

**BANNOCK COUNTY COMMISSIONERS**

624 E. Center, Pocatello, ID 83201  
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**ERNIE MOSER**  
Commissioner  
*1st District*

**JEFF HOUGH**  
Commissioner  
*2nd District*

**TERREL N. TOVEY**  
Commissioner  
*3rd District*

**BANNOCK COUNTY SEEKING LETTERS OF INTEREST  
FOR CONFLICT PUBLIC DEFENDER CONTRACT**

Bannock County is seeking letters of interest from licensed attorneys in good standing with the Idaho State Bar to perform conflict indigent legal defense services for individuals charged with juvenile, misdemeanors, and/or felonies in Bannock County. Services will be provided for clients when the Bannock County Public Defender's office is unable to represent the client because of a conflict of interest. See Attachment 1 – Proposed Contract for details. Standards set by Idaho Code and the Idaho State Public Defense Commission will apply. We anticipate services will begin on May 1, 2022. The contract will be classified as an independent contractor with a budgeted amount of \$85.00 per hour, invoiced monthly in 10-minute increments. Letters of interest should be mailed to: Bannock County Commissioners, 624 East Center, Room 101, Pocatello, ID 83201; or emailed to [shandac@bannockcounty.us](mailto:shandac@bannockcounty.us).

Interest letters shall include the following items:

- Cover letter that states why the attorney is interested in providing conflict public defense services for the County of Bannock. The cover letter should also include firm address, telephone number, email and other contact information and attorney signature.
- Description of the attorney's history and background.
- Description of the current responsibilities of the individual.
- Demonstrated experience of the individual and familiarity with the law, regulations and public defense services.
- Resume for the attorney.
- Ability to comply with the Americans with Disabilities Act, Equal Employment Opportunity, and any other applicable County, State or Federal laws.
- At least three professional references, within the last ten years, who can attest to the individual's or firm's abilities.

This contract will be open until filled, but a review of Letters of Interest received will begin on April 14, 2022.

# Attachment 1 – Proposed Contract

## PROFESSIONAL SERVICES CONTRACT AND RETAINER AS CONFLICT COUNSEL FOR INDIGENT PERSONS

**THIS CONTRACT FOR PROFESSIONAL SERVICES**, made and entered into on the \_\_\_\_ day of \_\_\_\_\_, 2022 and effective the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Bannock COUNTY, a political subdivision of the State of Idaho, acting by and through its duly elected Board of Commissioners, hereinafter called “COUNTY”, and \_\_\_\_\_, hereinafter called “COUNSEL”;

### WITNESSETH:

**WHEREAS**, COUNTY is required by law to provide legal representation to certain needy and incapacitated persons at public expense; and

**WHEREAS**, COUNTY has met its statutory requirements under Idaho Code §§19-859(1)-(3) by providing for legal representation of needy person by employing and budgeting for a Public Defender Department with duly qualified and licensed attorneys; and

**WHEREAS**, the County Public Defender Department may, from time to time, be unable to represent said needy person(s) due to actual and/or legal conflicts of interest that have arisen or reasonably may arise during the course of representation; and

**WHEREAS**, COUNSEL is an attorney duly licensed to practice law in the State of Idaho, and is otherwise competent to counsel and defend a person charged with a crime and maintain an office for the practice of law in Bannock County, State of Idaho; and

**NOW THEREFORE**, COUNTY and COUNSEL enter into this Agreement on the following terms and conditions:

1. **TERM** The term of this contract shall be from \_\_\_\_\_ through \_\_\_\_\_ and shall contain the following provisions:
2. **CONSIDERATION and COMPENSATION:**
  - A. For all other cases, COUNSEL shall be compensated at the rate of \$85.00 per hour.
  - B. COUNSEL may petition the Commission for additional compensation. Additional compensation is not guaranteed, and may be limited by COUNTY budget restrictions and appropriations. Compensation requests shall be accompanied by accurate and verifiable reports.
3. **DESCRIPTION OF SERVICES:** COUNSEL shall furnish full and adequate representation as may be required to be furnished at public expense, and shall expend such time and effort as may be necessary to discharge the obligation of

the COUNTY to provide representation at public expense, including the following:

- A. Full and adequate representation of such persons as may be determined by the Court to be eligible for such representation at public expense (except where a conflict exists) in the following cases:
  - 1) Persons detained by a law enforcement officer, confined, or who are under a formal charge of having committed, or are being detained under a conviction of, a serious crime, as determined by the Court;
  - 2) Persons subject to proceedings under the provisions of the Uniform Rendition of Accused Persons Act, Idaho Code Title 19, Chapter 45;
  - 3) Persons party to proceedings under the provisions of the Uniform Post-Conviction Procedure Act, Idaho Code Title 19, Chapter 49;
  - 4) Persons formally petitioned to be within the purview of the Youth Rehabilitation Act, Idaho Code Title 16, Chapter 18, or the Juvenile Corrections Act, Idaho Code Title 20, Chapter 5;
  - 5) Persons subject to proceedings under Idaho Code Title 16, Chapters 16 and 20;
  - 6) Persons in contempt proceedings pursuant to Idaho Rule of Civil Procedure 75 or similar provisions of law.
  - 7) Persons subject to proceedings under Idaho Code Section 39-6306, Hearing on Petition for Protection Order;
  - 8) Persons for whom an attorney or guardian ad litem is appointed pursuant to Idaho Code Section 15-5-207(5) to the extent such appointments are lawfully at public expense; and
  - 9) COUNSEL shall be appointed to only represent clients under Paragraphs 3(A)(4) and 3(A)(5). It is the mutual intent of COUNSEL and of COUNTY that COUNSEL shall serve as the conflict of interest Public Defender for juvenile court and child protection cases in Bannock County and that COUNSEL structure their calendar to make them available primarily to that Court.
- B. Caseload Guidelines:
  - 1) The parties acknowledge that the assigned caseload may include cases that were previously handled by another conflict attorney and/or the public defender's office.
  - 2) COUNSEL acknowledges that they will be assigned new cases as needed by COUNTY.
- C. Except as otherwise provided by law or order of the presiding District Court Judge or Magistrate, COUNSEL's duty to perform the services provided for herein shall extend not only to such persons whom the Court determines, after the commencement of the term of this contract, are entitled to representation at public expense, but also to such persons whom the court has previously determined are entitled to representation at public expense, regardless of the state of the proceeding involving such latter person as of the

- date of commencement of the term of this contract unless otherwise ordered by the Court.
- D. Unless otherwise conflicted, COUNSEL shall be available to serve as conflict counsel in any case in which there exists a true conflict, and a public defender or conflict public defender is appointed and removed.
  - E. COUNSEL shall not serve as co-counsel in any such manner as to potentially create a conflict without first obtaining court approval. COUNSEL shall be excused from representing persons with whom an actual conflict of interest exists between COUNSEL and such person on legal or ethical grounds when the court having jurisdiction of the case determines that such a conflict exists. In such event, conflict representation shall be provided by court appointment, and the costs of such representation shall not be a charge against the compensation of COUNSEL provided for herein.
  - F. COUNSEL shall maintain an office in the State of Idaho, and within 30 miles of Bannock County. Counsel shall promptly and reliably communicate with the court, the Board of Commissioners, and those persons whom COUNSEL represents under the terms of this contract.
  - G. COUNSEL's services shall be initiated in each case at the time of the appointment of COUNSEL by the court in which such case is pending. A defendant's indigence may be reassessed at each stage of the proceedings and if the defendant is found not indigent, public representation services for such defendant may be terminated by the court.
  - H. COUNSEL shall comport with their obligations under the Idaho Rules of Professional Conduct
  - I. To prevent the appearance of conflict of interest, COUNSEL shall not represent any client in any law suit against COUNTY or its employees. COUNTY and COUNSEL agree that the appearance of conflict and remedy under this contract and paragraph are only because of this contract, and any other alleged conflict, real or perceived, will be dealt with separate and apart from this contract on a case-by-case basis.
  - J. COUNSEL shall not be prohibited from the outside practice of law.
  - K. COUNSEL may subcontract cases either on a case-by-case basis or by a class of case. If COUNSEL subcontracts on a case-by-case basis, subcontracting COUNSEL must be approved by the court. If COUNSEL subcontracts on a class basis, subcontracting counsel must be approved by the Board of County Commissioners before the subcontract takes effect. Subcontracting COUNSEL must meet all qualifications of COUNSEL relevant to the class or type of case being subcontract, and COUNSEL shall be solely responsible for all compensation and expenses of any subcontracted COUNSEL.
  - L. COUNSEL shall maintain adequate policies of professional liability insurance at all times with any carrier licensed to issue such insurance in Idaho. COUNSEL shall furnish proof of such insurance to COUNTY upon request.
  - M. The parties acknowledge that the Idaho Supreme Court has adopted certain qualifications for public defense counsel in cases where the death penalty may

be or has been imposed on a defendant. COUNSEL agrees to make good faith efforts to obtain and maintain such qualifications within a reasonable timeframe. However, the parties acknowledge that COUNSEL may be excused from representation if said COUNSEL does not meet the qualifications for either lead trial counsel or co-counsel.

N. COUNSEL shall continue to represent clients previously appointed under this agreement until the appointing court has granted permission for COUNSEL to withdraw. In the case of termination of this contract, COUNSEL shall continue representation of clients COUNSEL has been appointed to represent under the contract until one of the following conditions has been met:

- 1) The client's case reaches final disposition, including any appeal, or
- 2) New counsel has been appointed to the client.

If neither of these conditions has been met after 60 days from the effective termination of the contract, the COUNSEL may file a written motion requesting that the courts appoint a new public defender and allow COUNSEL to withdraw. COUNSEL may petition the Commission for additional compensation for actual representation provided to clients after the effective termination of the contract. This additional compensation is not guaranteed and may be limited by COUNTY budget restrictions and appropriations.

4. **RECORDS AND REPORTS:** COUNSEL shall compile and maintain complete and accurate records of each and every case assigned, and submit a monthly report to COUNTY. This monthly report shall include all the cases that COUNSEL has been assigned and the time spent on each case. Additionally, an annual report shall be submitted pursuant to Idaho Code §19-864, et seq., within 30 days of fiscal year-end to the COUNTY regarding the number of persons represented, the crimes involved, and expenditures by category (i.e. investigators, evaluations, extraordinary travel), totaled by kind; and maintain a written and/or digital copy of all criminal files according to standard profession practices.
5. **TERMINATION:** This contract shall terminate upon the expiration of the term hereof or upon the happening of any of the following events, whichever shall first occur:
  - A. Upon the death of COUNSEL;
  - B. Upon the inability of COUNSEL to perform any of the professional services provided for hereunder due to physical or mental disability. Physical or mental disability shall be determined by a court of competent jurisdiction or by two licensed physicians.
  - C. Disbarment or suspension from the practice of law, or failure of COUNSEL to maintain his license to practice law in the State of Idaho;
  - D. Material breach of any contract term by either party;
  - E. By 60 day written notice of either party, subject to the conditions found in 3(N) of this agreement. (See subsection 11 for notice requirements.)
  - F. By mutual agreement of the parties hereto, except that the parties must agree in writing regarding the terms of said mutual termination agreement.

G. Non-appropriation of funds as contemplated by paragraph 2(C).

6. **RIGHT OF CONTROL:** COUNTY agrees that it will have no right to control or direct the details, manner, or means by which COUNSEL accomplishes the results of the services performed hereunder. COUNSEL has no obligation to work any particular hours or days or any particular number of hours or days. COUNSEL agrees, however, that his other contracts or services shall not interfere with the performance of his services under this Agreement.
7. **INDEPENDENT CONTRACTOR RELATIONSHIP:** COUNSEL is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of COUNTY. COUNTY shall determine the work to be done by COUNSEL, but COUNSEL shall determine the legal means by which it accomplishes the work specified by COUNTY.
8. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by COUNTY on behalf of COUNSEL or the employees of COUNSEL. COUNSEL shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. COUNSEL understands that COUNSEL is responsible to pay, according to law, COUNSEL income tax. *CONTRACTOR* further understands that COUNSEL may be liable for self-employment (Social Security) tax to be paid by COUNSEL according to law.
9. **FRINGE BENEFITS:** Because COUNSEL is engaged in its own independently established business, COUNSEL is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of COUNTY.
10. **LICENSE AND TRAINING:** COUNSEL shall maintain their license with the Idaho State Bar. COUNSEL shall participate in regular training programs and continuing legal education on criminal defense law in areas relating to their public defense practice.
11. **BAR DISCIPLINE:** COUNSEL shall immediately notify COUNTY in writing when COUNSEL becomes aware that a complaint lodged with the Idaho State Bar, or any other state where the attorney is licensed, has resulted in reprimand, suspension or disbarment of any attorney working under this agreement.
12. **INDEMNIFICATION:** COUNSEL agrees to indemnify, defend, and hold harmless COUNTY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of COUNTY, COUNTY's agents, employees, or representatives under this Agreement.

13. **SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.
14. **NOTICES:** All notices between COUNSEL and COUNTY shall be directed by COUNSEL to the Bannock County Commissioners, 624 East Center, Room 101, Pocatello, ID 83201, and by COUNTY to \_\_\_\_\_ (Counsel name and address), or hand delivered to the location designated by the Bannock County Clerk as the mailbox for COUNSEL.
15. **ENTIRE AGREEMENT:** This is the entire agreement of the parties and can only be modified or amended in writing by the parties.
16. **GOVERNING LAW:** This agreement shall be construed in accordance with the laws of the State of Idaho.