

**AGREEMENT  
FOR INDIGENT CAPITAL DEFENSE COUNSEL SERVICE**

This Agreement ("Agreement") is made and entered into by and between Weber County ("County"), a body corporate, politic and political subdivision of the State of Utah, and defense attorneys Jonathan Nish and David Ferguson ("Defenders").

**RECITALS**

**WHEREAS**, Doug Lovell ("Defendant") was charged in criminal case 921900407 in the Second Judicial District Court in and for Weber County, Utah, with the commission of the criminal offense of Aggravated Murder, a capital offense, in violation of§ 76-5-202, Utah Code Ann.; and

**WHEREAS**, pursuant to the Indigent Defense Act, as set forth in Title 77, Chapter 32, Utah Code Ann., the Court found Defendant to be indigent and entitled to the assignment of defense counsel in this case pursuant to§ 77-32-301, Utah Code Ann., at public expense; and

**WHEREAS**, Jonathan Nish, as lead counsel, verifies by signing this Agreement that he is an attorney duly licensed to practice law in the State of Utah and currently qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned as lead defense counsel for an indigent charged with an offense for which the punishment may be death and that he is proficient in the trial of capital cases; and

**WHEREAS**, David Ferguson, as co-counsel, verifies by signing this Agreement, he is an attorney duly licensed to practice law in the State of Utah, and he is qualified to be assigned as defense co-counsel in a capital case; and

**WHEREAS**, Defenders are able and willing to undertake the assignment as defense counsel for and have no known conflicts of interest in representing Defendant in this case; and

**WHEREAS**, in contemplation of the assignment of the Defenders to represent Defendant in this case, Defenders and the County have negotiated a reasonable compensation for the services of Defenders as indigent defense counsel, and it is the intent of the parties that the terms of those services and that compensation be set forth in this Agreement;

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth in this Agreement, the parties hereto do hereby agree as follows:

**SECTION ONE  
SERVICES**

- A. Defenders shall provide legal service and representation to Defendant in all phases and proceedings on the trial level in criminal case 921900407 in the Second Judicial District Court in and for Weber County, in which Defendant is charged with Aggravated Murder.

- B. Defenders shall represent Defendant in this case and provide and perform all necessary and appropriate legal defense services through:
- (1) Any proceedings and trial, including any new trial granted by the trial court, all motion hearings, and any other proceedings which may be held in this case before the trial court; and
  - (2) Any post-trial proceedings before the trial court, including sentencing and any post-plea or post-trial motions filed by either Defendant or the State.
- C. The services contemplated by this Agreement do not include any:
- (1) Post-plea or post-trial appeals to an appellate court; or
  - (2) Proceedings before the trial court if the court has relieved counsel of the obligation to represent Defendant.
- D. Defenders shall perform the legal services required under this Agreement in a professional and ethical manner in accordance with the Utah Rules of Professional Conduct, and such other applicable law, rules, and case law governing the practice of law in the State of Utah together with such other regulations or statutory provisions to which the Defenders may be subject as a result of federal law. Defenders agree 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.
- E. Defenders agree to be supervised by the director of the Weber County Public Defender Group ("Director"). Defenders shall, with reasonable promptness, inform the Director of:
- (1) Any pending or possible conflicts of interest that may exist as a result of the proposed or current representation by either Defender of Defendant in the above-described criminal case and, if reasonably possible, obtain the appropriate and necessary waivers or releases from all concerned parties;
  - (2) Any circumstances which are likely to reasonably necessitate the withdrawal of either Defender; or
  - (3) The intention of either Defender to withdraw from representation of Defendant.

## **SECTION TWO COMPENSATION**

- A. The County hereby authorizes payment of attorney fees at a rate of \$250 per hour for Jonathan Nish, \$155 per hour for David Ferguson, and \$125 per hour for Mr. Nish's office staff (office staff includes paralegals, legal assistants, law clerks, law students, and associate counsel).

Payments for both lead counsel and co-counsel may not exceed \$350,000 unless the Defenders can show exceptional circumstances as required by 2E. The fee cap in this paragraph applies to compensation authorized under this Agreement only and does not include amounts previously authorized and paid under any prior agreements, including the prior Agreement between the County, Julie George, and David Ferguson.

- B. To establish exceptional circumstances, the Defenders must demonstrate that the compensation provided in this paragraph is unreasonably inadequate in light of the length and complexity of the litigation.
- C. The compensation to be paid shall be the sole consideration provided to the Defenders by the County for services under this Agreement, and includes all of the Defenders' general office expenses, copying (other than voluminous copying performed by an outside provider), postage, preparation expenses, and other similar operating expenses, except as specifically provided otherwise in this Agreement. Time spent by an attorney, their clerical or other staff, or other legal team members regarding preparation, clarification, or interpretation of billings or contracts is considered a general office expense and shall not be billed to the County. This includes time spent working with the County on billing or contract issues.
- D. In the event the Defenders, jointly or individually, receive payment from another source as payment of fees in the representation of Defendant in this case, the Defenders shall reimburse the County for any consideration paid to the extent of such payments.
- E. The parties have agreed that the fee caps set forth in paragraph 2A are reasonable and there shall be no additional compensation for the Defenders without the prior written approval of the County subject to the following conditions:
  - (1) If it becomes apparent that the fee caps will be inadequate because of exceptional circumstances, the Defenders shall submit a written request for additional fees, as soon as reasonably possible.
  - (2) The written request shall specify the amount of additional fees that the Defenders believe would be sufficient to complete the representation of Defendant in this case and shall include sufficient and appropriate information and documentation to show the exceptional circumstances necessitating the additional fees.
  - (3) At the discretion of the County Commissioners, the Defenders may be required to meet with the County Commissioners to further explain and present evidence as to the exceptional circumstances that necessitate the payment of additional fees.
  - (4) If the County Commissioners find that the additional fees requested are reasonable and based on exceptional circumstances, the County shall approve the additional compensation.
- F. In an effort to keep costs under this contract to a minimum and to provide the Defendant with exceptional representation, the Defenders are encouraged to utilize the Weber Public Defender's Office to assist with legal research and drafting whenever practical. The extent to which Defenders utilize the Weber Public Defender's Office to assist in research and drafting will be taken into account should Defenders request to exceed the caps set forth in paragraph 2A.

**SECTION THREE  
DEFENSE RESOURCES**

- A. Subject to the provisions of this Section, the County shall provide for the reasonable and necessary costs of defense resources, including expenses for:
- (1) Investigator fees, other than mitigation investigations, not to exceed \$75 per hour and not to exceed a total payment of \$10,000, except as authorized in 3B.
  - (2) Mitigation investigator fees, not to exceed \$75 per hour and not to exceed a total payment of \$30,000, except as authorized in 3B. If the death penalty is withdrawn, mitigation fees incurred after the date the death penalty is withdrawn will not be reimbursed, except as approved by the County.
  - (3) Transcription fees;
  - (4) Witness costs;
  - (5) Expert witness fees, as approved by the Director of the Weber Public Defender Group.
  - (6) Fees for mental and physical examinations, as approved by the Director of the WPDG;
  - (7) Defense counsel, investigator, and mitigation investigator travel costs at state rates; and
  - (8) Costs for voluminous copying of documents by an outside provider.
- B. The caps stated in paragraph 3A(1) and 3A(2) are presumptive and any amounts in excess must have prior approval by the county. The necessity and reasonableness of these and any other expenses shall be determined and approved by the county before the expense is incurred and before a statement for reimbursement for those expenses may be submitted to the county. In the event of a disagreement, the Director and lead counsel shall meet and confer in good faith to attempt to resolve the dispute. If they are unable to resolve the dispute, the Defenders may apply to the Second Judicial District Court for a determination of the reasonableness and necessity of the requested defense resource. The application shall be heard ex parte from the prosecution, and the hearing, all filings, and the court's order shall be sealed and excluded from the public record to protect attorney-client privilege, work-product, and the Defendant's right to a fair trial. The County, through the Civil Division of the County Attorney's Office, shall have the right to appear and be heard at any such hearing.
- C. Defenders may pay defense resource expenses directly and submit statements to the County for reimbursement, together with proof of payment and supporting documentation, or submit invoices from service providers to the County for payment. Defenders shall submit statements for defense resource expenses to the County together with supporting documentation and such statements shall be processed and paid within 60 days.
- D. In the event the Defenders, jointly or individually, receive payment from another source as reimbursement for defense costs in the representation of Defendant in this case, the Defenders shall reimburse the County for any consideration paid to the extent of such payments.

#### **SECTION FOUR STATEMENTS**

- A. Defenders shall submit joint invoices on a monthly basis which sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the County in order to properly review, evaluate, and process the statement.
- B. The invoices shall detail the hours worked in 1/10<sup>th</sup> increments, which attorney performed the work, and provide a description of the work that was performed. The monthly invoices shall clearly indicate the total amount due each attorney.
- C. The invoices shall be submitted to the County via email or in a sealed envelope and shall not be made available to the division responsible for prosecuting the Defendant.
- D. The County shall process and pay any statements submitted by Defenders under this Agreement within 60 days.

**SECTION FIVE  
JOINT OBLIGATIONS AND  
CONTINUITY OF REPRESENTATION**

- A. Defenders are, individually and jointly, obligated by this Agreement to provide the legal defense services set forth in this Agreement. In the event of the inability or unwillingness of either Defender to represent or continue to represent Defendant, or the dismissal or withdrawal of either Defender, the remaining Defender shall continue to represent Defendant above as though the dismissal or withdrawal of co-counsel had not occurred. The County will take reasonable measures to engage successor lead or co-counsel as necessary to bring the defense team into compliance with the requirement in Rule 8(b), U.R.Crim.P., that the defendant have at least two attorneys.

**SECTION SIX  
WITHDRAWAL OR DISMISSAL OF COUNSEL**

- A. In the event of the inability of either Defender to represent Defendant in this case or in the event of court-approved dismissal or withdrawal of either Defender as defense counsel, the Defender who is dismissed or withdraws shall be entitled to compensation to the date of that dismissal or withdrawal.
- B. Neither such withdrawal or dismissal nor the appointment of a substitute legal counsel for the Defender who has withdrawn or been dismissed will alter the obligations and entitlements, including compensation, of the remaining Defender or the obligation of the County to pay compensation to the remaining Defender under the terms of this Agreement.
- C. An amendment to this Agreement shall be entered regarding the substitute legal counsel who shall be entitled to compensation only for services rendered from the time of appointment.
- D. In the event lead counsel is dismissed or withdraws from representation of Defendant in this case and new lead counsel is appointed, the new lead counsel may, with the approval of the trial court:

- (1) Select the appointment of new co-counsel, in which case, the new co-counsel will be compensated pursuant to this Agreement with the County and subject to the limitations set forth in paragraph 2A.
  - (2) Agree to the continuation of the current co-counsel.
- E. In the event of a withdrawal, dismissal, or appeal, Defenders agree to cooperate with any successor by filing all necessary pleadings for withdrawal and by delivering all applicable files, information, and materials to the successor.

#### **SECTION SEVEN QUALIFICATIONS**

- A. The Defenders verify that Jonathan Nish is and remains currently qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned and to continue to serve as defense counsel for an indigent charged with an offense for which the punishment may be death and that both Defenders remain attorneys in good standing with the Utah State Bar and licensed to practice law in the State of Utah.
- B. The Defenders shall have an ongoing duty to report to the County if either defense counsel is no longer qualified, for whatever reason, to continue to represent Defendant in the case.

#### **SECTION EIGHT INDEPENDENT CONTRACTORS**

- A. Defenders are independent contractors providing professional legal services and are not employees of the State of Utah or the County and are therefore not entitled to any of the benefits of employment by those entities such as, but not limited to, retirement, health, or Workers Compensation coverage.

#### **SECTION NINE INDEMNIFICATION AND INSURANCE**

- A. The Defenders shall indemnify and hold harmless the County and its officers, agents, and employees from and against any and all claims, damages, liabilities, and expenses arising out of or resulting from the Defenders' acts, errors, or omissions in the performance of this Agreement. This indemnity shall not extend to claims arising out of the sole negligence or willful misconduct of the County or its officers, agents, or employees.
- B. The Defenders shall maintain such insurance as will cover both the Defenders and the County from any and all claims for malpractice made by any person that may arise from the performance of this Agreement. The Defenders shall provide the County with appropriate current certificates of insurance as evidence of that coverage upon the execution of this Agreement.
- C. The minimum coverage shall be \$1,000,000 per claim and \$3,000,000 aggregate. Coverage shall be on a claims-made basis with an extended reporting period of at least three years following termination of this Agreement. Defenders shall provide the

County with written notice at least 30 days before any cancellation, non-renewal, or material reduction in coverage, and shall furnish a current certificate of insurance upon execution of this Agreement.

**SECTION TEN  
ENTIRE AGREEMENT**

- A. This Agreement sets forth the complete agreement between the parties and may be modified only by a subsequent written instrument approved and signed by both parties. This Agreement shall be governed by the laws of the State of Utah.

**SECTION ELEVEN  
NOTICE**

- A. All notices to be given under this Agreement shall be delivered to the parties as follows:

- (1) Notice shall be given to the Defenders at:

Jonathan Nish  
CHRISTENSEN & JENSEN  
257 E 200 S, Suite 1100  
Salt Lake City, Utah 84111  
jonathan.nish@chrisjen.com

David Ferguson  
Mercuri Defense, P.C.  
358 S 700 E, Ste B, box 249  
Salt Lake City, UT 84102  
david@mercdefense.com

- (2) Notice shall be given to the County at:

James Retallick  
Weber Public Defender Group  
2380 Washington Blvd., Ste 100  
Ogden, UT 84401

with a copy to:

Weber County Attorney's Office  
Attn: Civil Division  
2380 Washington Blvd., Ste 230  
Ogden, UT 84401

**SECTION TWELVE  
NON-ASSIGNMENT**

- A. The Defenders may not assign this Agreement or their performance under it, in whole

or in part, without the prior written approval of the County.

### SECTION THIRTEEN TERMINATION

- A. The County, upon reasonable written notice, may terminate this Agreement in whole or in part in the event that the County no longer has a statutory obligation to provide legal services to Defendant, including but not limited to a determination that Defendant is no longer indigent.
- B. The County may terminate this Agreement at any time upon verification that either Defender is no longer an attorney duly licensed to practice law in the State of Utah, or that Jonathan Nish is no longer qualified under Rule 8(b), Utah Rules of Criminal Procedure, to be assigned as lead defense counsel for an indigent charged with an offense for which the punishment may be death.
- C. Either party may terminate this Agreement for material breach by the other party upon the following conditions:
  - (1) The non-breaching party shall provide written notice to the breaching party specifying in reasonable detail the nature of the alleged material breach and the action required to cure it;
  - (2) The breaching party shall have 30 days from receipt of the notice to cure the breach, or such longer period as is reasonable under the circumstances if the breach is not reasonably capable of cure within 30 days and the breaching party is diligently pursuing cure;
  - (3) If the breach is not cured within the applicable cure period, the non-breaching party may terminate this Agreement by written notice of termination, effective on the date stated in that notice; and
  - (4) For purposes of this paragraph, "material breach" includes, without limitation, failure to provide the defense services required by Section One, failure to comply with the billing and reporting requirements of Sections Four and Fourteen, failure to maintain the insurance required by Section Nine, and repeated or substantial billing irregularities.
- D. If the County fails to pay undisputed amounts on properly submitted invoices within 60 days of receipt, Defenders may provide the County with written notice of non-payment specifying the unpaid amounts. If the County does not cure the non-payment within 30 days of receipt of that notice, Defenders may terminate this Agreement by written notice of termination, subject to paragraph F below.
- E. Nothing in this Agreement permits or authorizes either Defender to withdraw from representation of Defendant in the underlying criminal case without the approval of the Second Judicial District Court. A notice of termination delivered by Defenders under paragraph C or E obligates Defenders to file and diligently pursue a motion to withdraw, but Defenders shall continue to perform all obligations under this Agreement until the trial court enters an order approving withdrawal. The County's obligations under Section Two shall remain in effect through the date of any court-approved withdrawal, notwithstanding any notice of termination.

**SECTION FOURTEEN  
RECORDS AND REPORTS**

- A. The Defenders shall maintain such records and accounts as may be deemed reasonable and necessary to assure a proper accounting for all compensation and reimbursements paid to the Defenders under this Agreement. The Defenders shall, upon request, make those records available to the County for audit purposes and shall maintain those records for a period of 3 years after the expiration of this Agreement or such other longer period as may be required by law. Defenders shall not be required to submit attorney/client privileged or other privileged communications
- B. Lead counsel shall submit a brief report to the Director each month during the term of this Agreement informing the Director of the status of the criminal proceedings.
- C. A copy of all motions, memoranda, affidavits and supporting documentation shall be provided to the Director at the same time as those documents are submitted to the court. If the Director receives copies through the court filing system, that will satisfy this requirement.

**SECTION FIFTEEN  
MISCELLANEOUS**

- A. Severability. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- B. No Waiver. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that provision or of the right to enforce it later.
- C. Counterparts; Electronic Signatures. This Agreement may be signed in counterparts, including by electronic signature, each of which shall be deemed an original.
- D. Survival. The obligations in Sections 6(F), 9, 14, and any accrued payment obligations shall survive termination of this Agreement.

IN WITNESS WHEREOF this Agreement has been signed by the parties, on this \_\_\_\_ day of \_\_\_\_\_, 2026.

BOARD OF COUNTY COMMISSIONERS OF WEBER COUNTY

By \_\_\_\_\_  
GAGE FROERER

Commissioner Harvey voted \_\_\_\_\_  
Commissioner Froerer voted \_\_\_\_\_  
Commissioner Bolos voted \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

**DEFENSE COUNSEL:**

*Jonathan T. Nish*  
JONATHAN NISH

DATE: April 17, 2026

*David Ferguson*  
DAVID FERGUSON

DATE: April 22, 2026

**DIRECTOR:**

*James M. Retallick*  
JAMES M. RETALLICK

DATE: April 22, 2026