

**MEMORANDUM OF UNDERSTANDING
FOR INDIGENT DEFENSE SERVICES**

JULY 1, 2019 – JUNE 30, 2020

This Memorandum of Understanding is made and executed, effective September 09, 2019, by and between Tooele County, a body corporate and politic of the State of Utah, hereinafter referred to as “County,” and the Office of the Utah County Public Defender, hereinafter referred to as “Defender,” to provide constitutionally effective representation for indigent individuals on appeal from any cases arising in the County’s District or Juvenile courts through and until June 30, ~~2019~~.

2020.

RECITALS

WHEREAS, the County is obligated by the United States and Utah Constitutions, and Utah Code § 78B-22-101 *et. seq.* (2019, as amended), to provide indigent individuals the effective assistance of defense counsel on appeal from any conviction or final court action from the proceedings enumerated in Utah Code § 78B-22-201(1); and

WHEREAS, the County may fulfill the statutory obligation by contracting with a qualified indigent defense services provider as defined by Utah Code Ann. § 78B-22-102(5), Utah Rule of Appellate Procedure 38B, and Rule 11-401, Standing Committee on Appellate Representation; and

WHEREAS, Defender is an existing legal defender office organized by Utah County, organized according to law, and contracted to provide effective indigent defense representation to indigent individuals, and Defender has established a demonstrated record of providing effective, qualified, competent, and constitutional indigent defense services since its inception; and

WHEREAS, Defender and the County jointly desire to enter into this Memorandum of Understanding to provide constitutional indigent defense services in all courts under the County’s jurisdiction.

AGREEMENT

NOW THEREFORE, accepting the recitals above, the County and the Defender agree as follows:

Section 1. REPRESENTATION

- 1.1 Defender agrees to provide all indigent individuals who are entitled by law to court-appointed counsel in all appeals in the Utah Court of Appeals or Utah Supreme Court, arising from convictions or final court actions in the District and Juvenile Courts, or the County Justice Court if a constitutional claim is raised on appeal, in Tooele County.

- 1.2 Defender agrees to ensure that all such legal representation is provided by attorneys who are active members, in good standing of the Utah State Bar, and who have appropriate legal qualifications, experience, time, and expertise, to provide effective assistance of counsel in the cases in which they appear.
- 1.3 Defender agrees in good faith to seek and contract with attorneys under this Memorandum who are listed and currently eligible for appointment on the Utah Appellate Roster.
- 1.4 The parties agree that Defender will require any attorneys employed or contracted with under this agreement to meet with local trial attorneys about any pending appeals, and that the County will require any trial attorneys it employs or contracts with, to do the same.
- 1.5 The parties agree that, if in the performance of this Memorandum, any third persons are employed or contracted by the Defender to provide the legal representation contemplated herein, such person shall be entirely and exclusively under the direction, supervision, and control of the Defender.
- 1.6 Upon employing or contracting any third persons to provide legal representation, the Defender agrees to adhere to hiring practices that remain free from judicial and prosecutorial oversight. All terms of employment or contract, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment, contract, or requirement of law, shall be determined by the Defender, and the County shall have no right or authority over such persons or the terms of employment or the terms of such contract.
- 1.7 Defender agrees to comply with the Core Principles adopted by the IDC.
- 1.8 Defender agrees to work with the County to monitor attorney caseloads so no attorney carries a caseload that would unreasonably interfere with the attorney's ability to provide effective assistance of counsel. Defender agrees to ensure that an attorney contracted to provide representation in a case arising under this Memorandum, is qualified by experience and training to handle the complexity of the case.
- 1.9 It is understood and agreed that accessibility to indigent defendants is an integral consideration to this Memorandum and therefore the Defender agrees to ensure attorneys are available and accessible to indigent clients and to ensure a single attorney provides continuous (vertical) representation throughout the entirety of a case.
- 1.10 Defender also agrees to require any attorney employed or contracted under this agreement to make reasonable efforts to visit indigent defendants who are incarcerated in a County Jail or State Prison, at the earliest possible date; to return telephone calls as soon as reasonably possible and to otherwise be reasonably accessible to, and provide continuous representation.

- 1.11 Defender agrees to ensure that any attorneys providing appointed representation for the County, pursuant to this Memorandum, will be provided with defense resources separate from their compensation for the service rendered pursuant to this Memorandum, which are necessary to provide effective representation, which may include but is not limited to: investigators, experts, social workers, interpreters, travel, and/or forensic services, and any other resources necessary to. Provide the effective assistance of counsel under Utah Code § 78B-22-102(4).
- 1.12 Defender agrees to cooperate with the County to maintain and make available records of data and all information necessary for reporting to the IDC, as required by any grant funding. To wit, by providing, at a minimum, quarterly reports of expenses incurred for contract attorney services; and quarterly reports of the total number of appointed cases in which the Defender or an attorney appeared pursuant to this Memorandum, including the type of each appeal, the hearings held in each case, the status or disposition of each case, the hours spent by attorneys on each case, and/or such other information as may be reasonably requested by the County or the IDC, which do not violate attorney client privilege.

Section 2. COSTS AND PAYMENT

- 2.1 In exchange for the services rendered in Section ~~X~~¹ above (Base Duties), it is agreed to between the parties that the County will bear the reasonable and necessary expenses related to the representation pursuant to this Memorandum
- 2.2 The County shall pay the Defender, as consideration for Defender's performance of the above-described base duties, five thousand dollars (\$5,000).
- 2.3 Except as provided herein, the IDC will bear all other expenses in providing the services contemplated herein.
- 2.4 Upon a showing of critical need, Defender may request additional funding for extraordinary unforeseen expenses which may arise during the term of this agreement, from the County, which may then request additional funding in grants from the Commission.

Section 3. EXCLUSIONS

- 3.1 Defender shall not be required to or appointed to represent any indigent defendant charged with a capital felony.
- 3.2 Defender shall not be required to represent any indigent adults in civil matters, except as provided by law in Juvenile courts of the County.
- 3.3 Transition. In the event this Memorandum is terminated or is not renewed:
 - 3.3.1 Defender agrees to complete those existing cases where it is not feasible for Defender to withdraw.

- 3.3.2 Defender agrees to cooperate with Defender's successors including the filing of all necessary pleadings for withdrawal and to deliver all applicable files, information and materials to the successor.
- 3.3.3 If Defender is not permitted to withdraw from the representation in any matter by the court, the County agrees to compensate the Defender for base services under Section 3 above, at the prevailing hourly rate being paid to attorneys who handle conflict-of-interest cases.
- 3.4 Non-funding. It is understood by the parties that as a governmental entity, that all government funding for this agreement is subject to the funds being appropriated by the County, legislative body and the IDC and the State of Utah. In the event no funds or insufficient funds are appropriated and budgeted in the fiscal year(s) of this Agreement, this agreement shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, or in the event of a reduction in appropriations, on the last day before the reduction becomes effective. Said termination shall not be construed as a breach or default under this agreement and said termination shall be without penalty, additional payments, or other expense to the County of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Defender.
- 3.5 Discrimination. Defender assures compliance with the Americans with Disabilities Act (ADA), and Title VI of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, sex, sexual orientation, marital status, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement.
- 3.6 TERMINATION
 - 3.6.1 Either party may terminate this Memorandum, without cause, upon ninety (90) days written notice served upon the other party. Notice shall be deemed served on the date of mailing.
 - 3.6.2 The County may terminate this Memorandum, if after thirty (3) days written notice of a failure to provide services required hereunder is served upon the Defender, and should the Defender fail to perform any of the covenants contained in this Memorandum, in the time and manner specified.
 - 3.6.3 The County may terminate or amend this Memorandum immediately upon written notice served upon the Defender stating that funds are not available from the County, State, or other sources.

Section 4. OTHER PROVISIONS

- 4.1 Independent Contractor. It is understood by the parties that Defender is an independent contractor and not an agent, representative, or employee of the County nor is this Memorandum intended to create such a relationship. It is further

understood by the parties that all compensation provided hereunder shall not include deductions for FICA, Federal and State income tax and shall not include retirement benefits, health benefits, holiday pay leave or any other fringe benefit of the County.

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

FOR THE COUNTY:

Tooele County Commission
47 S. Main
Tooele, Utah 84074

with a copy to:

Tooele County Attorney
74 S. 100 East, Suite 26
Tooele, Utah 84074

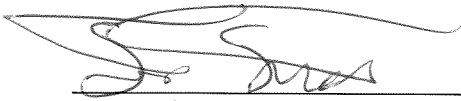
FOR THE DEFENDER:

Utah County Public Defender ²⁰⁶
51 S. University Avenue, Suite ~~117~~
Provo, Utah 84601

In witness whereof, the parties have executed this Memorandum of Understanding the day and year written below:

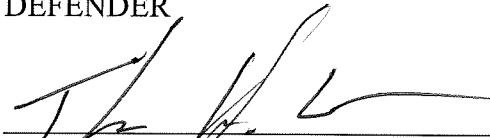
ABOVE

COUNTY



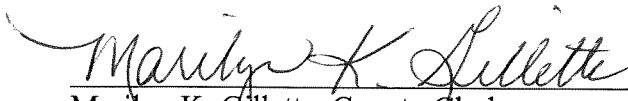
Tom Tripp, Chairman
Tooele County Commission

DEFENDER



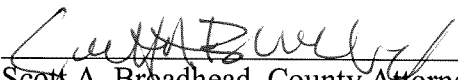
Tom Means, Director
Utah County Public Defender

ATTEST



Marilyn K. Gillette, County Clerk

APPROVED AS TO FORM



Scott A. Broadhead, County Attorney

