

**INDEPENDENT CONTRACTOR AGREEMENT FOR
COURT APPOINTED COUNSEL**

This Agreement between Canyon County, Idaho, a political subdivision of the State of Idaho ("County"), and Maloney Law Office ("Contract Counsel") is for the provision of contract legal services for individuals and agencies who cannot afford the services of an attorney and are involved in a type of case in which Idaho law requires a court to appoint counsel. This Agreement only pertains to state court cases with venue and jurisdiction in Canyon County.

WHEREAS, Idaho law requires that the Court appoint legal counsel to represent individuals in certain cases; and

WHEREAS, pursuant to Idaho Code §§ 1-1613 and 16-1614(4), counties have the obligation to arrange for and provide legal services in these certain cases; and

WHEREAS, the Third District Court, through the Administrative District Judge and the Trial Court Administrator, have agreed to manage the assignment of contract legal services and to be the point of contact for the cases assigned to Contract Counsel under this Agreement; and

WHEREAS, the County desires to enter into this Independent Contractor Agreement with Contract Counsel to satisfy its legal obligation to provide legal representation for the types of cases described below.

THEREFORE, the Parties agree as follows:

- 1. Definitions.** For the purposes of this Agreement, the terms below shall have the following meanings:
 - 1.1. "Contract Counsel" includes any individual lawyer or law firm entering into this Agreement and any individual attorney members and staff of the law firm who will be assigned to represent or assist Clients in Assigned Cases.
 - 1.2. "Assigned Case" means a Contract Counsel case assigned by the Courts of Canyon County to Contract Counsel.
 - 1.3. "Client" means the person(s) in an Assigned Case Contract Counsel is appointed to represent by the Courts in Canyon County.
 - 1.4. "CPA GAL Case" refers to assigned cases requiring Contract Counsel to provide legal representation for guardians ad litem in Child Protective Act proceedings pursuant to Idaho Code § 16-1614.
 - 1.5. "Adult Guardianship Cases" refers to assigned cases requiring Contract Counsel to provide legal representation to incapacitated adults subject to guardianship or conservatorship proceedings initiated by the Canyon County Board of Community Guardians pursuant to Idaho Code § 15-5-301 et seq.; including appointment as guardian ad litem for the client as required by Idaho law.

1.6. "DD Commitment Cases" refers to assigned cases requiring Contract Counsel to provide legal representation for clients in developmental disability commitment cases pursuant to Idaho Code § 66-406.

2. Legal Services. Contract Counsel shall provide legal representation in the following type of Assigned Cases (Contract Counsel will check the box(es) which they will accept appointment):

☒ CPA GAL Cases ☐ Adult Guardianship Cases ☒ DD Commitment Cases

3. Contract Counsel Representations. Contract Counsel represents and warrants as follows:

3.1. Contract Counsel is currently licensed to practice law in the courts of the state of Idaho and in good standing with the Idaho State Bar.

3.2. Contract Counsel has current professional liability and malpractice insurance coverage that meets the requirements of the Idaho State Bar.

3.3. Contract Counsel is familiar with the laws, rules, and procedures applicable to the Contract Counsel Appropriate Cases that will be assigned.

3.4. Contract Counsel shall not accept any payments from assigned clients or third parties for legal services provided in a case assigned under this agreement.

3.5. Contract Counsel understands and agrees that this Agreement is not a guarantee of a specific number of case assignments and this Agreement is non-exclusive; the Agreement does not any guarantee or create a right or claim to assignment of any cases and cases may not be assigned equally among the various Contract Counsel engaged by the County.

4. Contract Counsel Obligations.

4.1. Contract Counsel shall maintain the minimum qualifications to practice law in Idaho and shall report to County of any change in the status of Contract Counsel's licensure as soon as possible. Contract Counsel must provide County with proof of licensure in good standing upon request.

4.2. Contract Counsel shall at all times abide by and fulfill its obligations under the Idaho Rules of Professional Conduct ("IRPC"). In accordance with IRPC 1.6, Contract Counsel shall fulfill its duties to protect the clients' privileged and confidential information. In accordance with IRPC 3.2, Contract Counsel shall make reasonable efforts to expedite litigation consistent with the interests of assigned Clients.

4.3. Contract Counsel shall maintain the ability to communicate with Clients via phone and email. Contract Counsel understands and agrees there may be a need to meet in person with Client at a location convenient to Client and Contract Counsel.

4.4. Contract Counsel is representing assigned Clients for the assigned cases only. Contract Counsel's representation does not include independent or unrelated matters that may arise,

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including but not limited to the following: 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 Contract Counsel may assume as part of Contract Counsel's private business interests so long as they do not conflict with their duties under this Agreement.

5. **Independent Contractor Status.** Contract Counsel is an independent contractor of County and in no way an employee or agent of County. Contract Counsel is not entitled to worker's compensation or any benefit of employment with County. County has no control over Contract Counsel's performance of this Agreement, except as laid out herein. County has no responsibility for security or protection of Contract Counsel's supplies or equipment. Contract Counsel shall pay and be responsible for all taxes due from the compensation received under this contract. Before commencing services, Contract Counsel must complete a W-9 Form and provide it to the County. County must send a 1099-MISC form to Contract Counsel on or before January 31 following each year Contract Counsel provides services.
6. **No Limitation on Law Practice.** Nothing in this Agreement limits the right of Contract Counsel to maintain a private law practice or represent clients outside this contract. Conflicts that may arise will be resolved by assignment and substitution of a non-conflicted Contract Counsel to the case.
7. **Case Assignment.** Cases will be assigned to Contract Counsel according to the process developed by the Courts, not by the County.
8. **Compensation Rates.** Compensation for services under this Agreement will be on an hourly rate basis as follows:
 - 8.1. *Attorney Hourly Rate.* All services that can only be provided by a licensed attorney shall be paid at a rate of \$70.00 per hour, billed in six (6) minute increments.
 - 8.2. *Non-Attorney Rate.* All secretarial and administrative support services, regardless of whether such services are performed by an attorney, shall be paid at a rate of \$30.00 per hour, billed in six (6) minute increments.
9. **Claims Process for Payment.** Contract Counsel shall follow the process outlined below to secure payment for services rendered under this Agreement.
 - 9.1. *Invoice.* Contract Counsel shall submit an invoice on the county form (Attachment A) documenting work performed under the contract a minimum of one time per month, but up to twice monthly submitted via email to the contact listed in this Agreement for approval by the TCA. A list of invoice due dates and scheduled payments can be found on the County's website. The invoice must list the case name, case number, case name, client's name, date activity conducted, and time spent at a minimum. Contract Counsel must also fill out the Auditor Claim Form (Attachment B) to include the date of the claim form, case name and court number and amount.

- 9.2. *Approval.* Contract Counsel understands that there is a specific budget set by the Board of Canyon County Commissioners to pay for court appointed counsel. Contract Counsel will handle each assigned case and client and bill time as they would for any privately retained client.

Contract Counsel understands and agrees that billing will be reviewed for approval prior to submission to the Canyon County Auditor for payment. This may include review by the Administrative District Judge or a delegated judge. Any discrepancies, questions, or issues in billing will be resolved prior to submission for payment. The Board of County Commissioners has delegated the TCA to resolve any disagreements, disputes, discrepancies and issues with costs of court appointed counsel matters. Disagreements and issues regarding billing time and expenses may result in a reassignment of the case at issue.

- 9.3. *Payment.* Payment under the contract will be paid at a time consistent with Canyon County Auditor's office claim payment dates.

For CPA GAL cases, payment may be impacted by reimbursement from the State. County will timely communicate any reimbursement issues with Contract Counsel to determine the best course of action in such situations.

- 9.4. *Expenses.* Any expense associated with representation of Client other than hourly compensation for tasks typical to the assigned case shall be submitted via email to the TCA for pre-approval. The request should include the type of service needed, the proposed cost or hourly rate, and estimates for total cost. If approved and the service is unavailable through this Agreement, then Contract Counsel shall send an invoice to TCA for approval and reimbursement by the County to the service provider. If denied, Contract Counsel may seek leave of the court for permission to retain additional services. The TCA office may consult with the Canyon County Prosecutors Office and/or the Administrative District Judge for the Third Judicial District to assist in determining the expenditure.

Unless approved by the County, Contract Counsel will be responsible for payment of all office expenses including rent or lease, utilities, bar dues, CLE expenses, supplies, stamps, copies, CDs/DVD's, travel expenses, parking and paper. The County will not be responsible to reimburse any non-approved expense.

10. **Conflict.** In the event of a conflict of interest between Contract Counsel and any assigned Client, the Contract Counsel shall notify the TCA of the conflict, and the case may be reassigned depending on the nature of the conflict. Contract Counsel is also permitted to file a Motion to Withdraw in the case with all requirements under law and procedure to be followed.

11. **Insurance.** Contract Counsel shall maintain current insurance at the policy minimums set forth below, or those permitted by the Idaho State Bar.

- 11.1. *General liability.* Contract Counsel 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 Contract Counsel, all Contract Counsel's employees, 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 Contract Counsel's acts. Contract Counsel's insurer must have an A.M. Best Rating of not less than "A."

11.2. *Worker's compensation.* Contract Counsel shall maintain in full force and effect worker's compensation for Contract Counsel and any agents, employees, volunteers, and staff that Contract Counsel may employ as required by Idaho Code law.

11.3. *Malpractice insurance.* Contract Counsel 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 Contract Counsel, all Contract Counsel's employees, subcontract Counsels, and its officers, agents and employees. Contract Counsel's maintenance of insurance must satisfy the requirements of Idaho Bar Commission Rule 302(a).

12. Term and Renewal.

12.1. *Effective Date.* This Agreement shall be in effect from the date of signing and will extend through the period ending September 30, 2025, unless otherwise terminated.

12.2. *Renewal.* 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. County's obligations under this Agreement shall be contingent upon County appropriating the necessary funds for payment to Contract Counsel in each fiscal year during the term of this Agreement.

13. Termination.

13.1. *Immediate termination.* 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. County reserves the right to immediately terminate this Agreement upon the written from the TCA or the Third District Administrative District Judge that such action is in the best interest of the Client or the County.

13.2. *Termination by Contract Counsel.* Contract Counsel shall have the right to terminate this Agreement upon (15) business days written notice to the TCA. Absent legitimate cause for termination acceptable to the County, Contract Counsel must provide all current Clients appropriate legal representation until a court enters an order of withdrawal of counsel.

13.3. *Termination by County.* County may terminate this agreement for failure to comply with any requirement of the Agreement. County reserves the right to immediately terminate

this Agreement upon the written from the TCA or the Third District Administrative District Judge that such action is in the best interest of the Client or the County.

13.4. *Mutual termination.* This Agreement may be terminated immediately by mutual agreement in writing by both parties.

13.5. *Accounting.* Contract Counsel shall provide final invoices and a listing of all assigned cases within 48 hours of the notice of termination of the contract.

14. Case Files and Documents.

14.1. All files are the property of the Client in the care of the Contract Counsel.

14.2. Contract Counsel shall retain files from these cases, even past termination, to comply with its duties under IRPC.

14.3. If this Agreement is terminated before the dismissal or completion of the case, Contract Counsel 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.

14.4. Contract Counsel shall, upon termination of this Agreement, return all open files and materials related to representation of assigned clients to the TCA. Contract Counsel may retain a copy of the file to comply with its duties under IRPC.

15. Notice. Any notices required to be given or which shall be given under this Agreement shall be in writing to the contacts listed below. Notice is effective on the date sent by the noticing party and may be provided electronically.

Canyon County	Contract Counsel
Trial Court Administrator	Maloney Law Office
1115 Albany Street Caldwell, Idaho 83605	Jolene Maloney
	199 N. Capitol Blvd. Ste. 601 Boise, Idaho 83702
tca@canyoncounty.id.gov	<u>jolene@maloneylawidaho.com</u>
208-454-7571	(208) 287-2009

16. Miscellaneous.

16.1. *Employment.* Nothing in this Agreement limits the right of Contract Counsel to maintain a law practice or represent clients for money not appointed representation by the TCA.

16.2. *Indemnification.* Contract Counsel 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 Contract Counsel under this agreement.

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- 16.3. *Non-exclusive agreement.* This Agreement is non-exclusive, and Contract Counsel and County may contract with any other person or entity for providing similar legal services.
- 16.4. *Assignment.* Contract Counsel may not assign or subcontract the performance of its obligations under this Agreement without written consent from County, but may have other attorneys appear when there is a timing conflict for Contract Counsel or qualified counsel from within its firm. Contract Counsel will be responsible for any payment to the appearing attorney.
- 16.5. *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.
- 16.6. *Mandatory Pre-Litigation 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. Alternatively, the Parties may also engage the Idaho State Bar fee dispute resolution process, if applicable.
- 16.7. *Controlling law.* 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.
- 16.8. *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.
- 16.9. *Non-appropriation.* Contract Counsel understands and agrees that County may cancel this Agreement for any fiscal year when the necessary funds for fulfillment of this Agreement are not budgeted for, nor appropriated by, County. County's fiscal year begins October 1 of each year and terminates on September 30 of the following year.
- 16.10. *Entire agreement.* This Agreement encompasses the entire agreement of the Parties and may only be modified by a written document signed by all the Parties.
- 16.11. *Authority to bind.* The signatories to this Agreement represent they have the proper legal authority to bind the organization to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the dates written below.

CONTRACT COUNSEL

Maloney Law Office

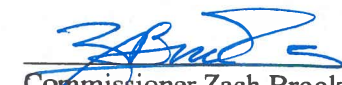
By: *John C. Maloney*

Date: 9/24/24

DATED this 26th day of Sept., 2024.

CANYON COUNTY BOARD OF COMMISSIONERS

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

	Yes	No	Did Not Vote
 _____ Commissioner Leslie Van Beek	<u> </u>	<u> </u>	<u> </u>
 _____ Commissioner Brad Holton	<u> X </u>	<u> </u>	<u> </u>
 _____ Commissioner Zach Brooks	<u> X </u>	<u> </u>	<u> </u>

ATTEST: RICK HOGABOAM, CLERK

By: J Ross
Deputy Clerk