

## INDEPENDENT CONTRACTOR AGREEMENT FOR PUBLIC DEFENDER CONFLICT COUNSEL

This agreement is between Canyon County, Idaho, a political subdivision of the State of Idaho ("County"), and Nielson McCrea Law, PLLC a Law Firm with the following licensed attorneys, Jeffery Nielson, Jordan McCrea and Devin Harris ("Contractor").

**WHEREAS**, in 2014, Canyon County created an "in-house" Public Defender's Office to provide representation to indigent persons charged with crimes; and

**WHEREAS**, in the course of establishing this office, the County created the position of Chief Public Defender by its Resolution No. 14-035 and filled such position by process provided by Idaho Code § 19-860; and

**WHEREAS**, the Chief Public Defender is tasked with providing competent criminal defense services to persons in Canyon County appointed the public defender; and

**WHEREAS**, the County, acting through its Chief Public Defender, has determined that satisfaction of those duties to the Public Defender's Office may be facilitated by engaging certain contracted conflict attorneys to provide representation in cases as provided by Idaho Code § 19-861; and

**WHEREAS**, the County desires to enter into an Independent Services Contract with Contractor under the supervision of the Chief Public Defender of Canyon County for representation of conflict cases assigned by the Courts to the Canyon County Public Defender's Office.

Therefore, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings herein:
  - A. "*Assigned Case*" means a case which is assigned to Contractor by the Chief Public Defender of Canyon County.
  - B. "*Assigned Client*" means a person or agency in a case assigned to Contractor.
2. **Contractor representations.** Contractor represents and warrants as follows:
  - A. Contractor is currently licensed by and in good standing with the Idaho State Bar.
  - B. Contractor has current professional liability and malpractice insurance coverage.
  - C. Contractor is familiar with federal, state, and local laws and regulations that are relevant to Contractor's provision of services under this agreement, as well

as with the Idaho Rules of Professional Conduct ("IRPC").

3. **Services.**

- A. *Legal representation.* Contractor shall provide legal representation to persons or agencies appointed the public defender's office and facing charges in criminal courts, persons or agencies involved in Child Protection cases, persons facing contempt allegations, juveniles or parents in juvenile court or other matters as assigned by the Chief Public Defender.
- B. *Conduct.* Contractor shall at all times abide by and fulfill its obligations under IRPC. In accordance with IRPC 1.6, Contractor shall fulfill its duties to protect the clients' privileged and confidential information. In accordance with IRPC 3.2, Contractor shall make reasonable efforts to expedite litigation consistent with the interests of assigned clients.
- C. *Preparation.* Contractor must be prepared for each court hearing and maintain contact with assigned clients. At a minimum, Contractor must have reviewed all police reports and pleadings, as well as have offered legal advice to the client before the time scheduled for each court hearing if at all possible and reasonable efforts are made to keep in contact with the clients.
- D. *Correspondence.* Contractor shall maintain the ability to receive correspondence via phone, facsimile, and email.
- E. *Limitation of representation.* Contractor is representing assigned clients for the assigned cases only. Contractor's representation does not include independent or related matters that may arise, including, among other things: claims for property damage, workers' compensation, eviction proceedings, civil forfeiture, administrative driver's license hearings, advising on litigation against the County, and claims for reimbursement by insurance companies. This agreement does not apply to any other legal matters that Contractor may assume as part of Contractor's private business interests so long as they do not conflict with their duties under this agreement.
- F. *Expenses.* Any costs associated with adequate and effective representation of an indigent defendant, including, but not limited to: further or additional investigation by an investigator, administration of polygraph testing or other testing, service of subpoenas, hiring of expert witnesses, or other related costs not related specifically to the work of the attorney, shall be submitted via email to the Chief Public Defender for pre-approval. The request should include the type of service needed and the proposed cost or hourly rate and proposed hours spent if known. If approved and the service is unavailable through the Canyon County Public Defender's Office, then Contractor shall send an invoice to the County Public Defender's Office for approval and reimbursement by the County to the service provider. If denied, Contractor may seek leave of the court for permission to retain additional services and seek reimbursement from the County.

G. *Office Expenses Covered and Not Covered:* Contractor will be responsible for payment of all their own office expenses including rent/lease, utilities, bar dues, CLE expenses, supplies, stamps, copies, CDs/DVD's, travel expenses and paper. Canyon County Public Defender's Office will be responsible for costs for evaluations, transcripts and pre-approved service providers.

4. **Compensation.**

- A. *Hourly Rate.* County shall pay Contractor \$70 per hour for legal services rendered by Contractor and billed. County shall pay Contractor \$30 per hour for secretarial and administrative services rendered and billed. Contractor must bill in six-minute increments (one-tenth of an hour).
- B. *Third party.* Contractor may not accept any payments from assigned clients or third parties for legal services provided in a case assigned under this agreement.
- C. *Invoice.* Contractor shall submit an invoice (Exhibit A) documenting work performed under the contract a minimum of one time per month, but up to twice monthly submitted via email to PDBilling@canyoncounty.id.gov for approval by the Chief Public Defender of Canyon County. A list of invoice due dates and scheduled payments will be provided to the Contractor by the Public Defender's Department. Invoice must list the case name, case number, Defendant name, date activity conducted, and time spent at a minimum. If Contractor represents Defendant on multiple cases, invoice must identify the case number to be billed for each activity. Contractor must also fill out the Auditor Claim Form to include the date of the claim form, case name and court number and amount. See attached Exhibit B.
- D. *Approval.* Contractor understands that there is a specific budget provided to the Public Defender's office to pay for conflict attorneys and that the Chief Public Defender is responsible for monitoring this budget. This budget is set by the Board of Canyon County Commissioners. Contractor will handle each assigned case and client and bill time as they would for any privately retained client. Contractor agrees that all billing is reviewed by the Chief Public Defender for approval prior to submission to the County for payment. Any discrepancies, questions, or issues in billing will be resolved prior to submission for payment. Contractor further understands that the Chief Public Defender has been vested by the BOCC with the responsibility to resolve any disagreements, disputes, discrepancies and issues with costs of conflict public defense matters. The Chief Public Defender fully retains the right to reassign matters in which there are disagreements and issues regarding billing time and expenses.
- E. *Payment.* Payment under the contract will be paid at a time consistent with Canyon County auditor's office pay dates.

5. **Qualifications.** Contractor shall maintain the minimum qualifications to practice law in the state of Idaho, and shall report to County of any change in the status of Contractor's licensure within twenty-four (24) hours of such change. Contractor must provide County with proof of licensure in good standing upon request. Contractor shall be familiar with the rules and regulations under Idaho Code and those passed and adopted by the Idaho Public Defense Commission and comply with all such rules and regulations. **Conflict Counsel agrees to file in a timely manner their annual reports as required under Idaho Code Section 19-864.**

6. **Continuing Legal Education.** Contractor agrees to compete annually at least seven (7) hours of continuing legal education in representation of indigent defense clients.

7. **Disposition of Cases upon Termination of Contract.**

A. All files are the property of the Client in the care of the Public Defender's Department.

B. *Copies of files and notes.*

- a. Contractor shall retain files from these cases, even past termination, to comply with its duties under IRPC.
- b. If this agreement is terminated before the dismissal or completion of the case, Contractor must provide to County within two (2) business days a copy of the complete file, notes, drafts of any pleadings and memorandum, as well as any work product for each assigned case.
- c. Contractor shall, upon termination of this agreement, return all open files and materials related to representation of assigned clients to the Chief Public Defender. Contractor may at their discretion retain a copy of the file to comply with its duties under IRPC.

8. **Conflict.** In the event of a conflict of interest between Contractor and any assigned Client, the Contractor shall notify the Chief Public Defender of the conflict, and the case will be reassigned through the Chief Public Defender.

9. **Non-appropriation.** In order to comply with the requirements of Article VIII, Section 3 of the Constitution of the State of Idaho, Contractor understands and agrees that County may, solely at its option, cancel this agreement for any fiscal year when the necessary funds for fulfillment of this agreement are not budgeted for, and appropriated by, County. County's fiscal year shall commence on the 1st day of October of each year and shall terminate on the 30th day of September of the following year.

10. **Independent contractor.**

A. Contractor is an independent contractor of County and in no way an employee or

agent of County. Contractor is not entitled to worker's compensation or any benefit of employment with County. County has no control over Contractor's performance of this agreement, except as laid out herein. County has no responsibility for security or protection of Contractor's supplies or equipment. Contractor shall pay and be responsible for all taxes due from the compensation received under this contract. Before commencing services, Contractor must complete a W-9 Form and provide to County. County must send a 1099-MISC form to Contractor on or before January 31, 2018, or on or before the January 31 falling in the year immediately following the term's conclusion.

- B. *Employment.* Nothing in this agreement limits the right of Contractor to maintain a law practice or represent clients for money not appointed representation by the Canyon County Public Defender Department.

11. **Indemnification.** Contractor shall indemnify 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 Contractor under this agreement.

12. **Insurance.**

A. *General liability.* Contractor shall obtain and keep in force during its acts under this agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which shall name and protect Contractor, all Contractor's employees, subcontractors, County, and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with Contractor's acts. Contractor's insurer must have an A.M. Best Rating of not less than "A."

B. *Worker's compensation.* Contractor shall maintain in full force and effect worker's compensation for Contractor and any agents, employees, subcontractors, volunteers, and staff that Contractor may employ as required by Idaho Code Title 72.

C. *Malpractice insurance.* Contractor shall obtain and keep in force during its acts under this agreement a professional liability insurance (also known as "legal malpractice insurance") policy which shall name and protect Contractor, all Contractor's employees, subcontractors, and its officers, agents and employees. Contractor's maintenance of insurance must satisfy the requirements of Idaho Bar Commission Rule 302(a).

13. **Non-exclusive agreement.** This agreement is non-exclusive, and Contractor and County may contract with any other person or entity for providing similar legal services.

14. **Term.** This Agreement shall be in effect from the date of signing and will extend

through the period ending September 30, 2023, unless terminated as otherwise provided herein. At the end of the initial term, this Agreement will automatically renew for subsequent one (1) year periods, beginning October 1 and extending until September 30 of the following year, unless otherwise terminated as provided herein. It is understood and agreed that this Agreement may be terminated at the option of either party upon giving a thirty (30) day notice in writing to the other party. County's obligations under this Agreement shall be contingent upon County appropriating the necessary funds for payment to Contractor in each fiscal year during the term of this Agreement.

**15. Termination.**

- A. *Immediate termination for cause.* In the event that either party fails to conform to the terms of this agreement, written notice of such failure and a demand for performance within five (5) business days may be issued. In the event the deficient performance is not cured within those five (5) business days, the agreement may be terminated for cause.
- B. *Termination by Contractor.* Contractor shall have the right to terminate this agreement upon fourteen (14) days written notice to Chief Public Defender.
- C. *Termination by County.* County may terminate this agreement for failure to comply with any requirement of the agreement. Chief Public Defender is designated by County to determine when a failure to comply with this agreement has occurred and to terminate the agreement by written notice effective immediately. Contractor shall provide final invoices and a listing of all assigned cases within 48 hours of the notice of termination of the contract. This agreement is not a guarantee of case assignment; authority over the assignment of cases to contractor under this agreement lies in the sole discretion of the Chief Public Defender or designee.
- D. *Mutual termination.* This agreement may be terminated immediately by mutual agreement in writing by both parties.

**16. Notice.** Any notices required to be given or which shall be given under this Agreement shall be in writing delivered by first class mail, email, or fax addressed to the parties as follows:

COUNTY  
Canyon County Chief Public Defender  
111 N. 11<sup>th</sup> Avenue, Ste. 120  
Caldwell, Idaho 83605  
PDmail@canyonco.org  
Fax: (208) 649-1819

CONTRACTOR ~~Nielson McCrae~~ <sup>McCrae</sup>  
Nielson ~~McCrae~~ Law, PLLC  
2949 E. Copperpoint Dr., Suite 125  
Meridian, ID 83642  
(208) 900-9529 <sup>nielsonmccrealaw.com</sup>  
Efiling: efile@~~nielsonmccraelaw.com~~  
Email: jeff@~~nielsonmccraelaw.com~~ <sup>jeff@nielsonmccrealaw.com</sup>  
Idaho State Bar # 11986

In the event that notices, statements, and payments required under this agreement are sent by certified or registered mail by one party to the other party at its above address, they shall be deemed to have been given or made as of the date so mailed. Any party may change its contact information by giving notice to all of the other parties in the foregoing manner.

17. **Assignment.** Contractor may not assign or subcontract the performance of its obligations under this agreement without written consent from County but may have other attorneys appear at hearings when there is a timing conflict for Contractor. Contractor will be responsible for billing said time and any payment to the appearing attorney.

18. **Severability.** The terms of this agreement are severable. Should a court of competent jurisdiction decide that any portion of this agreement is unlawful or invalid, said decision will only affect those specific sections, and the remaining portions of this agreement will remain in full force and effect.

19. **Negotiation.** In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the party considering filing litigation shall first send a written "invitation to negotiate" to the other party. Before resorting to litigation, the parties must meet at least once face-to-face and negotiate in good faith in an attempt to reach a mutually satisfactory resolution. If, for whatever reason, the parties do not reach a resolution within thirty (30) days since the date of mailing the "invitation to negotiate," then the parties may proceed to litigation.

20. **Controlling law and venue.** This agreement shall be interpreted, and rights of the parties determined, under the laws of the State of Idaho. The venue of any claim, litigation, or cause of action between the parties will be a court having jurisdiction in Canyon County, Idaho.

21. **Attorney fees.** Should any litigation be commenced between the parties hereto concerning this agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorney fees as determined by a court of competent jurisdiction.

22. **Entire agreement.** This agreement encompasses the entire agreement of the parties and may not be modified or changed in any way except by written document signed by all the parties.

In witness whereof, the parties have signed this agreement on the dates written below.

DATED this 9 day of March, 2023.

CONTRACTOR

[Signature]

Jeffrey Nielson (printed)

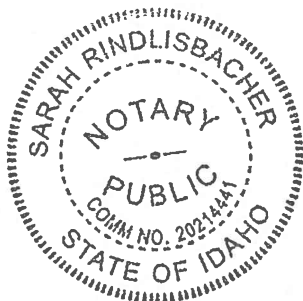
Jeffrey

Jeffrey D. Nielson

(signature)

On this 9 day of March, 2023, before me, a notary public for Idaho, appeared Jeffrey D. Nielson, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

(SEAL)



[Signature]

Notary Public for Idaho

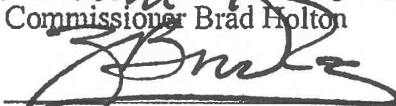
Residing at Ada County

My Commission Expires: 09/17/2027

DATED this 20<sup>th</sup> day of March, ~~2020~~  
2023

BOARD OF COUNTY COMMISSIONERS

☒ Motion Carried Unanimously  
☐ Motion Carried/Split Vote Below  
☐ Motion Defeated/Split Vote Below

|                                                                                                                            | Yes   | No    | Did Not Vote |
|----------------------------------------------------------------------------------------------------------------------------|-------|-------|--------------|
| <br>_____<br>Commissioner Leslie Van Beek | _____ | _____ | _____        |
| <br>_____<br>Commissioner Brad Holton     | _____ | _____ | _____        |
| <br>_____<br>Commissioner Zach Brooks     | _____ | _____ | _____        |

ATTEST: CHRIS YAMAMOTO, CLERK

By: U Ross  
Deputy Clerk

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Aaron Bazzoli  
Chief Public Defender

**Exhibit A:**

[INSERT CONTRACTOR NAME], J.D.  
[INSERT CONTRACTOR ADDRESS]  
[INSERT CONTRACTOR EMAIL]

November 30, 2018

Canyon County Public Defender  
111 N. 11th St.  
Caldwell, ID 83605

CR2013-00001

Case Name

| Date                | Person  | Services Rendered                                                                  | Time Spent |
|---------------------|---------|------------------------------------------------------------------------------------|------------|
| 11/09/13            | Atty    | Reviewed case file, made notes for upcoming bond hearing.                          | 0.20       |
| 11/10/13            | Support | Filed discovery request with prosecutor's office (by secretary).                   | 0.10       |
| 11/14/13            | Atty    | Court appearance, argued for bond reduction, counseled client before court hearing | 0.30       |
| <b><u>Total</u></b> |         |                                                                                    | .60        |
|                     |         |                                                                                    |            |