

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY
DISTRICT COURT**

This Agreement is made effective the 1st day of February, 2018, by and between Weber County, a body politic and political subdivision of the State of Utah, hereinafter referred to as "County," and Michael D. Bouwhuis, hereinafter referred to as "Attorney." County and Attorney are sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, pursuant to Chapter 32 of Title 77, Utah Code Ann. (1953, as amended), County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty; and

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

WHEREAS, Attorney is an experienced attorney and has been acting as the coordinator and supervisor of other attorneys who have contracts for indigent defense with County; and

WHEREAS, Attorney is willing to continue to act as the coordinator and supervisor of attorneys who have contracts with County; and

WHEREAS, Attorney is willing to represent indigent persons in the Second District Court when appointed by the Court and as more fully specified herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained hereafter, the Parties agree as follows:

1. **COORDINATOR RESPONSIBILITIES**. Attorney acknowledges that other attorneys contract with County to provide legal counsel for defendants within Weber County ("Public Defenders"). Attorney agrees to act as the coordinator and supervisor of the Public Defenders. In his capacity as Coordinating Attorney, Attorney shall be responsible for the following:
 - a. Attorney shall supervise and coordinate all Public Defenders in Weber County. This shall include but not be limited to assigning attorneys to courts and court calendars in district, justice and juvenile courts, video arraignments, mental health hearings, and other hearings as necessary.
 - b. Attorney shall develop, monitor, and coordinate the preparation and implementation of policies and procedures regarding "Standards of Indigency" and assist in the preparation of long range planning proposals and policies related to Standards of Indigency.
 - c. Attorney shall meet regularly with the Public Defenders and review caseload

information to ensure that each Public Defender has a substantially equivalent case load in comparison to other Public Defenders with similar contracts.

- d. In meeting with individual Public Defenders, Attorney shall also determine if their respective caseloads for County are manageable under the Rules of Professional Conduct. If a Public Defender reports that he or she believes their caseload is too great to manage in accordance with rules or ethics, Attorney shall make further inquiry and then take appropriate action to resolve the problem. Resolution may include but not be limited too, reassigning a case or cases; assigning an additional attorney for complex cases; requesting the attorney to lessen or eliminate private practice matters, or find other solutions. If Attorney believes that the overall caseload for the Public Defenders is not manageable under the rules of professional conduct, he shall immediately contact his liaison county commissioner to seek additional resources and present a plan that defines the problem and provides possible solutions. In order to do this Attorney shall meet with the Public Defenders on a quarterly basis to receive feedback in regard to their respective responsibilities.
- e. Attorney shall receive, respond, and resolve complaints that may be lodged by anyone against the Public Defenders and seek to identify potential conflicts or complaints that persons may have against Public Defenders.
- f. Attorney shall establish a rotation for assignment of conflicts among Public Defenders.
- g. Attorney shall establish and maintain a system for statistical reports and costs that demonstrate gross trends and caseload management and collect any such statistical reports and data from each Public Defender.
- h. Attorney shall meet with the county commissioner liason at least once quarterly to report on gross trends, caseload management, and statistical reports for the Public Defenders.
- i. Attorney shall attend annual budget hearings with the County to negotiate compensation rates and contract provisions for the Public Defenders.
- j. Attorney shall develop and implement a system for the collection of closed files from Public Defenders and the storage of such files in a location deemed appropriate by County and Attorney.
- k. Attorney shall develop a list of court-approved expert witnesses and encourage other Public Defenders to utilize the experts on the list. Attorney will monitor the Public Defenders in their use of the court-appointed expert witnesses.
- l. Except for the appellate attorneys, Attorney shall receive from each Public Defender copies of all motions, memoranda, and appellate briefs filed and review

the same. Attorney shall establish and maintain a system to monitor the quality and track the quantity of such documents filed by Public Defenders.

2. **INDIGENT DEFENSE RESPONSIBILITIES.** Attorney agrees to provide competent legal counsel to any person charged with a felony or a misdemeanor who appears at the arraignment calendar sessions in the court Attorney is assigned to and who is deemed by the court to be indigent, as well as those indigent persons assigned to Attorney at video arraignments. Attorney will represent indigent defendants in all matters before the court including scheduling conferences, all hearings and trials, and all other matters required to ensure adequate representation including but not limited to probation violations hearings and restitution hearings. There will be a standing assignment for two court calendars in addition to the coordinating duty set forth in this Agreement.
3. Attorney agrees to promptly notify the court of any changes with regard to the indigent status of client, which changes would affect the qualifying of the client for court-appointed counsel.
4. If Attorney is not Rule 8 qualified, Attorney shall make reasonable efforts to become Rule 8 qualified.
5. Attorney will seek to identify potential conflicts or complaints that persons may have against Attorney and work diligently to avoid any complaints being lodged against Attorney. If any complaints are lodged by anyone against Attorney, Attorney will work diligently to resolve any such complaints.
6. If at any time Attorney's case load becomes sufficiently burdensome to create an ineffective assistance of counsel issue or could cause the attorney to be in violation of the Rules of Professional Conduct, Attorney shall take appropriate action to resolve the problem. Resolution may include but not be limited too, reassigning a case or cases; assigning an additional attorney for complex cases; requesting the attorney to lessen or eliminate private practice matters, or find other solutions.
7. County agrees that if Attorney is asked to represent a defendant in a capital defense case which could result in the death penalty, a separate contract would be crafted to handle compensation.
8. Attorney is expected to provide coverage for other contract attorneys when necessary and when Attorney is available to provide coverage. When possible, the attorneys should attempt to trade coverage at the time coverage is procured. When a simultaneous trade is not possible, the attorney whose calendar was covered should make reasonable efforts to reciprocate coverage for the attorney who covered for him/her upon request.
9. If the Coordinating Attorney determines that the attorney who provided coverage made reasonable efforts to procure coverage from the attorney for whom he/she provided coverage and the other attorney is unwilling or unable to provide coverage within six months of the original coverage having been provided, the covering attorney shall be

compensated \$250 by the attorney who was covered. This amount shall be deducted from the paycheck of the attorney whose calendar was covered and added to the paycheck of the covering attorney.

10. When Attorney will miss his/her regular court assignment due to trial, vacation, seminar, etc., Attorney shall arrange with another contract attorney to cover Attorney's court. If Attorney fails to procure coverage and does not appear at Attorney's court assignment, the sum of \$600 shall be deducted from Attorney's pay and paid to the attorney[s] who provided coverage for Attorney (if any is provided).
11. The term of this Agreement shall be from February 1, 2018 through December 31, 2019.
12. County agrees to pay Attorney the following amounts annually:

Basis for Amount	Amount
District Court Calendars	\$75,430
Coordinating Attorney	\$52,000
Mental Health Hearings	\$3,900
Additional Increase	\$5,185
Total	\$136,515

Payment shall be made to the Attorney in equal monthly installments of \$11,376.25 per month. The first installment is due before the end of February 2018 and a like sum on the last day of each month thereafter through December 31, 2019.

13. Attorney's compensation is based on the number of years Attorney has practiced. County agrees to periodically increase the compensation to Attorney up to a maximum of 30 years.
14. Attorney agrees to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to County evidence of the insurance. In addition, Attorney agrees to defend, indemnify, and hold County harmless from all damage, loss, or injury Attorney may suffer or be held liable for as a result of Attorney's conduct.
15. Attorney agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association, and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, Utah Code Ann. (1953, as amended).
16. Attorney agrees to keep abreast of all current legal trends and to that end shall maintain sufficient continuing professional education credits during the period of this Agreement.
17. Throughout the term of this Agreement, Attorney agrees to maintain access to an office within Weber County where Attorney can meet with clients which Attorney serves under

the terms of this Agreement. Attorney agrees to be available and accessible to clients reasonably in advance of any hearing or trial, to make reasonable efforts to visit clients who are incarcerated, to return telephone calls as soon as reasonably possible, and to otherwise be reasonably accessible to all clients.

18. Attorney agrees to use his/her best efforts to avoid any conflicts of interest which would divide loyalty of Attorney to the client. The Parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent the person charged. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court.
19. Attorney will represent various clients that would typically be assigned to other Public Defenders when the court deems there is a conflict of interest preventing the other Public Defender from representing the client. Any such representation shall be at no additional cost to County, with such assignments being made under the direction of the Coordinating Attorney.
20. Nothing in this Agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of clients appointed under this Agreement.
21. Unless the fee is waived by the court based upon the client's financial condition, Attorney agrees to assist County in the continued implementation of a fee recovery program whereby Defendants receiving assistance of appointed counsel shall repay to County a portion of the expense thereof as a matter of restitution, based upon a schedule approved by the Weber County Commission.
22. This Agreement may not be assigned by Attorney. Attorney is an independent contractor and shall not act as an agent for County.
23. County has established an indigent expense fund and will continue to fund the expense fund for the term of this Agreement. The expense fund may be used by all attorneys representing indigent defendants in County. Appropriate expenses shall include, but shall not be limited to laboratory costs, transcripts, defense witness fees, and extraordinary investigator fees. Attorney will bear all other expenses in providing the services contemplated herein, including but not limited to, transportation, office, telephone, postage, copying, and secretarial costs. While ensuring that Attorney's client receives an adequate and reasonable defense, Attorney hereby agrees to use his/her best efforts to minimize the cost and expenses to be deducted from the fund.
24. Before any of the expense funds are expended, Attorney shall make application for approval of expenses in the form of a written motion to the trial judge and shall specify the reasons for the expense. Payment for any expense incurred by the Attorney and not previously approved by the Court, or in excess of that approved by the Court, shall be the sole responsibility of the Attorney. In the event the total court approved expenses

exhaust the expense fund for the year, the Attorney shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.

25. Attorney or County may terminate this Agreement without cause upon sixty days written notice to the other Party.
26. This Agreement may be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of Attorney's license to practice law in the State of Utah, a breach of this Agreement, or behavior which brings disrepute to other contract attorneys or to County.
27. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven calendar days to cure the breach or violation. Failure of the Attorney to cure the breach or violation within the specified period shall result in termination of this Agreement. In the event this Agreement is terminated, the Parties agree that County may award this contract to other legal counsel and deduct the costs from the compensation identified in this Agreement.
28. Any notice required by this agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Weber County Attorney
2380 Washington Blvd., Suite 230
Ogden, UT 84401

FOR THE ATTORNEY:

29. In the event this Agreement is terminated or is not renewed, Attorney agrees to cooperate with his successor including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information, and materials to the successor.
30. In the event that Attorney files a Notice of Appeal to the Utah Court of Appeals and/or the Utah Supreme Court, Attorney shall immediately, but not later than ten (10) days thereafter, contact Appellant Counsel designated by County to transition and turn over all relevant records within Attorney's possession or control as necessary in the interests of justice and as requested by Appellate Counsel.
31. This Agreement can be changed, modified, or amended only by written agreement of the Parties.
32. Attorney is an independent contractor and is responsible to pay any and all taxes and fees which may result from the compensation paid to Attorney pursuant to this Agreement.
33. This Agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

34. This Agreement shall be governed by the laws of the State of Utah.

IN WITNESS WHEREOF the undersigned have affixed their respective signatures hereto the dates indicated below.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
James H. "Jim" Harvey, Chair


Date _____

Commissioner Harvey voted _____
Commissioner Gibson voted _____
Commissioner Ebert voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

INDIGENT DEFENSE COORDINATOR

By 
Michael D. Bouwhuis

Date 1/19/18