

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, September 26, 2017 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

In accordance with the requirements of Utah Code Annotated Section 52-4-203, the County Clerk records in the minutes the names of all persons who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.

**WEBER COUNTY COMMISSIONERS:** James Ebert and Jim Harvey. Kerry W. Gibson was excused.

**OTHER STAFF PRESENT:** Ricky D. Hatch, County Clerk/Auditor, Christopher Crockett, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

**A. WELCOME** – Chair Ebert

**B. INVOCATION** – Ricky Hatch

**C. PLEDGE OF ALLEGIANCE** – Brooke Stewart

**D. THOUGHT OF THE DAY** – Commissioner Harvey

**E. CONSENT ITEMS:**

1. Warrants #1204-1215 and #421067-421353 in the amount of \$1,787,121.81.
2. Purchase orders in the amount of \$114,353.94.
3. Minutes for the meeting held on September 19, 2017.
4. New business licenses.
5. Retirement Agreement with Craig Tillet.

Commissioner Harvey moved to approve the consent items; Chair Ebert seconded.

Commissioner Harvey – aye; Chair Ebert – aye

**F. ACTION ITEMS:**

1. **CONTRACT WITH WEST HAVEN CITY FOR ANIMAL CONTROL SERVICES.**

Ashley Haslam, of County Animal Control, briefly presented this contract extension through 6/30/2019.

Commissioner Harvey moved to approve the contract extension with West Haven City for animal control services through 6/30/2019; Chair Ebert seconded.

Commissioner Harvey – aye; Chair Ebert – aye

2. **CONTRACT WITH COLLEEN COEBERGH TO TAKE OVER THE REPRESENTATION OF DOUGLAS LOVELL IN HIS CAPITAL APPEAL CASE.**

Bryan Baron, Deputy County Attorney, noted that the county's obligation to provide attorneys for indigent defendants. The county hired attorney Sam Newton who filed a motion to withdraw citing health reasons. The county reached out to all the defense attorneys in the State who belong to the Utah Criminal Defense Association and all criminal defense attorneys who have filed two or more appeals in the last two years. Ms. Coebergh, a well qualified applicant, was selected and agreed to a soft cap of \$100,000.

Commissioner Harvey moved to approve the contract with Colleen Coebergh to take over the representation of Douglas Lovell in his capital appeal case; Chair Ebert seconded.

Commissioner Harvey – aye; Chair Ebert – aye

3. **RESOLUTION CONSENTING TO THE USE OF THE WORD "COUNTY" IN THE NAME OF THE COMMUNITY REINVESTMENT AGENCY OF WEBER COUNTY - RESOLUTION 38-2017.**

Courtlan Erickson, Deputy County Attorney, noted the name change occurred on 9/12/2017. Today's action satisfies State Code authorizing the Community Reinvestment Agency to use "county" in its name.

Commissioner Harvey moved to adopt Resolution 38-2017 consenting to the use of the word "county" in the name of the Community Reinvestment Agency of Weber County; Chair Ebert seconded.

Commissioner Harvey – aye; Chair Ebert – aye

4. **LOCAL TRANSPORTATION FUNDING AGREEMENT TO ESTABLISH TERMS RELATED TO THE WEST HAVEN CITY 3300 SOUTH PROJECT.**

Brooke Stewart, of Weber edp, noted that UDOT is in the process of realigning this intersection at Midland Dr. This project will connect to that realignment and includes other improvements. WACOG recommended up to \$89,960 from corridor preservation funds and up to \$257,791 from sales tax. The latter is 50% less than the City's original request. The city will use its own funds and seek other funding.

Commissioner Harvey moved to approve the Local Transportation Funding Agreement to establish terms related to the West Haven City 3300 South Project; Chair Ebert seconded.

Commissioner Harvey – aye; Chair Ebert – aye

5. **RESOLUTION EXPANDING THE MISSION OF THE WEBER COUNTY CULTURAL ARTS COUNCIL AND RENAMING IT AS THE WEBER COUNTY CREATIVE ALLIANCE - RESOLUTION 39-2017.**

Jennifer Graham, with County Culture, Parks & Recreation, briefly presented this item.

Commissioner Harvey moved to adopt Resolution 39-2017 expanding the mission of the Weber County Cultural Arts Council and renaming it as the Weber County Creative Alliance; Chair Ebert seconded.  
Commissioner Harvey – aye; Chair Ebert – aye

6. **RESOLUTION APPOINTING MEMBERS TO WEBER COUNTY CREATIVE ALLIANCE - RESOLUTION 40-2017.**

Jennifer Graham, with County Culture, Parks & Recreation, presented the five names to begin this newly created advisory board and the commissioners drew names for the initial terms as follows: Emily Kunz (1-year); Thaine Fischer (2-year); Aydika James (3-year); Scott Sprenger (4-year); Scott Patria (4-year). Ms. Graham stated that once they grow the board, these will be 4-year staggered terms.

Commissioner Harvey moved to adopt Resolution 40-2017 appointing Emily Kunz (1-year); Thaine Fischer (2-year); Aydika James; (3-year); Scott Patria (4-year); and Scott Sprenger (4-year) to the Weber County Creative Alliance; Commissioner Harvey seconded.  
Commissioner Harvey – aye; Chair Ebert – aye

7. **CONTRACT WITH THE OGDEN CITY ATTORNEY'S OFFICE TO PROVIDE JUSTWARE TO THE OGDEN CITY ATTORNEY'S OFFICE THROUGH THE WEBER COUNTY'S SYSTEM.**

Christopher Crockett, Deputy County Attorney, stated that the county has a contract with Journal Technologies to use their JustWare software in the online case management of the county's criminal cases. Ogden City has expressed interest to use the same system and this will increase the number of licenses to access the JustWare system and the county will be reimbursed in administrative fees.

Commissioner Harvey moved to approve the contract with the Ogden City Attorney's Office to provide JustWare to the Ogden City Attorney's Office through the County's system; Commissioner Harvey seconded.  
Commissioner Harvey – aye; Chair Ebert – aye

8. **CONTRACT WITH JAGERSWALD MUSIKANTEN FOR ENTERTAINMENT AT 2018 HOF GERMANFEST.**

Cari Montgomery, with GSEC (Golden Spike Event Center), presented this contract.

Commissioner Harvey moved to approve the contract with Jagerswald Musikanten for entertainment at the 2018 Hof Germanfest; Chair Ebert seconded.  
Commissioner Harvey – aye; Chair Ebert – aye

9. **REQUEST FOR CONTRACT WITH TAYLOR AUDIO FOR AUDIO SERVICES AT WEBER COUNTY COORDINATING COUNCIL BLOCK PARTY.**

This item was held.

**G. PUBLIC COMMENTS:**

Lori Brinkerhoff, Hooper City Council member, thanked the Commission for the recent use of county inmates for Hooper Tomato Days.

**H. ADJOURN**

Commissioner Harvey moved to adjourn at 10:26 a.m.; Commissioner Harvey seconded.  
Commissioner Harvey – aye; Chair Ebert – aye

Attest:

\_\_\_\_\_  
James Ebert, Chair  
Weber County Commission

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

**CONTRACT FOR APPELLATE DEFENSE COUNSEL SERVICES  
FOR AN INDIGENT DEFENDANT**

9-26-2017

THIS CONTRACT is made and entered into by and between Weber County, a body corporate, politic and political subdivision of the State of Utah, hereinafter "COUNTY," and Colleen Coebergh, hereinafter "APPELLATE COUNSEL."

**RECITALS**

**WHEREAS**, Douglas Lovell (hereinafter "defendant"), an inmate in the Utah State Prison, was charged with the commission of the offense of Capital Murder; and

**WHEREAS**, the Court found the defendant to be indigent and entitled to the assignment of defense counsel pursuant to § 77-32-1, *Utah Code Ann.*, at public expense; and

**WHEREAS**, the defendant was convicted on March 18, 2015, by a duly seated jury of the offense of one count of Aggravated Murder, Aggravated Sexual Assault, Forcible Sodomy, Conspiracy to Commit Murder with William Wiswell, conspiracy to Commit Murder with Tom Peters and Witness Tampering and was also given a sentence of death by the jury on April 1, 2015; and

**WHEREAS**, the defendant has appealed his conviction and under the provisions of Section 77-32-301(5) *Utah Code Ann.*, COUNTY is obligated to provide the services of legal appellate counsel for the first appeal of right of an indigent defendant in a criminal case; and

**WHEREAS**, APPELLATE COUNSEL is an attorney in good standing with the Utah State Bar Association and qualified to represent indigent defendants in criminal matters in the State of Utah and is qualified to be appointed as defense APPELLATE COUNSEL pursuant to Rule 38B of the Rules of Appellate Procedure and Rule 8 of the Utah rules of Criminal Procedure; and

**WHEREAS**, the parties have negotiated reasonable compensation for the services of APPELLATE COUNSEL to represent the defendant in this appeal, and it is the intent of the parties that the terms of that compensation be set forth in this contract;

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

**SECTION ONE  
SERVICES**

APPELLATE COUNSEL shall represent the defendant, Douglas Lovell, in Criminal Case No. 921900407 before the Utah Supreme Court in the first appeal of right of the conviction of the offenses of Aggravated Murder, a capital offense. Discretionary appeals, discretionary writ

proceedings, writs of certiorari to the Utah Supreme Court, and writs of certiorari to the United States Supreme Court are not covered by this contract.

APPELLATE COUNSEL may be assisted in performing this work by Julie George, an attorney that is licensed and in good standing with the Utah State Bar. Ms. George will be compensated by APPELLATE COUNSEL out of the funds provided to APPELLATE COUNSEL at a rate not to exceed \$125 per hour.

## **SECTION TWO COMPENSATION**

- A. The total compensation to be paid to APPELLATE COUNSEL in this case shall be at the rate of \$125 per hour up to the amount of \$100,000.
- B. The COUNTY recognizes the possibility of unforeseeable issues arising in this case which will require additional time of APPELLATE COUNSEL, and the COUNTY wants to ensure that the case is adequately funded even in the event of those unforeseeable issues arising; therefore, the \$100,000 limit may be exceeded upon showing of good cause to the COUNTY. In order to show good cause, APPELLATE COUNSEL will submit in writing the reasons justifying good cause to the Weber County Commissioners who will determine if there is good cause and in what amount to increase APPELLATE COUNSEL's compensation.
- C. APPELLATE COUNSEL shall be paid a \$10,000 retainer up front upon execution of the contract. Counsel will enter appearance with the trial court as appellate counsel and with the Utah Supreme Court upon execution of the contract and payment of the \$10,000.00 initial payment. Once the \$10,000 has been exhausted, and invoices have been submitted to the COUNTY detailing how it was exhausted, APPELLATE COUNSEL shall submit statements sufficiently itemizing and describing the services performed for which compensation is claimed. The parties agree that the billing format submitted by Ms. Coebergh in her bid proposal is acceptable. APPELLATE COUNSEL agrees to provide such other information as may be reasonably required by the COUNTY in order to properly review, evaluate, and process the statements. The County agrees to pay invoices no later than thirty (30) days following submission by any reasonable method.
- D. If the appeal is resolved, withdrawn, or rendered moot for whatever reason, COUNTY shall be obligated to pay and APPELLATE COUNSEL entitled to receive only those fees and expenses due up to and at that point.
- E. In the event APPELLATE COUNSEL receives payment from another source as payment of fees in representing the defendant in this appeal, APPELLATE COUNSEL shall reimburse COUNTY for any consideration paid under this contract to the extent of such payments.

**SECTION THREE  
REIMBURSEMENT OF EXPENSES**

The COUNTY shall reimburse APPELLATE COUNSEL for the expenses of printing or typewriting briefs, and for travel at the State of Utah rates. The COUNTY will pay the cost of any transcripts or depositions directly to the court reporter. The COUNTY shall also pay expenses, exclusive of overhead and extraordinary expense not approved by the court in accordance with §77-32-305.5, *Utah Code Ann.*, reasonably incurred in hiring investigators, mental health or other experts, such as may be necessary if a Rule 23B motion is required. Investigators will be paid a maximum of \$60 per hour and mitigations specialist will be paid a maximum of \$75 per hour. The County agrees to pay such individuals directly. “Extraordinary expense” means the collective expense which exceeds Five Hundred Dollars (\$500) for any particular service or item such as experts, investigators, surveys, or demonstrative evidence.

**SECTION FOUR  
WITHDRAWAL OR DISMISSAL**

In the event APPELLATE COUNSEL is unable to undertake or continue the representation of the defendant or in the event of the court-approved dismissal or withdrawal of APPELLATE COUNSEL, compensation shall be paid only to the date of that dismissal or withdrawal.

**SECTION FIVE  
INDEPENDENT CONTRACTOR**

APPELLATE COUNSEL is an independent contractor providing professional legal services and is not an employee of the COUNTY and is therefore not entitled to any of the benefits of employment such as, but not limited to, retirement, health, or workers compensation coverage.

**SECTION SIX  
INDEMNIFICATION AND INSURANCE**

- A. APPELLATE COUNSEL shall indemnify and save the COUNTY and its 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 APPELLATE COUNSEL.
- B. APPELLATE COUNSEL shall maintain such insurance as will cover APPELLATE COUNSEL 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. APPELLATE COUNSEL shall provide the COUNTY with appropriate certificates of insurance as evidence of that coverage upon the execution of this contract. APPELLATE COUNSEL agrees not to cancel such insurance during the pendency of this contract.

**SECTION SEVEN  
RECORDS AND REPORTS**

APPELLATE COUNSEL shall maintain such records and accounts to assure a proper accounting for all compensation and reimbursements paid to APPELLATE COUNSEL under this contract. APPELLATE COUNSEL shall, upon request, make those records available to the COUNTY for audit purposes and shall maintain those records for a period of three (3) years or such other longer period as may be required by law after the expiration of this contract. Any attorney/client privileged information is specifically excluded from the terms of this disclosure provision, and will not be disclosed.

**SECTION EIGHT  
NOTICE**

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

Colleen Coebergh  
29 South State Street, #7  
Salt Lake City, UT 84111  
Ckc4thedefense@msn.com

Weber County Clerk/Auditor's Office  
2380 Washington Blvd., Ste 320  
Ogden, UT 84401

with a copy to:

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

**SECTION NINE  
MISCELLANEOUS**

- A. APPELLATE COUNSEL certifies that she is a member in good standing with the Utah State Bar Association and that she is competent in criminal law and qualified pursuant to Rule 38B of the Rules of Appellate Procedure and Rule 8 of the Utah Rules of Criminal Procedure.
- B. APPELLATE COUNSEL agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association, and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, Utah Code Ann. (1953, as amended).
- C. APPELLATE COUNSEL agrees not to carry a workload that, by reason of its excessive

size, interferes with the rendering of quality representation, endangers the defendant's interest in any respect, or may lead to the breach of professional obligations. Workload includes not only the number of cases, but also includes the seriousness of the cases, the number of charges involved in individual cases, and the time required to adequately represent each client.

- D. APPELLATE COUNSEL agrees to maintain professional malpractice insurance with limits of \$100,000 per person and an aggregate of \$300,000 and provide to County evidence of the insurance.
- E. APPELLATE COUNSEL may not assign this contract or the performance under it, in whole or in part, without the prior written approval of COUNTY except that Julie George is authorized to assist as mentioned above.
- F. APPELLATE COUNSEL agrees to keep abreast of all current legal trends and to maintain sufficient continuing professional education credits during the period of this agreement.
- G. APPELLATE COUNSEL or COUNTY may terminate this Agreement without cause upon sixty days written notice to the other Party.
- H. This Agreement may be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of APPELLATE COUNSEL's license to practice law in the State of Utah, a breach of this Agreement, or behavior which brings disrepute to other contract attorneys or to COUNTY.
- I. In the case of a breach or violation of a term of this Agreement, APPELLATE COUNSEL shall be given seven calendar days to cure the breach or violation. Failure of the APPELLATE COUNSEL to cure the breach or violation within the specified period shall result in termination of this Agreement.
- J. 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.
- K. This Agreement can be changed, modified or amended only by written agreement of the parties hereto.
- L. APPELLATE COUNSEL is an independent contractor and is responsible to pay any and all taxes and fees which may result from the compensation paid to APPELLATE COUNSEL pursuant to this Agreement.
- M. This Agreement shall constitute the entire agreement between the parties and by prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

N. This Agreement shall be governed by the laws of the State of Utah.

**IN WITNESS WHEREOF** this contract has been signed in triplicate by the parties, each of which shall be deemed an original, on the 26 day of September, 2017.

APPELLATE COUNSEL

By *Robert H. Fairbank*  
Name: \_\_\_\_\_ Title: *Attorney at Law*

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

By *James Ebert*  
James Ebert, Chair

ATTEST:

*Ricky Hatch*  
Ricky Hatch, CPA  
Weber County Clerk/Auditor