**Appellate legal Services Contract**

This agreement is made and entered into this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023 by and between [NAME] County, a body corporate and politic of the State of Utah, hereinafter referred to as “County,” and [ATTORNEY], hereinafter referred to as “Attorney”.

**RECITALS**

 A. Pursuant to Utah Code Ann. §78B-22-201 and §78B-6-112(6) County is obligated to provide representation to a parent or legal guardian who qualifies as indigent and who does not knowingly, intelligently and voluntarily waive the right to counsel after being fully advised of the right to counsel (“Qualifying Matters”); and

B. Pursuant to Utah Code Ann. §78B-6-112(7) if County incurs expenses in providing defense services in Qualifying Matters, and contingent on state appropriations, County may apply for reimbursement from the Utah Indigent Defense Commission (“IDC”) under Utah Code Ann. §78B-22-406,so long as County has complied with policies or procedures related to reimbursement that have been adopted by the Indigent Defense Commission; and

C. Attorney is a qualified and competent appellate attorney, licensed to practice law in the State of Utah, and is included on the roster of approved indigent appellate parental defense attorneys that is maintained by the Board of Appellate Judges pursuant to UCJA Rule 11-401.

D. Attorney has entered into this Agreement with the County and accepted all terms and conditions herein, and is able to perform the necessary legal services for Qualifying Matters;

 NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, it is hereby agreed between the parties as follows:

1. REPRESENTATION
2. Attorney shall provide effective appellate legal representation to parents in Qualifying Matters where a Utah appellate court issues an order requiring the County to provide representation, or appointing Attorney to provide representation, for an indigent legal parent who opposes a “Notice of Petition to Adopt and Notice of Rights,” or a “Petition to Terminate Parental Rights” or their equivalent;

1. QUALIFICATIONS
2. By Attorney’s signature below, Attorney certifies (s)he is a member in good standing of the Utah Bar and that (s)he is competent in appellate practice and is a member in good standing of the appellate roster maintained by the Board of Appellate Judges. Attorney further certifies that (s)he shall at all times during the period of this Agreement, maintain status as an Active member in good standing of the Utah Bar.
3. Attorney agrees to abide by all federal, state and local laws, to abide by the Canons of Ethics adopted by the Utah Bar Association, the Utah Rules of Professional Conduct, and to be bound by the Rules of Civility adopted by the Utah Supreme Court.
4. Attorney agrees that (s)he is not currently, nor shall voluntarily be, party to any litigation which would place his/her licensing or standing with the Utah Bar in jeopardy.
5. Attorney shall, during the period of this Agreement, maintain professional malpractice insurance with, at a minimum, limits of $250,000 per claim and $500,000 per occurrence and provide to County evidence of the insurance to assure the County of Attorney’s compliance with this provision. Additionally, Attorney agrees to hold County harmless from all damages, loss or injury it may suffer or be held liable for as a result of the conduct of Attorney or as a result of this Agreement.

1. In the event of any change of address, on-going conflict of interest, conflicting litigation or inability to practice law, Attorney shall promptly notify County in writing of such change of status.
2. DUTIES OF ATTORNEY

In exchange for the compensation described in Section 4.1 below, Attorney agrees to provide the following duties in representation of Assigned Respondents:

1. Attorney will provide effective and timely appellate representation and counsel for Assigned Respondents in Qualifying Matters consistent with the standards adopted by the Indigent Defense Commission pursuant to §78B-22-404**.**

1. Attorney will not accept appointments that would prevent Attorney from providing timely competent appellate representation to Assigned Respondents in Qualifying Matters. Attorney shall promptly notify County if Attorney is unable to accept an appointment as counsel in a Qualifying Matter, to allow County to make arrangement for the appointment of other counsel.
2. It is understood and agreed that accessibility to Assigned Respondents is an integral consideration in making this Agreement, and therefore Attorney agrees to be available and accessible to Assigned Respondents from the outset of any appointment and reasonably in advance of any hearing or appellate proceeding.
3. Attorney will provide adequate means for Assigned Respondents to communicate with Attorney, including the telephone number and email address of Attorney. Attorney also agrees to return telephone calls as soon as reasonably possible and to otherwise be reasonably accessible to all Assigned Respondents.
4. Attorney agrees to abide by Rules 1.3 and 1.4 of the Utah Rules of Professional Conduct in communicating with Assigned Respondents
5. Attorney agrees effective representation shall include conferring with clients, attending all matters before appellate courts, including scheduling conferences, all hearings and proceedings, and all other matters required to ensure adequate representation of Assigned Respondents in Qualifying Matters.
6. Attorney will always appear for Assigned Respondents in appellate courts wherever or whenever proceedings may be held.
7. Attorney agrees to maintain adequate and proper records of the representation for each Assigned Respondent. Attorney agrees to maintain a case file for each Assigned Respondent case as well as all other records and accountings associated with each Assigned Respondent case for a period of at least five (5) years after the expiration of this Agreement and further agrees to make such files, records, and accountings available to County and IDC, subject to attorney-client privilege restrictions.
8. Attorney agrees to provide to County and to the IDC, a bi-annual report of the number and types of appellate cases handled and such other factors or statistical information as may be reasonably requested by County that do not violate attorney-client privilege. Attorney agrees to track Attorney’s total cases, appointed and private, to establish that Attorney is not carrying a workload that would prevent Attorney from fulfilling the requirements of this Agreement in all appointed cases.
9. Attorney agrees to meet with County representative(s) at least twice per year. The meetings with the County should correspond as much as possible to the filing of the bi-annual report described in the previous section. Any time an extraordinary matter becomes apparent to Attorney in the course of performing this Agreement, the Attorney is encouraged to meet with the County to keep it apprised of such situations and to discuss whether additional funding may be necessary to address the matter.
10. Subject to Section 4 below, the parties agree County will pay expenses *not to exceed $500* per complete transaction within an eligible defense resource category for the reasonable and necessary cost of defense resources including: investigators, subpoenas, transcripts, record requests, experts, evaluations, forensic tests, and witness fees (hereinafter “Listed Costs”) (i.e. one complete evaluation, the services of an investigator in one matter, the costs of a complete records request, etc.).

1. It is agreed by the parties that Attorney is authorized to spend up to $500 of expenses per complete transaction for legal resources for any one item of Listed Costs without prior approval of the IDC, as specified in 3.13.

1. It is agreed by the parties that prior to Attorney incurring expenses for legal resources in excess of $500 per complete transaction on behalf of an Assigned Respondent, the reasons for the expense must be described and the amount of the expense must first be approved in writing by the IDC and County, and shall be subject to the availability of state appropriations.

1. Attorney agrees that payment for any expense over $500 incurred by the Attorney and not previously approved in writing by County and IDC shall be the sole responsibility of the Attorney and shall not be reimbursed by County or by IDC.

1. County will bear the reasonable travel costs of Attorney, if any travel is required outside of [NAME] County in conjunction with Attorney’s representation of an Assigned Respondent.

1. Except as provided herein, Attorney will bear all other expenses in providing the services contemplated herein not otherwise authorized by the County and IDC, including, but not limited to, transportation within [NAME] County, office, telephone, postage, copying and secretarial costs.
2. PAYMENT.
3. Subject to Section 4 below, County shall pay Attorney $150/hour for reasonable services rendered in Section 3 above (Duties of Attorney), provided that Attorney complies fully with the requirements stated in paragraphs 4.2 and 4.3.

1. Attorney agrees to use the Detailed Invoice Form attached hereto and incorporated herein as Attachment A (“Form”), to invoice County. Attorney will submit each Form to County within 15 days following the end of each month and agrees that payment will be made to Attorney only after a complete Form has been received by County.
2. Each monthly Form submitted to County shall detail all reasonable fees at $150/hour, and all out-of-pocket defense resource expenses, and shall include for each Assigned Respondent: (a) any (redacted) Orders of Appointment; and (b) an approval email from County and IDC for each defense resource expense outside of the Listed Costs and for each defense resource expense exceeding the $500 maximum amount per complete transaction on behalf of an Assigned Respondent.
3. Upon a showing of critical need and with prior written approval from the County and IDC, Attorney may request reimbursement for defense resources that exceed the $500 maximum per complete transaction of Listed Costs.
4. It is specifically understood that Attorney will accept no other payment for work provided under this Agreement, other than the compensation provided in this Agreement under this Section. In the event a court orders repayment from any Assigned Respondent for attorney fees and costs, all such repayment shall belong to County if the County has not been reimbursed by the IDC for those fees, and to the IDC if reimbursement to the County has occurred.
5. OTHER PROVISIONS
6. Conflicts of Interest. Attorney agrees to use his/her best efforts to avoid any conflicts of interest that would divide loyalty of representation to the client or otherwise violate the Utah Rules of Professional Conduct.
7. Assignability of Agreement. This Agreement is personal in nature and is not assignable to any person not a party to the Agreement without the express written consent of the County and the IDC.
8. Independent Contractor. It is understood by the parties that Attorney is an independent contractor and not an agent, representative, or employee of the County nor is this Agreement intended to create such a relationship. It is further understood by the parties that all compensation provided hereunder shall not include deductions for FICA, Federal and State income tax and shall not include retirement benefits, health benefits, holiday pay leave or any other fringe benefit of the County.
9. Duration. This contract shall commence on and end on . It shall include work provided on or after on pending cases as well as work on new cases filed on or after .
10. Termination. This Agreement may be terminated upon the following events:
11. Breach. In the event that either party hereto shall deem the other to be in breach of any provision hereof, the party claiming the existence of the breach on the other’s part shall notify the other in writing of such claimed breach. The alleged breaching party shall have fifteen (15) days in which to commence all actions necessary to cure the alleged breach and shall notify the complaining party in writing of the actions taken to cure the alleged breach. In the event the actions reasonably necessary to cure the alleged breach are not commenced in a timely manner, the complaining party may terminate this Agreement.
12. Voluntary Termination. Either party may terminate this Agreement, with or without cause, upon ninety (90) days advance written notice delivered to the other party.
13. Misconduct. In the event any disciplinary action is taken by the Utah State Bar against the Attorney, this Agreement may be immediately terminated by County upon notice to Attorney.

5.6 Notice. Any notice required by this Agreement shall be given in writing addressed to the following unless otherwise designated in writing:

**FOR THE COUNTY**:

 [NAME] County

 [ADDRESS]

 [CITY], [STATE] [ZIP CODE]

 with a copy to:

 [NAME] County Attorney

 [ADDRESS]

 [CITY], [STATE] [ZIP CODE]

**FOR THE ATTORNEY:**

 [NAME]

 [ADDRESS]

 [CITY], [STATE] [ZIP CODE]

1. Private practice. Nothing in this Agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of indigent respondent(s).

1. Governing law. This Agreement shall be governed by the laws of the State of Utah.
2. Non-funding clause. It is understood by the parties that County is a governmental entity, and that County funding for this Agreement is subject to the funds being appropriated by the legislative body. In the event no funds or insufficient funds are appropriated and budgeted in the fiscal year(s) of this Agreement, this Agreement shall terminate and become void on the last day of the fiscal year for which funds were budgeted and appropriated, or in the event of a reduction in appropriations, on the last day before the reduction becomes effective. Said termination shall not be construed as a breach or default under this Agreement and said termination shall be without penalty, additional payments, or other expense to the County of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Attorney.
3. Discrimination. Attorney assures that they will comply with the Americans with Disabilities Act (ADA), and Title VI of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, sex, sexual orientation, marital status, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
4. Entire Agreement. The Recitals are incorporated into this Agreement. 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 County Legislative Body in a public meeting.

In witness whereof, the parties have executed this Agreement the day and year first written above:

[NAME] COUNTY ATTORNEY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: [NAME]

Title:

ATTEST\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[NAME] County Clerk

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to form, Approved as to form,

[NAME] County Attorney Matthew Barraza, Executive Director

 Office of Indigent Defense Services