

Contract for Indigent Capital Defense Counsel Service

THIS CONTRACT is made and entered into by and between the UTAH INDIGENT DEFENSE FUNDS BOARD, a board created by and acting under Sections §78B-22-501 through §78B-22-502, *Utah Code Ann.*, which shall be called the "BOARD" in this contract, and RICHARD A. VAN WAGONER ("VAN WAGONER") and RUDY BAUTISTA ("BAUTISTA"), who shall be called "DEFENDERS" in this contract. Collectively, they shall be referred to in this contract as "Parties".

This contract is based, in part, upon the following recitals:

- A. COLIN JEFFERY HAYNIE, who shall be called "DEFENDANT" in this contract, was charged in an information, dated January 22, 2020, and filed in Criminal Case 201300046 in the Third Judicial District Court in and for Tooele County, Utah, with the commission of the offense of FOUR COUNTS OF CRIMINAL HOMICIDE, AGGRAVATED MURDER, a first degree felony, in violation of §76-5-202, *Utah Code Ann.* One COUNT OF ATTEMPTED CRIMINAL HOMICIDE, AGGRAVATED MURDER, a first degree felony, in violation of §76-5-202, *Utah Code Ann.*, and FIVE COUNTS OF FELONY DISCHARGE OF A FIREARM WITH SERIOUS BODILY INJURY, in violation of §76-5-202 and §76-10-508.1, *Utah Code Ann.*
- B. Pursuant to the Indigent Defense Act, as set forth in Title 78B, Chapter 22, *Utah Code Ann.*, the Court found, on January 27, 2020, DEFENDANT to be indigent and entitled to the assignment of defense counsel in this case pursuant to §78B-22 Part 2, *Utah Code Ann.*, at public expense.
- C. On February 24, 2020, the Court has made findings that Richard A. Van Wagoner and Rudy Bautista, are attorneys duly licensed to practice law in the State of Utah and are qualified to be assigned as counsel for an indigent charged with an offense of Criminal Homicide, Aggravated Murder.

- D. 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.
- E. In contemplation of the assignment of DEFENDERS to represent DEFENDANT in this case, DEFENDERS and the BOARD 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 contract. Tooele County, which may hereinafter be referred to as COUNTY, approves the negotiated compensation and this contract as acknowledged in the County Acknowledgment and Approval which is attached to contract as Exhibit "A" and incorporated herein by reference.

Now therefore, in consideration of the mutual terms and conditions set forth in this contract, the parties hereto do hereby agree as follows:

1. Services

- A. DEFENDERS shall provide legal service and represent DEFENDANT in all phases and proceedings of the defense in Criminal Case No. 201300046 in the Third Judicial District Court in and for Tooele County, in which DEFENDANT is charged with the offense of four counts of criminal homicide, one count of attempted criminal homicide aggravated murder, and five counts of felony discharge of a firearm with serious bodily injury.
- B. DEFENDERS shall represent DEFENDANT in this case and provide and perform all necessary and appropriate defense legal 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 contract 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 contract in a professional and ethical manner under the guidelines and standards set forth in the Utah Rules of Professional Conduct, and such other applicable law, rule, 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.
- E. DEFENDERS shall, with reasonable promptness, inform the BOARD 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.

2. Compensation

- A. The Board authorizes payment of attorney fees at a rate of \$188 per hour for Van Wagoner as first chair and \$140 per hour for other Rule 8 or non-

Rule 8 qualified attorneys including Bautista who serve in the capacity of second chair in the case up to a maximum of \$85,000.

- B. DEFENDERS shall be authorized to receive up to the following presumptive caps in accordance with the following schedule:
- (1) Maximum of up to \$40,000 upon completion or waiver of the preliminary hearing.
 - (2) Maximum of up to an additional \$45,000 after completion or waiver of the preliminary hearing up to the conclusion of the trial by verdict and completion of the penalty phase.

The Board may authorize payments in excess of the maximum amounts only upon a showing of exceptional circumstances in accordance with paragraph 2C.

- C. The Parties have agreed that the amounts and timing of compensation set forth in this contract are reasonable and adequate. The Parties further agree that the presumptive caps in paragraphs 2A and 2B shall be binding and shall operate to limit the timing and amount of total compensation paid to DEFENDERS and that there shall be no right to receive additional compensation unless prior written approval is obtained from the Board. DEFENDERS may request that the Board exceed the maximum amounts listed in paragraph 2A and 2B based upon a showing of Exceptional Circumstance.

To establish exceptional circumstances, DEFENDERS must demonstrate to the Board that compensation provided by paragraphs 2A and 2B is unreasonably inadequate in light of the length and complexity of the litigation which length and or complexity was not reasonably foreseeable at the time the Parties entered into this Contract. Exceptional

circumstances are defined as circumstances related to the case that were not reasonably foreseeable at the time the Parties entered into this Contract. DEFENDERS shall be required to work within the presumptive caps in paragraphs 2A and 2B even if the total amount of work within the presumptive cap results in an hourly rate that is less than the hourly rate that is authorized by the Board in paragraph 2A of this Contract.

- (1) To request additional compensation, DEFENDERS must as soon as is reasonably possible, submit a written request with sufficient and appropriate information and documentation to the BOARD to justify the requested additional fees
- (2) DEFENDERS shall request that the trial court make ex parte findings regarding the length and complexity of the case and shall forward any determinations by trial court regarding that request.
- (3) The Board, in its complete discretion, shall determine whether the additional fees requested are reasonable in light of the circumstances and could not have been reasonably anticipated at the time this contract was approved and signed.
- (4) If the Board decides not to approve a request to exceed a presumptive cap based on a written request, DEFENDERS shall be given an opportunity to present their reasoning to the Board and ask for a reconsideration of the decision. If DEFENDERS choose to present their reasoning to the Board in person or by phone, they shall do so at his own expense, and such expenses shall not be billed to the Fund.
- (5) DEFENDERS shall have no rights to claim additional recovery under this Agreement in the event the Board refuses to authorize additional compensation.

- D. The compensation to be paid shall be the sole consideration to be paid to DEFENDERS by the BOARD for services under this contract, and includes all of the DEFENDERS' general office expenses, postage, preparation expenses, and other similar operating expenses, except as provided specifically otherwise in this contract. Time spent by 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 Fund. This includes time spent working with the Division of Finance or a board member on billing or contract issues.
- E. DEFENDERS shall submit fee statements jointly which sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the BOARD in order to properly review, evaluate, and process the statement.
- F. DEFENDERS shall submit billing statements detailing the hours worked and describing the work performed. The billing records shall be submitted to the Court/Board and are to be sealed and not made available to the agencies prosecuting the defendant. Billings shall be made in 1/10th hour increments. The fee statements shall be submitted at the stages of the proceedings as set forth in the foregoing Sub-paragraph B., however, monthly progress billings are required. If billings have gone beyond a presumptive cap they still need to be submitted monthly. The Board has the right to decide not to pay charges that are three months old or older that have not been previously submitted.
- G. In the event DEFENDERS receives payment from another source as payment of fees in the representation of DEFENDANT in this case,

DEFENDERS shall reimburse the BOARD for any consideration paid under this contract to the extent of such payments.

3. Reimbursement of Expenses

A. Subject to the provisions of this paragraph and Paragraph 4 of this contract, the BOARD shall reimburse DEFENDERS for the reasonable and necessary costs of defense, including reasonable and necessary defense expenses for:

- (1) Mitigation Specialist and Mitigation Investigator fees: \$100 per hour plus reasonable expenses not to exceed \$30,000.
- (2) Investigator Fees: \$80 per hour plus reasonable expenses not to exceed \$10,000. Investigator fees may be paid to the mitigation investigator. DEFENDERS are approved to charge for a paralegal under this cap at the \$80 per hour rate.
- (3) Transcription fees;
- (4) Witness costs;
- (5) Expert witness fees;
- (6) Fees for mental and physical examinations and costs associated therewith;
- (7) Defense counsel travel costs, at state rates and in accordance with state rules and policies;
- (8) Costs for major voluminous copying of documents by an outside provider; and
- (9) Internal copies, or copies not made by an outside provider, will be reimbursed at 10 cents per copy.

B. For the purposes of this contract, with the exception of the Subsections 3A.(1), 3A.(2), and 3A.(9), the above expenses shall be deemed to be

extraordinary expenses and must have prior Court approval if the expense is \$500 or more. The caps stated in Subsection (A) are presumptive and any amounts in excess must have prior court approval. The necessity and reasonableness of these and any other extraordinary expenses shall be determined and approved by the Court before the expenses are incurred and before a statement for reimbursement for those extraordinary expenses may be submitted to the Board.

- C. The Parties have agreed that the reimbursement amounts provided by paragraphs 3A and 3B are reasonable and adequate. The Parties further agree that the limitations in those paragraphs shall be binding and shall operate to limit the timing and amount of reimbursement of expenses. DEFENDERS shall submit their statements for expense reimbursements, including those extraordinary expenses approved by the Court, to the BOARD together with supporting documentation and such statements shall be processed with reasonable diligence in accordance with the fiscal procedures of the State of Utah.
- D. Travel is not considered necessary and reasonable when the purpose of the travel can reasonably be accomplished in another way, such as by telephone, email, video communication such as Skype, or other correspondence.
- E. In the event DEFENDERS receive payment from another source as reimbursement for defense costs in the representation of DEFENDANT in this case, DEFENDERS shall reimburse the BOARD for any reimbursements paid under this contract to the extent of such payments.

4. Statements or Requests for Payment or Reimbursement

- A. DEFENDERS shall submit to the BOARD statements or requests for

payment or reimbursement jointly which sufficiently describe the services performed for which compensation is claimed and such other information as may be reasonably required by the BOARD in order to properly review, evaluate, and process the request. Before making payment, the Board may request additional supporting documentation.

The Board may withhold payment for any item in a statement or request when such item is not accompanied by supporting documentation, such as a paid invoice, or such item conflicts with the provisions of this contract pending resolution of the amount requested.

- B. Fee statements shall be submitted at the times described in the foregoing Paragraph 2.F.
- C. The BOARD shall process any payment requests submitted by DEFENDERS under this contract with reasonable diligence and in accordance with the fiscal procedures of the State.

5. Non-Funding Clause as to Board

Because the sole source of funding for the BOARD for the purposes of this contract is the Indigent Aggravated Defense Trust Fund in accordance with §78B-22-703, *Utah Code Ann.*, which is derived from revenues from participating counties and the State of Utah, the liability and responsibility of the BOARD to pay compensation and reimbursement of expenses to DEFENDERS under this contract is limited to the amount of funds available to the BOARD in the Indigent Aggravated Murder Defense Trust Fund.

6. Qualifications

DEFENDERS shall, as may be requested by the BOARD, provide sufficient documentation to verify that they are and remain currently qualified to be assigned and continue to serve as defense counsel for an indigent charged with aggravated murder for which the punishment of death is not sought, and that DEFENDERS remain attorneys in good standing with the Utah State Bar and licensed to practice law in the State of Utah. DEFENDERS shall have an ongoing duty to report to the BOARD if either are no longer qualified, for whatever reason, to continue to represent DEFENDANT in the case.

7. Independent Contractor

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.

8. Indemnification and Insurance

- A. DEFENDERS shall indemnify and save the BOARD and the COUNTY and their officers, agents, and employees harmless from and against all claims for damages or injuries resulting from any claimed malpractice, injury, death, damages, and any other causes of action arising directly or indirectly from the performance of this contract by DEFENDERS.
- B. DEFENDERS shall maintain such insurance as will cover both DEFENDERS and the BOARD from any and all claims for malpractice, property damages, injuries, or death made by any person that may arise from the performance of this contract. DEFENDERS shall provide the BOARD with appropriate current certificates of insurance as evidence of that coverage upon the execution of this contract.

- C. The minimum coverage shall be One Hundred Thousand Dollars (\$100,000.00) per claim and Three Hundred Thousand Dollars (\$300,000.00) per year.

9. Entire Agreement

This contract sets forth the complete agreement between the parties and may be modified only by a subsequent written instrument approved and signed by both parties.

10. Default

In the event of a default in the performance of this contract, the defaulting party shall reimburse the other party for all reasonable attorney's fees and costs incurred in the enforcement of this contract.

11. Notice

All notices to be given under this contract shall be delivered to the parties as follows:

- A. Notice shall be given to the DEFENDERS at:

Richard A. Van Wagoner

10 Exchange Place, 11th Floor

Salt Lake City, UT 84111

rav@scmlaw.com

Telephone: 801-322-9168

- B. Notice shall be given to the BOARD at:

Indigent Defense Funds Board

c/o John Reidhead, Director

Division of Finance

Taylorsville State Office Building

Salt Lake City, UT 84129

jreidhead@utah.gov

Telephone: 801-957-7734

Mailing Address
c/o John Reidhead, Director
Division of Finance
PO Box 141031
Salt Lake City, UT 84114-1031

12. Non-Assignment

DEFENDERS may not assign this contract or their performance under it, in whole or in part, without the prior written approval of the BOARD, which shall not be unreasonably withheld in the event that the BOARD terminates this contract because of non-funding.

13. Termination

- A. DEFENDERS may terminate this contract by giving written notice to the BOARD 30 days in advance of the termination, except that in the event of either non-funding or a conflict of interest the termination may take effect immediately. It is understood that the termination of this contract is not the same as withdrawal of representation of DEFENDANT. In order to withdraw his representation of DEFENDANT, DEFENDERS acknowledge that the approval of the court must first be obtained.
- B. The BOARD, upon reasonable notice, may terminate this contract in whole or in part in the event that the BOARD no longer has a statutory obligation to provide legal services to DEFENDANT, e.g. if DEFENDANT is determined to no longer be indigent.
- C. The BOARD may terminate this contract at any time upon verification that DEFENDERS are no longer attorneys duly licensed to practice law in the

State of Utah or that Van Wagoner or Bautista is not or is no longer qualified to be assigned as counsel for an indigent charged with an offense of Criminal Homicide, Aggravated Murder.

- D. The Board may terminate this contract at any time in the event that either DEFENDER commits any ethical violation or for any other factor which may prevent DEFENDERS from fairly, efficiently and effectively providing representation to the DEFENDANT.

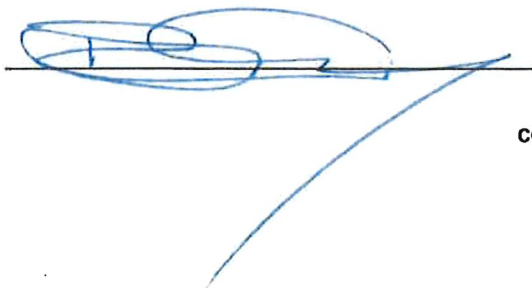
14. **Records and Reports**

- A. DEFENDERS shall maintain such records and accounts as may be deemed reasonable and necessary by the BOARD to assure a proper accounting for all compensation and reimbursements paid to DEFENDERS under this contract. DEFENDER shall, upon request, make those records available to the BOARD for audit purposes and shall maintain those records for a period of three years or such other longer period as may be required by law after the expiration of this contract.
- B. DEFENDERS shall submit to the BOARD a report each month during the term of this contract informing the BOARD of the status of the criminal proceedings.

IN WITNESS WHEREOF this contract has been signed in triplicate by the parties, each of which shall be deemed an original, on this 21st day of April, 2020.

DEFENDERS:

INDIGENT DEFENSE FUNDS BOARD



ces



Richard A. Van Wagoner

Neal Hamilton, Chairman



Rudy Bautista

Exhibit A

County Acknowledgment and Approval

Tooele County acknowledges and approves the foregoing Contract of Indigent Defense Counsel Services which has been negotiated and executed by the Indigent Defense Funds Board for the following criminal case:

Defendant: Colin Jeffery Haynie

Criminal Charge: Four Counts of Criminal Homicide, Aggravated Murder, One Count of Attempted Criminal Homicide, Aggravated Murder, and Five Counts of Felony Discharge of a Firearm with Serious Bodily Injury

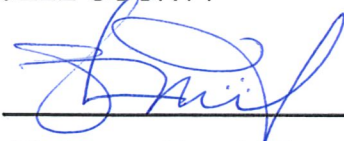
Case No.: 201300046

DEFENDERS: Richard A. Van Wagoner
Rudy Bautista

Date: 5 June, 2020.

TOOELE COUNTY

By:

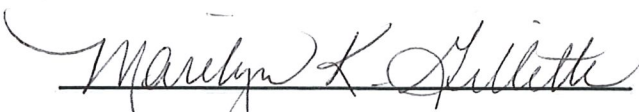


SHAWN MILNE

Chairman, Tooele County

Board of County Commissioners

ATTEST:


Tooele County Clerk

