

**CONTRACT AND AGREEMENT
FOR
APPOINTED COUNSEL SERVICES
BETWEEN
THE BOARD OF PARDONS AND PAROLES
AND

ATTORNEY AND COUNSELOR AT LAW**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**SECTION 1
PARTIES**

This contract and agreement is made and entered into by and between the Board of Pardons and Paroles, hereinafter referred to as "BPP," and _____, hereinafter referred to as "Counsel." The parties hereto severally and collectively have agreed and by the execution hereof are bound to the mutual obligations and performance of the tasks hereinafter described.

**SECTION 2
CONTRACT PERIOD**

This contract shall commence on September 1, 2011 or if the contract is signed, by any party, after September 1, 2011, on the date last appearing in this contract and agreement shall terminate on August 31, 2012 or when a final order is entered in the any pending parole revocation hearing referenced in Section 4, herein, whichever occurs later, or unless terminated earlier in accordance with the provisions of Section 13, herein.

**SECTION 3
AUTHORITY AND REPRESENTATIONS**

The BPP enters into this contract under the authority granted to that Agency by the Constitution and laws of Texas. This contract is not within the purview of, nor is it controlled either by the Consulting Services Act, Section 2254.021 *et seq.* of the Government Code or the Professional Services Act, Section 2253.042 *et seq.* of the Government Code.

SECTION 4
OBLIGATION OF COUNSEL

Counsel shall provide competent legal representation and advice to certain offenders scheduled to appear at a preliminary and/or revocation hearings, including a continuance and reopening, to consider revocation of their administrative release or other sanctions; or scheduled to appear at an erroneous release hearing to consider their return to prison or other parole vote; and/or to pursue an appeal of the revocation hearing by filing a Motion to Reopen Hearing with the BPP.

In performing the obligations described above, Counsel shall adhere to all rules and regulations of the facility at which hearings are conducted and more specifically, comply with all instructions from the facility's administrator(s) related to security.

It is understood that Counsel, unless authorized herein, will initiate no litigation concerning matters related to the legal representation of an offender without the prior approval of the Board.

SECTION 5
OBLIGATIONS OF BPP

A. Measure of Liability for Counsel Witness Services

By execution of this contract, Counsel will bill by invoice and BPP shall pay for services rendered by Counsel, for work performed pursuant to this contract and agreement. In consideration of full and satisfactory performance thereof, BPP shall pay the rate of Seventy Five Dollars (\$75) per hour for the first two (2) hours and Thirty Five Dollars (\$35) for every hour after the second hour per appointment for a preliminary, revocation or erroneous release hearing; and Thirty Five Dollars (\$35) for a continued or reopened hearing or the submission of a Motion to Reopen Hearing.

B. Reimbursement for Travel Expenses

BPP shall reimburse Counsel for any approved travel expenses incurred in connection with the performance of Counsel's duties and obligations pursuant to this contract and agreement, but such reimbursement shall not exceed the rates for the reimbursement of like expenses for employees of the State of Texas, pursuant to Texas administrative law related to travel expenses promulgated by the Comptroller of Public Accounts. Such reimbursement shall be claimed in the manner specified by BPP.

C. Reimbursement for Incidental Expenses

BPP shall reimburse Counsel for any necessary and proper incidental expenses incurred in connection with the performance of Counsel's duties and obligations pursuant to this agreement. Such reimbursement shall be claimed in the manner specified by BPP.

SECTION 6
MAXIMUM LIABILITY OF BPP

The cumulative liability of BPP to the Counsel pursuant to the provisions of paragraph A of Section 5 hereto shall not exceed the sum of Ten Thousand Dollars (\$10,000.00) for the duration of this agreement, inclusive of any actual and reasonable expenses incurred for travel necessary in the performance of this agreement at the same rate authorized for state employees.

SECTION 7
LIMITATIONS ON LIABILITY OF TXBPP

This contract and agreement shall not be construed as creating any debt by or on behalf of BPP in violation of Article III, Section 49 of the Constitution of Texas in accordance with Article VIII, Section 6 of the Constitution of Texas. All obligations hereunder are subject to the availability of appropriations from the Texas Legislature.

SECTION 8
REQUEST FOR PAYMENT

Counsel shall complete the Texas Board of Pardons and Paroles Attorney Statement and submit the statement for legal services and expenses incurred in performing the duties and obligations pursuant to this contract and agreement. The statement shall be completed and submitted as outlined in the "Instruction for Submitting and Completing Attorney Statements" and the "Reimbursement Schedule," which is incorporated by reference, to the BPP who will process these statements for payment through the Texas Comptroller of Public Accounts. The Attorney Statement must be submitted within **sixty (60) days** from completion of each step within the Hearing Process (i.e. preliminary hearing, revocation hearing or erroneous release hearing).

SECTION 9
CONFIDENTIALITY OF INFORMATION AND RECORDS

During the term of this appointment, as well as thereafter, Counsel agrees to keep all information pertaining to the offender, Board, and its personnel confidential, unless such information is open to the public under Chapter 552 of the Texas Government Code, and will not use any such information to the detriment of the offender, Board, or its officers or employees at any time. In the event that Counsel is provided or obtains access to information made confidential by any federal law, then Counsel agrees to strictly maintain the confidentiality of such records or information as may be required by federal law and regulations.

SECTION 10
LIABILITY

As an independent contractor, Counsel agrees to hold BPP harmless and to indemnify BPP from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring from, in any way incident to, arising out of, or in connection with the activities to be performed by Counsel hereunder. It is expressly agreed and understood between the parties that any payments made to Counsel which may be similar to payments made to employees of the State of Texas have been determined by BPP to be the method of contracting which involved the least expense to the state.

SECTION 11
RECORDS RETENTION

Counsel shall maintain for a period of **three (3) years** after the submission of the last claim for the payment of fees or the reimbursement of expenses hereunder, or until all audit or litigation matters in connection with this contract are resolved, whichever time period is longer, all such records as are relevant to the delivery of services hereunder, or the nature and amount of reimbursement for expenses. Counsel shall grant access to all such books and records to BPP.

SECTION 12
CERTAIN FEDERAL REQUIREMENTS

Counsel shall ensure that all subcontractors shall comply with the provisions of this Section in connection with any subcontract in excess of ten thousand dollars entered into by Counsel, as a result of the duties imposed on Counsel by this contract.

If funds provided in whole or in part by the United States are used to meet any obligation of BPP to Counsel pursuant to this Agreement, then Counsel shall comply with the following provisions:

A. Drug-Free Work Place Act

Counsel shall comply with the provisions of the Drug-Free Work Place Act, 102 Stat. 4303, and the regulations of the United States Department of Health and Human Services at 45 C.F.R. Part 76, Subpart F.

B. Immigration Reform and Control Act of 1986

Counsel shall comply with the provisions of the Immigration Reform and Control Act of 1986, 100 Stat. 3359, by verifying the identity and authorization to work in the United States of their employees who may assist Counsel at any time during the term of this contract.

C. Equal Opportunity

Counsel agrees that no person shall, on the basis of race, color, religion, sex, national origin, age, handicap, political affiliation or belief be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part by the funds made available under this contract. (See Executive Order 11246, as amended by Executive Order 11375, and as supplemented by 41 C.F.R. Part 60) Further, Counsel shall comply with the regulations issued by the Secretary of Labor in Title 20 C.F.R. Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.

SECTION 13 SUSPENSION

BPP shall have the right, at its sole discretion, to suspend for cause the obligations and duties to be rendered under this contract for failure to comply with any terms of this contract and agreement by notifying Counsel in writing of such suspension, prior to the effective day and time of such suspension. Notice of termination shall be communicated to Counsel by BPP by certified and first class mail and, if practicable, by email or facsimile transmission.

SECTION 14 EARLY TERMINATION

BPP shall have the right, at its sole option, to terminate and bring to an end all of the obligations and duties to be rendered under this contract for failure to comply with any of the terms of this contract and agreement by notifying Counsel in writing of such termination, prior to the effective day and time of such termination. Notice of termination shall be communicated to Counsel by BPP by certified and first class mail and, if practicable, by email or facsimile transmission.

SECTION 15 CHILD SUPPORT ENFORCEMENT

Under Section 231.006 of the Texas Family Code, Counsel certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and Counsel acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 16 AMENDMENT

Any alterations, additions, or deletions to the term of this agreement shall be by amendment hereto and executed by both parties in writing.

SECTION 17
ENTIRE AGREEMENT

This contract and agreement, consisting of **six (6) pages**, constitutes the entire agreement between the parties hereto and all oral or written agreements between the parties hereto relating to the subject matter of this contract have been reduced to writing and are contained herein.

SECTION 18
VENUE

This contract and agreement shall be governed by and construed in accordance with the laws of the State of Texas. All payments due and payable under this contract and agreement shall be due and payable in Travis County, Texas, and the venue of any suit brought for any breach of this agreement is affixed in a court of competent jurisdiction in Travis County, Texas.

SECTION 19
DISPUTE RESOLUTION

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by BPP and Counsel to attempt to resolve all disputes arising under this contract.

WITNESS our hands on this _____ day of _____, A.D. _____.

Timothy McDonnell
Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd.
Austin, Texas 78757

Counsel

(Street Address)

(City, State, Zip Code)

(Phone Number)

(Fax Number)

(Email Address)

**Counsel Tax Identification
or Social Security Number**

Texas Bar Card Number

Kyle Britt, Budget Director
Texas Board of Pardons and Paroles
1300 11th Street, Suite 520
Huntsville, Texas 77340