



Office of the
BONNER COUNTY PROSECUTING ATTORNEY

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Alex J. Adams, Chairman
Coronavirus Financial Advisory Committee ("CFAC")
304 N. 8th Street, 3rd Floor
Boise, ID 83702

Dear Committee Members,

Bonner County hereby respectfully requests the opportunity to participate in the Governor's Public Safety Initiative program by submitting for reimbursement its public safety payroll costs in an amount equal to the \$2.06 million in Coronavirus Relief (CRF) funds allocated to the County at a prior point in time. We recognize that this request comes later than requests by other cities and counties and after CFAC may have identified alternative avenues for spending that money. This letter explains the circumstances that led to that delay, and requests that Bonner County not be penalized for not opting into the program prior to the September 2020 deadline.

On July 17, 2020, Bonner County timely submitted a letter of intent to participate in the program. *See Attachment A.* The County's letter of intent identified approximately \$4.85 million in estimated public safety payroll expenses between March 1, 2020 through December 30, 2020. At the time of submitting its letter of intent, the County was "still uncertain about whether we can participate in this program" due to regulatory ambiguity. *See Attachment A, p. 1.* Specifically, the County was concerned about accepting funds pursuant to the presumption identified in what was then ambiguous guidance issued by U.S. Treasury and the Office of Inspector General ("OIG"). As you know, the County also initiated a federal action seeking clarity on these issues.

At the time of the deadline for the County to opt into the program by checking a box on its Form L-2 (in September 2020), the federal guidance on this issue remained unclear, and the County remained uncertain regarding participation based on that regulatory uncertainty. Specifically, the guidance that was in effect during the September L-2 deadline was guidance issued by OIG and the Treasury Department on August 28, 2020, and September 2, 2020, respectively. That guidance purported to require substantial documentation regarding time spent by public health and safety employees responding to COVID-19, which appeared contrary to the statement that governments were entitled to a presumption that such payroll costs were properly subject to reimbursement.

As you know, conditions have changed and the federal guidance on this issue has been updated (most recently on November 25, 2020), and the County now feels comfortable receiving funds to

reimburse its public safety payroll expenses pursuant to the presumption identified in the most recent guidance from U.S. Treasury and OIG.

Likewise, the County has settled and dismissed, with prejudice, its lawsuit with the various State Defendants, including this Committee.

Although the County did not check the box on its Form L-2 to participate in the Public Safety Initiative program prior to the September deadline, the County also did not avail itself of its annual right to increase property taxes, and opted instead to hold taxes flat. Thus, the only distinction between Bonner County and the other counties who have participated in the program is that the County did not check the box to opt into the program.

In light of the above, the County hereby respectfully requests the opportunity to participate in the Governor's Public Safety Initiative program by submitting for reimbursement its public safety payroll costs in an amount equal to the \$2.06 million in CRF funds allocated to the County at a prior point in time.

Bonner County would use the additional 2.06 million in lieu of collected property taxes to finance its public safety budgets during the current fiscal year. Bonner County would reserve Public Safety property tax dollars collected in the current fiscal year and then place them as carry-over to finance the next fiscal years (in lieu of taxation) budget. Bonner would do to ensure that the benefit is passed on to Bonner County taxpayers.

Respectfully submitted,



Scott Bauer
Civil Deputy Prosecutor



Bonner County

Board of Commissioners

Daniel McDonald

Jeff Connolly

Steven Bradshaw

July 17, 2020

Sent via email to: CFAC@dfm.idaho.gov

Honorable Governor Brad Little
Idaho State Capitol
P.O. Box 83720
Boise, ID 83720

Letter of Intent

Dear Governor Little,

On behalf of Bonner County, we are notifying you of our intent to participate in the public safety reimbursement/property tax reduction proposal. Our understanding is that this Notice is non-binding and intended to assist you in estimating allocations under the program. While we are concerned about the legal and logistical elements of the program, we hope to continue working with your Office and appreciate any legal guidance that might be provided from the U.S. Treasury or Attorney General in the coming weeks.

Per your request under this program, our estimated public safety payroll costs from March 1, 2020 through December 30, 2020 are as follows:

Employee Category (<i>only include the relevant categories</i>)	Estimated Payroll Costs
County Sheriff Jail and Detention Deputies	\$2,731,874.04
Emergency Medical Services	\$2,118,216.00
Total	\$4,850,063.04

Because we are still uncertain about whether we can participate in this program, Bonner County reserves the right to withdraw this Notice of Interest at any time prior to the adoption of the Bonner County budget on August 26, 2020.

Further, if we are able to participate and as a condition for our participation in the program, in the event that the U.S. Treasury requests repayment of these funds, or in the event any claims, suits or judgments are brought pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733 or on any other basis, Bonner County understands that the State of Idaho will hold us harmless and defend and indemnify Bonner County. Bonner County expressly declines to refund, defend, indemnify or hold harmless the State of Idaho relating to the provision of these funds.



Bonner County

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The Governor's Office is encouraging all counties in Idaho to fund their emergency services departments in their entirety under the "administrative convenience" exception while reserving the right to seek reimbursement if the United States Department of the Treasury seeks to recoup such funds. The Governor's policy has put localities in the untenable position of either denying the funds outright (to the detriment of local taxpayers) or using such funds in accordance with the Governor's Office's legal interpretation and facing the risk that recoupment will be sought for expenditures not directly and substantially related to COVID-19.

Thus, Bonner County has initiated a federal action seeking clarification of these issues (Case No. 1:20-cv-00350-REB (Attachment A) pending in the United States District Court for the District of Idaho, Southern Division). This Notice of Intent is expressly subject to the issues set forth in the Complaint filed in that action, which is attached hereto and incorporated by reference herein.

We look forward to receipt of an estimated payroll allocation available through the Coronavirus Relief Fund by August 3, 2020 so that we can properly assess whether this is in the best interests of the citizens of Bonner County and accurately prepare and publish the upcoming budget.

Thank you for the work that your Office has put into combating this pandemic. We look forward to continuing communication on the program and for your Office's willingness to discuss and review our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel McDonald".

Daniel McDonald
Chairman
Bonner County Board of Commissioners

ATTEST: Michael W. Rosedale

By A handwritten signature in black ink, appearing to read "Jesse Webster".
Deputy Clerk