



LATAH COUNTY  
**BOARD OF COMMISSIONERS**  
**MOTION AND ORDER**




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(208) 883-7208 ♦ Fax: (208) 883-2280  
[bocc@latahcountyid.gov](mailto:bocc@latahcountyid.gov)

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COMMISSIONER LaFortune MOVES THAT THE BOARD:

Approve and sign Capital Criminal Defense Provider Agreement, effective December 30, 2022,  
by and between the County of Kootenai, the County of Latah, Anne C. Taylor, and Jay Logsdon.

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	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
 Thomas C. Lamar, Chair District II	<u>✓</u>	<u>_____</u>	<u>_____</u>
 Kathie LaFortune, Commissioner District I	<u>✓</u>	<u>_____</u>	<u>_____</u>
 John Bohman, Commissioner District III	<u>✓</u>	<u>_____</u>	<u>_____</u>

ATTEST:

  
Clerk/Deputy Clerk

DATE:

February 7, 2023

## **CAPITAL CRIMINAL DEFENSE PROVIDER AGREEMENT**

This CAPITAL CRIMINAL DEFENSE PROVIDER AGREEMENT (“Agreement”) shall be effective beginning December 30, 2022, by and between the COUNTY OF KOOTENAI, a political subdivision of the State of Idaho, by and through the Board of Commissioners (hereinafter “Kootenai County”), and the COUNTY OF LATAH, a political subdivision of the State of Idaho, by and through the Board of Commissioners (hereinafter “Latah County”) and, ANNE C. TAYLOR, attorney licensed to practice law in the State of Idaho and Death Penalty Qualified, first seat in the State of Idaho, with a current address of P.O. Box 9000, Coeur d’Alene, Idaho 83816-9000 (hereinafter “Attorney”), and JAY LOGSDON, attorney licensed to practice law in the State of Idaho and Death Penalty Qualified, second seat in the State of Idaho, with a current address of P.O. Box 9000, Coeur d’Alene, Idaho 83816-9000 (hereinafter “Second Seat Attorney”).

WHEREAS, the Prosecuting Attorney for Latah County has brought criminal charges of four counts of first degree murder in which a death notice may be filed, which crime allegedly occurred in Latah County, against Bryan Christopher Kohberger, (“Defendant”); and

WHEREAS, Mr. Kohberger is entitled to be represented by an attorney at public expense; and

WHEREAS, Latah County is desirous of procuring the services of competent counsel to represent and defend Defendant, and a team of Death Qualified attorneys must be appointed; and

WHEREAS, Kootenai County employs Attorney, Anne C. Taylor, Chief Public Defender, a licensed member of the Idaho State Bar and otherwise competent to represent Defendant in those proceedings referred to above; and

WHEREAS, Kootenai County employs Second Seat Attorney, Jay Logsdon, Chief Deputy Public Defender, a licensed member of the Idaho State Bar and otherwise competent to represent Defendant in those proceedings referred to above; and

WHEREAS on December 30, 2022, Anne C. Taylor was appointed by Judge Megan Marshall to serve as Defendant’s court appointed counsel; and

NOW, THEREFORE, pursuant to Idaho Code § 19-859(4), Latah County and Kootenai County and Anne C. Taylor does hereby accept appointment in the above referenced case as defense counsel for Defendant upon the following terms and conditions.

**ARTICLE I.**  
**(Duties of Attorney)**

1.1 Obligations of Attorney. Attorney accepts appointment as court-appointed counsel for Defendant throughout the trial stage of the above-referenced criminal charges. Defendant shall be Attorney's client within the meaning of applicable Laws, rules and regulations governing the practice of law in Idaho. Attorney is required to devote such time and effort as is reasonably necessary to meet all state and federal requirements for effective assistance of counsel.

1.2 Conflicts of Interest. Attorney shall inform the Court of any possible conflicts under the Idaho Rules of Professional Conduct, Rules 1.7 through 1.11.

1.3 Warranty of Fitness to Practice Law. Attorney warrants that he/she is duly licensed to practice law in the State courts of the State of Idaho and is a member in good standing of the Idaho State Bar.

1.4 General Performance Expectations. Without limiting to obligations of Attorney set forth elsewhere in this Agreement or by the applicable Laws, rules and regulations governing the practice of law in Idaho, Attorney shall make a reasonable effort to comply with the *Performance Guideline for Criminal Defense Representation* promulgated by the National Legal Aid & Defender Association and incorporated by this reference, and Idaho Code §18-850(1)(a)(vii). Such reasonable effort includes legitimate and articulated reasons for deviating from any particular Performance Guideline. So long as the reason(s) for the deviation is legitimate and articulated, the deviation will be deemed a reasonable effort to comply with the Performance Expectation.

1.5 Capital Murder Defense Expectations. Attorney shall also:

1.5.1 Be familiar with the 2003 ABA Guidelines for the appointment and performance of defense counsel in death penalty cases Standards for Capital cases.

1.5.2 Be familiar with the 2008 supplementary guidelines for the mitigation function of defense teams in death penalty cases.

1.5.3 Be familiar with the requirements as set forth in Idaho Criminal Rule 44.3.2.

1.5.4 The defense team assembled by Attorney should include, at a minimum, two attorneys appointed pursuant to Idaho Criminal Rule 44.3, a mitigation specialist and two investigators. Psychiatrists, psychologists and other experts and support personnel should be added as needed. Lead counsel may seek additional counsel as needed and as approved and appointed by the Court.

1.6 Support Staff. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel. The parties agree and expect that at a minimum the Attorney will employ support staff services at a level sufficient to allow the attorney to comply with her duties set forth in this Agreement. The Attorney may

determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction. Attorney shall be responsible for the costs and expenses of his or her support staff.

1.7 Insurance. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties' liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for, and shall at all times during the period of this agreement, insure for, its own acts and omissions and those of its employees, officers, agents, and contractors.

1.8 Records. Attorney agrees to maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Agreement, for a period of five (5) years after termination of this Agreement unless permission to destroy them before that time period is granted by County. Further, Attorney agrees to maintain records which sufficiently and properly reflect all direct and indirect costs of any subcontracts or personal service contracts, for a period of five (5) years after termination of this Agreement unless permission to destroy them before that time period is granted by County. Such records shall include, but not be limited to, documentation of any funds expended by Attorney for said personal service contracts or subcontracts, documentation of the nature of the service rendered, and records which demonstrate the amount of time spent by each subcontractor personal service contractor rendering service pursuant to the subcontract or personal service contract.

1.9 Licensing. Attorney will immediately notify the County in writing when it 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 who is a member of the Defending Attorney's staff or working for the Attorney.

## **ARTICLE II. (Compensation)**

2.1 Attorneys Fees. All attorneys shall be either lead or 2<sup>nd</sup> chair Death Penalty Qualified. Compensation shall be paid as follows:

2.1.1 Attorney: Latah County shall pay Kootenai County at the rate of \$200 per hour for hours occurring during the 40 hour regular work-week, and shall pay Attorney directly at the rate of \$200 per hour for hours occurring outside of a 40 hour work week.

2.1.2 Second Seat Attorney: Latah County shall pay Kootenai County at the rate of \$180 per hour for hours occurring during the 40 hour regular work-week, and shall pay Attorney directly at the rate of \$180 per hour for hours occurring outside of a 40 hour work week.

2.1.3 Any Third and Fourth seat attorney shall enter separate contracts with Latah County.

2.1.4 Mileage, Lodging, meal costs: reimbursement shall be made with proof of receipt, directly to the person incurring the costs.

2.2 Investigators and Experts. Subject to approval by the appointed Judge per the process outlined in Idaho Criminal Rule 12.2, investigative and expert fees, expenses, and costs will be paid at a reasonable rate for services rendered. Attorney shall contract directly with, review and approve billings prior to submission for payment and the County or Capital Defense Fund shall pay directly, all outside defense investigators and experts. Up to two investigators, employed by Kootenai County, shall assist in the defense. Latah County shall pay Kootenai County \$45.00 per hour for all hours worked by investigators. Payment will be approved by the Court and funds delivered by Latah County to Kootenai County, for work done by Kootenai County's investigators, or directly from Latah County to the outside Expert or Investigator.

2.3 All invoicing shall be approved pursuant to ICR 12.2. Invoices approved shall be submitted to Latah County for payment.

### **ARTICLE III. (General Provisions)**

3.1 Agreement Not a Fixed Fee Contract. This Agreement is not and is not intended to be a "fixed fee contract" for provision of public defender services. The parties hereto have endeavored to assure that Defendant will receive such services without undue limitation on the amount of time or expense required to provide the same.

3.2 Assignment. Attorney may not assign, sub-contract or delegate his or her rights and duties hereunder to any person or entity without the prior written consent of the Board. Any person seeking assignment shall agree to be bound by the terms of this Agreement.

3.3 Attorney Fees. In the event any party hereto initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

3.4 Special Services Provider. The parties agree that Attorney is a special services provider for Latah County and is not an employee or agent of the Board or County. As a special services provider, Attorney is not entitled to worker's compensation, health care insurance, retirement benefits or any other benefit of employment with Latah County otherwise available to County employees, The Board and County shall have no supervisory control over the performance of this Agreement by Attorney or his or her employees.

3.5 Merger. This Agreement embodies the sole understanding of the parties. There are no other oral or written agreements outside of this Agreement. No modification,

amendment or addition to this Agreement shall be effective unless agreed to by the parties in a written instrument duly executed by Attorney and the Board.

3.6 Waiver. The failure of any party to insist upon strict performance of any of the obligations contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach in the performance of any of the terms and provisions contained herein by the same or any other person.

3.7 Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

3.8 Cations and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms and provisions contained herein.

3.9 Construction. No presumptions shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this Agreement.

3.10 Venue and Governing Law. In the event an action is brought to enforce or interpret this Agreement, the parties submit to the exclusive jurisdiction of the courts of the State of Idaho, and agree that venue for any such action shall be in Latah County, Idaho. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Idaho.

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

KOOTENAI COUNTY BOARD OF  
COUNTY COMMISSIONERS

\_\_\_\_\_  
Leslie Duncan, Chair

\_\_\_\_\_  
Bill Brooks, Commissioner

\_\_\_\_\_  
Bruce Mattare, Commissioner

ATTEST:

\_\_\_\_\_  
Deputy Clerk

DATED this 7 day of February, 2023.

LATAH COUNTY BOARD OF COUNTY  
COMMISSIONERS



Thomas C. Lamar, Chair



Kathie LaFortune, Commissioner



John Bohman, Commissioner

ATTEST:



Deputy Clerk

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

\_\_\_\_\_  
Anne C. Taylor, Chief Public Defender,  
Kootenai County

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

\_\_\_\_\_  
Jay Logsdon, Chief Deputy Public Defender,  
Kootenai County