

**MINUTES**  
**WEBER COUNTY COMMISSION**

Tuesday, August 7, 2018 - 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 "Jim" H. Harvey, James Ebert and Scott K. Jenkins.

**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 Harvey
- B. INVOCATION** – Christopher Crockett
- C. PLEDGE OF ALLEGIANCE** – Courtlan Erickson
- D. THOUGHT OF THE DAY** – Commissioner Jenkins

**E. PUBLIC COMMENTS:** None.

**F. PRESENTATIONS:**

**1. PRESENTATION OF SEAL OF SERVICE AWARD TO DR. KAY HAW OF WEBER COUNTY SHERIFF'S OFFICE.**

Chair Harvey stated that this award is given to outstanding employees in Weber County and Dr. does her job out of love, and he expressed thanks. Chief Jason Talbot, of the County Sheriff's Office, stated that it takes a special person to work in a jail and the love Dr. Haw has for the people there is unbelievable. Commissioner Ebert noted the tremendous job and challenges at the Sheriff's Office, and Dr. Haw responded to his questions including that she and her staff see several hundred inmates/month, that about 60% of that population is on medication, dispensed at least twice/day, etc. Her biggest staffing challenge is the nursing shortage as many leave due to salary. Commissioner Ebert expressed thanks for her dedication and taking on those specific challenges and choosing to work with Weber County in corrections, a difficult assignment, when she could work elsewhere. She was presented with a plaque and \$100 for her exemplary work.

**2. PRESENTATION OF AN UPDATE ON FIRE LEVEL ACTIVITY AND FIRE CONDITIONS.**

Weber Fire District Captain Rick Cooper reported on the current fire levels within the District and nationally. He reiterated that we are in advanced fire behavior and above fire potential level activity throughout the entire State for low and high elevations, which will only worsen until there is substantial rain, which is not anticipated for another 1½ months, and dry lightning is expected soon. This is a huge concern for fire management, not only on the local level, but also state and federal levels. The county and its public information officer have been proactive and getting the message out to the public about the restrictions in order to help minimize fire behavior. County-wide the resources are better prepared than five years ago when Captain Cooper took over and agencies have built a stronger rapport with each other and better response times. The worse threat are the minimal resources and field conditions for wildland and urban interfaces areas. He responded to the commissioners' questions stating that there were 19 grassfires from 10 p.m.-2 a.m. on July 4<sup>th</sup> and that Box Elder County's fires are affecting Weber County's air quality.

**3. PRESENTATION OF THE 2<sup>ND</sup> QUARTER 2018 FINANCIAL REPORT.**

Scott Parke, County Comptroller, stated that the expenditures are where expected. The county is conservative with revenue estimates. Last year 4% sales tax growth was projected and the county is on track to experience about 6.8% growth. The 2018 property tax growth rate was estimated at 1.75% and it has been growing over 4%, although a portion of that is due to an RDA that came off a year early (making the actual growth rate closer to 3.3%). The county is anticipating about \$700,000 of additional revenue in 2018. Mr. Parke said that the county is in good shape but still needs to be conservative because of unknown general economy impacts.

**G. CONSENT ITEMS:**

- 1. Warrants #1511-1516 and #430667-430887 in the amount of \$1,521,873.05.
- 2. Purchase orders in the amount of \$78,730.66.
- 3. Minutes for meetings held on July 31, 2018.
- 4. New business licenses.
- 5. Set public hearing for August 14, 2018, 10 a.m., regarding a request to vacate a portion of lot 1 of the Pelican Bluff Subdivision.
- 6. Addendum to a contract with Century Link agreeing to a new price structure that lowers the price.  
Commissioner Jenkins moved to approve the consent items; Commissioner Ebert seconded.  
Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

## H. ACTION ITEMS:

### 1. MEMORANDUM OF UNDERSTANDING WITH OGDEN CITY FOR DISTRIBUTING JAG GRANT FUNDS.

Steffani Ebert, of the County Sheriff's Office, stated that the federal government had a hold on these funds for the past year which impacted the past two years' grants. Ogden City submits an application on behalf of the county, which is treated as a disparate agency. The total grant for the year is about \$58,997, of which Weber County will receive \$5,900 and Ogden \$53,097. The county will use the funds to create a safe exchange zone in the Sheriff's Complex parking lot where exchange of children of child custody issues, online transaction exchanges, and other things of that nature can occur.

Commissioner Jenkins moved to approve the Memorandum of Understanding with Ogden City for the purpose of distributing JAG grant funds; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

### 2. RESOLUTION AUTHORIZING THE FILING OF CROSS-APPEALS FOR 2018 CENTRALLY ASSESSED PROPERTIES – RESOLUTION 38-2018.

Courtlan Erickson, Deputy County Attorney, outlined State timelines for submission of these appeals. The county has 60 days to file a cross-appeal, if it wants to become a party to these appeals. Since June six additional taxpayers have filed: Century Link, AT&T Inc., Pioneer Pipeline Company, Compass Minerals Ogden Inc., Union Pacific Railroad Company, and Integra Telecom.

Commissioner Jenkins moved to adopt Resolution 38-2018 authorizing the filing of cross-appeals for 2018 centrally assessed properties for Century Link, AT&T Inc., Pioneer Pipeline Company, Compass Minerals Ogden Inc., Union Pacific Railroad Company, and Integra Telecom; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

### 3. CONTRACTS WITH THE FOLLOWING ATTORNEYS TO PROVIDE INDIGENT DEFENSE COUNSEL ON CAPITAL CASES: RANDALL MARSHALL AND JAMES RETALLICK, MARTIN GRAVIS AND JASON WIDDISON.

Bryan Baron, Deputy County Attorney, stated that the county has an obligation to provide indigent defense counsel on capital cases, which have specific rules, including hiring two attorneys per defendant. This is for the Miller Eric Costello and Brenda Emile capital cases.

Commissioner Jenkins moved to approve contracts with Randall Marshall and James Retallick, and Martin Gravis and Jason Widdison, attorneys to provide indigent defense counsel on the capital cases; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

## I. PUBLIC HEARING:

### 1.

Commissioner Ebert moved to adjourn the public meeting and convene the public hearing; Commissioner Jenkins seconded.

Commissioner Ebert – aye; Commissioner Jenkins; Chair Harvey – aye

### 2. PUBLIC HEARING REGARDING A PROPOSAL TO AMEND THE FOLLOWING WEBER COUNTY CODE: §102-1, §104-[ALL], §106-2, & §108-[ALL], TO MAKE DECISIONS FOR PLANNED RESIDENTIAL UNIT DEVELOPMENTS (PRUD) LEGISLATIVE AND NOT ADMINISTRATIVE BY CREATING A PLANNED RESIDENTIAL UNIT OVERLAY ZONE AND REPEALING THE PLANNED RESIDENTIAL UNIT ENTITLEMENT & ADMINISTRATIVE CRITERIA FROM EACH ZONE AND THE STANDARDS CHAPTER; AND TO ADD FLEXIBLE LOT WIDTH & LOT AREA STANDARDS INTO THE SUBDIVISION CODE IN A MANNER THAT ALLOWS FLEXIBILITY & DIVERSITY OF LOT TYPES IN A SUBDIVISION WHILE NOT INCREASING OVERALL DWELLING UNIT DENSITY.

Charles Ewert, of the County Planning Division, noted that up until this point, the PRUD code is a list of standards that go with a PRUD decision. PRUDs are listed in many zones as being an allowed development-type and as such a landowner has the right to be approved if they comply with the code standards. Current PRUD code states that any standard can be waived or modified but gives no rules/criteria for doing so. Last year an application was received to amend this code to reduce the amount of single-family residential dwellings that could come with a PRUD from 24 to 8 under certain circumstances, and it was put on hold for review. The Ogden Valley Planning Commission did not wish to make changes to the PRUD code because there are issues with it and they did not wish to expand the problems; the County Commission discussed this item and had similar concerns, which is that the Code is way too flexible/too open-ended. The code is written with what appears as unlimited legislative discretion and decision making, but it is not a legislative decision, rather it is an administrative decision, and it would have to be approved. Currently it is a complicated and convoluted situation without predictable outcomes.

Commissioner Ebert noted that because it is so flexible, the decision comes from the Planning Commission, which came from the staff recommendations, and puts staff and the Planning Commission in an untenable situation where they were trying to balance the wants/needs of the Commission and community against the developer, creating at times an indefensible situation. A more structured code is needed so staff will not have to make arbitrary decisions.

Mr. Ewert offered two options: a) to amend the code by reinforcing it with objective standards or b) staff's recommendation to change the PRUD to a legislative/zoning decision as opposed to an administrative approval by making the PRUD an overlay zone. The applicant's request from last year has been incorporated into this amendment. It also includes the Planning Commission's recommendations, which rewrites the PRUD rules to be legislative. Mr. Ewert reviewed major points of this proposal, noting that he had worked with the County Attorney's Office and they have suggested a few minor non policy-related changes, and he requested that this be the first reading for an opportunity to make the necessary changes. Mr. Ewert addressed the commissioners' questions, including that both Planning Commissions recommended removing the section about lot averaging from the PRUD code because that undermines the cluster code that was just adopted, and they prefer to see that prevail. Lot averaging can be placed in the Subdivision Code and still accomplish some flexibility and not really impact the processing time or density. Commissioner Ebert noted that the first meeting on the item is administrative, people show up upset about how an incoming PRUD is set up, but in that meeting the commissioners cannot override the administrative section of the ordinance if the requirements are met. According to State Code, a conditional use permit shall be approved, and there is very limited ability to deny it.

3. Public Comments: Eric Householder, a developer with the Householder Group, likes flexibility but is not opposed to anything in this amendment and also is not opposed to establishing a framework for the process. Bob Favero, Weber County property owner, would like flexibility on lot size and encouraged having lot averaging in this code. He'd submitted an application under the Cluster Subdivision Ordinance prior to the current one to develop land in the Taylor area. The former code allowed smaller open spaces but it changed to require all open space in one area and all homes in another. Because of this, he changed his approach to go to acre lots and not use the current Cluster Subdivision rules, in order to use corners more effectively. He believes that the open space in the future will turn into 10-acre weed patches as farming does not continue with farmers' heirs. He said that secondary water is a huge issue not addressed in any of this conversation, and it will run out. Commissioner Jenkins noted that the water districts require that developers have enough culinary water and a secondary system or they will not connect them in and Mr. Favero said that this is not working; the extraction amount by the water companies is way over what Weber Basin's recommendations are for what is needed to provide the service and this will dry up a lot of areas. Commissioner Jenkins understands this. When he was in the legislature he tried for many years to correct the 1:1 ratio they use because the agriculture water is in open ditches, etc., and should be treated differently from culinary water, but in the end it became difficult to prove. He said that the amount of money spent for secondary water is many times over what is paid for the shares that one owns.

4.

Commissioner Ebert moved to adjourn the public hearing and reconvene the public meeting; Commissioner Jenkins seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

5. **REQUEST FOR ACTION ON PUBLIC HEARING: I.2-AMENDING THE FOLLOWING PARTS OF THE WEBER COUNTY CODE: §102-1, §104-[ALL], §106-2, AND §108-[ALL].**

Commissioner Ebert moved to table this item for two weeks to have more time for review; Commissioner Jenkins seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

**J. COMMISSIONER COMMENTS:** None.

**K. ADJOURN**

Commissioner Jenkins moved to adjourn at 11:39 a.m.; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Jenkins – aye; Chair Harvey – aye

Attest:

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James "Jim" H. Harvey, Chair  
Weber County Commission

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Ricky D. Hatch, CPA  
Weber County Clerk/Auditor

8/7/2018

## 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 James M. Retallick and Randall L. Marshall ("Defenders").

### RECITALS

**WHEREAS**, Miller Eric Costello ("Defendant") was charged in criminal case 171901546 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**, Randall L. Marshall is an attorney duly licensed to practice law in the State of Utah and is 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**, Randall L. Marshall, as lead counsel, verifies by signing this Agreement that he is 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**, Randall L. Marshall, as lead counsel, has selected James M. Retallick to be co-counsel in this case. By signing this Agreement, James M. Retallick verifies that 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:

RM

CS



**SECTION ONE  
SERVICES**

- A. Defenders shall provide legal service and representation to Defendant in all phases and proceedings in criminal case 171901546 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 agrees to promptly notify the court of any changes with regard to the indigent status of Defendant, which changes would affect the Defendant's qualifying for court-appointed counsel.
- F. The Defenders agree to be supervised by an attorney who has been hired by the County to act as the coordinating attorney for indigent defense attorneys in Weber County ("Coordinating Attorney"). Defenders shall, with reasonable promptness, inform the Coordinating Attorney 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

*RM*  
*Abu*

- (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 \$170 per hour for the Rule 8 qualified lead attorney and \$140 per hour for second chair, whether Rule 8 qualified or not. Defenders may begin billing the County for work performed on this case as of July 10, 2018. Payments for both first and second chair may not exceed \$100,000 (combined total) if the death penalty is sought by the prosecution or up to a maximum of \$70,000 (combined total) if the death penalty is withdrawn by the prosecution before the commencement of trial unless the Defenders can show exceptional circumstances as required by 2E.
- 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, paralegal 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, his/her 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 paragraphs 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.

**SECTION THREE**  
**REIMBURSEMENT OF EXPENSES**

- A. Subject to the provisions of this Section, the County shall reimburse the Defenders for the reasonable and necessary costs of defense, including expenses for:
- (1) Investigator fees, other than mitigation investigations, not to exceed Sixty Dollars (\$60) per hour and not to exceed a total payment of Seven Thousand Five Hundred Dollars (\$7,500).
  - (2) Mitigation investigator fees, not to exceed Seventy-Five Dollars (\$75) per hour and not to exceed a total payment of Ten Thousand Dollars (\$10,000). 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 court;
  - (6) Fees for mental and physical examinations, as approved by the court;
  - (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. For the purposes of this Agreement, with the exception of paragraphs 3A(1) and 3A(2), the above expenses shall be deemed to be extraordinary expenses as defined in Section 77-32-305.5, Utah Code Ann. and subject to approval in the manner provided in that statute. The caps stated in paragraph 3A(1) and 3A(2) 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 expense is incurred and before a statement for reimbursement for those extraordinary expenses may be submitted to the County.
- C. Defenders shall submit their statements for expense reimbursements, including those extraordinary expenses approved by the Court, to the County together with supporting documentation and such statements shall be processed with reasonable diligence.
- 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.

*RM*

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**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 any statements submitted by Defenders under this Agreement with reasonable diligence.

**SECTION FIVE  
INDEPENDENT CO-COUNSEL**

- 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.

**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. If a new lead counsel selects the appointment of new co-counsel pursuant to Subsection 6D(1), the current co-counsel shall be compensated for services as provided above before the approval of withdrawal is entered by the trial court.
- F. 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 shall provide sufficient documentation to the County to verify that Randall L. Marshall 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 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 Agreement by the Defenders.

- B. The Defenders shall maintain such insurance as will cover both the Defenders and the County from any and all claims for malpractice, property damages, injuries, or death 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 Two Hundred Thousand Dollars (\$250,000) per claim and Five Hundred Thousand Dollars (\$500,000) aggregate.

#### 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:

James M. Retallick  
Attorney at Law  
3440 N 2400 E  
Layton, UT 84040  
(801) 627-3303

Randall L. Marshall  
Attorney at Law  
2650 Washington Blvd., Suite 202  
Ogden, UT 84401  
(801) 394-2673

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

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



with a copy to:

Civil Division of the County Attorney's Office  
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 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, e.g. if Defendant is determined to no longer be indigent.
- B. The County may terminate this Agreement at any time upon verification that the Defenders are no longer attorneys duly licensed to practice law in the State of Utah or if Randall L. Marshall is not or 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.

**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.
- B. The Defenders shall submit to the Coordinating Attorney a report each month during the term of this Agreement informing the Coordinating Attorney of the status of the criminal proceedings.
- C. A copy of all motions, memoranda, affidavits and supporting documentation shall be provided to the Coordinating Attorney at the same time as those documents are submitted to the court.



IN WITNESS WHEREOF this Agreement has been signed by the parties, on this 7<sup>th</sup> day of August, 2018.

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

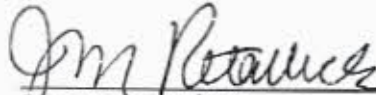
By   
James "Jim" Harvey, Chair


Commissioner Harvey voted   
Commissioner Ebert voted   
Commissioner Jenkins voted

ATTEST:

  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

DEFENDERS

  
James M. Retallick  
Date 8/2/18

  
Randall L. Marshall  
Date 8/3/2018

COORDINATING ATTORNEY

By \_\_\_\_\_  
Michael D. Bouwhuis  
Date \_\_\_\_\_

8/7/2018

## 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 Martin V. Gravis and Jason R. Widdison ("Defenders").

### RECITALS

**WHEREAS**, Brenda Emile ("Defendant") was charged in criminal case 171901547 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**, Martin V. Gravis is an attorney duly licensed to practice law in the State of Utah and is 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**, Martin V. Gravis, as lead counsel, verifies by signing this Agreement that he is 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**, Martin V. Gravis, as lead counsel, has selected Jason R. Widdison to be co-counsel in this case. By signing this Agreement, Jason R. Widdison verifies that 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 in criminal case 171901546 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 agrees to promptly notify the court of any changes with regard to the indigent status of Defendant, which changes would affect the Defendant's qualifying for court-appointed counsel.
- F. The Defenders agree to be supervised by an attorney who has been hired by the County to act as the coordinating attorney for indigent defense attorneys in Weber County ("Coordinating Attorney"). Defenders shall, with reasonable promptness, inform the Coordinating Attorney 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 \$170 per hour for the Rule 8 qualified lead attorney and \$140 per hour for second chair, whether Rule 8 qualified or not. Defenders may begin billing the County for work performed on this case as of July 10, 2018. Payments for both first and second chair may not exceed \$100,000 (combined total) if the death penalty is sought by the prosecution or up to a maximum of \$70,000 (combined total) if the death penalty is withdrawn by the prosecution before the commencement of trial unless the Defenders can show exceptional circumstances as required by 2E.
- 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, paralegal 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, his/her 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 paragraphs 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.

### SECTION THREE REIMBURSEMENT OF EXPENSES

- A. Subject to the provisions of this Section, the County shall reimburse the Defenders for the reasonable and necessary costs of defense, including expenses for:
- (1) Investigator fees, other than mitigation investigations, not to exceed Sixty Dollars (\$60) per hour and not to exceed a total payment of Seven Thousand Five Hundred Dollars (\$7,500).
  - (2) Mitigation investigator fees, not to exceed Seventy-Five Dollars (\$75) per hour and not to exceed a total payment of Ten Thousand Dollars (\$10,000). 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 court;
  - (6) Fees for mental and physical examinations, as approved by the court;
  - (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. For the purposes of this Agreement, with the exception of paragraphs 3A(1) and 3A(2), the above expenses shall be deemed to be extraordinary expenses as defined in Section 77-32-305.5, Utah Code Ann. and subject to approval in the manner provided in that statute. The caps stated in paragraph 3A(1) and 3A(2) 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 expense is incurred and before a statement for reimbursement for those extraordinary expenses may be submitted to the County.
- C. Defenders shall submit their statements for expense reimbursements, including those extraordinary expenses approved by the Court, to the County together with supporting documentation and such statements shall be processed with reasonable diligence.
- 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 any statements submitted by Defenders under this Agreement with reasonable diligence.

**SECTION FIVE  
INDEPENDENT CO-COUNSEL**

- 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.

**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. If a new lead counsel selects the appointment of new co-counsel pursuant to Subsection 6D(1), the current co-counsel shall be compensated for services as provided above before the approval of withdrawal is entered by the trial court.
- F. 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 shall provide sufficient documentation to the County to verify that Martin V. Gravis 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 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 Agreement by the Defenders.

- B. The Defenders shall maintain such insurance as will cover both the Defenders and the County from any and all claims for malpractice, property damages, injuries, or death 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 Two Hundred Thousand Dollars (\$250,000) per claim and Five Hundred Thousand Dollars (\$500,000) aggregate.

#### **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:

Martin V. Gravis  
Attorney at Law  
2568 Washington Blvd.  
Ogden, UT 84401  
(801) 392-8231

Jason R. Widdison  
Attorney at Law  
470 24<sup>th</sup> Street, Ste. 202  
Ogden, UT 84401  
(385) 313-0292

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

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

with a copy to:

Civil Division of the County Attorney's Office  
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**

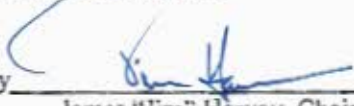
- A. The County, upon reasonable notice, may terminate this Agreement in whole or in part in the event that the County no longer has a statutory obligation to provide legal services to Defendant, e.g. if Defendant is determined to no longer be indigent.
- B. The County may terminate this Agreement at any time upon verification that the Defenders are no longer attorneys duly licensed to practice law in the State of Utah or if Martin V. Gravis is not or 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.

**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.
- B. The Defenders shall submit to the Coordinating Attorney a report each month during the term of this Agreement informing the Coordinating Attorney of the status of the criminal proceedings.
- C. A copy of all motions, memoranda, affidavits and supporting documentation shall be provided to the Coordinating Attorney at the same time as those documents are submitted to the court.

IN WITNESS WHEREOF this Agreement has been signed by the parties, on this 7<sup>th</sup> day of August, 2018.


BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

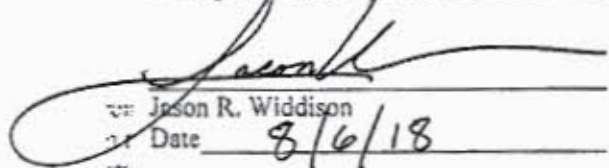
By   
James "Jim" Harvey, Chair

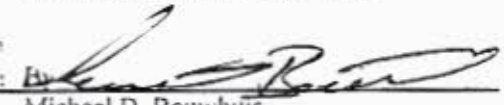
- dr Commissioner Harvey voted
- Commissioner Ebert voted
- Commissioner Jenkins voted

ATTEST:

  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

DEFENDERS  
  
Martin V. Gravis  
Date 8/6/2018

  
Jason R. Widdison  
Date 8/6/18

COORDINATING ATTORNEY  
  
Michael D. Bouwhuis  
Date 8/6/18