



## REGIONAL PUBLIC DEFENDER FOR CAPITAL CASES

P. O. Box 2097  
Lubbock, Texas 79408  
Main Phone: (806) 775-5650  
Fax: (806) 775-7954

October 23, 2012

**CHIEF PUBLIC DEFENDER**  
Jack Stoffregen

**Deputy Public Defender**  
Philip Wischkaemper

**Office Administrator**  
Elaine Nauert

**Assistant Public Defender**  
Mary Elizabeth Conn  
Anna Maria Jimenez  
Edward Ray Keith, Jr.  
Keri Mallon  
Anthony C. Odiorne  
Maxwell C. Peck III  
Dennis R. Reeves  
Thomas J. "Jay" Wooten  
John E. Wright

**Senior Investigator**  
Albert Miraval

**Investigator**  
Kirk D. Noaker, Sr.  
Rudy O'Brien  
Juan Raul "JR" Soto

**Mitigator**  
Robin Buggs  
Carol Camp  
Robert Cowie  
Ricardo Jimenez  
Kama Lawrence  
Sarah Molzow  
Roel Perez  
Joanna Petrov  
Joseph Ward

**Legal Assistant**  
Berenice De Leon  
Sherri Griffith  
Twylana Harrison  
Leticia Noel  
Monica Quijano  
Lindsey Wilson

To: Constitutional County Court Judges of the 1<sup>st</sup> and 8<sup>th</sup> Regions

Re: Interlocal Agreement/ Regional Public Defender for Capital Cases

Dear Judges:

### INTRODUCTION

My name is Jack Stoffregen and I am the Chief of the Regional Public Defender for Capital Cases.

### BRIEF HISTORY

This office was created to represent indigent defendants charged with capital offenses. As you are no doubt aware, the costs associated with providing a competent defense team are enormous. The reasoning behind the creation of this office, I believe, was to alleviate the financial burden on the participating counties while providing a defense team which is effective, ethical, and efficient. The Texas Indigent Defense Commission has provided significant funding to achieve these goals. I was hired on November 12, 2007, and this office has been accepting cases in the 7<sup>th</sup> and 9<sup>th</sup> Administrative Judicial Regions since January 1, 2008, cases in the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Administrative Judicial Regions since October 1, 2010 and cases in the 2<sup>nd</sup> and 3<sup>rd</sup> Administrative Judicial Regions since October 1, 2011. Currently 173 counties are participating in the program and the office has been appointed on 61 cases. The TIDC has recently approved grant funding to expand this program into your region.

### SERVICES TO BE PROVIDED

Once the Interlocal Agreement has been signed, this office will begin accepting appointments in capital murder cases in your county on the latter of the date you sign the Interlocal Agreement or October 1, 2011. Your county's contribution is based on the population of your county combined with the number of capital cases you have averaged over a ten (10) year period. We will provide the defense attorneys, the fact investigator and the mitigation specialist at no costs to the participating county where the prosecution originated.

Our office is handling only capital murder cases, so the staff will be well-trained and competent. Grant funding will allow me to open two additional offices in the region above-outlined. I will also hire up to 10 additional attorneys, 10 mitigators, 7 investigator and 6 legal assistants to staff these offices.

### **YOUR PARTICIPATION**

Attached hereto is an Interlocal Agreement which I would request you to present to your county commissioners. It outlines this program and also your participation. I am available to make a presentation to the commissioners at their convenience if that would be helpful. You may also call with any questions.

Sincerely,

Jack Stoffregen

JS:en

Attachment

## INTERLOCAL AGREEMENT

This interlocal agreement (the “Agreement”) is made by and between **LUBBOCK COUNTY, TEXAS** (“LUBBOCK COUNTY”), a political subdivision of the State of Texas, acting through the Regional Public Defender for Capital Cases (the “PD”), and «**COUNTY**» **COUNTY, TEXAS** (“PARTICIPANT”), a political subdivision of the State of Texas, (also, individually, a “Party” or, collectively, the “Parties”). This Agreement is made pursuant to the Fair Defense Act, Texas Code of Criminal Procedure 26.044(b), and Texas Government Code Chapter 791.

### RECITALS

**WHEREAS**, each Party finds: 1) that the subject of this Agreement is necessary for the benefit of the public; and 2) that it has the legal authority to perform and to provide the government function or service which is the subject matter of this Agreement; and,

**WHEREAS**, the performance of this Agreement by LUBBOCK COUNTY and PARTICIPANT will be in the common interest of the Parties;

**NOW, THEREFORE**, the Parties agree as follows:

### ARTICLE I PROGRAM

1.01 **Program Purpose and Term.** The Regional Public Defender for Capital Cases (the “PD”), funded proportionately by the Texas Indigent Defense Commission Multi-Year Discretionary Grant Program Funds (the “TIDC”), will provide court-appointed counsel for individuals charged with the offense of capital murder (death-eligible) in the participating counties and who cannot afford to hire their own attorney. Inmates in units of the Texas Department of Criminal Justice within the region who are charged with capital murder will continue to be represented by the State Counsel on Offenders, or by private counsel in the case of a conflict. Capital murder cases filed against inmates in units of the Texas Department of Criminal Justice shall not be counted in the average number of capital murder cases filed in a county.

Participant recognizes that counties from other Administrative Regions are also participating in the program. Each county’s participatory costs within the first 5 years of eligibility are based upon funding by the Texas Indigent Defense Commission Multi-Year Discretionary Grant Program Funds (the “TIDC”) and cost-sharing commensurate with their region’s applicable inclusion in the program.

Pursuant to continued funding, the TIDC is anticipated to provide funds to operate the PD office on a cost-sharing basis (Year 1 of Region’s inclusion – 100% funded by TIDC, Year 2 of Region’s inclusion – 100% funded by TIDC, Year 3 of Region’s inclusion – 80% funded by TIDC, Year 4 of Region’s inclusion – 60% funded by TIDC, Year 5 of Region’s inclusion – 40% funded by TIDC, Year 6 of Region’s inclusion – 0% funded by

TIDC). It is possible that the TIDC may consider additional funding mechanisms during Fiscal Years 2012 through 2017; however, the TIDC funding is not anticipated to be less than detailed above. In order to provide sustainable funding for the office and a fund balance for emergency situations, counties in the region will contribute as follows, during Year 1 of inclusion - 0%, Year 2 of inclusion – 30%, Year 3 of inclusion – 40%, Year 4 of inclusion – 60%, Year 5 of inclusion – 80% and Year 6 of inclusion - 100% (with a minimum contribution of \$1,000 per county). All percentages are based upon the amount that would be required with no grant funding available (year 6 of regional inclusion). A detailed county allocation schedule is provided in Attachment 1 and is incorporated herein for all purposes. Based upon this cost-sharing approach, participating counties shall provide the remaining operating costs based upon a formula taking into account the population of the county as a percentage of the whole of that county's region (50%) and the average number of capital murder cases filed between 1998 and 2008 as a percentage of the whole of that county's region (50%). Such cost share payments shall be made from current funds available to the PARTICIPANT at that time, subject to an annual appropriation. The PD will develop a plan to share costs among the counties beyond the TIDC grant period; however, the PD's obligation to perform after the TIDC grant period is contingent upon receipt of continued county funding.

Interlocal Agreement shall become effective October 1, 2013, and continue through September 30, 2014. Thereafter, this agreement shall renew automatically each October 1<sup>st</sup> for successive one-year terms through September 30, 2017 unless terminated under this agreement.

- 1.02 **Judges Authorized to Appoint PD.** The District Courts in the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Administrative Judicial Region may participate in the Program. The Program allows the Honorable Judge(s) of the Judicial District having jurisdiction within PARTICIPANT's geographic boundaries (so long as the jurisdiction lies within the noted Administrative Judicial Regions) to appoint the PD for the trial defense of death-eligible capital murder cases. In the event of a conflict of interest among defendants or a legal liability for the PD to accept appointment, the trial court shall appoint an attorney or attorneys other than the PD at the PARTICIPANT's expense.
- 1.03 **Duties and Responsibilities of the PD.** The PD will represent defendants at the trial or re-trial phase only. All decisions pertaining to the presentation of the case will be at the sole discretion of the PD. The PD will at all times be guided by and comply with his or her duties as a licensed attorney in the State of Texas and the Texas Disciplinary Rules of Professional Conduct in making these determinations.
- 1.04 **Program Analysis.** At least quarterly throughout the period of the grant and at the end thereof, the PD will prepare an analysis of the Program, as well as an estimated cost for PARTICIPANT's continued participation after all grant funds are expended. The analysis will consist of a fiscal analysis and an analysis of the effectiveness of the PD in meeting pre-established goals and objectives. The PD will provide copies of the analysis to PARTICIPANT's Commissioners Court and to the Honorable Judges identified of the

Participating Administrative Judicial Regions. PARTICIPANT shall have three months from the date the cost analysis is provided to the Commissioners Courts to consider the analysis and determine whether it will continue to participate in the Program. If PARTICIPANT requests to continue participating in the Program, a new interlocal agreement as to funding and the funding cycle will be necessary.

- 1.05 **Data for the Analysis.** As consideration for its participation in the Program, PARTICIPANT agrees to provide the PD information as needed to conduct the analysis, including the current payment schedule for court-appointed counsel on capital murder cases, and the previous five fiscal years' data on the amount PARTICIPANT paid for appointed counsel on capital murder cases, if available.
- 1.06 **Additional Experts.** PARTICIPANT will continue to incur the expense of additional experts as approved by the local court.
- 1.07 **Fact Investigators and Mitigation Specialists.** The PD will provide a fact investigator and mitigation specialist to cases assigned to the office.
- 1.08 **No other Costs Incurred.** Neither the TIDC nor the PD will assume any additional costs associated with representation of indigent defendants. Costs of interpreters or any other collateral cost must be absorbed by PARTICIPANT.

## **ARTICLE II** **OTHER TERMS AND CONDITIONS**

- 2.01 **Notice and Addresses.** Unless otherwise specifically provided herein, all notices, reports, and invoices required under this Agreement shall be given in person or by certified or registered mail, addressed to the proper Party, at the following address:

**If to LUBBOCK COUNTY:**

Honorable Tom V. Head  
County Judge  
Lubbock County  
PO Box 10536  
Lubbock, Texas 79408

**And:**

Jack Stoffregen  
Chief Public Defender  
Regional Public Defender for Capital Cases  
P O Box 2097  
Lubbock, Texas 79408

**If to PARTICIPANT:**

Honorable «Name»  
County Judge  
«County» County  
«Address\_1»  
«City», Texas «ZIP»

- 2.02 **No Partnership.** Nothing contained in this Agreement is intended to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. This Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other Party, for any purpose whatsoever.
- 2.03 **Waiver.** The failure of any Party to insist upon the performance of any terms or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.
- 2.04 **Benefit of the Parties.** The terms and conditions of this Agreement are solely for the benefit of the Parties and are not intended to create any rights, contractual or otherwise, for any other person or entity.
- 2.05 **Force Majeure.** If the performance of any obligation under this Agreement is delayed by something reasonably beyond the control of the Party obligated to perform ("Force Majeure"), that Party shall be excused from performing the obligation during that period, so that the time period applicable to the performance shall be extended for a period of time equal to the period that Party was delayed due to the event of Force Majeure.
- 2.06 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.
- 2.07 **Prior Agreements Superseded.** This Agreement constitutes the only agreement of the Parties and supersedes any prior understanding or written or oral agreements between the Parties respecting the within subject matter.
- 2.08 **Amendments.** In order to be binding, an amendment to this Agreement must be in writing, dated subsequent to the date of this Agreement, and executed by the Parties.
- 2.09 **Withdrawal by Party.**
- (a) **Voluntary Withdrawal.** Voluntary withdrawal by PARTICIPANT from the Agreement shall occur upon the affirmative decision by PARTICIPANT's Commissioners Court to withdraw from the Agreement and the withdrawing

PARTICIPANT giving at least one hundred and eighty (180) calendar days notice to LUBBOCK COUNTY and the PD. The effective date of voluntary withdrawal shall be one hundred and eighty (180) calendar days after the withdrawing Participant gives notice to LUBBOCK COUNTY.

(b) Involuntary Withdrawal. PARTICIPANT shall be deemed to have involuntarily withdrawn from the Agreement upon the failure by the PARTICIPANT to pay any cost-sharing payment by the due date, as provided in a notice to the PARTICIPANT. PARTICIPANT shall be given thirty (30) days written notice of non-payment by LUBBOCK COUNTY and shall not be deemed to be in default until the expiration of thirty (30) days after receipt of the written notice.

**SIGNED AND EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

COUNTY OF LUBBOCK

COUNTY OF «COUNTY»

\_\_\_\_\_  
Honorable Thomas V. Head  
County Judge

\_\_\_\_\_  
Honorable «Name»  
County Judge

ATTEST:

ATTEST:

\_\_\_\_\_  
Honorable Kelly Pinion  
Lubbock County Clerk

\_\_\_\_\_  
«County» County Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jack Stoffregen  
Chief Public Defender  
Regional Public Defender  
for Capital Cases

REVIEWED FOR FORM:

REVIEWED FOR FORM:

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R. Neal Burt  
Civil Division Chief  
Criminal District Attorney's Office  
Lubbock County