

APPELLATE PUBLIC DEFENDER CONTRACT 2014

THIS AGREEMENT is made effective this 1st day of January, 2014, by and between WASHINGTON COUNTY, a political subdivision of the State of Utah, hereinafter referred to as COUNTY, and GARY G. KUHLMANN, an attorney licensed by the Utah State Bar Association, hereinafter referred to as DEFENDER.

A. THE COUNTY'S AGREEMENTS:

1. In exchange for DEFENDER's performance of the services outlined herein, the COUNTY agrees to pay DEFENDER the contract price of Thirty Four Thousand Three Hundred Fifty Six Dollars (\$46,356.00), payable in monthly payments of Three Thousand Eight Hundred Sixty Three Dollars (\$3,863.00).

2. The COUNTY agrees to reimburse DEFENDER for (1) costs of the original and one copy of transcripts necessary to prosecute appeals of qualified indigent persons; and (2) costs of printing and binding briefs on the first appeal of right. DEFENDER shall be responsible for paying all other expenses necessary to perform the required services, including but not limited to travel costs, witness fees, expert witness expenses, investigation, research, additional copies, typewriting expenses, paralegal assistance, and legal clerks, etc., such costs being expressly included in the contract price.

3. The COUNTY agrees that DEFENDER may engage in the private practice of law so long as such private practice does not impair DEFENDER's ability to provide zealous and loyal representation to clients represented by DEFENDER pursuant to the terms of this AGREEMENT.

B. THE DEFENDER'S AGREEMENTS:

1. DEFENDER agrees to continue and conclude representation of those indigent criminal defendants whose first appeals as of right are currently pending. DEFENDER's duties specifically include:

- a. providing timely and competent legal advice and representation at all stages of the first appeals of right except for other and subsequent discretionary appeals or discretionary writ proceedings;
- b. providing the investigatory resources necessary for a complete defense; and
- c. assuring undivided loyalty to the client.

2. DEFENDER agrees not to act on a case as a public defender until an applicable court has made an order of appointment and a determination of indigency.

3. DEFENDER agrees to bear all expenses related to providing the services rendered under this Agreement except those specifically outlined in this AGREEMENT.

4. Before commencing work under this AGREEMENT, DEFENDER agrees to file a Certificate of Insurance with the Washington County Clerk, showing that a valid worker's compensation policy exists and provides coverage for DEFENDER and any employees or subcontractors of DEFENDER.

5. DEFENDER agrees to carry and maintain at DEFENDER's sole cost and expense for the full term of this Agreement malpractice insurance with limits of not less than two hundred fifty thousand dollars (\$250,000.00) per occurrence.

6. DEFENDER agrees to maintain a current active license with the Utah State Bar and to comply with the Utah Supreme Court Rules of Professional Practice, including the Rules of Professional Conduct and the Rules of Lawyer Discipline and Disability.

7. DEFENDER agrees to abide by all laws of the United States, the State of Utah and Washington County and acknowledges that violation of any such law (except for minor traffic violations that do not involve alcohol or drugs) constitutes cause for termination of this AGREEMENT.

8. DEFENDER agrees that DEFENDER and DEFENDER's associates, agents, or subcontractors will comply with Title VII of the Civil Rights Act of 1964, as amended, and that no person shall on the grounds of race, color, religion, sex or national origin be excluded from participation in, be denied the benefits of this AGREEMENT, or be otherwise subjected to discrimination under this AGREEMENT.

9. DEFENDER agrees to continue to represent those indigent criminal defendants whose first appeals as of right are currently pending as of the date of this AGREEMENT for the total consideration being paid by the COUNTY pursuant to this AGREEMENT (\$46,356.00), even if said representation occurs after the thirty thousand dollars (\$46,356.00) has been paid to DEFENDER.

C. MUTUAL TERMS:

1. If DEFENDER is of the opinion that a conflict exists between two or more defendants assigned to DEFENDER under this AGREEMENT, or if a conflict of interest exists that would preclude DEFENDER from rendering the undivided loyalty required by law and this AGREEMENT, DEFENDER will, after notice to the Washington County Attorney, present the relevant facts and circumstances, as far as practical without disclosing confidences, to the court having jurisdiction over the pending case for determination as to whether such a conflict

exists. The Court's determination regarding the existence of a conflict binds both COUNTY and DEFENDER for the purposes of this AGREEMENT.

If the conflict is the result of DEFENDER's private representation of an individual, DEFENDER is responsible for providing replacement counsel and all costs related thereto. In all other circumstances, the COUNTY will provide replacement counsel.

2. The parties agree that the term of this AGREEMENT shall not terminate, unless for cause as set forth below, until DEFENDER has concluded the pending cases DEFENDER is currently defending.

3. The parties agree that this AGREEMENT may be terminated for cause upon providing seven (7) calendar days written notice. The parties agree that failure to comply with any term of this AGREEMENT constitutes "cause" and is grounds to terminate the AGREEMENT. The parties agree that a previous failure to enforce any provision of this AGREEMENT does not constitute a waiver of the right to subsequently enforce that provision or any other provision.

4. In the event the AGREEMENT is terminated for cause by the COUNTY, all future payments owed by COUNTY to DEFENDER at the time of termination shall extinguish. In addition, DEFENDER shall pay COUNTY all reasonable expenses incurred by the COUNTY in obtaining legal representation and the legal defense of all pending appeals that DEFENDER was defending as of the date of the termination of the AGREEMENT.

5. The parties agree that DEFENDER is an independent contractor and neither DEFENDER nor any agent, employee, or servant of DEFENDER shall be deemed an agent, employee or servant of the COUNTY. This AGREEMENT is for professional services and DEFENDER is not an employee of COUNTY and is not entitled to the benefits provided by the COUNTY to its employees. The DEFENDER solely controls the method and manner of delivering the services required by this AGREEMENT.

6. The parties agree to indemnify and hold one another harmless from any claims, suits, causes of action, damages, or costs that may arise as a result of the negligent or intentional acts of themselves or their agents.

7. The AGREEMENT shall not, nor shall any interest in the AGREEMENT, be assignable, as to the interest of the DEFENDER, without the prior written consent of the COUNTY.

8. The parties agree that any disputes regarding this AGREEMENT shall first be submitted to non-binding mediation. If mediation is unsuccessful in resolving the dispute, the parties agree to submit the dispute to binding arbitration pursuant to the rules of the American Arbitration Association.

9. The parties agree that the term of this agreement shall be twelve (12) months dating from January 1, 2014 through December 31, 2014, both dates inclusive. DEFENDER agrees to continue to provide representation for all cases until completion should that case extend beyond December 31, 2014. All amendments or extensions hereof shall reset the term of the extension period in the amount and conditions agreed upon herein, provided however, that upon failure of the parties to agree upon compensation or the terms of said agreement, this agreement shall expire and be of no further effect.

10. The parties agree that this AGREEMENT constitutes their entire agreement and any changes or modifications must be agreed to in writing by both parties and approved by the County Legislative Body in a public meeting.

DATED this ____ day of December, 2013.

ATTEST:

WASHINGTON COUNTY

KIM HAFEN
WASHINGTON COUNTY CLERK

JAMES J. EARDLEY, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

DEFENDER

ATTORNEY AT LAW

SUBSCRIBED and SWORN to before me this _____ day of December, 2013.

NOTARY PUBLIC

APPROVED AS TO FORM:

DEPUTY WASHINGTON COUNTY ATTORNEY