFP.
- C. Failure to provide requested documentation at the time of proposal submission.
- D. Ineligible responses.
- E. Failure to sign and return the proposal.
- F. Unsatisfactory record of professional integrity.
- G. Failure to qualify legally to contract.

### **SECTION 5 TERMS AND CONDITIONS**

#### **5.1 GENERAL REQUIREMENTS**

Utah County will award an agreement in reliance upon the information contained in proposals submitted in response to this RFP. Utah County will be legally bound only when and if there is a definitive signed agreement with the successful Applicant.

It is vitally important that any person who signs a proposal or agreement on behalf of an Applicant's organization certifies that he or she has the authority to so act. The successful Applicant who has its proposal accepted may be required to answer further questions and provide further clarification of its proposal and responses.

Receiving this RFP or responding to it does not entitle any Applicant to participate in services or transactions resulting from or arising in connection with this RFP. Utah County shall have no

liability to any Applicant under or in connection with this RFP, unless and until Utah County and such Applicant shall have executed and delivered a definitive written agreement.

By responding to this RFP, each Applicant acknowledges that neither Utah County nor any of its representatives is making or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any portion of the information contained in this RFP. The Applicant further agrees that neither Utah County nor any of its representatives shall have any liability to the Applicant or any of its representatives because of this RFP process or the use of the information contained in this RFP. Only the terms and conditions contained in an agreement when, as, and if signed, and subject to such limitations and restrictions as may be specified therein, may be relied upon by the parties in any manner as having any legal effect whatsoever.

No oral modifications or amendments to this RFP or any resulting agreement shall be effective, but such may be modified or amended by a written agreement signed by the parties. If it becomes necessary to revise any part of this RFP, an addendum will be provided to all who received an RFP.

## **5.2 PROPRIETARY INFORMATION**

An Applicant is required to mark any specific information contained in its proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the RFP. Each request for nondisclosure must be accompanied by a specific justification explaining why the information is to be protected.



**SIGNATURE SHEET**

I hereby certify that the information submitted by me/my company in response to this RFP, including the pricing and other information in this Proposal Response Form is true and accurate.

I understand that Utah County has the right to reject any or all proposals or to waive minor irregularities when to do so would in the best interests of Utah County.

I certify by my signature below that I am authorized to contractually bind the Company/Firm/Individual(s) listed below.

Name of  
Company/Firm/Individual(s) \_\_\_\_\_

Address:  
\_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_

Print Name  
\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title/Position \_\_\_\_\_

## **ADDENDA**

- A. Certificate of Non-Collusion**
- B. Bid Sheet**
- C. UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS AND SERVICE**
- D. Sample Work Agreement**
- E. Proposed Utah County Aggravated Murder Defense Fund Agreement**

**ADDENDUM A**

**CERTIFICATE OF NON-COLLUSION**

STATE OF UTAH

COUNTY OF UTAH

**AFFIDAVIT**

The undersigned, being of lawful age and duly sworn, disposes and says:  
That as a condition precedent to the award of the Utah County project as above captioned,

I \_\_\_\_\_  
(owner, partner, officer or delegate)

of \_\_\_\_\_ do  
(company)

solemnly swear that neither I, nor to the best of my knowledge any member or members of my firm have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by Utah County, with regard to this proposal or potential agreement resulting therefrom.

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Subscribed/sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2024 A.D.  
My Commission Expires \_\_\_\_\_  
Residing at \_\_\_\_\_

By: \_\_\_\_\_  
Notary Public

Seal: \_\_\_\_\_

## **ADDENDUM B**

### **Bid Sheet**

#### **RFP 2024-10 – Indigent Defense Services**

**NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

#### **Instructions:**

- 1) Individual attorneys, law firms, or a group of attorneys may submit a proposal to provide indigent defense services in any or all the below listed items.**
- 2) The agreement period will be a term of three years commencing January 1, 2025. Utah County will have an option, pursuant to that agreement, to renew the agreement for two additional one-year periods, upon the same terms and conditions.**
- 3) \*\*For each proposal, Applicant must specify the portion of the bid amount that will be set aside and dedicated to the cost/expenses--apart from personnel—of providing the indigent defense services including, but not limited to, investigator fees, laboratory costs, transcripts, and defense witness fees.**
- 4) If you have any questions about completing this proposal and bid sheet, please contact the Utah County Purchasing Manager, Robert Baxter, at [RobertB@utahcounty.gov](mailto:RobertB@utahcounty.gov).**

A. **District Court (Fourth District, Provo):** The Scope of Work is contained in the Request for Proposal document. The Fourth District Court in Provo consists of 10 separate courtrooms/judges that handle criminal cases filed by the Utah County Attorney’s Office. Each district court judge handles a regular criminal calendar on one day per week. Currently, the criminal calendars are scheduled on Monday, Tuesday, Wednesday, and Thursday, but that schedule is subject to change at the court’s discretion. The criminal calendars may be held on different days and/or multiple days for special-set hearings, trials, or felony-first calendars. In submitting a proposal, the individual attorney, law firm, or group of attorneys understands that in addition to covering the criminal calendar, they will also be responsible to appear and handle their assigned cases if the case is a special-set hearing, a trial, or the assigned judge is handling a felony-first calendar. An Applicant who selects a specific day to appear is not selecting a particular judge to appear in front of. Successful applicants will be assigned, at random, a judge that currently holds their criminal calendar on the respective day of the week and will be expected to make representation under the agreement in the respective court for the duration of the agreement regardless of how that schedule may change during the contract term.

| <b>Check Box for courts on which you are bidding</b> | <b>Days</b>         | <b>Yearly Bid Amount (specify in parentheses portion dedicated to cost/expenses)</b> |
|--|---------------------|--|
| <input type="checkbox"/>                             | Monday (Judge 1)    |  |
| <input type="checkbox"/>                             | Monday (Judge 2)    |  |
| <input type="checkbox"/>                             | Tuesday (Judge 1)   |  |
| <input type="checkbox"/>                             | Tuesday (Judge 2)   |  |
| <input type="checkbox"/>                             | Tuesday (Judge 3)   |  |
| <input type="checkbox"/>                             | Wednesday (Judge 1) |  |
| <input type="checkbox"/>                             | Wednesday (Judge 2) |  |
| <input type="checkbox"/>                             | Wednesday (Judge 3) |  |
| <input type="checkbox"/>                             | Thursday (Judge 1)  |  |
| <input type="checkbox"/>                             | Thursday (Judge 2)  |  |

B. **Juvenile Court (Fourth District):** The Scope of Work is contained in the Request for Proposal document. The juvenile court currently has 6 judges, but it is expected that by 1 January 2025, there will be 7 juvenile court judges. Utah County is requesting that a law firm or group of attorneys submit a single proposal to cover all 7 juvenile court judges.

| 7 Judges, Juvenile Court (Fourth District)           | Yearly Bid Amount<br>(specify in parentheses portion of bid dedicated to cost/expenses) |
|--|---|
| <input data-bbox="461 537 534 594" type="checkbox"/> |   |

C. **Utah County Justice Court:** The Scope of Work is contained in the Request for Proposal document. The Utah County Justice Court currently has 1 full-time judge and 1 judge who handles a three-quarters caseload. Utah County is requesting that an attorney, law firm, or group of attorneys submit a proposal to cover each justice court judge.

| Check box for justice court judge you are bidding      |  | Yearly Bid Amount<br>(specify in parentheses portion of bid dedicated to cost/expenses) |
|--|--|---|
| <input data-bbox="318 1077 391 1134" type="checkbox"/> | <b>Full-time Justice Court Judge</b>           |   |
| <input data-bbox="318 1203 391 1260" type="checkbox"/> | <b>Three quarters-time Justice Court Judge</b> |   |

D. **Civil Commitment Hearings:** The Scope of Work is contained in the Request for Proposal document. Utah County is requesting that an attorney, law firm, or group of attorneys submit a proposal to handle all civil commitment hearings with jurisdiction in the Fourth District Court. (This proposal does not include commitment hearings originating in Salt Lake County which are currently handled under a separate contract.)

|  |
|--|
| <b>Yearly Bid Amount (specify in parentheses portion dedicated to cost/expense):</b> |
|--|

- E. **Criminal Appeals in the Fourth District Court of Provo:** The Scope of Work is contained in the Request for Proposal document. Utah County is requesting that an attorney, law firm, or group of attorneys submit a proposal to represent individuals seeking to appeal matters in capital (must be a member of the Utah Appellate Roster as provided under Rule 11-401 of the Rules of Judicial Administration), felony, class A misdemeanor, and juvenile delinquency cases.

|  |
|--|
| <p><b>Yearly Bid Amount (specify in parentheses portion dedicated to cost/expenses):</b></p> |
|--|

- F. **Aggravated Murder:** The Scope of Work is contained in the Request for Proposal document. Utah County is requesting an attorney, law firm, or group of attorneys who would like to be included in a pool of attorneys from which the County could draw to represent indigent defendants charged with aggravated murder carrying the potential of the death penalty if convicted (must satisfy the requirements of Rule 8, Utah Rules of Criminal Procedure).

The full contract for aggravated murder indigent defense services is contained in Addendum E. By checking the box below, you affirm you have read and agree to the terms of the aggravated murder indigent defense contract and express your desire to be included in the aggravated murder defense pool.

|                          |
|--------------------------|
| <input type="checkbox"/> |
|--------------------------|

**ADDENDUM C:  
UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS AND  
SERVICES**

**DEFINITIONS.** The following terms shall have the meanings set forth below:

The “Agreement” consists of the following documents:

The Utah County Agreement cover page, which contains the signatures of Utah County and Contractor;

This Attachment A: Utah County Standard Terms and Conditions for Products and Services; and

Any other express written attachments that are incorporated by reference on the Utah County Agreement cover page.

“Contractor” means the individual or entity delivering the Products and Services identified in the Agreement. The term “Contractor” shall include the individual’s or entities’ agents, officers, employees, and partners.

The “County” means Utah County, a political subdivision of the State of Utah, as directed and managed by a majority vote of the Board of County Commissioners of Utah County.

“Products” means any products to be delivered to the County by Contractor as described in the Utah County Agreement cover page, including any products described in any attachments that are incorporated by reference on the Utah County Agreement cover page.

“Services” means any services to be performed for the County by Contractor as described in the Utah County Agreement cover page, including any services described in any attachments that are incorporated by reference on the Utah County Agreement cover page.

“Subcontractors” mean subcontractors or subconsultants that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or authorized resellers.

**EXTRA WORK.**

(A) Extra work shall be undertaken only when previously authorized in writing by the County and is defined as additional work which is neither shown nor defined in the Agreement or the attached Contractor’s proposal (if any) but determined by the County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical and unforeseeable.

Miscellaneous items normally associated with the major work items included in the Agreement, but which may not be specifically identified, shall be furnished by Contractor as if they had been included in the Agreement, without additional cost to the County. After written prior authorization of the Board of County Commissioners of Utah County, payment for authorized extra work will be made in the previously authorized amount only.



**PAYMENT.** Payments from the County are normally made within thirty (30) days following the date an order is delivered, service is performed, or the date a correct invoice is received, whichever is later. All payments for the Agreement will be remitted electronically, by mail, or as otherwise determined by the County. Contractor shall accept payment by check or by Purchasing Card without any additional fees.

**OWNERSHIP IN INTELLECTUAL PROPERTY.** The County and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The County will have all rights, title, and ownership of all websites and social media accounts, including any passwords, usernames, or other pertinent login information or hosting credentials; advertising materials, including any content or work product; images; newsletters; and intellectual property, including derivative works, created, or arising out of the performance of the Agreement, unless otherwise indicated in the Agreement. Contractor will give the County a list of all current passwords, usernames, and any other relevant information or credentials necessary for access and control of any property under the Agreement upon completion of the Agreement or upon the County's request.

#### **INSURANCE.**

Prior to commencement of Services, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has Workers Compensation Insurance for the Contractor and Subcontractors. Prior to commencement of Services, Contractor also shall furnish a Certificate of Insurance to the County evidencing professional malpractice insurance with limits of \$100,000.00 per person and an aggregate of \$300,000.00 and provide to Utah County evidence of the insurance. Attorney also agrees to notify Utah County in writing within ten days of any claim or legal action filed against Attorney related to services provided by Attorney under this contract. Attorney further agrees to maintain the foregoing insurance policies with minimum limits as required by law. If any proprietor, partner, executive, officer, member, or otherwise, is excluded from the insurance policies, Attorney shall provide County with the applicable state issued waiver relating to all proprietors, partners, executives, officers, members, or otherwise of Attorney where the insurance policies have been waived.

**Data Privacy.** If Contractor, as part of this agreement or transaction, will receive or work with County information, or if they will be gathering data on behalf of the County, Contractor will be required to comply with the following provisions as applicable.

(A) Cyber Insurance. Contractor agrees to purchase and maintain throughout the term of this Agreement a technology and professional liability insurance policy, including coverage for network security and data protection liability insurance (also called "cyber liability") covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology or professional services or in connection with the specific services described in violation or infringement of any right of privacy, including breach of security and breach of security or privacy laws, rules or regulations globally, now or hereinafter constituted or amended; data theft, damage, unauthorized disclosure, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential government, corporate, or public information in whatever form; transmission of a computer virus or other type of malicious code; participation in a denial of service attack on third party computer systems; loss or denial of service; with no cyber terrorism exclusion; with a minimum limit of three million dollars (\$3,000,000) for each and every claim and in the aggregate. Such coverage must include technology and professional liability including breach of contract, privacy and security liability, privacy regulatory defense

and payment of civil fines, payment of credit card provider penalties, and breach response costs (including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management and public relations services). Such insurance must explicitly address all the foregoing without limitation if caused by an employee of the Contractor or an independent contractor working on behalf of the Contractor in performing services under this Agreement. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. Such insurance must include affirmative contractual liability coverage for any data breach indemnity in this Agreement, for all damages, defense costs, privacy regulatory civil fines and penalties, and reasonable and necessary data breach notification, forensics, credit protection services, public relations and crisis management, and other data breach mitigation services resulting from a confidentiality or security breach by or on behalf of the Contractor. Contractor shall furnish evidence of coverage at the time of any bid or proposal, and upon request at any time during the term of the Agreement.

(B) Protecting Personal Identifying Information. Utah Code 63A-19-101 *et seq.* requires governmental agencies follow specific standards to protect personal data privacy. Consistent with Utah Code 63A-19-401(4)(a) Contractor acknowledges that Contractor is also required to comply with the relevant requirements of this chapter regarding the personal data processed or accessed by Contractor as part of Contractor's duties under the Agreement to the same extent as required of the governmental entity.

**GOVERNING LAW AND VENUE.** The Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Utah and Utah County. Any action or proceeding arising from the Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Provo, in the Fourth Judicial District Court for Utah County.

**COMPLIANCE WITH LAWS AND REGULATIONS.** At all times during the Agreement, Contractor and all Products and Services performed under the Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. Any violation by Contractor of applicable law shall constitute an event of default under the Agreement and Contractor shall indemnify the County from and against all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the County because of the violation. Contractor is responsible, at its expense, to acquire, maintain, and renew all necessary permits and licenses required for its lawful performance of its duties and obligations under the Agreement during the term of the Agreement. To the extent that Contractor uses, stores, transfers, or manipulates any data in the performance of its obligations, Contractor will further comply with all applicable privacy and data laws and regulations, including but not limited to General Data Protection Regulation 2016/679 of the European Union ("GDPR") and similar provisions from any jurisdiction in the United States and any locations where data is or may be stored.

**EMPLOYMENT STATUS VERIFICATION.** Contractor shall register and participate in the Status Verification System and comply with Utah Code section 63G-12-302 of the Identity Documents and Verification Act. Contractor shall require an affidavit verifying compliance with Utah Code section 63-G-12-302 from each of its contractors and subcontractors.

**INDEPENDENT CONTRACTOR.** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the County, and therefore is not entitled to any of the benefits associated with such employment. As an independent contractor, Contractor shall have no express or implied authority to bind the County to any agreements,

settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the County. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.

**INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall, for Contractor and on behalf of Contractor's officers, employees, agents, and volunteers, indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgements, losses, risks of loss, damages, expenses, and liabilities arising out of or related to the Agreement. Contractor shall also pay any litigation expenses that the County incurs, including attorney's fees, arising out of or related to the Agreement. As between the parties to the Agreement, Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of the Agreement. The County reserves the right to conduct, control, and direct its own defense for any claims, demands, causes of action, orders, decrees, judgements, losses, damages, expenses, and liabilities arising out of or related to the Agreement.

**INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY.** Contractor shall indemnify and hold the County harmless from and against all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs in any action or claim brought against the County for infringement of a third party's copyright, trademark, trade secret, or other proprietary right arising from this Agreement.

**GOVERNMENTAL IMMUNITY.** The County is a corporate and political subdivision of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"). The County does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or any comparable legislative enactment. The parties agree that the County shall only be liable within the parameters of the Act. Nothing contained in the Agreement shall be construed in any way to modify the limits set forth in that Act or the basis for liability as established in the Act.

**NON-FUNDING CLAUSE.** The County intends to request the appropriation of funds to be paid for the services provided by Contractor under the Agreement. The Agreement shall create no obligation on the County as to succeeding annual budget cycles and if funds are not available beyond December 31 of any effective annual budget cycle of the Agreement, or if the budget is amended and such funds are no longer available, the County's obligation for performance of the Agreement shall be null and void. This termination shall not be construed as a breach of the Agreement or any event of default under the Agreement and the termination shall be without penalty, and no right of action for damages or other relief shall accrue to the benefit of Contractor, its successors, or its assigns, as to the Agreement. If funds are not appropriated for a succeeding annual budget cycle to fund performance by the County under the Agreement, or if the budget is amended to make such funds no longer available, the County shall attempt to notify Contractor of non-funding and the termination of the Agreement.

**CONFIDENTIALITY.** Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall be owned by the County and shall be held confidential by Contractor. In addition, all information provided to Contractor by the County for the purposes of Contractor's performance of the Products or Services, whether provided in writing or any other form, shall be held in confidence by Contractor and Contractor shall not release any of the information to any third party, any member of Contractor's firm who is not involved in the performance of Products or Services, or to any representative of the news media without prior written consent of the County. The County shall have the sole obligation or privilege of releasing such information as required by law. Any

employee or member of Contractor's firm, subcontractor, or agent with whom Contractor shares any information as described in this section will be under the same obligations of confidentiality, and Contractor is required to secure and provide to County written commitments to that effect from each such recipient of information.

**TERMINATION.** Unless otherwise stated in Attachment C: Special Provisions, the Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. If the violation is reasonably subject to cure, the party in violation will be given 10 working days after notification to correct and cease the violation, after which the Agreement may be terminated for cause. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. The Agreement may be terminated without cause, in advance of the specified expiration date, by either party upon 90 days prior written notice being given to Contractor. On termination of the Agreement, all accounts and payments will be processed according to the financial arrangements in the Agreement for approved services rendered prior to the date of termination, subject to any offsetting claims by the County.

**FORCE MAJEURE.** The County will not be held liable for delay or default caused by fire, riot, acts of God, State or Utah County declared state of emergency, or war. The County may terminate the Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.

**SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.

**LEGAL SUPPORT.** Contractor shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors.

**NO PRESUMPTION.** Should any provision of the Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms in the Agreement shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.

**TIME IS OF THE ESSENCE.** The County and Contractor recognize that time is of the essence here and the County will suffer financial loss if any Products or Services are not delivered and performed within the time specified in the Agreement, plus any extensions approved in writing by the County. Contractor shall be liable for all reasonable damages to the County and to anyone whom the County may be liable because of Contractor's failure to timely deliver and perform the Products and Services.

**DELIVERY.** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the County except as to latent defects, fraud, and Contractor's warranty obligations, if applicable.

**INTERPRETATION OF AGREEMENT.** Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

**NOTICES.** All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their respective places of business, or at such other addresses as may be designated by notice given hereunder, including by email to the contact person for Contractor at the email address identified on the Utah County Agreement cover page.

**COUNTERPARTS AND FACSIMILE SIGNATURES.** The Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, emailed, texted, electronic, or power of attorney signatures shall be binding upon the the executing party.

**AMENDMENTS.** No oral modifications or amendments to the Agreement shall be effective. The Agreement may be modified or amended by a written agreement signed by the parties.

**ASSIGNMENT.** The parties to the Agreement shall not assign the Agreement without the prior written consent of the other party to the Agreement. No assignment shall relieve the original parties from any liability arising out of or related to the Agreement.

**SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.

**WAIVER.** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege. Any waiver must be in writing and signed by the party making the waiver.

**SURVIVAL.** The provisions of this Agreement which by their terms call for performance after termination of the Agreement shall so survive such expiration or termination, such as but not limited to: **Section 4. Ownership of Intellectual Property, Section 11. Indemnification, Section 12. Indemnification Relating to Intellectual Property, and Section 16. Confidentiality.**

**ENTIRE AGREEMENT.** The Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

## **ADDENDUM D**

### **Sample Work Agreement**

WHEREAS Utah County has the responsibility to provide constitutionally effective legal representation to indigent persons in criminal and juvenile delinquency matters pending in Utah County; and

WHEREAS Attorney is a member in good standing of the Utah State Bar and admitted to practice law before the courts of the State of Utah; and

WHEREAS Attorney is willing to coordinate and work with the Legal Defender Manager for Utah County (“Manager”) who manages and coordinates all attorneys contracting with Utah County to represent indigent clients; and

WHEREAS Attorney is willing to represent indigent clients in the Fourth District Court and in accordance with the Attorney’s accepted proposal.

NOW, for and in consideration of the mutual promises, obligations, and/or covenants contained herein, and for other good and valuable consideration, the receipt, fairness, and sufficiency of which are hereby acknowledged, and County and Attorney (collectively, the “Parties”) intending to be legally bound, do hereby mutually agree as follows:

1. Attorney acknowledges that other attorneys (“Legal Defenders”) will contract with Utah County to provide legal counsel for indigent clients appearing in the Provo Fourth District Court and that Utah County has a Legal Defender Manager to coordinate with those Legal Defenders.
2. Attorney agrees to:
  - a. Assist the Manager in the preparation of long -range planning proposals and policies related to the representation of indigent clients.
  - b. Meet regularly with the Manager and other contract Legal Defenders and review caseload information and appointment of counsel to clients.
  - c. Cooperate with the Manager to resolve complaints which have been made against Attorney for work performed under this Agreement and to identify potential conflicts or complaints that persons may have against contract Legal Defenders.
  - d. Comply with applicable policies and/or practices implemented by the Manager to document legal trends and caseload management, including but not limited to the maintenance and production of statistical reports and costs.
  - e. Comply with applicable policies and/or practices implemented by the Manager for the collection and storage of closed files of Attorney that relate to work performed under

- this Agreement, including, but not limited to, the maintenance of closed files for a minimum period of 12 months after a case is closed.
- f. Work with the Manager in requesting additional defense resources from the indigent defense fund.
  - g. Cooperate with and assist the Manager and other Legal Defenders to provide competent representation to all indigents, including coverage of cases for other Legal Defenders when the need arises due to conflicts of interests or scheduling conflicts. Any such representation will be at no additional cost to Utah County unless agreed upon by Utah County.
  - h. Comply with applicable statutory and professional rules of attorney conduct.
  - i. Abide by the Utah Rules of Professional Conduct and the laws of the State of Utah.
  - j. Attend 6 hours of CLE training sponsored by the IDC for each reporting period unless that requirement is waived by the Indigent Defense Commission (IDC).
  - k. Be reasonably available to meet with clients in a manner that does not require them to leave Utah County.
3. Attorney agrees to use Attorney's best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client. The parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent a particular indigent defendant. In such instances, the Attorney shall arrange, in every respect, for representation by other counsel to be paid for by Utah County.
  4. Attorney agrees to support Utah County in the continued implementation of a fee recovery program whereby indigent clients represented by a Legal Defender or otherwise benefitting from legal resources paid for by Utah County shall repay to Utah County a portion of the expenses incurred by Utah County.
  5. To assure Utah County complies with grant requirements established by the IDC, Attorney agrees to provide the Manager or the Manager's designee various caseload information on a monthly basis or as otherwise directed in a format approved by the Manager. This will include use of Defender Data or other software that may be required to enter, record, and report data necessary to comply with IDC grant contracts.
  6. Each year, for the period January 1, 2025, through December 31, 2027, Utah County agrees to pay Attorney the sum of \$ \_\_\_\_\_. Payments shall be made to the Attorney in quarterly installments. Installments will be paid within 30 days of receiving an invoice. Invoices shall be submitted no sooner than 30 days prior to the start of a quarter unless otherwise agreed upon by the parties.

7. Attorney shall be responsible for costs such as investigator fees, laboratory costs, transcripts, and defense witness fees.
8. The parties agree that in cases involving complex litigation, such as aggravated child sexual abuse cases punishable by mandatory prison terms of not less than 25 years or white collar crimes, the Attorney may apply to Utah County for additional funds for work and expenses incurred as the result of providing representation in such cases, with the awarding of such additional funds to be at the discretion of the Manager upon approval of the Board of Utah County Commissioners.
9. Attorney acknowledges and agrees that failure to comply with any of the provisions of this Agreement constitutes a breach of this Agreement, and the County, may, at its discretion and upon delivering written notice of breach to Attorney, withhold payment to Attorney until such breach is cured, and/or terminate this Agreement in accordance with paragraph 15 herein.
10. The rights and remedies of the Parties under this Agreement shall be construed cumulatively, and none of the rights and/or remedies under this Agreement shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.



## ADDENDUM E

### PROPOSED CONTRACT FOR INDIGENT DEFENSE SERVICES IN A CASE INVOLVING AGGRAVATED MURDER

THIS CONTRACT FOR INDIGENT DEFENSE SERVICES IN A CASE INVOLVING AGGRAVATED MURDER (“CONTRACT”) is made and entered into on \_\_\_\_\_, by and between UTAH COUNTY (“COUNTY”), a body corporate and politic of the State of Utah, and \_\_\_\_\_ (jointly and individually “DEFENDERS”). Collectively, they shall be referred to in this CONTRACT as the “PARTIES”.

This CONTRACT is based, in part, upon the following recitals:

- A. \_\_\_\_\_ (“DEFENDANT”) was charged in an Aggravated Murder case dated \_\_\_\_\_, and filed in Criminal Case \_\_\_\_\_ in the Fourth Judicial District Court in Utah County, Utah, with the commission of the criminal offense of aggravated murder, a possible capital offense, in violation of § 76-5-202, *Utah Code Ann.*
- B. Pursuant to the Indigent Defense Act, as set forth in Title 78B, Chapter 22, *Utah Code Ann.*, the Court found the DEFENDANT to be indigent and entitled to the assignment of defense counsel in this case at public expense.
- C. Pursuant to the Indigent Defense Act, as set forth in Title 78B, Chapter 22, *Utah Code Ann.*, the COUNTY is the indigent defense system for charges occurring within Utah County, Utah, and may contract for indigent defense services.
- D. The Court has made findings that \_\_\_\_\_ is an attorney duly licensed to practice law in the State of Utah and is qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned as lead defense counsel for an indigent charged with an offense for which the punishment may be death and that the Defender is

proficient in the trial of capital cases.

E. \_\_\_\_\_, as lead counsel, has signed and submitted to the COUNTY sufficient documentation to verify that the Defender is currently qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned as lead defense counsel for an indigent charged with an offense for which the punishment may be death and is proficient in the trial of capital cases.

F. \_\_\_\_\_, as lead counsel, has selected \_\_\_\_\_ to be co-counsel in this case. The Court has made findings that \_\_\_\_\_ is an attorney duly licensed to practice law in the State of Utah and is currently qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned as defense co-counsel in a capital case.

G. The DEFENDERS are able and willing to undertake the assignment as defense counsel for and have no known conflicts of interest in representing the DEFENDANT in this case.

H. In contemplation of the assignment of the DEFENDERS to represent the DEFENDANT in this case, the DEFENDERS and the COUNTY have negotiated reasonable compensation for the services of the DEFENDERS as indigent defense counsel, and it is the intent of the PARTIES that the terms of those services and that compensation be set forth in this CONTRACT.

Now therefore, in consideration of the mutual terms and conditions set forth in this CONTRACT, the parties hereto do hereby agree as follows:

**1. Services**

A. The DEFENDERS shall, as co-counsel, provide legal services and represent the DEFENDANT in all phases and proceedings of the defense in Criminal Case No. \_\_\_\_\_ in the Fourth Judicial District Court in and for Utah County, in

which the DEFENDANT is charged with the offense of criminal homicide, aggravated murder, a possible capital offense.

B. The DEFENDERS shall represent the DEFENDANT in this case and provide and perform all necessary and appropriate defense legal services through:

(1) Any proceedings and trial, including any new trial granted by the trial court, all motion hearings, and any other proceedings which may be held in this case before the trial court; and

(2) Any post-trial proceedings before the trial court, including sentencing and any post- plea or post-trial motions filed by either the DEFENDANT or the State.

C. The services contemplated by this CONTRACT do not include any:

(1) Post-plea or post-trial appeals to an appellate court; or

(2) Proceedings before the trial court if the court has relieved counsel of the obligation to represent the DEFENDANT.

D. The DEFENDERS shall perform the legal services required under this CONTRACT in a professional and ethical manner under the guidelines and standards set forth in the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, if the death penalty is sought, the Utah Rules of Professional Conduct, and other applicable state and federal law.

E. The DEFENDERS shall, with reasonable promptness, inform the COUNTY of:

(1) Any pending or possible conflicts of interest that may exist because of the proposed or current representation by the DEFENDERS of the DEFENDANT in the above- described criminal case and, if reasonably possible, obtain the appropriate and necessary waivers or releases from all concerned parties.

(2) Any circumstances which are likely to reasonably necessitate the withdrawal of the DEFENDERS; or

(3) The intention of the DEFENDERS to withdraw from representation of the DEFENDANT.

**2. Compensation.**

- A. The COUNTY may authorize payment of attorney fees at a rate of \$225 per hour for Rule 8 qualified lead counsel and \$185 per hour for Rule 8 or non-Rule 8 qualified attorneys who serve in the capacity of second chair for a case in which capital aggravated murder is charged. If the case is or becomes a non-capital case, the COUNTY may authorize payment of attorney fees at a rate of \$200 per hour for lead counsel and \$152 per hour for second chair. The case is presumed as one for capital aggravated murder until either 60 days after arraignment or until the DEFENDERS receive written confirmation from the prosecution that it will not pursue the death penalty, whichever occurs first. The DEFENDERS shall inform the COUNTY of the date when either of these conditions occur, and appropriate pay rates shall be applied from the date that either of these conditions occur. Paralegals may be used by the DEFENDERS at a rate to be determined by the DEFENDERS, but not to exceed the rate of the second chair.
- B. The DEFENDERS shall be authorized to receive up to the following presumptive caps for each stage of the case in accordance with the following schedule:

| <b>Capital Aggravated Murder Charge</b>     |   |
|---|---|
| \$80,000                                    | Phase 1: Initial appearance through completion or waiver of preliminary hearing   |
| \$70,000                                    | Phase 2: After completion or waiver of preliminary hearing up to commencement of trial  |
| \$50,000                                    | Phase 3: From commencement of trial through completion of penalty phase and any post-trial proceedings before the trial court |
| <b>Non-Capital Aggravated Murder Charge</b> |   |
| \$40,000                                    | Phase 1: Initial appearance through completion or waiver of preliminary hearing   |
| \$30,000                                    | Phase 2: After completion or waiver of preliminary hearing up to commencement of trial  |
| \$25,000                                    | Phase 3: From commencement of trial through completion of penalty phase and any post-trial proceedings before the trial court |

The case is presumed as one for capital aggravated murder until either 60 days after arraignment or until the DEFENDERS receive written confirmation from the prosecution that it will not pursue the death penalty, whichever occurs first. If the occurrence of either of those conditions occurs in the middle of a phase, the presumptive caps will continue to apply until the beginning of the following phase. The DEFENDERS shall be required to work within these presumptive caps even if the total amount of work within the presumptive cap results in an hourly rate that is less than the hourly rate that is authorized by the COUNTY in paragraph 2A of this contract. The presumptive caps apply to payments for paralegals.

**The COUNTY may authorize payments in excess of the maximum amounts only upon a showing of exceptional circumstances in accordance with paragraph 2C.**

- C. The PARTIES have agreed that the amounts and timing of compensation set forth in this CONTRACT are reasonable and adequate. The PARTIES further agree that the presumptive caps in paragraph 2B shall be binding and shall operate to limit the timing and amount of total compensation paid to the DEFENDERS and that there shall be no right to receive additional compensation unless prior written approval is obtained from the COUNTY. The DEFENDERS may request that the COUNTY exceed the maximum amounts listed in paragraph 2B based upon a showing of Exceptional Circumstance.

To establish exceptional circumstances, the DEFENDERS must demonstrate to the COUNTY that compensation provided by paragraphs 2B is unreasonably inadequate in light of the length and complexity of the litigation which length and or complexity was not reasonably foreseeable at the time the PARTIES entered into this CONTRACT. Exceptional circumstances are defined as circumstances related to the case that were not reasonably foreseeable at the time the PARTIES entered into this CONTRACT.

- (1) To request additional compensation, the DEFENDERS must, as soon as is reasonably possible, but no later than two months after the need is

determined to exist, submit a written request with sufficient and appropriate information and documentation to the COUNTY to justify the requested additional fees.

- (2) The DEFENDERS shall request that the trial court make ex parte findings regarding the length and complexity of the case, the request shall include a complete copy of this agreement. DEFENDERS shall forward any determinations made by the trial court to the COUNTY. Motion should be provided to the COUNTY if when submitted to COUNTY or sooner if requested.
- (3) The COUNTY, in its complete discretion, shall determine whether the additional fees requested are reasonable in light of the circumstances and could not have been reasonably anticipated at the time this CONTRACT was approved and signed.
- (4) If the COUNTY decides not to approve a request to exceed a presumptive cap based on a written request, the DEFENDERS shall be given an opportunity to present their reasoning to the COUNTY and ask for a reconsideration of the decision. If the DEFENDERS choose to present their reasoning to the Board, they shall do so at their own expense, and such expenses shall not be billed to the County.
- (5) The DEFENDERS shall have no rights to claim additional recovery under this CONTRACT in the event the COUNTY refuses to authorize additional compensation.

D. The compensation to be paid shall be the sole consideration to be paid to the DEFENDERS by the COUNTY for services under this CONTRACT and includes all the DEFENDERS' general office expenses, paralegal expenses, postage, preparation expenses, and other similar operating expenses, except as provided specifically otherwise in this CONTRACT. Time spent by an attorney, his/her clerical or other staff, or other legal team members regarding preparation, clarification or interpretation of billings or contracts is considered a general office expense and shall not be billed as services rendered under this CONTRACT.

- E. The DEFENDERS shall submit fee statements jointly which sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the COUNTY to properly review, evaluate, and process the statement.
- F. The DEFENDERS shall submit billing statements detailing the hours worked and describing the work performed. The billing records shall be submitted to the COUNTY and are to be sealed and not made available to the agencies prosecuting the DEFENDANT. Billings shall be made in 1/10<sup>th</sup> hour increments. The fee statements shall be submitted at the stages of the proceedings as set forth in the foregoing Sub-paragraph B., however, monthly progress billings are required. If billings have gone beyond a presumptive cap, they still need to be submitted monthly. The COUNTY has the right to decide not to pay charges that are three months old or older that have not been previously submitted.
- G. In the event the DEFENDERS, jointly or severally, receive payment from another source as payment of fees in the representation of the DEFENDANT in this case, the DEFENDERS shall reimburse the COUNTY for any consideration paid under this CONTRACT to the extent of such payments.
- H. In the event lead counsel is dismissed or withdraws from representation of the DEFENDANT in this case whether temporarily or for limited purposes or permanently, because of any pending, possible, or actual conflicts of interest, and new lead counsel is appointed, the new lead counsel may, with the approval of the trial court:
- (1) Select the appointment of new co-counsel, in which case, the new co-counsel will be compensated pursuant to an agreement with the COUNTY or subject to the limitations set forth in paragraph 2A or
  - (2) Agree to the continuation of the current co-counsel.

- I. If a new lead counsel selects the appointment of new co-counsel pursuant to Subsection H(1), the current co-counsel shall be compensated for services as provided above before the approval of withdrawal is entered by the trial court.

### **3. Reimbursement of Expenses**

- A. Subject to the provisions of this paragraph and Paragraph 4 of this CONTRACT, the COUNTY shall reimburse the DEFENDERS for the reasonable and necessary costs of defense, including reasonable and necessary defense expenses for:

- (1) For a charge of capital aggravated murder:

- (a) Mitigation Specialist and Mitigation Investigator fees: \$150 per hour plus reasonable expenses not to exceed \$80,000.
  - (i) Maximum of up to \$30,000 upon completion or waiver of the preliminary hearing (phase 1).
  - (ii) Maximum of up to \$20,000 after completion or waiver of the preliminary hearing up to trial (phase 2).
  - (iii) Maximum of up to \$30,000 from the beginning of trial through completion of the penalty phase (phase 3).

- (b) Investigator fees: \$125 per hour plus reasonable expenses not to exceed \$60,000.

- (i) Maximum of up to \$20,000 upon completion or waiver of the preliminary hearing (phase 1).
- (ii) Maximum of up to \$20,000 after completion or waiver of the preliminary hearing up to trial (phase 2).
- (iii) Maximum of up to \$20,000 from the beginning of trial through completion of the penalty phase (phase 3).

- (2) For a charge of non-capital aggravated murder:

- (a) Mitigation Specialist and Mitigation Investigator fees: \$100 per hour plus reasonable expenses not to exceed \$30,000.
- (b) Investigator Fees: \$80 per hour plus reasonable expenses not to exceed \$10,000. Investigator fees may be paid to the mitigation investigator.



- (3) Transcription fees;
- (4) Witness costs;
- (5) Expert witness fees;
- (6) Fees for mental and physical examinations and costs associated therewith;
- (7) Defense counsel travel costs, at state rates and in accordance with state rules and policies;
- (8) Costs for major voluminous copying of documents by an outside provider; and
- (9) Internal copies, or copies not made by an outside provider, will be reimbursed at 10 cents per copy.

For the purposes of determining the fees and caps for mitigation specialists and investigators, the case is presumed as one for capital aggravated murder until either 60 days after arraignment or until the DEFENDERS receive written confirmation from the prosecution that it will not pursue the death penalty, whichever occurs first. If the occurrence of either of those conditions occurs in the middle of a phase, the fees will adjust immediately but the presumptive caps will continue to apply until the beginning of the following phase.

B. For the purposes of this CONTRACT, with the exception of Subsections 3A.(1), 3A.(2), and 3A.(9), the above expenses shall be deemed to be extraordinary expenses and must have prior Court approval if the expense is \$750 or more. The caps stated in Subsection (A) are presumptive and any amounts in excess must have prior court approval. The necessity and reasonableness of these and any other extraordinary expenses shall be determined and approved by the Court before the expenses are incurred and before a statement for reimbursement for those extraordinary expenses may be submitted to the COUNTY.

- C. The PARTIES have agreed that the reimbursement amounts provided by paragraphs 3A and 3B are reasonable and adequate. The PARTIES further agree that the limitations in those paragraphs shall be binding and shall operate to limit the timing and amount of reimbursement of expenses.

DEFENDERS shall submit their statements for expense reimbursements, including those extraordinary expenses approved by the Court, to COUNTY together with supporting documentation and such statements shall be processed with reasonable diligence.

- D. Travel is not considered necessary and reasonable when the purpose of the travel can reasonably be accomplished in another way, such as by telephone, email, video communication, or other correspondence.
- E. In the event the DEFENDERS, or either of them, receive payment from another source as reimbursement for defense costs in the representation of the DEFENDANT in this case, the DEFENDERS shall reimburse the COUNTY for any reimbursements paid under this CONTRACT to the extent of such payments.

#### **4. Statements or Requests for Payment or Reimbursement**

- A. The DEFENDERS shall submit to the COUNTY statements or requests for payment or reimbursement jointly which sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the COUNTY to properly review, evaluate, and process the request. Before making payment, the COUNTY may request additional supporting documentation. The COUNTY may withhold payment for any item in a statement or request when such item is not accompanied by supporting documentation, such as a paid invoice, or such item conflicts with the provisions of this CONTRACT pending resolution of the amount requested.

B. Fee statements shall be submitted at the times described in the foregoing Paragraph 2.F.

C. The COUNTY shall process any payment requests submitted by the DEFENDERS under this CONTRACT with reasonable diligence.

### **5. Independent Co-Counsel**

The DEFENDERS are, individually and jointly, obligated by this CONTRACT to provide the legal defense services set forth in this CONTRACT. In the event of the inability or unwillingness of either of the DEFENDERS to represent or continue to represent the DEFENDANT, or the dismissal or withdrawal of either of the DEFENDERS, the remaining DEFENDER shall nonetheless continue to represent the DEFENDANT as though the dismissal or withdrawal of co-counsel had not occurred.

### **6. Withdrawal or Dismissal of Counsel**

- A. In the event of the inability of the DEFENDERS to represent the DEFENDANT in this case or in the event of court-approved dismissal or withdrawal of either the DEFENDERS as defense counsel, the DEFENDER who is dismissed or withdraws shall be entitled to compensation to the date of that dismissal or withdrawal.
- B. Neither such withdrawal or dismissal nor the appointment of a substitute legal counsel for the DEFENDER who has withdrawn or been dismissed will alter the obligations and entitlements, including compensation, of the remaining DEFENDER or the obligation of the COUNTY to pay compensation to the remaining DEFENDER under the terms of this CONTRACT.
- C. An amendment to this CONTRACT shall be entered regarding the substitute legal counsel who shall be entitled to compensation only for services rendered from the time of appointment.

- D. Should one or both DEFENDERS withdraw from the case for reasons other than an ethical conflict and the COUNTY reasonably incurs costs because of that withdrawal, the withdrawing DEFENDER shall be responsible to reimburse the COUNTY for these costs.

## **7. Qualifications**

The DEFENDERS shall, as may be requested by the COUNTY, provide sufficient documentation to verify that \_\_\_\_\_, and as necessary \_\_\_\_\_, are and remain currently qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned and continue to serve as defense counsel for an indigent charged with an offense for which the punishment may be death and that the DEFENDERS remain attorneys in good standing with the Utah State Bar and licensed to practice law in the State of Utah. The DEFENDERS shall have an ongoing duty to report to the COUNTY if either defense counsel is no longer qualified, for whatever reason, to continue to represent the DEFENDANT in the case.

## **8. Independent Contractors**

The DEFENDERS are independent contractors providing professional legal services and are not employees of the COUNTY and are therefore not entitled to any of the benefits of employment such as, but not limited to, retirement, health, or Workers Compensation coverage.

## **9. Indemnification and Insurance**

- A. The DEFENDERS shall maintain such insurance as will cover the DEFENDERS from all claims for malpractice, property damages, injuries, or death made by any person that may arise from the performance of this CONTRACT. The DEFENDERS shall provide the COUNTY with appropriate current certificates of insurance as evidence of that coverage upon the execution of this CONTRACT.
- B. The minimum coverage shall be One Hundred Thousand Dollars (\$100,000.00) per claim and Three Hundred Thousand Dollars (\$300,000.00) per year.

- C. The DEFENDERS agree to indemnify and hold the COUNTY harmless from all liability whatsoever which may arise from the DEFEDERS' performance or failure to perform its obligations under the CONTRACT. This obligation to indemnify shall include reasonable attorneys' fees and all other reasonable costs which may arise from the DEFENDERS' actions.

**10. Entire Agreement**

This CONTRACT sets forth the complete agreement between the PARTIES and may be modified only by a subsequent written instrument approved and signed by both PARTIES.

**11. Default**

In the event of a default in the performance of this CONTRACT, the defaulting party shall reimburse the other party for all reasonable attorney's fees and costs incurred in the enforcement of this CONTRACT.

**12. Notice**

All notices to be given under this CONTRACT shall be delivered to the PARTIES as follows:

- A. Notice shall be given to the DEFENDERS at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Notice shall be given to the COUNTY at:

[EzraN@utahcounty.gov](mailto:EzraN@utahcounty.gov)  
Utah County Administrator, Ezra Nair  
100 East Center Street, Ste. HCH 320C, Provo UT 84606

### **13. Non-Assignment**

The DEFENDERS may not assign this CONTRACT or their performance under it, in whole or in part, without the prior written approval of the COUNTY, which shall not be unreasonably withheld if the COUNTY terminates this CONTRACT because of non-funding.

### **14. Termination**

- A. In the event of a conflict of interest the agreement may be terminated as soon as new counsel can be procured by the COUNTY. If it would prejudice the case, termination may take effect immediately. It is understood that the termination of this CONTRACT is not the same as withdrawal of representation of the DEFENDANT. To withdraw their representation of the DEFENDANT, the DEFENDERS acknowledge that the approval of the court must first be obtained.
- B. The COUNTY, upon reasonable notice, may terminate this CONTRACT in whole or in part if the COUNTY no longer has a statutory obligation to provide legal services to the DEFENDANT, e.g. if the DEFENDANT is determined to no longer be indigent.
- C. The COUNTY may terminate this CONTRACT at any time upon verification that the DEFENDERS are no longer attorneys duly licensed to practice law in the State of Utah or that \_\_\_\_\_ is not or is no longer qualified under Rule 8, Utah Rules of Criminal Procedure, to be assigned as lead defense counsel for an indigent charged with an offense for which the punishment may be death.
- D. The COUNTY may terminate this CONTRACT at any time if the DEFENDERS commit any ethical violation or for any other factor which may prevent the DEFENDERS from fairly, efficiently, and effectively providing representation to the DEFENDANT.
- E. If DEFENDERS are not appointed to the case this CONTRACT will be automatically terminated and no payment will be made.

## **15. Records and Reports**

- A. The DEFENDERS shall maintain such records and accounts as may be deemed reasonable and necessary by the COUNTY to assure a proper accounting for all compensation and reimbursements paid to the DEFENDERS under this CONTRACT. The DEFENDERS shall, upon request, make those records available to the COUNTY for audit purposes and shall maintain those records for a period of 3 years or such other longer period as may be required by law after the expiration of this CONTRACT.
- B. The DEFENDERS shall submit to the COUNTY a report each month during the term of this CONTRACT informing the COUNTY of the status of the criminal proceedings.

{Parties Signatures}