



## REGIONAL PUBLIC DEFENDER FOR CAPITAL CASES

P. O. Box 2097  
Lubbock, Texas 79408  
Main Phone: (806) 775-5650  
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September 30, 2013

Dear Judge:

I am very pleased and excited to be able to tell you that the Regional Public Defender for Capital Cases office (RPDO) will be entering its seventh year of operation on October 1, 2013. This office was opened on October 1, 2007 as a pilot program limited to an eligible pool of eighty-five counties comprising the 7th and 9th Administrative Judicial Regions. Due to the success of the program, Lubbock County and the Texas Indigent Defense Commission expanded the office into the remaining seven Administrative Judicial Regions over a period of three years, resulting in a potential pool of two hundred forty eligible counties (counties with a population exceeding 300,000 on January 1, 2008 were not eligible to participate).

As you might expect, we encountered a number of unexpected problems as we developed sound office procedures and case protocols. With the assistance of Lubbock County, the Texas Indigent Defense Commission, and local officials such as you, we have managed to make corrections and arrive at a place where we can continue to fulfill our mission to provide effective, efficient, and ethical representation to indigent capital defendants.

The RPDO has a lot to be proud of as well. The program was recognized by both the National Association of Counties and the Texas Association of Counties as an award winner in 2009. We have also been the subject of several magazine publications and numerous newspaper and television reports. In 2013, the Public Policy Research Institute completed and published an in-depth study on the effectiveness and the efficiency of the office. Please visit our website at <http://rpdo.org> and open the "Publications" tab to view much of this material.

I have attached an Interlocal Agreement which details the services which the RPDO will provide your county, and the obligation of your county should you desire to participate, or continue your participation. This agreement has been slightly modified this year, providing that it will renew each year until 2017, unless either your county or Lubbock County opts out with proper notice as per the agreement.

My Oversight Board adopted a policy in 2011 that prohibits a county from participating for a minimum of two years if that county had not opted in during the initial two year eligibility period. The Texas Indigent Defense Commission has also adopted a policy, which you may view at [www.txcourts.gov/tidc/tidchome.asp](http://www.txcourts.gov/tidc/tidchome.asp), that makes it much more difficult for a county to obtain an extraordinary funds disbursement to defray costs for a capital case if the county had the

option to participate in the RPDO but did not.

As you and your Commissioners consider whether participation in the RPDO program is a good fit for your county, please feel free to call or write with any questions or concerns that you have. Additionally, a member of my staff is always available to meet with your Court to explain the benefits of participation and address any concerns voiced.

Sincerely,

Jack Stoffregen

cc: County

Auditor

## 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 **TOM GREEN 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 Michael D. Brown  
County Judge  
Tom Green County  
122 West Harris  
San Angelo, Texas 76903

- 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 8<sup>th</sup> day of October, 2013.

COUNTY OF LUBBOCK

COUNTY OF TOM GREEN

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

\_\_\_\_\_  
Honorable Michael D. Brown  
County Judge

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Tom Green County Clerk



APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

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

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REVIEWED FOR FORM:

REVIEWED FOR FORM:

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