

**AGREEMENT BETWEEN WEBER COUNTY AND CONSULTANT FOR
CONSULTATIVE AND EXPERT WITNESS SERVICES**

This Agreement is made and entered into this 8 day of DECEMBER, 2020, by and between Weber County, a body corporate and politic of the State of Utah ("County"), and **Matthew Davies** ("Consultant"). County and Consultant may be referred to collectively as "Parties."

RECITALS

WHEREAS, the indigent defense attorneys who contract with the County ("Attorneys") require the services of a consultant to provide expert witness and consultation services concerning their criminal cases ("Defense").

WHEREAS, Attorneys have identified Consultant as having the requisite experience to assist them with the Defense.

NOW, THEREFORE, in exchange for valuable consideration, including without limitation the mutual covenants, agreements, and representations contained in this Agreement, the Parties covenant and agree as follows:

1. SCOPE OF SERVICES.

1.1 Consultant agrees to provide expert consultation and witness services to Attorneys in connection with the Defense. Consultant's services may include, at the direction of Attorneys, but will not be limited to: *review of relevant factual evidence including witness statements, interviews, police reports, investigation reports, photographs, videotapes, and policies and procedures; preparation of an expert report(s) setting forth findings and opinions; review of all expert report(s) prepared by other experts; testifying at pretrial hearings and trial; and assistance, if requested, in any appeals.*

1.2 Consultant understands and agrees that Consultant will be asked to provide services as needed by the Attorneys but is not guaranteed any or all relevant work and that Attorneys may use other Consultants of their choosing.

1.3 As may be required by Utah Code Section 77-17-13, upon reasonable notice Consultant will make themselves available to, and cooperatively consult with, the opposing party.

2. CONSIDERATION.

2.1 Consultant shall bill in increments of 1/10th of an hour and shall bill at the rates specified below.

- A. Consultant shall be paid at the rate of \$300 per hour for reviewing relevant factual evidence, consulting with Attorneys, preparing a written report, performing pretrial work, travel to and from court, and \$350 per hour for testifying in court or depositions.

2.2 County shall reimburse Consultant for reasonable and necessary travel-related expenses under the following conditions.

- A. If Consultant is required to travel by airplane, Consultant must travel in coach or comparable class, using advanced purchase when possible through a major commercial carrier. Consultant will need to schedule air travel for which County will reimburse Consultant up to \$1,000 for one round-trip air ticket.
- B. If Consultant is required to stay overnight in a hotel, Consultant will be reimbursed up to the Utah State lodging per-diem rate of \$125.00 (plus tax) per night. If this rate is unavailable, Consultant may request an exception.
- C. Consultant will be reimbursed for standard taxi or other transportation services such as Uber or Lyft to get to and from the airport.
- D. Consultant will be provided a meal per-diem of no more than \$43.00 per 24 hour period. Partial travel days will be reimbursed at \$10, for breakfast, \$14.00 for lunch and \$19.00 for dinner.
- E. If it is reasonable for Consultant to travel in a privately owned vehicle, Consultant will be reimbursed at the rate of \$0.58 per mile.

2.3 Consultant will submit an invoice to County within 15 days following the end of the month in which any services are rendered pursuant to this Agreement. Each invoice will detail the billing rate, work performed, by whom, and on what dates. Invoices should be sent to Attorneys via email as well as to the County via the following email or physical address:

Weber County Attorney's Office
Attn: Bryan Baron
2380 Washington Blvd., Suite 230
Ogden, UT 84401
bbaron@co.weber.ut.us

2.4 If Consultant is seeking reimbursement for expenses and costs under the Agreement, including travel-related expenses, each invoice will also detail all costs and expenses incurred by Consultant in the performance of services under this Agreement and be accompanied by receipts or other proof of purchase.

2.5 In no event will the total amount of consideration paid by County to Consultant under this Agreement, absent a written amendment, exceed \$10,000.00, including all fees and expenses. This amount covers the Term plus Additional Terms, if any, as described in Section 3 below. If fees and costs for any work requested by County will exceed \$10,000.00, Consultant will notify the County prior to incurring such additional fees or costs. At that time, County may budget additional funds and the parties may enter into an additional written agreement, the County may terminate the Agreement as provided below, or the County may take such other action as it deems appropriate. If Consultant fails to notify County that Consultant's performance under this Agreement will exceed \$10,000.00 and fails to obtain written authorization to incur fees beyond \$10,000.00, County may refuse to pay any amount in excess of \$10,000.00.

2.6 Payment to Consultant is not dependent upon Consultant's findings or opinions, nor on the outcome of any legal action. However, Consultant is required to honestly and in good faith formulate and truthfully express Consultant's findings and opinion(s) and limit the same to areas where Consultant believes they are qualified and prepared to opine. Consultant's failure to do so will constitute a material misrepresentation and breach of the Agreement entitling County to withhold future payments and the reimbursement of previously paid fees and costs related to the breach, and to seek any other compensation for damages or pursue any other available remedies.

3. EFFECTIVE DATE/TERM. This Agreement shall be effective upon execution by both parties and shall continue for five years from the date of execution ("Term"). This Agreement may be renewed, at the end of the Term, as agreed upon by the parties subject to the same terms and conditions as set forth in this Agreement ("Additional Terms"). All consideration for the Term and any Additional Terms shall be limited to the amount stated in Paragraphs 2.1 and 2.5 unless amended in writing and executed by the Parties.

4. INDEPENDENT CONTRACTOR AND TAXES. The relationship of County and Consultant under this Agreement shall be that of an independent contractor. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state, and local law, including but not limited to: those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between County and Consultant of employer and employee, partners, or joint venturers.

5. COUNTY REPRESENTATIVE. County hereby appoints Michael Bouwhuis as the County representative to assist in the administrative management of this Agreement and to coordinate performance of the services to be provided for Attorneys under this Agreement.

6. CONSULTANT REPRESENTATIVE. Consultant shall represent themselves or designate a representative who is authorized to act as Consultant's representative in its performance of this Agreement and shall make known to the County the representative by name and title. The Consultant or designated representative shall have the responsibility of working with the County Representative and the Attorneys to coordinate the performance of obligations under this Agreement.
7. STANDARD OF PERFORMANCE/PROFESSION. Consultant acknowledges the standard of performance and professionalism required in the performance of services under this Agreement. Consultant agrees to perform the services under this Agreement with the level of professionalism expected in Consultant's industry or profession in the community. Consultant agrees it will not accept any fee or financial remuneration from any entity or person other than Weber County for performance under this Agreement.
8. INDEMNIFICATION. Consultant agrees to indemnify, hold harmless, and defend County, its officers, agents and employees from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, negligent acts or omissions by Consultant, its agents, representatives, officers, or employees in the performance of this Agreement.
9. GOVERNMENTAL IMMUNITY. County is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §§ 63G-7-101, *et. seq.* (1953, as amended). The Parties agree that County shall be liable only within the parameters of the Act. Nothing contained in this Agreement shall be construed in any way to modify the limits of liability set forth in the Act or the basis for liability as established in the Act.
10. INSURANCE.
- 10.1 County is a participating member of the Utah Counties Indemnity Pool (UCIP), a joint reserve fund authorized in accordance with the provisions of Utah Code § 63G-7-703. County will maintain at its own cost commercial general liability coverage with limits not less than \$1,000,000.00 for injury to or death of one or more persons in any one occurrence and \$500,000.00 for damage or destruction to property in any one occurrence.
- 10.2 Consultant shall, at its sole cost and discretion, secure and maintain during the Term of this Agreement, including all Additional Terms, the following minimum insurance coverage: Professional liability insurance with a minimum policy limit of \$1,000,000 per occurrence.
11. AGENCY. No agent, employee, or servant of Consultant or County is or shall be deemed to be an employee, agent, or servant of the other party. None of the benefits provided by each party to its employees, including but not limited to worker's compensation insurance, health insurance, and unemployment insurance, are available to

the employees, agents, or servants of the other party. Consultant and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement.

12. TERMINATION.

12.1 Termination by Consultant for Default. Either Party may terminate this Agreement for an Event of Default upon written notice. Event of Default means: (a) a party fails to make any payment hereunder when the same becomes due and such failure continues for a period of thirty (30) days after written notice to the party failing to make such payment; (b) a party hereto fails to perform any of its material obligations and such failure continues for a period of thirty (30) days after written notice to such defaulting party; or (c) any material representation or warranty of a party contained in this Agreement proves to be untrue or incorrect in any material respect when made.

12.2 Force Majeure. Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of 60 days, Consultant or County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

12.3 Waiver. The Parties agree that the waiver of any breach of this Agreement by either party shall in no event constitute a waiver as to any future breach.

12.4 Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the Term or any Additional Terms whenever County determines, in its sole discretion that it is in the County's interest to do so. If County elects to exercise this right, County shall provide written notice to Consultant at least thirty (30) days prior to the date of termination. Upon such termination, Consultant shall be paid for all services up to the date of termination. Consultant agrees that County's termination for convenience will not be deemed an Event of Default, nor will it entitle Consultant to any rights or remedies provided by law or this Agreement for breach of contract by the County or any other claim or cause of action.

13. COMPLIANCE WITH LAWS. The Parties agree to comply with all federal, state, and local laws, ordinances, rules, and regulations in the performance of their duties and obligations under this Agreement. Any violation by Consultant of applicable law shall constitute an Event of Default under this Agreement and Consultant shall be liable for, hold County harmless, and defend County from and against any and all liability arising out of or connected with the violation, to include all attorneys' fees and costs incurred by County as a result of the violation.

13.1 Consultant is responsible, at its expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

14. CONFIDENTIALITY. Consultant shall hold all information provided to it by Attorneys for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any member of Consultant's firm who is not involved in the performance of services under the Agreement, or to any representative of the news media without prior written consent of Attorneys, except when required by state statute or court order. Materials, information, audio-visual recordings, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Consultant in performance of this Agreement shall also be held confidential by Consultant. Attorneys shall have the sole obligation or privilege of releasing such information as required by law, unless otherwise required by state law or court order.
15. OWNERSHIP OF WORK PRODUCT. All work product created by Consultant under this Agreement shall be "work for hire" and shall become the sole property of the Attorneys. Ownership of the work shall apply regardless of the form of the work product, e.g., writings, drawings, reports, any form of video or audio, etc. Work product does not include records or documents prepared by a third party that are classified as personal health information under HIPPA or other state or federal statutes. Upon final payment by County to Consultant, Consultant shall deliver to Attorneys all of the work product applicable to the services provided under this Agreement, including but not limited to that work product in draft form.
16. INTERPRETATION. County and Consultant agree that, where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law, but if any provision of this Agreement shall be deemed invalid, prohibited, or unenforceable under applicable law, the parties shall replace the invalid provision with language that most closely meets the intent of the parties in agreeing to the invalid provision. If the Parties cannot agree upon language to replace the invalid provision, such provision shall be stricken from the Agreement without invalidating the remainder of such provision or the remaining provisions of this Agreement.
17. ASSIGNMENT. Consultant shall not assign or transfer its duties of performance nor its rights to compensation under this Agreement without the prior written approval of County. County reserves the right to assert any claim or defense it may have against Consultant and against any assignee or successor-in-interest of Consultant.
18. SUBCONTRACTING. Consultant agrees it shall not subcontract to provide any of the services under this Agreement or execute performance of its obligations under this Agreement without prior express and written consent of County.
19. NOTICES. All notices to be given under this Agreement shall be made in writing and shall be deemed given upon personal delivery, upon the next business day

immediately following the day sent if sent by overnight express carrier or electronic mail, or upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested, to the Parties at the following addresses (or to such other address or addresses as shall be specified in any notice given):

COUNTY: Weber County Attorney's Office
Attn: Bryan R. Baron
2380 Washington Blvd, Suite 230
Ogden, UT 84401
bbaron@co.weber.ut.us

CONSULTANT: MT Davies
MATTHEW DAVIES, PWD
53835.900E. STE 290
MURRAY, UT 84117

20. TIME. The Parties agree that time is of the essence in the performance of this Agreement.

21. ENTIRE AGREEMENT. County and Consultant acknowledge and agree that this Agreement constitutes the entire integrated understanding between County and Consultant, and that there are no other terms, conditions, representations, or understanding, whether written or oral, concerning the rights and obligations of the parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified, or altered, except in writing signed by the Parties.

22. GOVERNING LAW. It is understood and agreed by the Parties that this Agreement shall be governed by the laws of the State of Utah and the Ordinances of Weber County, both as to interpretation and performance. Any actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated, and resolved within the jurisdiction of the State of Utah.

23. COUNTERPARTS. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or by e-mail shall be deemed originally signed copies of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year recited above.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer, Chair

Date _____

Commissioner Harvey voted _____
Commissioner Jenkins voted _____
Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County

CONSULTANT:

By: MT Jenkins

Date: 12/8/20