



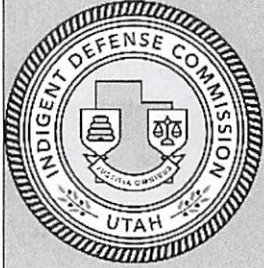
Weber County  
Grant Award Agreement

JULY 1, 2020 – JUNE 30, 2021

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Initials and signatures are required as noted below, indicating acceptance and understanding of all grant terms, conditions, requirements and responsibilities.

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**State of Utah**  
**Indigent Defense Commission**  
**GRANT AWARD**  
**AGREEMENT**

**1) Grantee Name & Address:**

Weber County  
 Attn: Bryan Baron  
 2380 Washington Blvd, Suite 230  
 Ogden, UT 84401

2) Project Director:	Michael Bouwhuis	3) Phone:	801-393-6452
4) Email:	barrister63@comcast.net	5) Length of Grant:	12 Months
6) Grant Start Date:	07-01-2020	7) Grant End Date:	06-30-2021

8) Budget Summary	IDC Grant Award	Required System Spending
Personnel / FTE Expenses:	\$ 0.00	\$ 0.00
Fringe Benefits for Personnel / FTE:	\$ 0.00	\$ 0.00
Contract Services:	\$ 129,253.60	\$ 1,610,435.0
Equipment, Supplies and Operating Expenses:	\$ 0.00	\$ 238,940.00
Travel (Mileage):	\$ 0.00	\$ 0.00
<b>Subtotals:</b>	<b>\$ 129,253.60</b>	<b>\$ 1,849,375.00</b>
<b>Total Budget (Grant + System Spending):</b>	<b>\$ 1,978,628.60</b>	

9) Certification  
 Under the terms and conditions of this Agreement, which incorporates by reference attachments A through G, the Grantees agree to complete all objectives and requirements of the project as described herein. The State of Utah, through its Indigent Defense Commission, agrees to fund the project up to the Total Grant Award contingent upon the grantee meeting all requirements outlined in the agreement.

10) Name and Title of Authorized System Representative\*

11) Signature of Authorized System Representative\*

12) Signature of System Project Director\*

13) Signature of OIDS Director\*

\* See next page for definitions.



# ATTACHMENT A: AGREEMENT DEFINITIONS AND TERMS

As used in this Agreement, the following terms shall have the meanings set forth below:

**Authorized system representative** means the official of the system authorized to sign grant applications and agreements. These may include City Mayor, City Manager, County Mayor, County Manager, County Council Chair, or County Commissioner of the fiduciary agency.

**Commission or IDC** means the Utah Indigent Defense Commission

**OIDS Director** means the director of the Office of Indigent Defense Services.

**Indigent defense resources** means the resources necessary to provide an effective defense for an indigent individual, including the costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs.

**Indigent defense service provider** means an attorney or entity appointed to represent an indigent individual pursuant to:

- (a) a contract with an indigent defense system to provide indigent defense services; or
- (b) an order issued by the court under Utah Code Subsection 78B-22-203(2)(a).

**Indigent defense services** means:

- (a) the representation of an indigent individual by an indigent defense service provider; and
- (b) the provision of indigent defense resources for an indigent individual.

**Indigent defense system or System** means:

- (a) a city or town that is responsible for providing indigent defense services;
- (b) a county that is responsible for providing indigent defense services in the district court, juvenile court, and the county's justice courts; or
- (c) an interlocal entity, created pursuant to Utah Code 11-13, the Interlocal Cooperation Act, that is responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.

**Office or OIDS** means the Office of Indigent Defense Services

**Project Director** means the individual, from the applicant indigent defense system, responsible for the day-to-day management and oversight of the grant program, and the person who the IDC will contact for information on compliance with the terms of the grant agreement and Utah Law, quarterly reports, invoices, and payment information.

<u>Michael Bouuhuis</u>	<u>Director</u>	<u>MOB</u>	<u>7/14/20</u>
System Project Director Name	Title	Initials	Date
_____	_____	_____	_____
Authorized System Representative Name	Title	Initials	Date

# **ATTACHMENT B: ASSURANCES, CONDITIONS, CERTIFICATIONS AND REQUIREMENTS**

Utah Indigent Defense Commission  
Revised June 2020

## **I. CERTIFIED ASSURANCES AND GRANT CONDITIONS**

### **CERTIFIED ASSURANCES**

1. The System assures that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Commission shall prescribe, shall be provided to assure fiscal control, proper management, independence of the public defender function, and efficient disbursement of funds.
2. The System assures that it has and will continue to maintain its baseline budget for indigent defense spending, as set forth in its application for Commission grant funding, and reflected in the grant payment structure and grant award agreement. In addition, the System assures that Commission funds shall be used to supplement and not supplant (replace) local spending on indigent defense services. If a System reduces its funding or otherwise is found to be in violation of this assurance, the system may be required to repay those funds that were used to supplant local spending, or may be denied all Commission grant funding.
3. The System assures that it shall maintain such data and information and submit quarterly reports, including progress reports, financial status reports, and other data requested by the Commission or Office, including Defender Data reports. These reports provide information and data related to narrative and numerical performance measures developed by the Commission, not limited to the number and types of all cases filed, number and types of cases where a court appoints an attorney to represent an indigent party, disposition of each court-appointed case, caseloads carried by indigent defense service providers in the System, etc.
4. The System assures that quarterly reports will be uploaded into the State GMS database no later than 20 days after the end of each quarter, and prior to July 13<sup>th</sup> for the quarter of April through June. If the 13<sup>th</sup> falls on a weekend the deadline will be the following Monday. Failure to submit complete reports by established deadlines may result in the freezing of grant funds, affect future funding eligibility, and/or risk designation. The Office may also require the System to complete corrective action. Due to the end of the state fiscal year, the reporting for the quarter ending June 30 requires a hard deadline of July 13<sup>th</sup>. The System will have up to 90 days past the closing date of the grant award to submit a final supplemental financial status report, for costs incurred during the grant period. However, the System should make every possible effort to include all final costs in the regularly scheduled status report due July 13<sup>th</sup>.
5. The System assures it will comply with State of Utah rules, policies, and rates, regarding personnel, purchasing supplies and equipment, contractual agreements, etc., unless its home agency rates

are more restrictive. If the System is working through a fiduciary agent, the policies of the fiduciary agent become the applicable policies with regard to expending grant funds. If the System does not currently have written policies or a fiduciary agent, the general policies adopted by the State of Utah - Department of Finance, Department of Human Resources, Division of Purchasing and General Services, etc. - must be complied with in expending grant funds.

6. The System assures it will require all indigent defense service providers to cooperate and participate with the IDC and Office in reporting, and any investigations, audits, and/or reviews of indigent defense services.
7. The System assures it will allow the Commission and Office to maintain oversight to: collect data, audit attorney performance, establish performance, caseload, and other standards, and to ensure the IDC Core Principles are being met.
8. The System assures, through appropriate language incorporated in each grant, sub-grant or other document under which funds are to be disbursed, the authorized official shall assure that the applicable certified assurances and grant conditions will be complied with by their own agency and any other agency or the system with whom they make subsequent contracts or agreements.

## **GRANT CONDITIONS**

1. **COMPENSATION AND METHOD OF PAYMENT:** The Commission will reimburse, or in rare cases with advance approval will forward the grant share of approved program expenditures as outlined in the grantee's grant award agreement. Reimbursement will be made on a quarterly basis, once quarterly required invoices and reports are submitted and the amount of expenditures are approved, unless other payment arrangements have been agreed to in advance and in writing by the Commission.
2. **AUDIT REPORTS:** The System agrees to make available to the Office and Commission a copy of any annual audits on the System or any sub-grantees.
3. **UTILIZATION AND PAYMENT OF FUNDS:**
  - a. Funds awarded are to be expended only for purposes and activities covered by the approved project activities and budget.
  - b. Project funds will be made available in accordance with provisions as prescribed by the Commission.
  - c. Grantee agrees to return to the Commission all unexpended funds provided hereunder to the Commission within 60 days of termination of the grant. Payments will be adjusted to correct previous overpayment or underpayment and disallowances resulting from audit.
  - d. **Approved project activities and budget categories may include:**

- i. Personnel / FTE Expenses: All remuneration for services of System employees during the period of the award, including wages and salaries. Any personnel / FTEs are considered employed by and employees of the System.
- ii. Fringe Benefits for Personnel / FTE: Allowances and services provided by employer(s) to their employee(s) as compensation in addition to regular salaries and wages. Commission reimbursement is limited to medical and dental insurance for System personnel / FTEs.
- iii. Contract Services: Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill (i.e. contracted defense attorneys). Not considered officers or employees of the System.
- iv. Reserve Funds: Money set aside to meet future or unexpected costs associated with defense resources. This includes, but is not limited to, investigators, experts, forensic services, appeals, and transcripts.
- v. Travel: The expenses for transportation incurred by personnel / FTEs and/or contractors who travel on official business. Such costs are charged on an actual mileage basis and subject to the State of Utah reimbursement rate.
- vi. Other: Subject to the limitation and approval of the Commission, other expenses related to indigent defense may be allowable.

4. OBLIGATION OF GRANT FUNDS: Grant funds may not be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations outstanding as of the termination date shall be liquidated within 90 days. Such obligations must be related to goods or services provided and utilized within the grant period.

5. EXPENSES NOT ALLOWABLE: Project funds may not be expended for: (a) items not part of the approved budget or separately approved by the Commission; (b) the purchase of land; or (c) construction projects. Expenditure of funds in excess of the amount budgeted per budget category will be permitted only with the Commission's prior written approval.

6. TERMINATION OF AID: If through any cause the System shall fail to substantially fulfill in a timely and proper manner all of its obligations, terms, covenants, conditions, attachments, addenda, or other stipulations of the grant agreement, as determined by the Commission, the Commission shall have the right to terminate the grant agreement or to suspend fund payments. The Commission shall give written notice to the System of such action, specifying the effective date thereof, at least thirty (30) days before the effective date of such action.

7. INSPECTION AND AUDIT: The Commission, the State of Utah, or any of their duly authorized representatives shall have access for purpose of audit and examinations to any books, documents, papers, and records of the System and any sub-grantees, and to relevant books and records of either.

8. PERSONAL PROPERTY: The System shall retain any nonexpendable personal property acquired with grant funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program, whether or not, the program continues to be supported by Commission grant funds. When there is no longer a need for the property to accomplish the purpose of the program, the grantee shall request property disposition instructions from the Office or Commission.
9. MAINTENANCE OF RECORDS: For purposes of state and federal examinations and audits, all financial and statistical records, supporting documents, and all other records pertinent to grant awards or contracts shall be retained for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later.
10. WRITTEN APPROVAL OF CHANGES: **The System must obtain prior written approval from the Commission for program changes.** These include (a) any change of substance in program activities, designs, or objectives; (b) changes in the system project director or key professional personnel identified in the approved application; (c) changes in the approved project budget; and (d) budget adjustments in any budget category.
11. THIRD PARTY PARTICIPATION: No contract or agreement may be entered into by the System for execution of project activities or provision of services that is not incorporated in the approved proposal, or approved in advance by the Commission. Any such arrangement shall provide that the System will retain ultimate control and responsibility for the grant project and that the System shall be bound by these grant conditions and any other requirements applicable to the System in the conduct of the project. The Commission shall be provided with a copy of all such contracts and agreements entered into by the System.
12. WRITTEN DESCRIPTIONS OF PROGRAMS: The System agrees that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with State money, the System receiving State funds shall clearly state (a) the percentage of the total cost of the program or project that will be financed with State money, and (b) the dollar amount of State funds for the project or program.
13. PROJECT DIRECTOR: There shall at all times during the life of the grant agreement be an individual appointed by the System as "Project Director." This individual will be responsible for program planning, operation, reporting and administration under the grant agreement.
14. RELEASE OF INFORMATION: All records, papers and other documents kept by recipients of Commission funds, their grantees and sub-grantees, relating to the receipt and disposition of such funds, are required to be made available to the Commission, and are subject to any applicable state or federal laws governing the disclosure of such records.

The System agrees that this agreement, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act



(GRAMA). The System gives the State Entity and the State of Utah express permission to make copies of this agreement, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by the System and expressly approved by the State of Utah Division of Purchasing and General Services, all of which must be in accordance with GRAMA, System also agrees that the System's application for the grant award will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform the System of any GRAMA requests for disclosure of this agreement, related purchase orders, related pricing documents, or invoices.

15. COPYRIGHTS AND RIGHTS IN DATA: Where activities supported by this grant produce original computer programs, writings, sound recordings, pictorial reproductions, drawing or other graphical representation and works of any similar nature (the term computer programs includes executable computer programs and supporting data in any form), the Commission has the right to use, duplicate and disclose, in whole, in part, or in any manner for any purpose whatsoever and have others do so. If the material is copyrightable, the System may copyright such, but the Commission reserves a royalty-free non-exclusive and irreversible license to reproduce, publish and use such materials in whole or in part and to authorize others to do so.
16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY: The System certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. The System must notify the Commission within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this agreement. Where the System is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation to the Commission.
17. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS: This certification is required by the State rules and regulations implementing the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F, and in the Rules Governing a Drug-Free Workplace set forth in Utah Administrative Rule 477-14-1 through 477-14-4. The regulations, published in the January 31, 1989 Federal Register, and incorporated by reference in the Utah Administrative Rules, require certification by the System, prior to award, that they will maintain a drug-free workplace.
18. LAWS AND REGULATIONS: At all times during this agreement, the System and all Indigent Service Providers will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
19. INDEMNITY: Both parties to this agreement are governmental entities as defined in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101 et. seq.). Nothing in this agreement shall be construed as a waiver by either or both parties of any rights, limits, protections or defenses provided by the Act. Nor shall this agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Agreement is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions

or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these parties.

20. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare the System in default of this Agreement: (i) System's non-performance of its contractual requirements and obligations under this Agreement; or (ii) System's material breach of any term or condition of this Agreement. The State Entity may issue a written notice of default providing a ten (10) day period in which the System will have an opportunity to cure. Time allowed for cure will not diminish or eliminate the System's liability for damages. If the default remains, after the System has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement; (iii) impose liquidated damages, if liquidated damages are listed in this Agreement; (iv) debar/suspend the System from receiving future agreements from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to the System under this Agreement for services that do not conform to this Agreement.
21. **FORCE MAJEURE:** Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, disease, state of emergency, executive order, and/or war, which is beyond that party's reasonable control. The State Entity may terminate this Agreement after determining such delay will prevent successful performance of this Agreement.
22. **EMPLOYMENT PRACTICES:** The System agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. The System further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of the System's employees.
23. **NON-APPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the System, this agreement may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; or (ii) that a change in available funds affects the State Entity's ability to pay under this Agreement. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse the System for the Services properly ordered until the effective date of said notice. The State Entity will not be liable

for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

24. TERMINATION: Unless otherwise stated in this Agreement, this Agreement may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated for cause immediately and is subject to the remedies listed below. This agreement may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon thirty (30) days written termination notice being given to the other party. The State Entity and the System may terminate this Agreement, in whole or in part, at any time, by mutual agreement in writing. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services ordered prior to the date of termination.

The System shall be compensated for services properly performed under this Agreement up to the effective date of the notice of termination. The System agrees that in the event of such termination for cause or without cause, the System's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all services properly performed as authorized under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the System having to terminate other contracts necessarily and appropriately entered into by the System pursuant to this Agreement.

### GRANTEE ACCEPTANCE OF ALL GRANT ASSURANCES, CONDITIONS, TERMS, CERTIFICATIONS, AND ANY OTHER GRANT REQUIREMENTS

The signatures below certify that you have reviewed and agree to comply with each of these IDC grant assurances, conditions, certifications, and the requirements in Attachment A through G of the IDC Grant Agreement and that all of the information provided is correct, that there has been appropriate coordination with affected agencies, and that the System will comply with the provisions of all state laws.

<i>Michael Bauwhuis</i>	<i>Director</i>	<i>[Signature]</i>	<i>7/14/20</i>
_____	_____	_____	_____
System Project Director Name	Title	Signature	Date
_____	_____	_____	_____
Authorized System Representative Name	Title	Signature	Date

**ATTACHMENT C: UTAH INDIGENT DEFENSE COMMISSION CORE PRINCIPLES**



**CORE PRINCIPLES FOR**  
**UTAH INDIGENT DEFENSE**  
**SYSTEMS**

*Updated December 2019*

## USER STATEMENT

This document, adopted by the Utah Indigent Defense Commission in August 2017, sets forth core principles for the provision of indigent defense representation in the State of Utah.<sup>1</sup> These principles are intended to encompass the provision of indigent defense services in three defined areas of practice—criminal defense, delinquency defense, and parental defense. Utah law delegates the provision of indigent defense services to its local governments.<sup>2</sup>

The purpose of these principles is threefold:

1. To provide guidance to government officials, policymakers, and entities charged with providing, overseeing, assessing, and/or funding indigent defense systems;
2. To provide a yardstick for measuring the extent to which an indigent defense system ensures that individual attorneys within that system have the knowledge, ability, resources, and independence necessary to provide effective representation; and
3. To encourage appointed counsel to provide a high standard of representation and promote professionalism in the representation of indigent individuals in Utah.

## THE UTAH INDIGENT DEFENSE COMMISSION

The Utah Indigent Defense Commission was created by legislation in 2016 to help the state ensure its indigent defense services are consistent with the United States and Utah Constitutions, and Utah law.

The membership of the Commission includes key leaders in state and local government, criminal defense, and indigent defense services.

The Commission works with the state, local governments, indigent defense providers, and other stakeholders to provide guidance on standards for constitutional representation, gather data and information about indigent defense service provision, award grants to improve indigent defense services, and support the regionalization of indigent defense services throughout the state.

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<sup>1</sup>The Utah Indigent Defense Commission is mandated to “adopt minimum guidelines for an indigent defense system to ensure the effective representation of indigent individuals consistent with the requirements of the United States Constitution, the Utah Constitution, and the Utah Code.” Indigent Defense Act, Utah Code § 78B-22-404(1)(a).

<sup>2</sup>“Indigent Defense System” or “system” refers to the local government entity that is responsible for providing indigent defense services in its respective state, county, or city courts; and the term includes counties, cities, towns, and any “interlocal entity . . . responsible for providing indigent defense services according to the terms of an agreement between a county, city, or town.” Indigent Defense Act, § 78B-22-102(7).



## **PRINCIPLE 1/ ORGANIZATIONAL CAPACITY OF DEFENSE SYSTEM IS SUFFICIENT TO ENSURE COMPLIANCE WITH CORE PRINCIPLES**

A system's ability to meet the principles articulated herein requires a threshold structural and resource capacity—for example, an adequate budget, administrative resources, and the ability to monitor attorney and system performance. Critical to this capacity is the collection and regular review of reliable data and information about the services and quality of representation that a system is providing.<sup>3</sup>

If an indigent defense system lacks such capacity, efforts must be made to improve the system's organization—for example, through adopting a managed assigned counsel (MAC) system, public defender office, and/ or through pursuing interlocal, resource-sharing agreements.

## **PRINCIPLE 2/ SYSTEM PROVIDES COUNSEL TO ALL ELIGIBLE DEFENDANTS, MINORS, AND RESPONDANTS WHO DO NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVE COUNSEL**

Rights. The U.S. Constitution, the Utah Constitution, and Utah law guarantee the right to counsel. That right extends under Utah law to all accused persons facing any possibility of incarceration or detention,<sup>4</sup> and to parents/legal guardians subject to child welfare proceedings and/or petitions to terminate their parental rights,<sup>5</sup> regardless of financial status.

Responsibilities. Systems must ensure individuals facing these proceedings, who are unable to afford counsel, are provided counsel at government expense.<sup>6</sup> Systems must also ensure the presence of defense counsel at all court proceedings, to avoid creating practical barriers to appointment or any pressure to waive counsel.

Restrictions. If a system seeks to recover/recoup public defender fees, it must strictly adhere to the statutory limitations and processes, to avoid undermining the right to counsel.<sup>7</sup> A system

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<sup>3</sup> Indigent Defense Act, §78B-22-404(1)(c). The commission shall, "identify and collect data from any source, which is necessary for the commission to: (i) aid, oversee, and review compliance by indigent defense systems with the commission's minimum guidelines for the effective representation of indigent individuals; and (ii) provide reports regarding the operation of the commission and the provision of indigent defense services by indigent defense systems in the state."

<sup>4</sup> Indigent Defense Act, § 78B-22-102(8) (defining a minor who is "arrested and admitted into detention" or who is "charged by petition or information in the juvenile or district court" as indigent for the entitlement to court-appointed counsel), 78B-22-201 (explaining the other individuals who are entitled to the right to counsel)

<sup>5</sup> Indigent Defense Act, § 78B-22-201(1)(b)(parent and legal guardians have the right to counsel in abuse, neglect, or dependency proceedings; termination of parental rights; adult offenses; or proceedings listed in § 78B-6-112).

<sup>6</sup> Indigent Defense Act, §§ 78B-22-102(7) (requiring cities, towns, and counties to provide indigent defense services), and 78B-22-202(2), 78B-22-203(1) (requiring a court to determine indigency, and upon finding indigency, to appoint an indigent defense service provider under contract with a system to represent indigent individuals).

<sup>7</sup> Recoupment of public defender fees is permissible with limitations. Such fees cannot be combined with a plea agreement and must only happen post-conviction after a court makes an independent "ability to pay" determination. Utah Code §77-

may not, for example, assess fees without individualized assessments for each convicted individual, as statute requires the court to consider financial resources and the burden any fee will cause before imposing it. Systems reinvest any recouped funding in indigent defense services.

### **PRINCIPLE 3/ SYSTEM PROVIDES PROPER SCOPE OF REPRESENTATION**

- ***Principle 3A/ Scope of Representation: Attorney Activity***

Effective representation requires attorney activity that is meaningfully addressing the allegations facing each client. Accordingly, indigent defense systems shall ensure that attorneys are regularly engaged in a scope of practice wherein the attorney will:

- Develop a theory of the case that guides the case strategy;
- Pursue available evidence through discovery and investigation;
- Examine and review all available evidence;
- File appropriate motions;
- Advise the client on the strengths and weaknesses of the state's case and on all implications of a plea offer, including direct and collateral consequences of accepting the plea offer;
- Litigate or adjudicate the allegations, unless a plea offer is consistent with the client's expressed wishes and represents a benefit to the client; and
- Use investigative and other defense resources, as appropriate.

- ***Principle 3B/ Scope of Representation: Stages of the Proceedings***

Early Appointment. Systems must ensure that as soon as feasible, defense counsel is assigned and notified of appointment, and indigent individuals are notified of the identity of assigned counsel and how to contact counsel.<sup>8</sup>

Continuity. Systems must ensure an indigent individual has access to counsel at all critical stages of criminal proceedings,<sup>9</sup> and in delinquency and child welfare proceedings that

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32a-108 ("The court may not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount of costs, the court shall take into account the financial resources of the defendant, the nature of the burden that payment of costs will impose, and that restitution is the first priority."); *Fuller v. Oregon*, 417 U.S. 40, 45 (1974).

<sup>8</sup> Utah R. Prof. Conduct. 1.4 (Communication).

<sup>9</sup> A critical stage is "every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). The right attaches when "formal judicial proceedings have begun." *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

indigent individuals have counsel to represent them at all stages of the juvenile court proceedings.<sup>10</sup>

Consistency. Systems must ensure representation commences in a timely manner, extends for the proper period of representation, and proceeds with reasonable continuity, unless the client's needs dictate otherwise—meaning the same attorney must continuously represent a client, where feasible, until a case concludes.<sup>11</sup>

#### **PRINCIPLE 4/ SYSTEM PROVIDES REPRESENTATION THAT IS INDEPENDENT AND FREE FROM INTERFERENCE**

Indigent defense counsel's primary and most fundamental responsibility is to promote and protect the interests of client. A system must ensure defense counsel is free to defend clients zealously, based on counsel's own judgement, and without fear of termination, reduction in compensation, reduction in staff, or reduction in defense resources.<sup>12</sup> The selection, funding, and payment of defense counsel should be independent of the judiciary and the prosecution.<sup>13</sup>

#### **PRINCIPLE 5/ SYSTEM RECOGNIZES DISTINCT AREAS OF SPECIALIZATION WITHIN INDIGENT DEEFENSE**

Indigent defense encompasses distinct areas of practice—criminal defense, delinquency defense, parental defense, and appellate advocacy.<sup>14</sup> Each is its own area of specialization, requiring a skills and knowledge distinct from what is required to practice in any other area.

Indigent defense systems must separately account for criminal defense, delinquency defense, parental defense, and appellate advocacy in their employment and contracting arrangements.<sup>15</sup>

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<sup>10</sup> Minors are entitled to appointed counsel. Indigent Defense Act, §§ 78B-22-102(8)(a), 78B-22-203(1)(a). Once appointed, providers "shall provide indigent defense services for the indigent individual in all court proceedings in the matter for which the indigent defense service provider is appointed." §§ 78B-22-203(1)(a), 78B-22-202(1)(b).

<sup>11</sup> System should ensure defense counsel does not withdraw from representation inappropriately, as defense counsel is required at probation revocation hearings. *Mempha*, 389 U.S. at 137.

<sup>12</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(A) (systems must ensure providers have "the ability to exercise independent judgment without fear of retaliation and [are] free to represent an indigent individual based on the indigent defense service provider's own independent judgment").

<sup>13</sup> The "independence of counsel" is "constitutionally protected." *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

<sup>14</sup> Indigent Defense Act, § 78B-22-201(1) (outlining the right to counsel in these four practice areas).

<sup>15</sup> Indigent Defense Act, § 78B-22-404(1)(a)(i)(B) (systems must ensure "a separate contract for each type of indigent defense service")

## **PRINCIPLE 6/ SYSTEM ENSURES THE RIGHT TO APPEAL**

Indigent defense systems must provide counsel for any first appeal of right,<sup>16</sup> and must separately account for the provision of appellate services to ensure the right to appeal.

## **PRINCIPLE 7/ SYSTEM PROVIDES REPRESENTATION THAT IS FREE FROM CONFLICTS OF INTEREST**

Effective representation is representation that is zealous, diligent, and free from conflicts of interest—as defined in the Utah Rules of Professional Conduct.<sup>17</sup> Indigent defense systems shall ensure that defense counsel manages conflicts of interest issues as required by the Utah Rules of Professional Conduct.<sup>18</sup> Systems shall provide appropriate employment and separate arrangements to account for conflict cases.<sup>19</sup> Those arrangements shall not create for defense counsel a financial disincentive to declare a conflict.<sup>20</sup>

## **PRINCIPLE 8/ SYSTEM PROVIDES EFFECTIVE REPRESENTATION**

Effective representation depends upon the zealous advocacy of qualified counsel, who receives training, has appropriate caseloads, access to defense resources, and proper compensation.

- ***Principle 8A/ Qualifications and Training***

Indigent defense systems must ensure defense counsel's ability, training, and experience

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<sup>16</sup> Indigent Defense Act, §§ 78B-22-201(1)(c), 78B-22-203(1)(a); *Douglas v. California*, 372 U.S. 353 (1963) (explaining that individuals who are “appealing a first appeal from a conviction or other final court action” have the right to counsel throughout the proceedings, and if such individuals are indigent, counsel will be appointed for them).

<sup>17</sup> Indigent Defense Act, § 78B-22-404(1)(a)(i)(A) (systems must ensure indigent individuals receive zealous and conflict-free indigent defense services); Utah R. Prof. Conduct. 1.1 (Competence), 1.2 (Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.6 (Confidentiality of information), 1.7 & 1.8 (Conflicts of Interest), 1.9 (Duties to Former Clients), 1.10 (Imputation of Conflicts of Interest), 1.14 (Client with Diminished Capacity), 1.15 (Safekeeping property), 1.16 (Declining or terminating representation), 1.18 (Duties to Prospective Client), 6.2 (Accepting Appointments).

<sup>18</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(H) (systems must ensure indigent service providers have “the ability to meet the obligations of the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest”).

<sup>19</sup> Indigent Defense Act, § 78B-22-404(1)(a)(i)(A) (systems must ensure an indigent individual receives conflict-free indigent defense services), Utah R. Prof. Conduct 1.7 through 1.10.

<sup>20</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(E) (systems must provide indigent defense providers with “adequate compensation without financial disincentives”).

match the complexity of the case.<sup>21</sup> Systems must require counsel to receive continuing legal education in the areas indigent defense representation in which they practice.<sup>22</sup>

- **Principle 8B/ Appropriate Caseloads**

Indigent defense systems must control defense counsel's total workload (including private and indigent caseloads in other jurisdictions) to allow for effective representation of each client. Total caseload must be set at a level that allows defense counsel to undertake the scope of work required to test the state's evidence in a meaningful way in each case.<sup>23</sup>

- **Principle 8C/ Access to Defense Resources**

Indigent defense systems must equip defense counsel with the tools necessary to provide effective representation, by providing access to defense resources, which may include "costs for a competent investigator, expert witness, scientific or medical testing, transcripts, and printing briefs,"<sup>24</sup> social workers, interpreters, and forensic services.

Systems must avoid conflicts or disincentives for defense counsel—for example, flat rate contracts where counsel pays for services from their compensation, or procedures requiring defense counsel to reveal a request for resources to prosecutors.

- **Principle 8D/ Proper Compensation**

Indigent defense systems must adopt appropriate rates and methodologies of compensation, sufficient to attract qualified applicants and to incentivize effective representation, which take into account the time, work, and complexity required to provide effective representation.

Indigent defense systems must avoid employment or contracting arrangements that create disincentives for effective representation—for example, flat fee contracts that provide no limit on the cases defense counsel will be assigned.<sup>25</sup> Systems must provide counsel with the ability to seek additional compensation for extraordinary cases, or additional attorneys when caseloads are too high.

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<i>Michael Boukhui</i>	<i>Director</i>	<i>MDB</i>	<i>7/14/20</i>
System Project Director Name	Title	Initials	Date

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Authorized System Representative Name	Title	Initials	Date
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<sup>21</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(F) (systems must ensure providers have "appropriate experience or training in the area for which the indigent defense service provider is representing indigent individuals").

<sup>22</sup> Indigent Defense Act § 78B-22-404(1)(a)(ii)(G) (systems must ensure compensate providers "for legal training and education in the areas of the law relevant to the types of cases for which the indigent defense service provider is representing indigent individuals").

<sup>23</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(D) (systems must ensure all providers have "a workload that allows for sufficient time to meet with clients, investigate cases, file appropriate documents with the courts, and otherwise provide effective assistance of counsel to each client").

<sup>24</sup> Indigent Defense Act, §§ 78B-22-102(4) & 78B-22-404(1)(a)(ii)(B).

<sup>25</sup> Indigent Defense Act, § 78B-22-404(1)(a)(ii)(E) (systems must provide indigent defense providers with "adequate compensation without financial disincentives").



## ATTACHMENT D: PROJECT DESCRIPTION, GOALS AND PERFORMANCE INDICATORS

PROJECT DESCRIPTION (July 1, 2020 - June 30, 2021)				
Grant Input Description	Specific Conditions of Grant Funding	Improvement Goal	IDC Core Principles Addressed	Improvement Outcome
Administrative Assistant	All hiring subject to open and competitive hiring process.  Specialty Attorney Contracts paid hourly at \$125 per hour.	Help to provide better and more accurate data to the IDC in quarterly reports by taking the attorneys' notes and inputting the data into Defender Data. Also make defense resources more easily accessible by creating an expert directory and a jail program directory.	1, 4	If the IDC's quarterly reports are more complete than they have been for the past two quarters, we will know that we have improved in this area.
Funding to cover an additional calendar / District Attorney Contract	County must ensure defense resources are available.  The IDC acknowledges that the county forecasts the budget for contract services and may not meet the quarterly budgeted spending amount. The IDC will only seek recoupment of grant funds if the county misuses it and/or supplants existing funding. The county must not decrease the budget due to the grant award.	Pay an attorney to take one of the coordinating attorney's calendars so that he can focus more time on administration of the system, including better training of defenders and more one-on-one training/mentoring with the less-seasoned defenders.	1, 4	If the coordinating attorney has more time to manage the system, he will fulfill more of his contractual duties such as developing a list of experts and managing the budget with less county involvement, and most importantly, improve the quality of representation in Weber County.
Specialty Attorneys		Pay specialty attorneys to handle difficult cases, so that the other public defenders can have more time to spend providing quality representation to their clients.	3A, 8B	The coordinating attorney will follow up with public defenders in their regular meetings to gauge whether they have additional time and what they are doing with that time to benefit their clients.

<u>Michael Bouwhuis</u>	<u>Director</u>	<u>MDR</u>	<u>7/14/20</u>
System Project Director Name	Title	Initials	Date

Authorized System Representative Name	Title	Initials	Date

## ATTACHMENT E: QUARTERLY REPORTING SCHEDULE

IDC funding is contingent upon the submission of required quarterly programmatic and fiscal status reports. Reports are due following the end of the quarter as follows. Deadlines are subject to change.

Grant Start Date: July 1, 2020		Grant End Date: June 30, 2021	
<b>QUARTER 1</b>			
Starts:	July 1, 2020		
Ends:	September 30, 2020		
Reporting Due:	October 20, 2020		
<b>QUARTER 2</b>			
Starts:	October 1, 2020		
Ends:	December 31, 2020		
Reporting Due:	January 20, 2021		
<b>QUARTER 3</b>			
Starts:	January 1, 2021		
Ends:	March 31, 2021		
Reporting Due:	April 20, 2021		
<b>QUARTER 4</b>			
Starts:	April 1, 2021		
Ends:	June 30, 2021		
Reporting Due:	July 13, 2021		

IDC quarterly reimbursement is contingent upon the local system submitting complete quarterly programmatic and fiscal reports as well as meeting system-spending requirements. The Office will provide forms required for quarterly reporting.

Minimum system spending requirements outlined in the attachments titled Budget Details and Quarterly Payment Structure. Data reporting requirements outlined in the attachment titled Assurances, Conditions, Certifications and Requirements.

<i>Michael Bouwhuis</i>	<i>Director</i>	<i>MPB</i>	<i>7/14/20</i>
System Project Director Name	Title	Initials	Date
Authorized System Representative Name	Title	Initials	Date



## ATTACHMENT F: BUDGET DETAILS

PROJECT BUDGET (July 1, 2020 - June 30, 2021)				
Expense Category	Expense Line Item	Total Cost	IDC Grant Award	System Spending
Personnel	Personnel	\$0.00	\$0.00	\$0.00
Fringe	Fringe	\$0.00	\$0.00	\$0.00
Contracted	District Court Attorney/Coordinator - Michael Bouwhuis	\$139,908.00	\$0.00	\$139,908.00
	District Court Attorney - Martin Gravis	\$94,672.00	\$0.00	\$94,672.00
	District Court Attorney - James Retallick	\$93,847.00	\$0.00	\$93,847.00
	District Court Attorney - Francisco Roman	\$79,641.00	\$0.00	\$79,641.00
	District Court Attorney - Randall Marshall	\$40,424.00	\$0.00	\$40,424.00
	District Court Attorney - Gage Crowther	\$64,934.00	\$32,467.00	\$32,467.00
	District Court Attorney - Shawn Condie	\$73,793.00	\$0.00	\$73,793.00
	District Court Attorney - Jason Widdison	\$77,627.00	\$0.00	\$77,627.00
	Juvenile Court Delinquencies - Richard Williams	\$71,748.00	\$0.00	\$71,748.00
	Juvenile Court Child Welfare - Jonathan Pace	\$95,016.00	\$0.00	\$95,016.00
	Juvenile Court Child Welfare/Delinquency - Jennifer Clark	\$135,930.00	\$0.00	\$135,930.00
	Juvenile Court Child Welfare - Andrew Heyward	\$89,224.00	\$0.00	\$89,224.00
	Juvenile Court Child Welfare - Mary Anne Ellis	\$89,723.00	\$0.00	\$89,723.00
	Juvenile Court Child Welfare - Rebecca Voymas	\$75,092.00	\$0.00	\$75,092.00
	Juvenile Court Child Welfare - Ammon Nelson	\$76,323.00	\$0.00	\$76,323.00
	Appellate Court Contract - The Appellate Group	\$100,000.00	\$0.00	\$100,000.00
	Investigator Contract - Robert Brunson	\$22,500.00	\$0.00	\$22,500.00
	Investigator Contract - Kelly Madsen	\$22,500.00	\$0.00	\$22,500.00
	Capital Appeal Contract - Colleen Coebergh	\$80,000.00	\$0.00	\$80,000.00
	Capital Defense Contract for Miller Costello	\$60,000.00	\$0.00	\$60,000.00
	Capital Defense Contract for Brenda Emilie	\$60,000.00	\$0.00	\$60,000.00
	Specialty Attorney Contract - Randall Marshall	\$31,753.30	\$31,753.30	\$0.00
	Specialty Attorney Contract - Grant Morrison	\$31,753.30	\$31,753.30	\$0.00
Administrative Assistant - Lindsey Watkins	\$33,280.00	\$33,280.00	\$0.00	
E.S.O.	Fixed Equipment, Supplies & Operating Expenses	\$23,940.00	\$0.00	\$23,940.00
	Other Equipment, Supplies & Operating Expenses	\$0.00	\$0.00	\$0.00
	Defense Resources & Reserves	\$90,000.00	\$0.00	\$90,000.00
	Training & Related Travel	\$5,000.00	\$0.00	\$5,000.00
	Indigent Defense Capital Fund	\$0.00	\$0.00	\$0.00
	Other Miscellaneous	\$120,000.00	\$0.00	\$120,000.00
Travel	Mileage	\$0.00	\$0.00	\$0.00
<b>Totals:</b>		<b>\$1,978,628.60</b>	<b>\$129,253.60</b>	<b>\$1,849,375.00</b>

Reimbursement is contingent upon the System meeting minimum required spending amounts for each expense category as outlined in the Quarterly Payment Structure. As specified in the Certified Assurances grant funds must supplement, not supplant or replace current System spending.

Unless otherwise approved by the IDC, System expenses must be paid prior to reimbursement and should be reported for the period in which the expense is incurred. Reporting periods are specified in the attachment titled Quarterly Reporting Schedule. For expenses incurred during a period that are paid after the quarterly fiscal report is submitted, a supplemental financial status report will be required. Contact the grant program manager for assistance. Reimbursement dates are dependent upon grantee reporting and subject to change.

<u>Michael Bouwhuis</u>	<u>Director</u>	<u>MOB</u>	<u>7/14/20</u>
System Project Director Name	Title	Initials	Date
<hr/>			
Authorized System Representative Name	Title	Initials	Date

# ATTACHMENT G: QUARTERLY PAYMENT STRUCTURE

PAYMENT STRUCTURE (July 1, 2020 - June 30, 2021)									
Expense Line Item	Expense Structure	Jul-Sep Grant Award	Jul-Sep System Spending	Oct-Dec Grant Award	Oct-Dec System Spending	Jan-Mar Grant Award	Jan-Mar System Spending	Apr-Jun Grant Award	Apr-Jun System Spending
Personnel	None	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Fringe	None	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
District Court Attorney/Coordinator - Michael Bouwhuis	Fixed	\$0.00	\$34,977.00	\$0.00	\$34,977.00	\$0.00	\$34,977.00	\$0.00	\$34,977.00
District Court Attorney - Martin Gravis	Fixed	\$0.00	\$23,668.00	\$0.00	\$23,668.00	\$0.00	\$23,668.00	\$0.00	\$23,668.00
District Court Attorney - James Retallick	Fixed	\$0.00	\$23,461.75	\$0.00	\$23,461.75	\$0.00	\$23,461.75	\$0.00	\$23,461.75
District Court Attorney - Francisco Roman	Fixed	\$0.00	\$19,910.25	\$0.00	\$19,910.25	\$0.00	\$19,910.25	\$0.00	\$19,910.25
District Court Attorney - Randall Marshall	Fixed	\$0.00	\$10,106.00	\$0.00	\$10,106.00	\$0.00	\$10,106.00	\$0.00	\$10,106.00
District Court Attorney - Gage Crowther	Fixed	\$8,116.75	\$8,116.75	\$8,116.75	\$8,116.75	\$8,116.75	\$8,116.75	\$8,116.75	\$8,116.75
District Court Attorney - Shawn Condie	Fixed	\$0.00	\$18,448.25	\$0.00	\$18,448.25	\$0.00	\$18,448.25	\$0.00	\$18,448.25
District Court Attorney - Jason Widdison	Fixed	\$0.00	\$19,406.75	\$0.00	\$19,406.75	\$0.00	\$19,406.75	\$0.00	\$19,406.75
Juvenile Court Delinquencies - Richard Williams	Fixed	\$0.00	\$17,937.00	\$0.00	\$17,937.00	\$0.00	\$17,937.00	\$0.00	\$17,937.00
Juvenile Court Child Welfare - Jonathan Pace	Fixed	\$0.00	\$23,754.00	\$0.00	\$23,754.00	\$0.00	\$23,754.00	\$0.00	\$23,754.00
Juvenile Court Child Welfare/Delinquency - Jennifer Clark	Fixed	\$0.00	\$33,982.50	\$0.00	\$33,982.50	\$0.00	\$33,982.50	\$0.00	\$33,982.50
Juvenile Court Child Welfare - Andrew Heyward	Fixed	\$0.00	\$22,306.00	\$0.00	\$22,306.00	\$0.00	\$22,306.00	\$0.00	\$22,306.00
Juvenile Court Child Welfare - Mary Anne Ellis	Variable	As-Billed							
Juvenile Court Child Welfare - Rebecca Voymas	Fixed	\$0.00	\$18,773.00	\$0.00	\$18,773.00	\$0.00	\$18,773.00	\$0.00	\$18,773.00
Juvenile Court Child Welfare - Ammon Nelson	Variable	As-Billed							
Appellate Court Contract - The Appellate Group	Variable	As-Billed							
Investigator Contract - Robert Brunson	Variable	As-Billed							
Investigator Contract - Kelly Madsen	Variable	As-Billed							
Capital Appeal Contract - Colleen Coebergh	Variable	As-Billed							
Capital Defense Contract for Miller Costello	Variable	As-Billed							
Capital Defense Contract for Brenda Emilie	Variable	As-Billed							
Specialty Attorney Contract - Randall Marshall	Variable	As-Billed							
Specialty Attorney Contract - Grant Morrison	Variable	As-Billed							
Administrative Assistant - Lindsey Watkins	Variable	As-Billed							
Fixed Equipment, Supplies & Operating Expenses	Fixed	\$0.00	\$5,985.00	\$0.00	\$5,985.00	\$0.00	\$5,985.00	\$0.00	\$5,985.00
Other Equipment, Supplies & Operating Expenses	None	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Defense Resources & Reserves	Variable	As-Billed							
Training & Related Travel	Variable	As-Billed							
Indigent Defense Capital Fund	None	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Miscellaneous	Variable	As-Billed							
Mileage	None	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



**For categories budgeted quarterly:**

- The System must meet the minimum required system spending amount for the quarter before requesting grant reimbursement.
- Reimbursement requests should not exceed the quarterly grant amount budgeted for each line item.
- Any costs exceeding the budgeted quarterly system spending and grant amounts combined, shall be the System's responsibility, and count toward the system-spending requirement for the following quarter.

**For as billed categories:**

- The System must meet any established annual system-spending requirement for a line item before utilizing grant funding on the same line item.
- Any costs exceeding the annual grant amount for a line item, will be the System's responsibility and will count as system spending.

<i>Michael Bouwhuis</i>	<i>Director</i>	<i>MOB</i>	<i>7/14/20</i>
System Project Director Name	Title	Initials	Date

Authorized System Representative Name	Title	Initials	Date
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