

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY
DISTRICT COURT**

This agreement is made effective the 1ST day of November, 2024, by and between Weber County Corporation, a body politic and political subdivision of the State of Utah (County) and Colton McKay (Attorney). County and Attorney are sometimes referred to individually as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, pursuant to the Indigent Defense Act, as set forth in Utah Code Ann.(UCA),Title 78B, Chapter 22, 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 an active 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 willing to represent indigent persons in the Second District Court when appointed by the Court or assigned by the Director;

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

**SECTION ONE
SERVICES**

1. Attorney shall fulfill the following specific assignments:
 - a. **District Court:** Attorney agrees to provide effective and competent representation to any person who is charged with a felony or a misdemeanor, to whom Attorney is appointed as assigned counsel by the Second District Court (Weber County) and assigned by the Director of the Weber Public Defender Group (Director), and who is deemed indigent by the court and pursuant to UCA 78B-22-202 et seq. (Clients.) Attorney will represent Clients in all criminal matters before the court including scheduling conferences, hearings, trials, probation violation hearings, restitution hearings, interlocutory appeals, notices to appeal and all other related criminal matters in District Court to ensure effective and competent representation.
2. Attorney shall to promptly notify the Court and the Director of any changes with regard to the indigent status of any Clients which would affect the qualifications of Clients for court-appointed counsel.
3. Attorney shall be supervised by the Director and/or a designated supervisor and agrees to accept assignments from Director to cover specific court calendars and other hearings as necessary.

4. Attorney agrees to provide the Director with various caseload information on a monthly basis in a format approved by the Director. Attorney will use DefenderData, or other software and any forms that may be required by Director, as a means of tracking and reporting various information about Attorney's assigned cases. Failure to provide the required information on a monthly basis may result in a financial penalty equal to the cost of having office staff research and record the required information. Repeated failures after corrective counseling shall be sufficient grounds for the immediate unilateral termination of this contract.
5. Attorney shall notify Director whenever attorney receives written notice from the Utah State Bar Association regarding any bar complaint and/or investigation involving Attorney and shall keep Director informed of the progress and resolution of said complaint. A suspension and/or disbarment of Attorney's license to practice law is grounds for immediate termination of this contract.
6. 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. Attorney will immediately communicate with Director regarding any complaints that are lodged by anyone against Attorney and work diligently to resolve any such complaints.
7. Attorney will be responsible for maintaining and storing any digital case files during the term of this contract as well as scanning any paper files once they are closed and destroying the hard copy of the file. In the event that Attorney fails to scan closed paper files and destroy the hard copies, County may withhold the costs for doing so from Attorney's paycheck. Attorney agrees to cooperate with Director in transferring the digital copies of closed files to Director.
8. Attorney will assist Director in the development of a list of court-approved expert witnesses and make diligent efforts to utilize only those expert witnesses found on such list. If Attorney feels it necessary to utilize an expert witness who is not on the approved list, Attorney agrees to consult with Director before making any such request.
9. Upon request, Attorney shall submit to Director an electronic copy of any motion, memoranda, appellate brief, court report, or any other such report pertaining to Attorney's Clients under this Agreement.
10. County agrees that a separate contract will be entered into if Attorney is asked to represent an indigent defendant in an aggravated murder case in either a first or second chair position, and the County Attorney's Office has not affirmatively agreed not to seek the death penalty.
11. Attorney agrees to make reasonable efforts to attend all of the periodic public defender training/coordination meetings. Attorney acknowledges that periodic performance

evaluations may be requested by Director to ensure the terms and conditions of this contract are met.

12. Attorney agrees to use his/her best efforts to avoid any conflicts of interest, which would divide loyalty of Attorney to Clients. The Parties recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent a particular Client. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court and/or Director.

SECTION TWO CONDUCT

13. If at any time Attorney's caseload 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 immediately notify the Director and determine a proper course of action to remedy the situation. Resolution may include but not be limited to, reassigning a case or cases; assigning an additional attorney for complex cases; reducing or eliminating private practice matters, or other solutions.
14. 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).
15. Attorney agrees to keep abreast of all current legal trends in the area of criminal defense necessary to provide effective and competent representation of Clients. Attorney is responsible to maintain sufficient continuing professional education credits during the period of this Agreement sufficient to maintain Attorney's bar license in good standing.
16. Throughout the term of this Agreement, Attorney agrees to maintain access to an office within Weber County where Attorney can meet with Clients. Attorney shall have access to the client meeting rooms and the conference room at the WPDG Office upon reasonable scheduling with office personnel. Attorney will be reasonably accessible to all Clients, make reasonable efforts to visit clients who are incarcerated, and to return telephone calls as soon as reasonably possible.

SECTION THREE COVERAGE

17. Attorney will be part of a team of contract and/or full-time attorneys assigned to a particular court or courts. The attorneys in the team shall work together to provide coverage for each other when necessary. If the caseload dictates additional coverage may be needed Attorney shall seek that coverage from other full-time and/or contract attorneys within the WPDG. On rare occasions and with the express permission of Director, a competent attorney from outside the WPDG may be allowed to cover Attorney's court calendar. Any agreement

regarding compensation of the outside attorney shall be between Attorney and outside attorney and shall not in any way obligate County to provide compensation. The office manager should be notified of any coverage arrangements, including who will be providing coverage.

18. Attorney, team members and any other attorneys within the WPDG shall make reasonable efforts to reciprocate coverage that was provided under paragraph 17 above. If there is a failure to reciprocate after a request within a reasonable period of time, the aggrieved attorney shall submit a request for intervention to Director. After an investigation the Director shall issue a proposed resolution, either denying the requested intervention, requiring reciprocal coverage or recommending financial compensation for coverage. The attorney against whom the proposed resolution is made may appeal the decision to a committee consisting of division chiefs, supervisors and at least one contract and one full time attorney. The majority decision of the committee shall be final and binding on the parties. Attorney hereby agrees that the County may deduct this amount from the paycheck of the offending attorney and added to the paycheck of the aggrieved attorney if financial compensation is determined the appropriate remedy.
19. Failure to procure coverage and/or appear at Attorney's court assignment shall result in a penalty of \$600 which shall be deducted from Attorney's pay and paid to the attorney[s] who provided coverage for Attorney (if any is provided).
20. Attorney shall represent indigent defendants that would typically be assigned to team members if the court determines a conflict of interest exists preventing the other attorney from representing the indigent defendant. Any such representation shall be at no additional cost to County, with such assignments being made under the direction of Director.
21. 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.

SECTION FOUR COMPENSATION

22. County agrees to pay Attorney the following amounts annually:

Basis for Amount	Amount
Weber District Court (Judges Renstrom and Hall)	\$82,680.00

Payment shall be made to the Attorney in equal monthly installments of \$6,890.00 per month. Installments shall be made on or before the last day of each month until this

agreement expires or is terminated. If employment begins mid-month, the first pro rata installment shall be made on or before the last day of the starting month.

23. Attorney's compensation is based on the number of years Attorney has practiced. County agrees to increase the compensation paid under this Agreement each year. Increases shall be in an amount determined by County and shall be based on the amount of the increase that County employees receive for Cost of Living Adjustments (COLA). Any and all increases in the contract amount above the COLA shall be in the sole discretion of the County and not based on any other compensation adjustments received by County employees. (i.e., market adjustments, etc.). Attorney must be under contract for one year before this provision applies.

SECTION FOUR INSURANCE

24. 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.
25. Attorney shall indemnify and save the County and its officers, agents, and employees harmless from and against all claims for damages or injuries resulting from any claimed malpractice, injury, death, damages, and any other causes of action arising directly or indirectly from the performance of this Agreement by the Attorney.

SECTION FIVE REIMBURSEMENT OF EXPENSES

26. County has established a budget within the Weber Public Defender Group to provide defense resources that are necessary to Attorney to provide effective and competent representation. ("Expense Fund.") Appropriate expenses include laboratory costs, fees to obtain transcripts, defense witness and expert fees, investigator and interpreter fees. Attorney shall consult with the Director and receive approval prior to the incurring of any such fees. Failure of Attorney to receive prior authorization for these expenses may result in Attorney being financially responsible for said costs.
27. Attorney will bear **all other** expenses in providing the services contemplated herein, including transportation, office costs, telephone, postage, copying, scanning, and secretarial costs.
28. While ensuring that Attorney's Clients receive an effective and competent defense, Attorney hereby agrees to use his/her best efforts to minimize the cost and expense of defense resources. In the event the total approved expenses exhaust the Expense Fund for the year, Director shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.

29. Attorney shall submit the invoices or statements for expense reimbursements, together with supporting documentation to Director within 14 days of receipt for all approved expenses.

**SECTION SIX
TERM AND TERMINATION**

30. The term of this Agreement shall be from November 1, 2024 through January 1, 2025.
31. The first six months of this contract shall be considered a probationary period during which County may terminate this Agreement without cause upon providing written notice to Attorney. Beginning June 1, 2025 Attorney or County may only terminate this Agreement without cause upon 60-days written notice to the other Party.
32. 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 that brings disrepute to the WPDG, other contract attorneys or to the County.
33. In the event this Agreement is terminated or is not renewed, Attorney agrees to cooperate with his/her successor including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information, and materials to the successor.

**SECTION SEVEN
MISCELLANEOUS**

34. Notice. Any notice required by this Agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Director
Weber Public Defender Group
2380 Washington Blvd., Suite 100
Ogden, UT 84401

FOR THE ATTORNEY:

Colton McKay
2650 Washington Blvd., Ste 101
Ogden, Utah 84401
email: coltonmckay@gmail.com

35. Appeal. 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 contact the Director to transition and turn over all relevant records within Attorney's possession or control to Appellate Counsel.
36. Modification. This Agreement can be changed, modified, or amended only by written agreement of the Parties.

- 37. Assignment. Attorney may not assign this Agreement or Attorney's performance under it, in whole or in part, without the prior written approval of the County.
- 38. Independent Contractor. Attorney is an independent contractor providing professional legal services to the County and is not an employee of the State of Utah or the County. Attorney is not entitled to any of the benefits of employment such as, but not limited to, retirement, health, or Workers Compensation coverage. Attorney is responsible to pay all taxes and fees that result from the compensation paid to Attorney under this Agreement.
- 39. Entire Agreement. 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.
- 40. Laws. 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. Harvey, Chair

Date _____

Commissioner Harvey voted _____
Commissioner Bolos voted _____
Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

ATTORNEY

By Colton McKay
Colton McKay
Date November 5th 2024

PUBLIC DEFENDER DIRECTOR

By James M. Retallick
James M. Retallick
Date November 5, 2024

