

February 2, 2009

**THE BOARD OF
BENTON COUNTY
COMMISSIONERS
AGENDA PACKET**

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
January 26, 2009, 9:00 am.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Max E. Benitz, Jr. Chairman
Commissioner Jim Beaver
Clerk of the Board Cami McKenzie

Absent: Commissioner Leo Bowman (excused for committee assignment - PEDDA)
County Administrator David Sparks (excused)

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; DPA Ryan Brown; Planning Manager Mike Shuttleworth; Susan Walker, Planning; PA Andy Miller; Margaret Ault, PA's Office; Public Works Director Ross Dunfee; Treasurer Duane Davidson.

Approval of Minutes

The Minutes of January 12, January 14, and January 21, 2009 were approved.

Consent Agenda

MOTION: Commissioner Beaver moved to approve the consent agenda items "a" through "hh". Chairman Benitz seconded and upon vote, the Board approved the following:

Facilities

- a. Notice of Completion – Construction of Courtroom TI Project @ Justice Center
- b. Notice of Completion – Haworth Office Furniture/Jury Chairs for Courtroom TI Project
- c. Lease Agreement w/Gold Wing Road Riders Association, Inc.
- d. Lease Agreement w/Franklin County Farm Bureau
- e. Contract Amendment, 307/09-DD-PHG-1, w/The Provident Horizon Group
- f. Contract Amendment, #07/09-DD-CDC-1, w/Children's Development Center
- g. Contract Amendment, #07/09-DD-ARC w/ARC of Tri-Cities
- h. Contract Amendment, w/Netsmart Ohio, Inc.
- i. Contract w/Benton Franklin Community Action Committee
- j. Amendment #07/09-DD-CI-01 w/Columbia Industries
- k. Amendment #07/09-DD-GW-01 w/Goodwill Industries

- l. Amendment #07/09/DD-PTC-01 w/Peopleworks Tri-Cities
- m. Amendment #07/09-RES-LCC w/Lourdes Counseling Center
- n. Personal Services Contract w/Tri-Cities Chaplaincy

Office of Public Defense

- o. Payment for Professional Services and Fees for M Iaria, Amending Resolution 08-829
- p. Authorization to Sign Expenditures for OPD; Rescinding Resolution 08-339
- q. District Court Defense Contract w/C Harkins
- r. District Court Defense Contract w/R Swinburnson

Personnel

- s. Position Classifications and Grades
- t. Personal Service Contract w/All-Safe Abatement

Road/Engineer

- u. E. R. & R. Fund Equipment Rental Rates
- v. Underpass Agreement w/BNSF Railway Company – Webber Canyon & Kiona
- w. Agreement w/City of West Richland to Seal Coat Roads
- x. Agreement w/City of Prosser to Allocate SAFETEA-LU Funds
- y. Local Agency Agreement Supplement w/WA St DOT – Webber Canyon Road
- z. Project Prospectus w/DOT – Horse Heaven Vista
- aa. Local Agency Agreement Supplement w/WA St DOT – Horse Heaven Vista
- bb. Local Agency Environmental Classification Summary w/ WA St DOT – Horse Heaven Vista
- cc. C.R.I.D. #16, Spirit Lane, Property Consolidation
- dd. Webber Canyon Road Bid Award

Sheriff

- ee. Authorization to Purchase Paper Supplies for the Benton County Jail

Sustainable Development

- ff. Annual Contract w/Department of Ecology

Treasurer

- gg. Canceling Uncollectible Taxes Assessed Upon Personal Property
- hh. Line Item Transfer, Fund No. 0000-101, Dept. 124

The Board briefly recessed, reconvening at 9:05 a.m.

Continued Public Hearing - 2008 Comprehensive Plan Amendments

CPA – 07-02

Mike Shuttleworth entered Exhibits “A” through “U” into the record. He indicated this was a continued public hearing for the request to change the land use designation from RL5 to RL1 on approximately 1,120 acres southwest of the I-82 Interchange and Badger Road.

Proponents

Thayne Wisner said that he and Mr. Sullins made the application together in 2006 for 2007 comprehensive plan amendments and that was important due to policies in effect at that time.

He said that 1 and 2.5 acre densities were allowable at that time. He indicated that landowners had been very successful and put in 300 homes on 1 acre lots and they had preserved the rural element and recommended the Board approve it. He said he received a copy of the email from Leo Bowman and concurred with his summary.

John Ziobro, attorney for applicants, asked if Commissioner Bowman's opinion would be allowed as a vote and the Chairman stated it would not. Mr. Ziobro said he believed the County had the authority to permit one-acre lots. Additionally, if the Board approved Motion Option #3 that required a further evaluation of RL 2.5, the Board should permit the same evaluation for one acre lots. He said he believed there was a way to make it work and asked that it be sent back to staff for some analysis.

Clarence Bumgartner spoke in favor of the proposal and said it was a good project and meant a lot of money to Benton County.

John Sullins, applicant, asked the Commissioners to strongly consider approving this request since it was a proven successful development.

As there was no one else present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved that Comprehensive Plan Amendment Application File # CPA 07-02, the proposal to change the land use designation from Rural Lands Five (RL-5) to Rural Lands One (RL-1) to be approved, and that the Chairman of the Board in conjunction with the Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 07-02, that articulate and are consistent with the findings and conclusions made by the Board. Chairman Benitz seconded.

Discussion

Commissioner Beaver said he was familiar with how land use designations changed and that cities were always trying to maximize the one-acre lots with more density. He said the County needed to continue to build areas in the community that met the needs and could look at Benton County as a whole as they continued to build. He then read comments into the record from Leo Bowman (Exhibit U).

Chairman Benitz requested a three-minute recess.

The Board recessed, reconvening at 9:30 a.m.

Chairman Benitz said he had looked at the land being proposed and believed it did not meet the legislative exception for more rural intensive development. He said he agreed the County needed more homes but it should be in compliance with the law.

Upon vote, the motion failed with Commissioner Beaver voting yes and Chairman Benitz opposing.

CPA 08-01

Mike Shuttleworth entered the Exhibits "A" through "K" into the record.

He stated it was a continued public hearing by Wayne Penttila to change the existing land use designation of Heavy Industrial to Rural Lands 5.

Proponents

Wayne Penttila, applicant, summarized and spoke in favor and said he was asking to do something productive with the property, instead of letting it sit vacant.

As there was no one else present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve that Comprehensive Plan Amendment Application File #CPA 08-01, the proposal to change the land use designation from Heavy Industrial to Rural lands Five (RL-5) be approved and the Chairman of the Board in conjunction with the Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-01 that articulate and are consistent with the findings and conclusions made by the Board. Chairman Benitz seconded.

Discussion

Commissioner Beaver said the County needed to move forward with proposals that landowners could do something with and build better places.

Chairman Benitz said the surrounding areas were in rural residential zones and he would support the application.

Upon vote, the motion carried.

CPA 08-02

Mr. Shuttleworth entered Exhibits "A" through "P" into the record. He then stated it was a continued public hearing to consider the City of West Richland's proposal to include an additional 747 acres of land into its Urban Growth Area.

Proponents

Dale Jackson, W. Richland Mayor, said the City had submitted its written summary of the proposal and stated his belief the County had the discretion to approve the inclusion of the 747 acres.

Chuck Dawsey, Benton REA, said he was in support of the expansion and that West Richland was the only city from Seattle to Tri-Cities that did not have interstate access. He said they

supported the application because it would include the Red Mountain Interchange, provide opportunity for the Red Mountain AVA to expand, and allow West Richland to become a city of its own with interstate access.

Calvin Dudney, Port of Kennewick, spoke in support of the application. He indicated it would protect the Red Mountain AVA and its value, promote economic development with the interchange, and said there were very few places that existed for commercial and light industrial development.

Dan Cryer, Port of Kennewick, read the Port Commissioners letter (Exhibit "K") into the record and spoke in favor.

Opponents

Susan Swanson said she previously submitted a letter and was opposed to the application. She said the application centered on the interstate and the expectation it would be there, but the interstate was a separate issue. She requested the proposal be denied.

Lloyd Coughlin spoke in opposition and said the current areas in the UGA were not being developed and he requested the Board deny the application.

As there was no one else present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve the Comprehensive Plan Amendment Application File CPA 08-02, the proposal to include 747 acres into the West Richland UGA and the Chairman of the Board, in conjunction with the Planning Department prepare written findings and conclusions reflecting the Board's decision to approve Comprehensive Plan Amendment Application CPA 08-02 that articulate and are consistent with the findings and conclusions made by the Board. Chairman Benitz seconded.

Discussion

Commissioner Beaver said he wanted to give West Richland an opportunity to create a vision, even during tough economic times.

Chairman Benitz said the first urban growth plan was adopted in 1990 and it was tough to draw a line in the sand and say it could not be changed due to changes in the economy. He indicated the intent of the growth management act was to encourage economic development and it was vitally important and he had considered the impact on the interchange and its enhancement of economic development.

Upon vote, the motion carried.

CPA 08-04

Mike Shuttleworth entered Exhibits A-E into the record. He said the amendments proposed were changes to the Benton County Comprehensive Plan.

As there was no one present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve Comprehensive Plan Amendment Application CPA 08-04, the proposal for additions and changes to Tables 9.0 and 9.1 of Chapter Nine, the Capital Facilities Element of the Benton County Comprehensive Plan and the Board adopt the Planning Commission's Findings of Fact as their own. Chairman Benitz seconded and upon vote, the motion carried.

CPA 08-05

Mr. Shuttleworth entered Exhibits A-E into the record.

As there was no one present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve Comprehensive Plan Amendment Application CPA 08-05, the proposal for edits to text in Benton County Comprehensive Plan and adopt the Planning Commission's Findings of Fact as their own. Chairman Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:15 a.m.

Crow Butte Report

The Port of Benton gave its annual report that included the following projects completed in 2008:

- Replace and Improve Electrical & RV Pedestals
- Slurry Seal and Restripe Marine Parking Lots; Crack Seal Roads
- Replace and Upgrade Waters Heaters; RV & Day Use
- Upgrade Lighting in Marina and Dump Station
- Extend Concrete Patio at Concession Area
- Replace Broken Windscreens
- Upgrade Landscaping at Dump Station
- Office Remodel

Additionally, the Port asked the Board to consider extending its contribution beyond 2009.

The Board briefly recessed, reconvening at 10:30 a.m.

Public Hearing – Application for Franchise – Roza Heights Water

Sue Schuetz said they received a petition for nonexclusive franchise to place water lines within Benton County road right of way. She said her office recommended approval, based upon current franchise requirements.

As there was no one present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve the petition of Roza Heights Water for a nonexclusive franchise to place water lines within Benton County road right of way with the listed conditions. Chairman Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:35 a.m.

Zone Change Request – ZC 08-01

Mike Shuttleworth presented the zone change request filed by Badger Properties II LLC and said the Planning Commission voted to recommend approval of the zone change application.

MOTION: Commissioner Beaver moved to approve the Zone Change Request ZC 08-01 and adopt the Planning Commission's findings of fact. Chairman Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 10:45 a.m.

Ordinance Amendment – BCC Chapter 11.54

Mike Shuttleworth said the Planning Commission had completed its open record hearing on the proposed ordinance amendment to BCC Chapter 11.54 and voted to recommend approval. He said the proposal was to bring current the rules adopted by the State regarding administration and disposition of infractions.

MOTION: Commissioner Beaver moved to approve the ordinance amendment to BCC Chapter 11.54 and adopt the Planning Commissions Recommendations, Findings and Conclusions. Chairman Benitz seconded and upon vote, the motion carried.

The Board recessed, reconvening at 10:50 a.m.

Public Hearing – Supplemental Appropriation

Linda Ivey summarized the request by the PA's office for a supplemental appropriation.

As there was no one present to testify, public testimony was closed.

MOTION: Commissioner Beaver moved to approve the supplemental appropriation to the 2009 Current Expense Fund, Prosecutor's Office, Dept. 117 in the amount of \$74,054. Chairman Benitz seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 11:00 a.m.

Final Plat of Summit View Phase 6

Mike Shuttleworth presented the final phase for approval and stated they had completed the 21 conditions of approval.

MOTION: Commissioner Beaver moved to approve the final plat of Summit View Phase 6 SUB 08-02. Chairman Benitz seconded and upon vote, the motion carried.

Other Business

Appointment of 16th Legislative District Position

The Board discussed possible dates to meet with the other counties regarding the appointment and agreed on February 20, 2009 at 1:30 p.m. in Walla Walla County. The Board requested Ms. Smith Kelty respond back regarding a date.

Claim for Damages

CC 09-01: Received on January 16, 2009 from Arnold Orozco for damage to his vehicle.
CC 09-02: Received on January 20, 2009 from William Blaine for injuries sustained from an automobile accident.

Vouchers

Check Date: 01/09/2009
Warrant #: 914762-914978
Total all funds: \$376,653.46

Check Date: 01/15/2009
Taxes # 10109014-10109015
Total all funds: \$35,972.10

Check Date: 01/15/2009
Warrant # 221807-222051
Total all funds: \$111,265.38

Check Date: 01/16/2009
Warrant # 915083-915181
Total all funds: \$1,499,963.33

Check Date: 01/23/2009
Warrant # 915829-91674
Total all funds: \$1,653,651.66

Check Date: 01/23/2009
Warrant # 915183-915593
Total all funds: \$10,324.07

Total amounts approved by fund can be reviewed in the Benton County Auditor's Office.

Resolutions

- 09-038: Notice of Completion – Construction of Courtroom TI Project @ Justice Center
- 09-039: Notice of Completion – Haworth Office Furniture/Jury Chairs for Courtroom TI Project
- 09-040: Lease Agreement w/Gold Wing Road Riders Association, Inc.
- 09-041: Lease Agreement w/Franklin County Farm Bureau
- 09-042: Contract Amendment, 307/09-DD-PHG-1, w/The Provident Horizon Group
- 09-043: Contract Amendment, #07/09-DD-CDC-1, w/Children's Development Center
- 09-044: Contract Amendment, #07/09-DD-ARC w/ARC of Tri-Cities
- 09-045: Contract Amendment, w/Netsmart Ohio, Inc.
- 09-046: Contract w/Benton Franklin Community Action Committee
- 09-047: Amendment #07/09-DD-CI-01 w/Columbia Industries
- 09-048: Amendment #07/09-DD-GW-01 w/Goodwill Industries
- 09-049: Amendment #07/09/DD-PTC-01 w/Peopleworks Tri-Cities
- 09-050: Amendment #07/09-RES-LCC w/Lourdes Counseling Center
- 09-051: Personal Services Contract w/Tri-Cities Chaplaincy
- 09-052: Payment for Professional Services and Fees for, M Iaria, Amending Resolution 08-829
- 09-053: Authorization to Sign Expenditures for OPD; Rescinding Resolution 08-339
- 09-054: District Court Defense Contract w/C Harkins
- 09-055: District Court Defense Contract w/R Swinburnson
- 09-056: Freeze for Evaluation and Approval Position Classifications and Grades
- 09-057: Personal Service Contract w/All-Safe Abatement
- 09-058: E.R. & R. Fund Equipment Rental Rates
- 09-059: Underpass Agreement w/BNSF Railway Company – Webber Canyon & Kiona
- 09-060: Agreement w/City of West Richland to Seal Coat Roads
- 09-061: Agreement w/City of Prosser to Allocate SAFETEA-LU Funds
- 09-062: Local Agency Agreement Supplement w/WA St DOT – Webber Canyon Road
- 09-063: Project Prospectus w/DOT – Horse Heaven Vista
- 09-064: Local Agency Agreement Supplement w/WA St DOT – Horse Heaven Vista
- 09-065: Local Agency Environmental Classification Summary w/ WA St DOT – Horse Heaven Vista
- 09-066: C.R.I.D. #16, Spirit Lane, Property Consolidation
- 09-067: Webber Canyon Road Bid Award
- 09-068: Authorization to Purchase Paper Supplies for the Benton County Jail

- 09-069: Annual Contract w/Department of Ecology
- 09-070: Canceling Uncollectible Taxes Assessed Upon Personal Property
- 09-071: Line Item Transfer, Fund No. 0000-101, Dept. 124
- 09-072: Approval of ZC 08-01
- 09-073: Approval of Ordinance Relating to Zoning and to the Administration and Disposition of Infractions
- 09-074: Approval of Supplemental Appropriation, Current Expense, Dept. 117, \$74,054
- 09-075: Approval of Final Plat of Summit view Phase 6 – SUB 08-02

There being no further business before the Board, the meeting adjourned at approximately 11:05 a.m.

Clerk of the Board

Chairman

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>		
Meeting Date: <u>February 2, 2009</u> Subject: <u>Archive Grant</u> Prepared by: <u>J. Delvin</u> Reviewed by:	Execute Contract Pass Resolution <u>XX</u> Pass Ordinance Pass Motion Other	<u>XX</u>	Consent Agenda <u>XX</u> Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

Pass resolution-allowing Chairman to sign invoice voucher for further disbursement of grant funds.

SUMMARY

RECOMMENDATION

1st

nd

FISCAL IMPACT

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF LOCAL RECORDS GRANT AWARD FROM THE WASHINGTON STATE ARCHIVES, SUBMITTED BY THE BENTON COUNTY CLERK,

WHEREAS, the grant invoice voucher requires the signature of the County Authorizing Official; NOW, THEREFORE,

BE IT RESOLVED, that the Board of Benton County Commissioners, hereby authorize the chairman to sign the attached invoice voucher to the Office of the Secretary of State, Washington State Archives, as submitted by the Benton County Clerk

Dated this _____ day of _____, 2009

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County,
Washington.

Attest: _____
Clerk of the Board

cc: Clerk, Auditor, R. Ozuna, file
Original to Clerk



STATE OF WASHINGTON
INVOICE VOUCHER

AGENCY USE ONLY		
AGENCY NO.	LOCATION CODE	P.R. OR AUTH. NO.
0850		07CE046R G3866

AGENCY NAME
Office of the Secretary of State
Attn: Patrick Williams
PO Box 40238
Olympia, WA 98504-0238

VENDOR OR CLAIMANT (Warrant is to be payable to)
Josie Delvin
Benton Co Clerk
7122 W Okanogan Place Building A
Kennewick, WA 99336

INSTRUCTIONS TO VENDOR OR CLAIMANT: Submit this form to claim payment for materials, merchandise or services. Show complete detail for each item.

Vendor's Certificate: I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the State of Washington, and that all goods furnished and/or services rendered have been provided without discrimination because of age, sex, marital status, race, creed, color, national origin, handicap, religion, or Vietnam era or disabled veterans status.

BY Commissioner (Sign in ink)
Max Benitz Jr. (DATE)

FEDERAL I.D. NO. OR SOCIAL SECURITY NO. (For reporting Personal Services Contract Payments to I.R.S.)
91-6001296

RECEIVED BY _____ DATE RECEIVED _____

DATE	DESCRIPTION	Approved Grant Disbursements	AMOUNT	FOR AGENCY USE
2007-2009	Washington State Archives Local Records Grant Program			
	Regular Grant - 2nd Interim Disbursement Request			
	Total Grant Award:		\$29,997.00	
	First Disbursement: 60%		\$17,998.20	
	Grant Balance:		\$11,998.80	
	Second Interim Disbursement: 20%	\$5,999.40		
	Remaining Grant Balance:		\$5,999.40	

PREPARED BY: Patrick Williams LRGP Coordinator
TELEPHONE NUMBER: 360-586-0108
DATE: 1-12-09
AGENCY APPROVAL: _____ DATE: _____

DOC. DATE: _____ PMT DUE DATE: _____ CURRENT DOC. NO.: _____ REF. DOC.: _____ VENDOR NUMBER: 2251-56
VENDOR MESSAGE: _____ UBI NUMBER: _____

REF DOC SUE	TRANS CODE	M O N	FUND	MASTER INDEX		SUB OBJ	SUB SUB OBJECT	ORG INDEX	WORKCLASS ALLOC	COUNTY BUDGET UNIT	CITY/TOWN MOS	PROJECT	SUB PROJ	PROJ PHAS	AMOUNT	INVOICE NUMBER
				APPN INDEX	PROGRAM INDEX											
	210		441	310	6803	nz	0006								\$5,999.40	07CE046R 2nd Disbursement
ACCOUNTING APPROVAL FOR PAYMENT _____ DATE _____																
															WARRANT TOTAL	WARRANT NUMBER

b

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF THE ORGANIZATION OF BENTON COUNTY COMMISSIONERS
FOR THE YEAR 2009, RESCINDING RESOLUTION 09-026**

BE IT HEREBY RESOLVED that the following constitutes the organization of the Benton County Commissioners and staff for the Year 2009:

- CHAIRMAN OF THE BOARD Max Benitz, Jr.
- CHAIRMAN PRO-TEM Leo Bowman
- COUNTY ADMINISTRATOR David Sparks
- CLERK OF THE BOARD Cami McKenzie
..... Lisa Small, Alt.
..... Marilu Flores, Alt.
- BENTON COUNTY EXTENSION DIRECTOR Marianne Ophardt
- BENTON COUNTY PEST BOARD SUPERINTENDENT Frank Wolf
- BI-PIN Brian White
..... David Sparks, Alt.
- HANFORD ADVISORY BOARD Maynard Plahuta
..... Kenneth Gasper, Alt.
..... Richard Jansons, 2nd Alt.
- HOMELESS HOUSING Carrie Huie-Pascua
- HUMAN SERVICES DIRECTOR Carrie Huie-Pascua
- METRO David Sparks
..... Loretta Smith Kely, Alt.
- PUBLIC WORKS DIRECTOR/COUNTY ENGINEER Ross Dunfee
- B-F REGIONAL REVOLVING LOAN FUND BOARD James Beaver
..... Leo Bowman, Alt.
- BEN FRANKLIN TRANSIT BOARD Leo Bowman
..... James Beaver, Alt.

BENTON CITY CAPITAL FACILITIES AREA LIBRARY BOARD Max Benitz, Jr.
 Leo Bowman
 James Beaver
 BENTON CLEAN AIR AUTHORITY James Beaver
 Leo Bowman, Alt.
 BENTON COUNTY FINANCE COMMITTEE (rotate w/chair)..... Max Benitz, Jr.
 BENTON COUNTY LEOFF DISABILITY BOARD Max Benitz, Jr.
 BENTON-FRANKLIN COUNCIL OF GOVERNMENTS James Beaver
 Max Benitz, Jr., Alt.
 BENTON-FRANKLIN LAW LIBRARY BOARD Leo Bowman
 BENTON-FRANKLIN-WALLA WALLA GOOD ROADS ASSN. Leo Bowman
 James Beaver, Alt.
 BI-COUNTY HEALTH BOARD James Beaver
 Max Benitz, Jr.
 Leo Bowman
 CONSOLIDATED JUVENILE SVCS. BOARD James Beaver
 CREDIT (Columbia Regional Economic Development Trust) Leo Bowman
 EMERGENCY SERVICES BOARD Max Benitz, Jr.
 ENERGY COMMUNITIES ALLIANCE James Beaver
 Adam Fyall, Alt.
 GREATER COLUMBIA BEHAVIORAL HEALTH (RSN) Max Benitz, Jr.
 Carrie Huie-Pascua, Alt.
 HANFORD AREA ECONOMIC INVESTMENT FUND COMMITTEE..... Max Benitz, Jr.
 NATIONAL ASSOCIATION OF COUNTIES (NACo) Leo Bowman
 PARK BOARD (ex-officio) James Beaver
 Leo Bowman, Alt.
 PROSSER ECONOMIC DEVELOPMENT ASSOCIATION (PEDA) ..Max E. Benitz, Jr. (ex-officio)
 SOLID WASTE ADVISORY COMMITTEE James Beaver
 Leo Bowman, Alt.
 TRI-CITY REGIONAL CHAMBER OF COMMERCE (ex-officio)..... Leo Bowman
 TRI-CITY VISITOR & CONVENTION BUREAU James Beaver



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ADOPTING THE 2009 BENTON COUNTY CAPITAL FACILITIES PLAN

WHEREAS, the Board of Benton County Commissioners desires to annually update the Benton County Capital Facilities Plan in conjunction with the annual Benton County Budget; and

WHEREAS, the Capital Facilities Plan is a planning document to be used in setting policy and establishing priorities for capital facilities projects; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby adopts the attached 2009 Benton County Capital Facilities Plan.

”.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

2009 – 2014

Benton County

Capital Facilities Plan

Available at the

Commissioners

Office upon request

d

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF BENTON COUNTY TAX LEVY FOR 2009

WHEREAS, on this 2nd day of February, 2009, the Board of Benton County Commissioners, pursuant to the laws of the State of Washington, providing for all assessment of taxes in the State of Washington, does hereby levy a tax on all taxable property in Benton County, and the taxable property within the various districts, as shown by the assessment rolls of said county, said tax being for the purpose of defraying the county, road, municipal, drainage, hospital districts, fire protection districts, and other expenses; and,

WHEREAS, the directors, supervisors, and commissioners of various school districts, drainage districts, and other districts and municipalities have certified to the county commissioners the amounts needed to meet the expenses for 2008-2009; and,

WHEREAS, it is necessary in some districts that a tax be levied to pay interest on bonds and create a sinking fund for the purpose of paying indebtedness; **NOW THEREFORE**,

BE IT RESOLVED, all members concurring, and for the purpose of raising revenue for the county, road, and other purposes, thereby and hereby is levied on all taxable property in the County of Benton, State of Washington, as shown by the assessment roles for the year of 2009, taxes sufficient to raise the following amounts:

See attached Exhibit A

BENTON COUNTY ASSESSED VALUATION FOR 2009 \$12,724,702,163

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

BENTON COUNTY, WASHINGTON
January 20, 2009

TAXING DISTRICT	LEVY VALUATION	\$/1000	AMOUNT TO BE COLLECTED IN 2009
STATE SCHOOLS	12,646,834,460	1.92398557	\$24,332,327
COUNTY-CURRENT EXPENSE	12,724,702,163	1.32342388	\$16,840,175
COUNTY-MH & RETARDATION	12,724,702,163	0.02500000	\$318,118
COUNTY-INDIGENT SOLDIER	12,724,702,163	0.01130000	\$143,789
COUNTY-ADMIN REFUND	12,724,702,163	0.01689210	\$214,947
CONSOLIDATED ROAD DISTRICT	2,763,524,217	1.91109633	\$5,281,361
ADMIN REFUND	2,763,524,217	0.01040546	\$28,756
BENTON CITY-CURRENT EXPENSE	101,731,657	1.29751597	\$131,998
KENNEWICK - CURRENT EXPENSE	4,373,699,449	2.26031251	\$9,885,928
KENNEWICK - ADMIN REFUND	4,373,699,449	0.02426750	\$106,139
KENNEWICK-LIBRARY BOND	4,341,821,484	0.08636928	\$375,000
PROSSER - CURRENT EXPENSE	365,389,454	2.87847005	\$1,051,763
PROSSER - ADMIN REFUND	365,389,454	0.01368403	\$5,000
PROSSER - FIRE STATION	362,588,034	0.43575625	\$158,000
RICHLAND - CURRENT EXPENSE	4,405,555,654	2.71408851	\$11,957,068
RICHLAND - POLICE STATION	4,383,347,922	0.05853403	\$256,575
RICHLAND - GOB FIRE & SWIN	4,383,347,922	0.04152077	\$182,000
RICHLAND - COMMUNITY CTR/DEBIT SERVICES	4,383,347,922	0.07175702	\$314,536
RICHLAND - LIBRARY	4,383,347,922	0.25327125	\$1,110,176
WEST RICHLAND - CURRENT EXPENSE	714,801,732	1.60375101	\$1,146,364
SCHOOL DISTRICT #116-BOND	869,771,025	1.58643721	\$1,379,837
SCHOOL DISTRICT #116-M & O	869,771,025	3.45386638	\$3,004,073
SCHOOL DISTRICT #17-BOND	5,405,621,447	1.52618900	\$8,250,000
SCHOOL DISTRICT #17-M & O	5,405,621,447	3.25586987	\$17,600,000
SCHOOL DISTRICT #200-BOND	32,246,672	2.36946451	\$76,407
SCHOOL DISTRICT #200-M & O	32,246,672	1.39545792	\$44,999
SCHOOL DISTRICT #400-BOND	5,222,261,617	1.43041474	\$7,470,000
SCHOOL DISTRICT #400-M & O	5,222,261,617	2.73900640	\$14,303,808
SCHOOL DISTRICT #50-BOND	325,280,888	0.49495684	\$161,000
SCHOOL DISTRICT #50-M & O	325,280,888	0.41582216	\$135,259
SCHOOL DISTRICT #52-BOND	438,549,933	1.33394160	\$585,000
SCHOOL DISTRICT #52-M & O	438,549,933	4.29474926	\$1,883,462
SCHOOL DISTRICT #53-BOND	350,514,903	2.45353334	\$860,000
SCHOOL DISTRICT #53-M & O	350,514,903	3.83708649	\$1,344,956
FIRE DISTRICT #1-CURRENT EXPENSE	1,240,585,432	1.43768786	\$1,783,575
FIRE DISTRICT #1-LTD BOND (1996)	1,240,585,432	0.03750590	\$46,529
FIRE DISTRICT #1-K22 LTD BOND (1996)	547,933,374	0.03750589	\$20,551
FIRE DISTRICT #1-LTD BOND (2003)	1,240,585,432	0.00787597	\$9,771
FIRE DISTRICT #1-K24 LTD BOND (2003)	240,882,968	0.00787598	\$1,897
FIRE DISTRICT #1- VOTED BOND (2003)	1,495,446,968	0.11669287	\$174,508
FIRE DISTRICT #2-CURRENT EXPENSE	337,081,507	1.48644194	\$501,052
FIRE DISTRICT #2 - ADMIN REFUND	337,081,507	0.01355806	\$4,570
FIRE DISTRICT #2-BOND	333,344,904	0.28331016	\$94,440
FIRE DISTRICT #2 EMS	337,081,507	0.49617774	\$167,252
FIRE DISTRICT #2 EMS - ADMIN REFUND	337,081,507	0.00382226	\$1,288
FIRE DISTRICT #3-CURRENT EXPENSE	404,276,569	1.03989541	\$420,405
FIRE DISTRICT #3-BOND	410,296,786	0.22684311	\$93,073
FIRE DISTRICT #4-CURRENT EXPENSE	969,776,447	1.43252672	\$1,389,231
FIRE DISTRICT #4-BOND	969,776,447	0.06747328	\$65,434
FIRE DISTRICT #5-CURRENT EXPENSE	83,938,882	0.75054609	\$63,000
FIRE DISTRICT #6-CURRENT EXPENSE	428,355,721	0.96638975	\$413,959
FIRE DISTRICT #6-EMS			\$0
PROSSER HOSPITAL-CURRENT EXPENSE	1,555,938,824	0.38987470	\$606,621
PROSSER HOSPITAL-BOND	1,552,349,626	0.31587150	\$490,343
KENNEWICK HOSPITAL-CURRENT EXPENSE	7,258,675,208	0.14944845	\$1,084,798
KENNEWICK HOSPITAL-ADM REFUND	7,258,675,208	0.00118607	\$8,609
PORT OF BENTON-CURRENT EXPENSE	4,305,685,014	0.40575587	\$1,747,057
PORT OF BENTON-BOND 1997	4,305,685,014	0.01574662	\$67,800
PORT OF KENNEWICK-CURRENT EXPENSE	8,419,017,149	0.09502297	\$800,000
PORT OF KENNEWICK-CONSTRUCTION FUND	8,419,017,149	0.25299202	\$2,129,944
PORT OF KENNEWICK-ADMIN REFUND	8,419,017,149	0.00265634	\$22,364
MID-COLUMBIA LIBRARY SYSTEM	7,238,955,323	0.41839537	\$3,028,745
MID-COLUMBIA LIBRARY SYSTEM-ADMIN REFUND	7,238,955,323	0.00303483	\$21,969
BENTON CITY LIBRARY CAPITAL FACILITY AREA	375,947,776	0.17483905	\$65,730
			\$146,263,336

e

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF ALTERNATE DATES FOR BUDGET HEARINGS, 2009
BENTON COUNTY BUDGETS**

WHEREAS, RCW 36.40.071 allows the county commissioners to set alternate dates for budget hearings; **NOW THEREFORE**,

BE IT RESOLVED that the following dates are hereby adopted for the 2009 budget preparation:

- August 7 Auditor's Office budget call letter to departments for estimates of revenues and expenditures, goals, objectives, milestones, and performance activity measures;
- August 28 Departments return final estimates of revenues and expenditures, goals, objectives, milestones, and performance activity measures to the Auditor's Office;
- October 2 Auditor's Office submits the preliminary budget to Board of Commissioners;
- October 13 Budget workshop;
- October 20-23 Budget workshops;
- November 15 First publication of notice of county budget hearings for final budgets;
- November 22 Second publication of notice of county budget hearings for final budgets;
- November 30 Public hearing and adoption of final budgets.

Dated this day of, 20

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

cc: All Depts.

Ivey

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator



February 2, 2009

Mayor John Fox, City of Richland
505 Swift Blvd.
Richland, WA 99352

Re: Duportail Bridge – SR240 to Queensgate

Dear Mayor Fox:

The Benton County Commissioners are pleased to express our support for the City's Duportail Bridge project. We applaud the thorough community involvement process the City used to select this project from among several alternative projects. Large infrastructure projects, such as the Duportail Bridge, represent complex decisions with far reaching consequences. The City has clearly made a good decision based on a good process in selecting the Duportail Bridge project.

The benefits that will result from completion of the bridge include congestion relief at long-standing choke points; deferral of expensive improvements to the state highway system; improved connectivity for alternative transportation modes such as pedestrians, bicycle riders and transit users; improved connectivity and access to the Yakima River greenbelt trail system; and support for commercial development in both downtown Richland and the Queensgate area. It is clear that this facility is consistent with and fulfills the transportation planning goals of the City of Richland, Benton County as well as our entire region.

Benton County supports the City's effort to complete this project as soon as possible. Doing so will resolve long-standing and worsening traffic congestion issues that have and threaten to stifle economic development in the City. Again, the Benton County Commissioners are pleased to lend our support to the City as it pursues completion of this very worthwhile and vital facility.

Sincerely,

BOARD OF BENTON COUNTY COMMISSIONERS

Max E. Benitz, Jr., Chairman

cc: Benton County Administration
Cindy Johnson, Richland City Manager
Pete Rogalsky, Richland Public Works Director
Ross Dunfee, Benton County Public Works Director

9

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REAPPOINTMENT TO THE BENTON COUNTY MOSQUITO CONTROL BOARD

WHEREAS, the two-year term for Mr. Donald E. Wiens expired on December 31, 2008; and

WHEREAS, Mr. Wiens has expressed an interest to be reappointed for an additional two-year term representing district number 3; and

WHEREAS, the Mosquito Control District desires to have Mr. Wiens be appointed for an additional term to the Benton County Mosquito Control; **NOW, THEREFORE,**

BE IT RESOLVED that Donald Wiens is hereby reappointed to the Benton County Mosquito Control Board, said term ending on December 31, 2010.

Dated this day of, 20

Chairman of the Board

Chairman Pro Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: February 2, 2009 Subject: Purchase 50 Ethernet protectors Prepared By: Keith Mercer Reviewed By: Loretta, Roy, and Dan	Execute Contract Pass Resolution xxx Pass Ordinance Pass Motion Other	Consent Agenda —X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND INFORMATION

In the Capital Facilities Plan 2009-2014 there is a Network Device Upgrade project for the Benton County Jail. The Ethernet Link Protector allows an Ethernet device to switch to its backup network, almost instantaneously, if the primary fails or if maintenance is needed. The original Ethernet Link Protectors have been failing, which has caused several outage/down time problems. The solution is to replace the fifty (50) original Ethernet Link Protectors with SM-2501 Ethernet Link Protectors. Facilities solicited the following companies to provide a quote for fifty (50) SM-2501 Ethernet Link Protectors:

- Shore Microsystems, Long Branch, NJ (\$16,266.41 including WSST and Shipping)
- Optimus Solutions, LLC, Norcross, GA (\$16,966.50 excluding WSST and Shipping)
- URS Electronics, Portland, OR (\$18,750.00 excluding WSST, but includes Shipping)

The Facilities Manager has reviewed the quotes for completeness and recommends purchasing the fifty (50) Ethernet Link Protectors from Shore Microsystems.

FISCAL IMPACT

\$16,266.41 to be paid out of Jail Depreciation Fund

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF FIFTY (50) ETHERNET LINK PROTECTORS FOR THE BENTON COUNTY JAIL FACILITY, KENNEWICK, WASHINGTON

WHEREAS, per resolution 08-131 and 08-132 authorizes the purchase of materials, equipment and supplies valued between \$5,000 and \$25,000 without advertisement and formal sealed bidding if the county secures written quotes from different vendors on the vendor list; and

WHEREAS, the Access Control System used inside the Jail is an Ethernet-based system; and

WHEREAS, there is a redundant Ethernet network in place; and

WHEREAS, the existing Ethernet Link Protectors have been failing, causing outages in the Access Control System; and

WHEREAS, the solution is to replace the fifty (50) current Ethernet Link Protectors with SM-2501 Ethernet Link Protectors; and

WHEREAS, Benton County Facilities solicited the following companies to provide a quote for fifty (50) SM-2501 Ethernet Link Protectors; and

Shore Microsystems, Long Branch, NJ (\$16,266.41 including WSST and Shipping)
Optimus Solutions, LLC, Norcross, GA (\$16,966.50 excluding WSST and Shipping)
URS Electronics, Portland, OR (\$18,750.00 excluding WSST, but includes Shipping)

WHEREAS, Shore Microsystems is the lowest bidder; and

WHEREAS, the Benton County Facilities Manager has reviewed the quotes for completeness and recommends purchasing the fifty (50) SM-2501 Ethernet Link Protectors from Shore Microsystems, Long Branch, NJ; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board concurs with the Facilities Manager's recommendation and hereby authorizes the purchase of fifty (50) SM-2501 Ethernet Link Protectors from Shore Microsystems, Long Branch, NJ in the amount of \$16,266.41 including WSST and shipping.

Dated this _____ day of _____, 2009.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor, Al Thompson, R. Ozuna

Prepared by: K Mercer



Quote Date: 1/5/2009

Quote

Quote For:

Company : Benton County Facilities and Parks
Contact : Dan Waggoner
Address : 7122 W Okanogan Place
City : Kennewick
State : WA
Zip : 99336
Phone : 509-222-3704
Fax :

The following quotation is valid for 30 days from above date:

Quantity : 50
Part Number : SM-2501
Item Description : Redundant Programmable 10Base-T/100BaseTX Auto Switch
Price Each : \$299.00
Price Extended : \$14,950.00
Tax : \$1,240.85
Shipping : \$75.56 (UPS Ground)

Total : 16,266.41

Quoted By : Scott Bald
: 45 Memorial Parkway
: Long Branch NJ 07740
: 732-870-0800 phone
: 732-870-1912 fax

Authorized Signature

Scott Bald
Regional Sales Manager



Optimus Solutions, LLC
 22 Technology Parkway South
 Norcross, GA 30092
 770-349-3226

SUBMITTED TO: Dan Waggoner Benton County Facilities	Quote Number 1	Date 01/06/2009
	Sales Consultant Vinny Polimeni 678-966-7156	Customer ID#

Prices are valid for 14 days unless otherwise indicated

Qty	Part Number	Description	Unit Price	Ext. Price
50	SM-2501	SHORE MICRO LINK PROTECTOR	\$ 339.77	\$ 16,988.50

Customer Acceptance: The above prices, specifications and conditions, and those below are satisfactory and hereby accepted. Customer agrees to pay the full invoice price of the equipment above within 30 days (or agreed terms) of the date of the invoice. The party below is expressly invested with the requisite authority to bind their corporation in this matter. Date: _____ PD#: _____ Name(Printed): _____ Title(Printed): _____ Signature: _____	Sub Total: \$16,988.50 Freight: Sales Tax: Total: Balance Due : _____
---	---

This information is confidential and proprietary to Optimus Solutions, LLC and is not to be released outside customer's organization. Customer is responsible for sales tax, freight, transportation, and insurance, if applicable. Delivery of products to client and start date of any services associated with products in this proposal shall be defined in a separate scope of work. Prices are valid for 14 days from date indicated in quote number unless otherwise indicated. Call for a quote on renting or leasing the above equipment; all sales and leasing quotes are subject to credit approval.



Dan Waggoner - RE: SM-2501

From: "Dan F. Coffey" <Dan.Coffey@urscorp.com>
To: Dan Waggoner <Dan.Waggoner@co.benton.wa.us>
Date: 1/8/2009 10:23 AM
Subject: RE: SM-2501

Dan,

OK, boss says under the contract they would be \$375.00 each and we pay the Ground freight to you.

Let me know if this works for you.

Thanks

Dan Coffey
URS Electronics
800-955-4877 ext 108
503-820-6108 direct
503-820-6138 fax
Hours M-F 7-4
Lunch 1-2

375
x 50

18,750.00

This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Record law, ORS 192. This annotation is for the exclusive use of the customer listed on the quotation, and written approval from URS Electronics is required prior to releasing this information to any other person and/or company.

ALL STOCKS ARE 100% TO BE PAID UP

From: Dan Waggoner [mailto:Dan.Waggoner@co.benton.wa.us]
Sent: Thursday, January 08, 2009 10:14 AM
To: Dan F. Coffey
Subject: Re: SM-2501

Yes, and they have been very reliable.

Dan

>>> "Dan F. Coffey" <Dan.Coffey@urscorp.com> 1/8/2009 9:41 AM >>>

Dan,

Have you used these in the past?

Just wondering because this would be a new vendor with us and the boss just wants to make sure you are sold on using them.

Thanks

Dan Coffey

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: 02/02/09 Subject: Columbia River Cowboy Gathering Foundation	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop
Prepared by: dgg Reviewed by: Isk		

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Columbia River Cowboy Gathering Foundation. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Columbia River Cowboy Gathering Foundation to use the Fairgrounds to hold an annual three-day Western Music and Art Festival. The Lease Agreement is for five years.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased.

The Deputy County Administrator recommends approval of the Lease Agreement with the Columbia River Cowboy Gathering Foundation.

RECOMMENDATION

Move the Lease Agreement with the Columbia River Cowboy Gathering Foundation be approved.

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON**

**IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE
BENTON COUNTY FAIRGROUNDS AND THE COLUMBIA RIVER COWBOY
GATHERING FOUNDATION**

WHEREAS, the Columbia River Cowboy Gathering Foundation will provide the Benton County Fairgrounds \$1,350.00 plus camping fees in 2009, and the remaining four years to be increased by the lesser of 80% of the CPI Index, or 3%, on a five year contract, to hold an annual Western Music and Art Festival.

WHEREAS, the dates on the Lease Agreement are April 10 – 12, 2009; April 9 – 11, 2010; April 8 – 10, 2011; April 13 – 15, 2012; and April 12 – 14, 2013; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 07-870, the agreement must be approved by the Board of Benton County Commissioners; and

WHEREAS, the Deputy County Administrator recommends the Lease Agreement with the Columbia River Cowboy Gathering Foundation be approved; **NOW THEREFORE**,

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Columbia River Cowboy Gathering Foundation shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Columbia River Cowboy Gathering Foundation.

Dated this _____ day of _____ 2009

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

**Constituting the Board of County
Commissioners of Benton County,
Washington**

BENTON COUNTY FAIRGROUNDS

1500 South Oak Street, Bldg #20
Kennewick, WA 99337
(509) 586-9211

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2009**

LEASE AGREEMENT NUMBER: **029.09**

EVENT DATE(S): **April 10-12, 2009**
April 9-11, 2010
April 8-10, 2011
April 13-15, 2012
April 12-14, 2013

BUILDING(S) / AREA: **Grounds – Including Buildings 1, 2 and 3; Oak Street Area,
And Commercial Pavilion**

LESSEE: **Columbia River Cowboy Gathering Foundation**

MAILING ADDRESS: **177 Maple St., Burbank, WA 99323**

CONTACT: **Budd Massengale, President**

HOME PHONE: **544-9003** CELLULAR PHONE: **851-4288**

TIME OF THE EVENT: **Friday and Saturday 8:00 am – 12:00 am,
Sunday 8:00 am – 2:00 pm**

TYPE OF EVENT: **Art Exhibit and Concert**

ESTIMATED ATTENDANCE: **1,000 over the course of the event**

SELLING TICKETS: YES NO

IF YES, TICKET OUTLET(S): **At the Door**

THIS LEASE (AGREEMENT) is entered into, effective upon the signature of both parties, between **Columbia River Cowboy Gathering Foundation, a Washington Non-Profit Corporation** organized under the laws of the State of Washington, with its principal place of business at 177 Maple, Burbank, WA 99323 (LESSEE) and **BENTON COUNTY**, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairground (LESSOR) for the purpose of leasing certain real property, located at the Benton County Fairgrounds, in order to hold an annual event every year until, and ending in, the year 2013, on the following dates:

April 10-12, 2009

April 9-11, 2010

April 8-10, 2011

April 13-15, 2012

April 12-14, 2013

1. EVENT

- a. ART EXHIBIT AND CONCERT ON THE GROUNDS INCLUDING BUILDINGS 1, 2, 3, OAK STREET AREA AND COMMERCIAL PAVILION ON FRIDAY AND SATURDAY FROM 8:00 AM UNTIL 12:00 AM; AND SUNDAY FROM 8:00 AM UNTIL 2:00 PM WITH AN ESTIMATED ATTENDANCE OF 1,000 PEOPLE OVER THE COURSE OF THE EVENT, hereafter referred to as the EVENT.

2. FACILITIES LEASED FOR THE EVENT

- a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities), to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes as follows:

April 8, 9, 13, 2009

April 7, 8, 12, 2010

April 6, 7, 11, 2011

April 11, 12, 16, 2012

April 10, 11, 15, 2013

- b. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. PAYMENTS

In Consideration for the leased facilities to hold the EVENT, LESSEE agrees to the following.

- a. Pay LESSOR the FEE of \$1,350.00 (less damage/cleaning deposit if previously paid) for the year 2009 for use of the Facilities as detailed in Paragraph 2. Payment shall be made no later than March 20, 2009.

- b. For the 2010 rental year, the annual lease payment shall be the 2009 lease payment increased by the lesser of: i) eighty percent (80%) of the percentage change in Seattle-Tacoma-Bremerton CPI-W Index published by the Bureau of Labor and Statistics for the twelve month period ending June 2009; or ii) three percent (3.0%), for use of the Facilities as detailed in Paragraph 2. Payment shall be made no later than March 20, 2010.
- c. For the 2011 rental year, the annual lease payment shall be the 2010 lease payment increased by the lesser of: I) eighty percent (80%) of the percentage change in the Seattle-Tacoma-Bremerton CPI-W Index published by the Bureau of Labor and Statistics for the twelve month period ending June 2010; or ii) three percent (3.0%). for use of the Facilities as detailed in Paragraph 2. Payment shall be made no later than March 20, 2011.
- d. For the 2012 rental year, the annual lease payment shall be the 2011 lease payment increased by the lesser of: I) eighty percent (80%) of the percentage change in the Seattle-Tacoma-Bremerton CPI-W Index published by the Bureau of Labor and Statistics for the twelve month period ending June 2011; or ii) three percent (3.0%). for use of the Facilities as detailed in Paragraph 2. Payment shall be made no later than March 20, 2012.
- e. For the 2013 rental year, the annual lease payment shall be the 2012 lease payment increased by the lesser of: I) eighty percent (80%) of the percentage change in the Seattle-Tacoma-Bremerton CPI-W Index published by the Bureau of Labor and Statistics for the twelve month period ending June 2012; or ii) three percent (3.0%). for use of the Facilities as detailed in Paragraph 2. Payment shall be made no later than March 20, 2013.

4. CAMPING OVERNIGHT

- a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.
- b. A \$10.00 fee per day per tent/camper applies to units hooked up to water and electricity. LESSEE is responsible for collecting all camping fees. Camping fees must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE'S damage/cleaning deposit will be

forfeited. IF THE REFUNDABLE PORTION OF THE DAMAGE/CLEANING DEPOSIT IS LESS THAN THE AMOUNT OF CAMPING FEES DUE, LESSEE REMAINS LIABLE FOR THE BALANCE OF THE CAMPING FEES. (Further details may be included in Exhibit A.)

5. CANCELLATION OF EVENT

- a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:
 1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
 2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.
- b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. CONCESSIONAIRES

- a. LESSEE and LESSOR agree that LESSEE may arrange for food and/or beverage service CONCESSIONAIRE(S) at the EVENT. LESSOR is entitled to 0 of the revenues generated by such CONCESSIONAIRE(S).
- b. LESSEE may arrange for food and/or beverage service CONCESSIONAIRE(S) at the EVENT on the following conditions:
 1. Any concessionaires shall be fully licensed under all applicable state and local laws to serve whatever food or beverage they intend to sell;
 2. Any concessionaires who serve food or drink other than alcoholic beverages must procure commercial general liability insurance, appropriate for the food service industry, which does not exclude any of the hazards common to vendors in the food service industry. Such policy must specifically insure against claims resulting from bodily injury, illness or death due to foodborne pathogens. The policy must have a minimum liability limit of \$1 million per person or incident with a general aggregate of \$2 million. Policies shall name Lessee, as well as Lessor, its officers, directors, its elected officials, agents and employees, as additional insureds.
 3. LESSEE shall ensure that all concessionaires have insurance policies as required herein, and must provide copies of certificates of insurance and the necessary endorsement pages to prove compliance with additional insured requirements, for said policies to LESSOR prior to the first date during which such concessionaires

plan on doing business at the event. In the event that LESSEE fails to provide a certificate of insurance as required by this paragraph for any concessionaire planning to do business at the event, then that concessionaire shall be barred from doing business anywhere on fairgrounds property.

- c. Permitting unlicensed vendors or vendors who are not insured as required in this article to do business on the fairgrounds property during any event or events shall constitute a breach of this agreement.

7. NOVELTIES/SOUVENIRS

- a. LESSEE agrees to pay 0 of all novelty, souvenir and merchandise gross revenues (minus sales tax) to the LESSOR for the duration of the EVENT.
- b. LESSEE may sell novelty, souvenir and similar merchandise at the EVENT and may contract with vendors for this purpose, and may contract with such other vendors as it finds necessary to conduct the Event provided that any vendors doing business at the site of the Event must comply with the following requirements:
 - 1. All vendors must be licensed to conduct business as vendors selling whatever merchandise they plan on selling, or providing such equipment/services as they plan on providing pursuant to all state and local laws.
- c. Permitting unlicensed vendors or vendors who are not insured as required in this article to do business on the fairgrounds property during any event or events shall constitute a breach of this agreement.

8. DAMAGE / CLEANING DEPOSIT

- a. LESSEE must pay a damage/cleaning deposit of \$ 250.00 at the time LESSEE executes this Agreement. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED. Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

- a. LESSEE agrees to purchase, and maintain in force through the duration of this Agreement **commercial general liability insurance with a limit in the sum of not less than one million dollars (\$1,000,000) per occurrence for bodily injury or death of any one person and property damage and two million dollars (\$2,000,000) in the aggregate for bodily injury to, or death of, any number of persons and property damage.** Said policy may not exclude any activities expected to be, or actually, undertaken during the EVENT or setup/takedown. Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. A CERTIFICATE OF LIABILITY INSURANCE COVERAGE AS REQUIRED BY THIS SECTION SHALL BE DELIVERED TO THE LESSOR NO LATER THAN THIRTY (30) DAYS PRIOR TO THE FIRST DATE OF THE EVENT.
- b. LESSEE shall ensure that all vendors and contractors for the EVENT are either covered by their own insurance policies, covered by a policy purchased through LESSOR specifically for this EVENT, or added as an additional insured on LESSEE'S policy in the following amounts:
 1. If the vendor or contractor will be serving food or food items, or beverages other than alcoholic beverages of any type, then the policy must be a **commercial general liability policy which does not exclude claims for food poisoning, and must have limits of one million dollars (\$1,000,000) per incident, and two million dollars (\$2,000,000) general aggregate.**
- c. *Policies sufficient to meet these requirements are available for purchase directly through LESSOR for this EVENT only, if any such vendors are not otherwise covered by appropriate insurance.*
- d. LESSEE is responsible for enforcing the above stated insurance requirements and requiring written proof from the vendors and contractors. No later than ten (10) business days prior to the EVENT, LESSEE shall provide to LESSOR proof, in the form of unaltered ACORD insurance certificates, of insurance as required above. In the case of liquor liability and food poisoning coverage, the proof must also include applicable endorsements and/or copies of the exclusions pages to evidence that such coverage is afforded.
- e. All insurance required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.
- f. All insurance policies required by this section shall include move-in and move-out days, as well as the event days.

- g. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;
- h. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;

10. PERMITS/LAWS

- a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.
- b. LESSEE shall comply with all Federal, State and local laws, ordinances, rules and regulations. LESSEE acknowledges that all buildings, premises or structures located in or upon the leased premises are considered "public buildings" for purposes of RCW Chapter 70.160 that prohibits smoking in and around public places. LESSEE shall ensure that the security personnel, if any, retained pursuant to section 11 of this agreement are specifically instructed to enforce the provisions of RCW Chapter 70.160.

11. SECURITY

- a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.
- b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID. Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

12. SERVING ALCOHOL

- a. No alcoholic beverages shall be served at this EVENT.

- b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.
- c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. NOISE CONTROL

- a. Noise is considered a nuisance if it exceeds 55 decibels between the hours of 6:00 am and 8:00 pm and 45 decibels between the hours of 8:00 PM and 6:00 AM (Kennewick Municipal Code Title 9 Health Sanitation). Decibel reading will be taken at the intersection of 10th Street and Oak Street.
- b. If a reasonable complaint is received alleging excessive noise, the Lessee will be given a warning to reduce the noise level. The volume and bass must be reduced to an acceptable level and remain there. A second complaint will result in the event being continuously monitored by a BCF representative at Lessee's cost in the amount of \$100.00 per hour, which may be deducted from the damage/cleaning deposit. A third complaint will result in the event being shut down and all parties asked to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility. A complaint which results in a citation being issued or arrest being made pursuant to Kennewick code 9.48.010 and 9.48.020, or any other applicable state or local law, shall also result in the event being shut down and all parties required to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility.

14. TERMINATION OR AMENDMENT

- a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

- a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives; and any of their employees) or damage to or destruction of any property (including,

without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. These indemnification obligations shall specifically include indemnification for any fines, fees, penalties or costs incurred by LESSEE during the course of the event for violations of any law, ordinance or regulation including, but not limited to, Washington's law on Smoking in Public Places, RCW Chapter 70.160. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

- b. In any and all claims against the LESSOR, its officers, officials, employees and agents by any employee of the LESSEE, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the LESSEE makes with any subcontractor or agent performing work hereunder.

16. ATTENDANCE

- a. In any literature provided to attendees and any tickets sold, LESSEE shall prominently state, in writing, a warning that unruly persons, persons who are suspected of engaging in criminal activity, visibly intoxicated persons, and persons who, by dress in "gang colors", use of hand signals, or use of language, clearly exhibit their affiliation with a criminal gang, are not welcome at the EVENT and may be removed from the premises at any time. If it is not possible to include this admonition in EVENT literature or tickets, or if no EVENT literature or tickets will be produced or utilized, then LESSEE shall post signs stating this, at all entrances open to participants, in 24 point type or larger, in black, on a white background, at a location which is conspicuous and reasonably calculated to be seen by all persons entering.
- b. LESSEE shall inform security personnel or police immediately if they are made aware of people who fit the criteria of people who should be removed from the EVENT, and under any circumstances shall not interfere with the efforts of security personnel or police to remove such persons.

17. FAIRGROUNDS CONTACT

a. The following person(s) is the contact representative of the Benton County Fairgrounds:

Jeff, Farrin, Jim and/or Denise 543-0060

b. This person(s) may be contacted for the following reasons:

1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:

1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

18. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, Budd Massengale, President (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind Columbia River Cowboy Gathering Foundation to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

LESSEE: Columbia River Cowboy
Gathering Foundation

BY: _____
Chairman of the Board

BY: Budd Massengale

Date: 1-16-2009

Date: _____

Name: _____

Title: _____

Approved as to form:

BY: Kelli S. Helton
Civil Deputy Prosecutor

**EXHIBIT A
FEES APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES**

DAMAGE/CLEANING DEPOSIT

Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: \$ 250.00

BUILDING(S) AND/OR AREA(S) FEES

Grounds – Including Buildings 1, 2 and 3; Oak Street Area,
And Commercial Pavilion

BUILDING(S)/AREA TOTAL: \$ 1,100.00

EQUIPMENT RENTAL FEES

All available inventory of chairs, tables, picnic tables and bleachers

EQUIPMENT RENTAL TOTAL: \$ 0

LESSOR FURNISHED INSURANCE FEES

Lessee will provide.

INSURANCE TOTAL: \$ 0

SECURITY FEES

Lessee will provide.

SECURITY TOTAL: \$ 0

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	4	Included	0

REFUSE TOTAL: \$ 0

OTHER FEES

Camping Fees: \$ 10.00 per day/camper with hookups

Camping fees need to be collected by the Lessee and paid to BCF within 2 business days.

NAME: Columbia River Cowboy Gathering Foundation

EVENT DATE(s): April 10-12, 2009
April 9-11, 2010
April 8-10, 2011
April 13-15, 2012
April 12-14, 2013

SUMMARY OF FEE(S) for April 10-12, 2009

Damage/Cleaning Deposit	\$ <u>250.00</u>
Building(s)/Area Fees	\$ <u>1,100.00</u>
Equipment Fees	\$ <u>0</u>
Insurance Fees	\$ <u>0</u>
Security Fees	\$ <u>0</u>
Refuse Disposal Fees	\$ <u>0</u>
Other Fees	\$ <u>Plus Camping Fees</u>

TOTAL FEE: \$ 1,350.00
Plus Camping Fees

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY j

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:		Execute Contract	<input type="checkbox"/>	Consent Agenda	<input checked="" type="checkbox"/>
Subject:	Joint Resolution for Appointment to	Pass Resolution	<input checked="" type="checkbox"/>	Public Hearing	<input type="checkbox"/>
	the Developmental Disabilities Advisory Board	Pass Ordinance	<input type="checkbox"/>	1 st Discussion	<input type="checkbox"/>
Prepared by:	Carol Carey	Pass Motion	<input type="checkbox"/>	2 nd Discussion	<input type="checkbox"/>
Reviewed by:		Other	<input type="checkbox"/>	Other	<input type="checkbox"/>

BACKGROUND INFORMATION

The Counties' Developmental Disabilities Advisory Board (DDAB) is a nine member board which reviews developmental disabilities service programs and contracts and provides recommendations to the Boards of County Commissioners for contracting and planning.

SUMMARY

Rod Bluechel resigned his position on the Board and Joe Montgomery has expressed interest in being appointed to the Developmental Disabilities Advisory Board. The Advisory Board will be at full capacity with this appointment.

RECOMMENDATION

1st Sign the Joint Resolution to appoint Joe Montgomery to fill the vacant position which will expire December 31, 2010.

FISCAL IMPACT

There is no fiscal impact. This is a voluntary position.

MOTION

To approve signing the Joint Resolution to appoint Joe Montgomery to a term on the Developmental Disabilities Advisory Board ending December 31, 2010.

JOINT RESOLUTION

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON, AND FRANKLIN COUNTY, WASHINGTON

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

IN THE MATTER OF APPOINTMENTS TO THE DEVELOPMENTAL DISABILITIES ADVISORY BOARD TO REPRESENT BENTON AND FRANKLIN COUNTIES

WHEREAS, a Joint Resolution was signed by Benton County on October 10, 2005, #05-634, and by Franklin County on September 21, 2005, #2005-391, re-creating the Benton-Franklin Counties' Developmental Disabilities Advisory Board, and

WHEREAS, said Joint Resolution provided for Board composition of nine members appointed by the Boards of Commissioners of Benton and Franklin Counties, and

WHEREAS, a vacancy exists on the Developmental Disabilities Advisory Board with the resignation of Rod Bluechel, and

WHEREAS, Joe Montgomery has demonstrated interest and indicated willingness to accept appointment to the Developmental Disabilities Advisory Board, NOW THEREFORE,

BE IT RESOLVED that Joe Montgomery, residing at 1941 Anna Avenue, Richland, WA 99352, be hereby appointed to the Benton-Franklin Developmental Disabilities Advisory Board to fill Mr. Bluechel's term of appointment which will expire on December 31, 2010.

DATED: _____

DATED: _____

Chair

Chair

Member

Member

Member
Constituting the Board of County
Commissioners of Benton County, Washington

Member
Constituting the Board of County
Commissioners of Franklin County, Washington

Attest: _____

Attest: _____

Clerk of the Board
Originals: Benton & Franklin County Commissioners
Human Services

Clerk of the Board

Carey

**BENTON AND FRANKLIN COUNTY
ACTION SUMMARY COVER SHEET**

K

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:		Execute Contract	<input type="checkbox"/>	Consent Agenda	<input type="checkbox"/>
Subject:	Joint Resolution for Appointment of	Pass Resolution	<input type="checkbox"/>	Public Hearing	<input type="checkbox"/>
	: CDMHP	Pass Ordinance	<input type="checkbox"/>	1 st Discussion	<input type="checkbox"/>
Prepared by:	Carol Carey	Pass Motion	<input type="checkbox"/>	2 nd Discussion	<input type="checkbox"/>
Reviewed by:		Other	<input type="checkbox"/>	Other	<input type="checkbox"/>

BACKGROUND INFORMATION

County Designated Mental Health Professionals (CDMHPs) are appointed by counties to perform the duties defined in WAC 388-865-0245. The Department of Human Services would like Kellie Benson appointed as a CDHMP. She is employed at the Crisis Response Unit and meets the educational and/or experience requirements specified in the WAC.

SUMMARY

Appoint Kellie Benson as a CDMHP. An updated CDMHP list is attached to the Resolution.

RECOMMENDATION

Sign the Joint Resolution to appoint Kellie Benson as a CDMHP.

FISCAL IMPACT

There is no fiscal impact.

MOTION

To approve signing the Joint Resolution to appoint Kellie Benson as a County Designated Mental Health Professional while employed at the Crisis Response Unit.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND FRANKLIN COUNTY, WASHINGTON;

IN THE MATTER OF APPOINTING COUNTY-DESIGNATED MENTAL HEALTH PROFESSIONALS

WHEREAS, it is the Counties' responsibility to appoint County-Designated Mental Health Professionals (CDMHPs) as defined in WAC 388-865-0245 to perform the duties specified in Chapters 71.05, 71.34 and 70.96A RCW; and

WHEREAS, individuals employed by Benton Franklin Counties' Department of Human Services' Crisis Response Unit perform the CDMHP duties for Benton County and Franklin County; and

WHEREAS, the Crisis Response Unit wishes to appoint Kellie Benson as a CDMHP since she now meets the educational and/or experience requirements as specified in WAC 388-865-0245; and

WHEREAS, the list of appointed County Designated Mental Health Professionals, attached hereto as Exhibit A, is updated to include Kellie Benson; **NOW THEREFORE**,

BE IT RESOLVED, that Kellie Benson be appointed as a County Designated Mental Health Professional; and

BE IT FURTHER RESOLVED that appointments of County Designated Mental Health Professionals shall be limited to the period during which they are assigned to perform the functions of a CDMHP and are employed by the Crisis Response Unit of Benton and Franklin Counties.

Dated this day of, 2009

Dated this day of, 2009

Chair

Chair

Chair Pro Tem

Chair Pro Tem

Member

Constituting the Board of County Commissioners,
Benton County, Washington

Member

Constituting the Board of County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

Originals (3): Benton County, Franklin County, Human Services
Copy: Kellie Benson

EXHIBIT A

**COUNTY-DESIGNATED
MENTAL HEALTH PROFESSIONALS**

Dated: January 12, 2009

<u>NAME</u>	<u>DATE APPOINTED</u>
Patrick C. R. Brunk.....	January, 1992
James C. Laws	January, 1992
Nowita Peters.....	May, 1993
James Tutwiler.....	April, 1994
Randi Hankins.....	July, 1996
Kyle Sullivan	February, 1998
Kathleen Laws	September, 2000
Cristina Maldonado	February, 2004
Gordon Cable.....	June, 2004
Hector DeLeon.....	February, 2006
Tony Larsen	January, 2007
Karin Cagle	July, 2008
Kellie Benton.....	January, 2009

”

BENTON AND FRANKLIN COUNTIES ACTION SUMMARY COVER SHEET

AGENDA ITEM	TYPE OF ACTION NEEDED	
Amendment #07/09-PREV-ESD-1	<input checked="" type="checkbox"/> Execute Contract <input checked="" type="checkbox"/> Pass Resolution <input type="checkbox"/> Pass Ordinance <input type="checkbox"/> Pass Motion <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Public Hearing <input type="checkbox"/> 1 st Discussion <input type="checkbox"/> 2 nd discussion <input type="checkbox"/> Other
Prepared By: Carol Carey		

BACKGROUND INFORMATION

The Department of Human Services (DHS) would like to amend the agreement contract with the Educational Service District 123 for substance abuse prevention services for the 2007-09 biennium. The amendments would be to reduce their maximum consideration by \$14,243.00 and to modify the Strengthening Families Program service conditions and the performance goals.

SUMMARY

Award: Consideration shall be a maximum of \$53,580.00

Period: July 1, 2007 to June 30, 2009

Funding Source: Division of Alcohol and Substance Abuse

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Alcohol and Substance Abuse. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #07/09-PREV-ESD-1 with the Educational Service District 123 and authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

2009 032

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON

IN THE MATTER OF EXECUTION OF AN AMENDMENT FOR PREVENTION SERVICES BETWEEN THE EDUCATIONAL SERVICE DISTRICT 123 (ESD) AND THE DEPARTMENT OF HUMAN SERVICES, AMENDMENT #07/09-PREV-ESD-1

WHEREAS, the Department of Human Services would like to amend Agreement #07/09-PREV-ESD with Educational Service District 123 to provide substance abuse prevention treatment services for the 2007-09 biennium by reducing the funding for the Strengthening Families Programs by \$14,243.00; and

WHEREAS, the maximum consideration of the funding is \$53,580.00

WHEREAS, the agreement is effective July 1, 2007 through June 30, 2009, NOW THEREFORE;

BE IT RESOLVED that the Board of Benton County Commissioners hereby accept the proposed amendment; and

BE IT FURTHER RESOLVED that the Chairman is hereby authorized to sign the agreement on behalf of the Board of Benton County Commissioners.

Dated this . . . day of, 2009.

Dated this ^{21st} day of JAN., 2009.

Chair



Chair

Chair Pro Tem



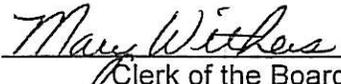
Chair Pro Tem

Member
Constituting the Board of County Commissioners
of Benton County, Washington



Member
Constituting the Board of County Commissioners
of Franklin County, Washington

Attest _____
Clerk of the Board

Attest 
Clerk of the Board

**BENTON AND FRANKLIN COUNTIES
ACTION SUMMARY COVER SHEET**

COPY

AGENDA ITEM	TYPE OF ACTION NEEDED	
Agreement #08/09-PREV-VYC with Vista Youth Center	<input checked="" type="checkbox"/> Execute Contract	<input checked="" type="checkbox"/> Consent Agenda
	<input checked="" type="checkbox"/> Pass Resolution	<input type="checkbox"/> Public Hearing
Prepared By: Carol Carey	<input type="checkbox"/> Pass Ordinance	<input type="checkbox"/> 1 st Discussion
	<input type="checkbox"/> Pass Motion	<input type="checkbox"/> 2 nd discussion
	<input type="checkbox"/> Other	<input type="checkbox"/> Other

BACKGROUND INFORMATION

The Department of Human Services (DHS) would like to enter into an Agreement with Vista Youth Center to provide hour long sessions focusing on substance abuse prevention with the Growing Up Safe, Sober, Happy and Healthy (GUSH) program, two times per week for eight weeks.

SUMMARY

Award: Consideration for this service is a maximum of \$20,000.

Period: December 1, 2008 to June 30, 2009

Funding Source: Division of Alcohol and Substance Abuse

RECOMMENDATION

- Sign the resolution to accept the proposed agreement.
- Approve the proposed agreement by signing all the copies where indicated.

FISCAL IMPACT

Funding for the services described in this Agreement is provided by the Division of Alcohol and Substance Abuse. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget.

MOTION

To approve signing Amendment #08/09-PREV-VYC with Vista Youth Center and to authorize the Chair to sign on behalf of the Board.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

**BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES,
WASHINGTON:**

**IN THE MATTER OF AGREEMENT #08/09-PREV-VYC BETWEEN THE BENTON
AND FRANKLIN COUNTIES DEPARTMENT OF HUMAN SERVICES AND VISTA
YOUTH CENTER TO PROVIDE PREVENTION SERVICES THROUGH THE
STRENGTHENING MULTI-ETHNIC FAMILIES PROGRAM WITH GROWING UP
SAFE, SOBER, HAPPY AND HEALTHY (GUSH) SESSIONS, and**

WHEREAS, the Vista Youth Center is offering a hour long session focusing on substance abuse prevention two times per week for eight weeks, and

WHEREAS, Vista Youth Center will be compensated at no more than \$20,000 for the program, and

NOW, THEREFORE, BE IT RESOLVED, that the Chairs of the Boards of Benton and Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, Agreement #08/09-PREV-VYC.

Dated this day of 2009.

Dated this day of2009.

Benton County Board of Commissioners

Franklin County Board of Commissioners

Chair, Benton County Commissioners

Chair, Franklin County Commissioners

Member

Member

Member
Constituting the Board of County Commissioners,
Benton County, Washington

Member
Constituting the Board of County Commissioners,
Franklin County, Washington

Attest:

Attest:

Clerk of the Board

Clerk of the Board

Originals: Franklin County
Human Services
Benton County



RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF PURCHASING TWO WASHING MACHINES FOR USE AT THE
BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER**

WHEREAS, the cost of the washing machines are greater than \$2,500 and less than \$25,000; and

WHEREAS, procurement of the washing machines in the specified price range is addressed in Benton County Resolution 97-615 allowing for procurement to occur after three quotes from the Benton County Vendor list; and,

WHEREAS, the Facilities Supervisor has obtained two quotes for the washing machines as follows: Integrity Laundry Solutions for \$16,574.75 (plus WSST) and Washington Automated for \$17,909.00 (plus WSST); and

WHEREAS, the Facilities Supervisor requested a third quote from Northwest Laundry Supply, Inc. who was ultimately non-responsive.

WHEREAS, the Facilities Supervisor reviewed the quotes for completeness and recommends Benton County award the procuring of the washing machines to Integrity Laundry Solutions **NOW**,

THEREFORE

BE IT RESOLVED, by the board of Benton County Commissioners that the Benton-Franklin Counties Facilities Supervisor is authorized to proceed with the purchase of the washing machines from Integrity Laundry Solutions in an amount not to exceed \$18,100.00.

Dated this 2nd day of February 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

P

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING PAYMENT TO WESTERN STATES EQUIPMENT FOR EMERGENCY WORK TO REPAIR THE MAIN GENERATOR AT THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

WHEREAS, on October 2, 2008, the main generator was overheating at the Benton-Franklin Counties Juvenile Justice Center declaring the matter an emergency; and

WHEREAS, Benton-Franklin Counties Juvenile Justice Center maintenance Supervisor was unable to repair the generator, necessitating the Benton-Franklin Counties Juvenile Justice Center immediately hire a local repair company to perform diagnostic testing and necessary repairs of the main generator; and

WHEREAS, Western States Equipment was contacted by telephone to determine availability for emergency service; and

WHEREAS, Western States Equipment was immediately responsive and available to perform the emergency generator repairs on short notice; **NOW, THEREFORE,**

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby approves payment to Western States Equipment in the amount of \$3,457.14 inclusive of Washington State Sales Tax.

Dated this 2nd day of February 2009

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest: _____
Clerk of the Board

BENTON COUNTY RESOLUTION NO. _____

98

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING PAYMENT TO YODER INC. DOING BUSINESS AS COFFEY REFRIGERATION FOR EMERGENCY REPAIRS TO THE DISHWASHER LOCATED IN THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER DETENTION KITCHEN

WHEREAS, on November 20, 2008, the kitchen dishwasher was not operational at the Benton-Franklin Counties Juvenile Justice Center Detention facility declaring the matter an emergency; and

WHEREAS, Benton-Franklin Counties Juvenile Justice Center maintenance Supervisor was unable to repair the dishwasher necessitating the Benton-Franklin Counties Juvenile Justice Center immediately hire a local repair company to perform diagnostic testing and necessary repairs of the kitchen dishwasher; and

WHEREAS, Coffey Refrigeration was contacted by telephone to determine availability for emergency service; and

WHEREAS, Coffey Refrigeration was immediately responsive and available to perform the emergency repairs on short notice; NOW, THEREFORE,

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby approves payment to Coffey Refrigeration in the amount of \$4,012.41 inclusive of Washington State Sales Tax.

Dated this 2nd day of February 2009

..

Chairman of the Board

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

r

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH TODD HARMS, ATTORNEY AT LAW, DBA LAW OFFICE OF KEVIN HOLT, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH FELONIES IN BENTON COUNTY SUPERIOR COURT

WHEREAS, the Board of County Commissioners and Todd Harms, Attorney at Law, both desire to enter into an agreement effective on January 01, 2009 for legal representation of indigent individuals charged with Felonies in Superior Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation of Indigent Individuals Charged with Felonies in Superior Court with Todd Harms, Attorney at Law , for the period January 01, 2009 through December 31, 2009.

”

Dated this day of, 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

Original: File
Cc: Rosie Sparks; Todd Harms; Pat Austin; Rosemary Ozuna

Judy Paxton

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION
TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT**

THIS AGREEMENT is entered into by and between TODD V. HARMS attorney at law, Washington State Bar Association #31104 ("Attorney"), dba Law Office of Kevin Holt and **BENTON COUNTY** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in the Benton County Superior Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2009** and shall continue thereafter through and including the **31st day of December 2009**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. It is specifically agreed and understood between the parties that this contract is intended to provide the services of Attorney as a temporary substitute for Attorney Kevin Holt who is on military leave, and this contract shall terminate, as provided in further detail herein, when Attorney Kevin Holt returns from military leave and is ready to resume providing representation according to his contract for indigent defense services.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at Law Office of Kevin Holt, 7014 W Okanogan Pl, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509)735-6520 and (509)736-1385, respectively; and Attorney's current office/work e-mail address toddvharms@yahoo.com

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the

Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous Benton and/or Franklin County personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her. These requirements may be reviewed with the IDC by written request.

(i) This Agreement may be subject to review pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal

history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report, or shall certify a provided written report, showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month, the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month.

Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.**

a. On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County Superior Court, the Superior Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to the Benton County Superior Court from any higher court.
- Any other type of Benton County Superior Court case or matter in which another Superior Court Criminal Defense Panel member and/or a and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement. For purposes of this paragraph, "concluded" means that the case is conclusively completed by sentencing and the entering of a Judgment and Sentencing, or by the dismissal of the case. In cases where a case is concluded by way of sentencing and the entering of a Judgment and Sentencing, Attorney shall be responsible for attending and representing the defendant in any restitution hearing that is scheduled during the sentencing hearing and for which the defendant elects to appear.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a non-homicide crime after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a homicide or Persistent Offender matter after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is specified in paragraph 13 below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County Superior Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

- (i) Any civil-based matter;
- (ii) Any matter involving a represented person for whom a warrant has been issued;

- (iii) Special Sex Offender Sentencing Alternative Revocation hearings;
- (iv) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. If the Agreement is to end upon its stated termination date without renewal, there are to be no new case appointments for thirty (30) days prior to the termination date, provided that notice of non-renewal is provided sixty (60) days prior to the termination date. If notice is not provided sixty days prior to the termination date, appointment of new cases shall cease thirty (30) days after notice is received.

d. Notwithstanding any other provision in this section, if this contract is terminated as provided in Section 19(f) of this contract as a result of the return of Attorney Kevin Holt from military leave, Attorney shall have no further duty of continued representation once Attorney Kevin Holt has resumed his contract provided that Attorney and Attorney Kevin Holt have jointly arranged for a seamless transition of representation duties and have further arranged for substitution of counsel on the record for all outstanding cases.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **one hundred fifty (150) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A felony appointment shall be counted as one (1) case equivalent except Class A felonies, which shall be counted as two (2) case equivalents.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one-half (1/2) of a case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County Superior Court shall count as one half (1/2) of a case equivalent.
- An appointment on a felony matter filed in Benton County Superior Court following a declination hearing in Juvenile Court shall count as one (1) case equivalent not withstanding any prior case credit granted in Juvenile Court.

- An appointment to a case or matter returned to Benton County Superior Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case credit.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the IDC may in his discretion adjust the case equivalent total after consultation.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the IDC in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County Superior Court of such possibility for purposes of the Superior Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Superior Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last. The parties recognize that Attorney will be fulfilling the duties imposed on him by this contract by and through facilities made available to him by the Law Offices of Kevin Holt and therefore, maintenance of records in such facilities associated with the Law Offices of Kevin Holt shall satisfy the provisions of this section.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during calendar year 2008, Attorney's monthly compensation hereunder shall be **\$6250 per month** (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **\$75,000**.

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **\$6506.25 per month**, an added 4.1 percent (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **\$78,075**.

c. During calendar year 2010, Attorney's monthly compensation hereunder shall be **\$6707.94 per month**, an added 3.1 percent (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **\$80,495.32**.

d. In addition to the stated monthly compensation, commencing in calendar year 2008, Attorney shall receive \$300 per day for each full day of trial and \$150 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. Commencing in calendar year 2009 and continuing through calendar year 2010, Attorney shall receive \$400 per day for each full day of trial and \$200 for each partial day of trial.

e. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2008, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date as well as any amounts accruing and owing to Attorney under paragraph 13 below for post-termination continued representation in homicide and Persistent Offender cases. By way of further example, if this Agreement is terminated effective November 15, 2008, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount) as well as any amounts accruing and owing to Attorney under paragraph 13 below for post-termination continued representation in homicide or Persistent Offender cases.

f. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide or Persistent Offender cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total of 150 case equivalents.

13. **HOMICIDE/PERSISTENT OFFENDER CASE COMPENSATION.** Homicide and Persistent Offender cases are appointed to the Benton County Criminal Defense Panel members on a rotational basis and shall not count against caseload limitations. Attorney shall receive additional compensation for appointments to homicide and Persistent Offender cases in any degree at the rate of **\$75.00 per hour** up to a maximum aggregate amount of **\$10,000.00** per case (or such greater

maximum aggregated amount as may be specifically approved and ordered by the court or its designee in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide or Persistent Offender case, Attorney shall be required to submit a vendor warrant payment voucher to the Superior Court Administrator that descriptively sets forth and details the total number of hours (documented and stated in one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a

specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County Superior Court under then-existing employee travel-related policies and rules.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the Superior Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in the Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Benton County Superior Court or its designee appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

(iii) For calendar year 2008 only, the County shall provide as cost reimbursement and not as compensation for professional services rendered the

sum of \$2,000 to Attorney to defray costs of professional liability insurance. Such cost reimbursement shall be distributed no later than February 1, 2008.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 17.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County Superior Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and

obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC, who shall provide the represented person with a copy of the response within five (5) business days). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County Superior Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the IDC have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to

\$5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Justice Center relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination and except as provided further in paragraph "f" below, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/dísbarment of Attorney from the practice of law in Washington.

e. Should the County decide to provide indigent defense representation in the Benton County Superior Court through a county agency such as an Office of Public Defense or a similar entity that will affect the scope and number of indigent defense contracts available, the County hereby agrees to make its intentions known as soon as reasonably possible so that both the County and the Attorney can plan an appropriate transition for both sides. Upon receipt of such notice, Attorney may request transfer from contract status to employee status with no interruption in and/or transfer of existing caseload in accordance with then-existing County personnel policies.

f. Upon the return from military duty of Attorney Kevin Holt and written notice that he wishes to resume his contract duties, County may terminate this contract in order to resume contracting with Attorney Kevin Holt with 15 days notice to Attorney.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance

compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide notice as soon as practically possible so that appropriate substitution for coverage of Attorney's contract can be obtained and approved. Compensation for Attorney's PSA shall be suspended during the time of active military duty and for reasonable transition time that may be requested by Attorney after return from active service. Attorney shall be entitled to resume contract duties with full compensation upon written request to the IDC within a reasonable time after return from active service.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

26. **CAPTIONS: TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

27. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

28. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory

Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Patricia J. Austin
Benton-Franklin Counties Superior Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Eric Hsu
Indigent Defense Coordinator
Benton & Franklin Counties Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address (es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an Indigent Defense Coordinator ("IDC") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

..

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

Date: _____

Date: 4/14/09

BENTON COUNTY

ATTORNEY

Chairman



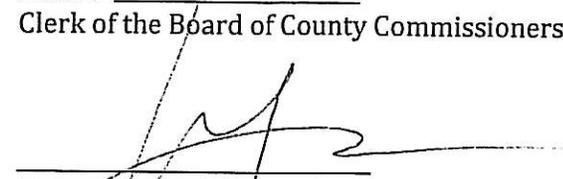
Commissioner

"

Commissioner

Comprising the Benton County Board of County Commissioners

Attest: _____
Clerk of the Board of County Commissioners



Approved as to Form and Content
Eric Hsu
Indigent Defense Coordinator

S

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH ELISA RILEY, ATTORNEY AT LAW, DBA SAXTON RILEY, PLLC. TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT

WHEREAS, the Board of County Commissioners and Elisa Riley, Attorney at Law, dba Saxton Riley, PLLC, mutually desire to enter into an agreement effective on February 01, 2009, whereby Elisa Riley will provide legal representation to indigent persons in Benton County District Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation Of Indigent Persons in District Court with Elisa Riley, Attorney at Law for the period February 01, 2009 through December 31, 2010.

Dated this day of, 2009.

_____ Chairman of the Board

_____ Chairman Pro-Tem

_____ Member

Attest:
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT# BCDC0810EVR002**

THIS AGREEMENT is entered into by and between **Elisa V. Riley**, attorney at law, Washington State Bar Association #36142 ("Attorney") dba Saxton Riley, PLLC, 1112 Meade Ave, Prosser, WA 99350; and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING
FACTS AND CIRCUMSTANCES:**

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **February 1, 2009**, and shall continue thereafter through and including the **31st day of December 2010**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at Saxton Riley, PLLC, 1112 Meade Ave, Prosser, WA 99350. Attorney's current local office telephone and fax numbers are (509) 786-1817 and (509) 786-1617 respectively; and Attorney's current office/work e-mail address is elisa.riley@gmail.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s)

to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is

appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. In order to qualify to represent indigent defendants in any appeals to Superior Court pursuant to RALJ, Attorney shall verify that he/she meets the standards for such representation as promulgated by the Washington State Bar Association in its Standards for Indigent Defense (Standard 14). Verification shall be in such form as reasonably required by the IDC. Failure to complete such verification will disqualify Attorney from being appointed to RALJ appeals cases.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Benton County District Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.
- Provided that Attorney is qualified to do so and provides verification as provided in 3(g) above, Attorney may be appointed to represent indigent defendants in RALJ appeals to Superior Court.

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this

Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement. By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a crime or other matter after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation, except for any court-authorized cost reimbursements specified in paragraph 13.b below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County District Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

- (i) Any civil-based matter;
- (ii) Any matter involving a represented person for whom a warrant has been issued; and
- (iii) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. Attorney will be appointed to no new cases under this Agreement during the thirty (30) day period prior to its termination date specified in paragraph 1 above if Attorney provides written notice to the County at least sixty (60) days prior to such termination date of Attorney's desire and intent to not pursue contracting with the County again to provide indigent defense services in Benton County District Court after such termination date. Attorney may belatedly provide such written notice at any time within said sixty (60) day time period, but the appointment of new cases to Attorney will not stop until thirty (30) days after the date such notice is received by the County.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of **three hundred and eighty (380) total case equivalents per calendar year** (proratable for any partial calendar year) for calendar year 2008 with downward adjustments in 2009 and 2010 as indicated in paragraph 12 below. The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-half (1/2) case equivalent.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- RALJ appeals shall not count as a case equivalent of any sort.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case

equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Provided, however, the IDC may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Upon receipt of such record, Attorney shall, within ten (10) business days, either: a) certify them as true and accurate; or b) state that Attorney disagrees with the caseload volume numbers contained therein, and shall promptly return a signed copy of the record to the IDC. The record provided to Attorney shall, on its face, provide a space for Attorney's certification or disagreement. If Attorney disagrees with the caseload volume numbers contained in the record provided, then Attorney shall bear the burden of proof in showing what caseload volume numbers are in fact correct, and the IDC may adjust reports of caseload volumes as appropriate.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County

District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

a. During calendar year 2008, Attorney's monthly compensation hereunder shall be **\$4,591.67 per month** (proratable for any partial month), payable on the last business day of the month for handling **380 total case equivalents** during the calendar year.

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **\$4,830.00 per month** (proratable for any partial month),

payable on the last business day of the month for handling **360 total case equivalents** during the calendar year.

c. During calendar year 2010, Attorney's monthly compensation hereunder shall be **\$5,071.67 per month**, (proratable for any partial month), payable on the last business day of the month for handling **340 total case equivalents** during the calendar year.

d. In addition to the stated monthly compensation, during calendar years 2008 and 2009, Attorney shall receive \$200 per day for each full day of trial and \$100 for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Commencing in calendar year 2010, Attorney shall receive \$300 per day for each full day of trial and \$150 for each partial day of trial.

e. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2008, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2008, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

f. RALJ appeals to Superior Court shall be compensated during calendar year 2009 at the rate of \$400 per case as a flat rate. Thereafter, compensation shall be increased for calendar year 2010 by the percentage increase that equals the cost of living increase percentage allotted to non-bargaining Benton County employees for that year.

13. COSTS AND EXPENSES.

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without

limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure; such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought,

and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with

copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the IDC have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of

termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide indigent defense representation in Benton County District Court through a County agency (such as an Office of Public Defense or similar entity) that would eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can mutually coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic or in any way guaranteed.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a. and 19.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense

Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the IDC with written notice of such event within five (5) business days of Attorney being called up so that the IDC and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall

receive no compensation under this Agreement while on leave or during any such transition time.

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

24. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time

shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

25. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

26. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

28. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award

within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Eric Hsu
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2a. above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

DATE: _____

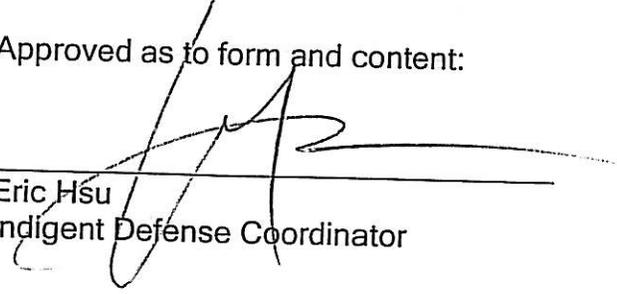
BENTON COUNTY

Chairman

Commissioner

Commissioner

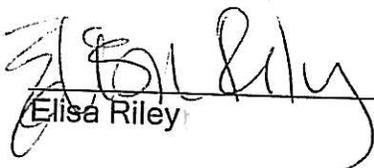
Approved as to form and content:



Eric Hsu
Indigent Defense Coordinator

DATE: 1/23/09

ATTORNEY



Elisa Riley



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH SHELLEY ANN AJAX, ATTORNEY AT LAW, DBA AJAX LAW FIRM, TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT

WHEREAS, the Board of County Commissioners and Shelley Ann Ajax, Attorney at Law, dba Ajax Law Firm, mutually desire to enter into an agreement effective on January 01, 2008, whereby Shelley Ann Ajax will provide legal representation to indigent persons in Benton County District Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation Of Indigent Persons in District Court with Shelley Ann Ajax, Attorney at Law for the period January 01, 2008 through December 31, 2008.

Dated this day of, 2009.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County
Commissioners of Benton County,
Washington

Attest:
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL
REPRESENTATION TO INDIGENT PERSONS IN
BENTON COUNTY DISTRICT COURT
CONTRACT# BCDC0808SAA001X**

THIS AGREEMENT is entered into by and between **Shelley Ann Ajax**, attorney at law, Washington State Bar Association #36227 ("Attorney") dba Ajax Law Firm, 8390 W Gage Blvd Ste 111, Kennewick, WA 99336-8105; and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

**THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING
FACTS AND CIRCUMSTANCES:**

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.
- C. Jason Celski is an attorney working in Attorney's law firm who is the holder of an indigent defense contract in Benton County District Court and who has reached his contractual maximum case appointment level. It is the intent of this Agreement to allow Attorney to assume Jason Celski's caseload that is in excess of the maximum case appointment level stated in his contract.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2008**, and shall continue thereafter through and including the **31st day of December 2008**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at Ajax Law Firm, 8390 W Gage Blvd Ste 111, Kennewick, WA 99336-8105. Attorney's current local office telephone and fax numbers are (509) 783-3330 and (509) 783-3334 respectively; and Attorney's current office/work e-mail address is shelley@ajaxlawfirm.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain such an office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Indigent Defense Coordinator ("IDC"), the Benton County Prosecuting Attorney, and the Benton County District Court Administrator ("District Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent

jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the IDC to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the IDC shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in the Benton County District Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County District Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any material witness matter relating to a case or matter filed in Benton County District Court.
- Any case or matter returned to the Benton County District Court from any higher court.
- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.
- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.
- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement. By way of example, in the

event that Attorney is required by this paragraph to continue representing a person charged with a crime or other matter after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation, except for any court-authorized cost reimbursements specified in paragraph 13.b below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County District Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

- (i) Any civil-based matter;
- (ii) Any matter involving a represented person for whom a warrant has been issued; and
- (iii) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. Attorney will be appointed to no new cases under this Agreement during the thirty (30) day period prior to its termination date specified in paragraph 1 above if Attorney provides written notice to the County at least sixty (60) days prior to such termination date of Attorney's desire and intent to not pursue contracting with the County again to provide indigent defense services in Benton County District Court after such termination date. Attorney may belatedly provide such written notice at any time within said sixty (60) day time period, but the appointment of new cases to Attorney will not stop until thirty (30) days after the date such notice is received by the County.

7. **APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-half (1/2) case equivalent.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter

involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Provided, however, the IDC may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the IDC in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County District Court of such possibility for purposes of the District Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County District Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington.

Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation shall include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of District Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the IDC of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or
- (iii) Any violent offense as defined in RCW 9.94A.030.

12. COMPENSATION.

Attorney shall be compensated on a flat-fee basis in the amount of \$145 per case equivalent.

13. COSTS AND EXPENSES.

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

- (i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to

be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the amounts that the County would be obligated to pay and reimburse to employees of the Benton County District Court under then-existing employee travel-related policies and rules.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being reimbursed for an expenditure under this paragraph, Attorney shall be required to submit a vendor warrant payment voucher to the County that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the court order(s) that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for reimbursement under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers to the District Court Administrator within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any

suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than \$1,000,000.00 per claim nor less than \$1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than \$10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of

not less than \$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County District Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving

such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the Benton County Court Administrator and the IDC.

a. Upon receiving such complaint, the IDC, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall immediately forward a copy of the complaint to Attorney and request and obtain Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the County and the IDC within five (5) business days, who then shall provide the represented person with a copy of the response within five (5) business days thereafter). The IDC shall review the complaint and Attorney's response and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The IDC then may follow-up with the Benton County District Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County District Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the IDC have the right to periodically ask, without limitation, the Benton County District Court and/or the District Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

17. TERMINATION.

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County District Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Benton County District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to \$5,000.00 for any additional costs or expenses incurred by the County relating to such substitute appointment(s).

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide indigent defense representation in Benton County District Court through a County agency (such as an Office of Public Defense or similar entity) that would eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that

Attorney and the County can mutually coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic or in any way guaranteed.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County District Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

19. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a. and 19.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County

District Court Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the District Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the IDC with written notice of such event within five (5) business days of Attorney being called up so that the IDC and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

21. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform prosecution services in any court or jurisdiction.

Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

22. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any court other than Benton County District Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

24. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

25. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

26. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

27. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

28. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

29. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced mediator chosen by mutual agreement between the parties. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

b. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be personally delivered to the County's Board of Commissioners or mailed to the County's Board of Commissioners via certified U.S. mail, postage prepaid, at the Board's following address:

Benton County Board of Commissioners
620 Market St.
Prosser, WA 99350

With a mandatory complete copy of any such notices to also be provided to:

Jacki Lahtinen
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Eric Hsu
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2a. above.

c. Any notices under this Agreement shall be deemed to have been duly given, made and received when personally delivered against receipt or when duly deposited in the U.S. mail in compliance with the provisions of this paragraph. A party may change the address(es) to which notices or copies thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

d. For purposes of clarity, whenever the terms of this Agreement require Attorney to provide "the County" with certain information or notice, such information or notice shall be provided to the County's Board of Commissioners or the Board's designee unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all

applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

32. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has established and employed the IDC to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public indigent defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the IDC to assume and fulfill various roles and functions under this Agreement. Though the IDC will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate and promptly comply with reasonable requests from the IDC to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

(SIGNATURES APPEAR ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

DATE: _____

BENTON COUNTY

Chairman

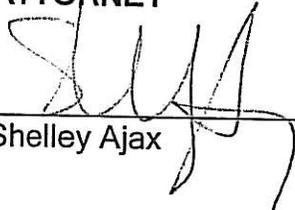
Commissioner

Commissioner

Approved as to form and content
Eric Hsu
Indigent Defense Coordinator

DATE: _____

ATTORNEY



Shelley Ajax

RESOLUTION NO. _____
 Road Program Item #21 09-14 Six Year Road Program

County Engineer Project No. 1861 CRP
 Arterial Access



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON
 IN THE MATTER OF COUNTY ROADS, RE: WEBBER CANYON ROAD (MP. 1.25 to DENNIS ROAD)

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the County Engineer is hereby authorized to proceed with the improvement of Webber Canyon Road from MP. 1.25 to Dennis Road according to the contract awarded to Tapani Underground, Inc., Battle Ground, Washington, on January 26, 2009.

Length of Project: 2.0± miles; Width of Roadbed: 41 ft.; Surface: 33 ft.; Pavement: 32 ft.
 Type and depth of surfacing: Hot Mixed Asphalt (HMA Class 1/2 inch PG 70-28)
 Bridge ___ Irrigation Crossing: Length ___ ft.; Width ___ ft.
 Estimated date of beginning: February 1, 2009; Estimated date of completion: December 31, 2009.

BE IT FURTHER RESOLVED, That for the foregoing proper county road purpose there is hereby appropriated sums in the following detail:

	<u>County Road & CP Funds</u>	<u>Federal Funds</u>		<u>Total</u>
Prel. Engr.	76,000.00	24,000.00		100,000.00
Right-of-Way				0.00
Mat. from Stkple				0.00
Day Labor				0.00
Contract	514,035.25	475,000.00		989,035.25
Const. Engr.	50,000.00			50,000.00
Contingencies	40,064.75			40,064.75
Total	680,100.00	499,000.00		1,179,100.00

The county road purpose herein described is HEREBY DECLARED to be a public necessity and the County Road Engineer is HEREBY ORDERED AND AUTHORIZED to report and proceed thereon as by law provided.

BE IT FURTHER RESOLVED, That this purpose be performed in accordance with the Standard Road and Bridge Specifications of the State of Washington as adopted by this Board.

ADOPTED this 2nd day of February, 2009.

 Chairman

(SEAL)

 Chairman Pro-Tem

Attest:

 Member
 Constituting the Board of County Commissioners
 of Benton County, Washington.

 Clerk of the Board

RBD:LJM:dlh



RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:**

IN THE MATTER OF COUNTY ROADS, RE: HESS ROAD GUARDRAIL UPGRADE,
CE 1903 CRP,

WHEREAS, plans for the above referenced project, having been signed by the County Engineer,
are hereby presented for approval to the Board of County Commissioners; NOW, THEREFORE

BE IT RESOLVED that the plans be and hereby are approved and that the Chairman is
authorized to sign Sheet One of 6 for Hess Road Guardrail Upgrade, CE 1903 CRP.

Dated this 2nd day of February 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:lss

W

RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:**

IN THE MATTER OF PROPERTY ACQUISITIONS, RE: LOCUST GROVE ROAD, CE 1838
CRP

WHEREAS, Associated Appraisers, LLC of Walla Walla, Washington has completed the
appraisals for Locust Grove Road, CE 1838 CRP, and

WHEREAS, Benton County having an Agreement for Aid with the Washington State
Department of Transportation (WSDOT) desires to employ WSDOT for appraisal review and for
landowner negotiations for the above referenced road project, and

WHEREAS, WSDOT has submitted an Administrative Authority Letter and Task Assignment
for approval by the County to allow them to undertake the request, and

WHEREAS, Public Works is recommending approval of the documents which have been
Approved as to Form by the Prosecuting Attorney's Office, NOW, THEREFORE

BE IT RESOLVED that the Administrative Authority Letter and Task Assignment be approved
and the Chairman of the Board is authorized to sign both documents on behalf of Benton County.

Dated this 2nd day of February 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

January 20, 2009

Ross B. Dunfee, P.E.
Benton County Engineer
P.O. Box 1001 - Courthouse
Prosser, WA. 99350-0954

ADMINISTRATIVE AUTHORITY
Benton County, Locust Grove Road, C. Williams to
Edwards CE 1838 CRP

Dear Ross:

Below I have cited the Local Agency Guidelines Manual Chapter 25, Administrative Settlements, Section 25.09. In addition, I have also included the Administrative Authority for the Locust Road, C. Williams to Edwards Road project.

The uniform Act requires that "the head of a federal agency shall make every reasonable effort to expeditiously acquire real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property by agreements with owners to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings, which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize the use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a right-of-way acquisition case in which the agency has administratively approved payment in excess of fair market value as shown by the agency's approved determination of value.

- a. Any administrative settlement, which exceeds the fair market value, must be documented and thoroughly justified in order to be eligible for federal aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region's Local Agency Coordinator.
- b. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including, but not limited to the following:

1. All available appraisals, including the owner's, and the probable range of testimony in a condemnation trial.
2. Ability of the agency to acquire the property, or possession, through the condemnation process to meet the construction schedule. Impact of construction delay pending acquisition.
3. The negotiator's recorded information.
4. Recent court awards in cases involving similar acquisition and appraisal problems.
5. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
6. Estimate of trial cost weighed against other factors."

Therefore, in concurrence with the aforementioned Administrative Procedure, the WSDOT proposes the following Administrative Settlement Authorities above the Determination of Value (DV) and/or the Administrative Offer Summary (AOS):

R/W Agent	DV/ \$1,500.00
Real Estate Service Manager	DV/ \$5,000.00 or 10% of DV, whichever is greater

The undersigned agrees to the conditions and responsibilities set forth herein.

Submitted this _____ day of _____, 2009.

BENTON COUNTY

TITLE

Approved as to Form:

Sincerely,



Al Rouse,
Local Agency/RW Coordinator
South Central Region

Deputy Prosecuting Attorney Date

TASK ASSIGNMENT

(Pursuant to Paragraph II-A of Governmental Agreement for Aid, GCA - 3230).

PROJECT TITLE: Locust Grove Road, C. Williams to Edwards CE 1838 CRP

PROJECT DESCRIPTION:

TASK DESCRIPTION: Benton County is contracting with the Washington State Department of Transportation, South Central Region, Real Estate Services Office, to do appraisal reviews, negotiate with all property owners and acquire the necessary parcels. This project has 3 parcels with 1 ownership. The authority to start work was initiated by Benton County's request for services letter dated December 16, 2008.

It is estimated that the total workforce expenditures to provide the above referenced services will be \$10,000.00. Any costs by Real Estate Services in excess of the above referenced estimate, plus 25 percent, will require additional written authorization by Benton County. Note, the actual cost of the land will be in addition to the workforce expenditures.

The following will be provided by **BENTON COUNTY**:

- Updated Title reports and the authority for the State to order any necessary updates.
- An approved, full and half sized set of R/W plans and a set of construction plans, if available.
- Approval for Administrative Settlements over the authorized limits.
- Concurrence and authorization for Review Appraiser's Determination of Value (DV).
- Authorization for the WSDOT to sign Excise Tax Affidavits.
- Payment of settlement amounts to property owners, title clearance fees, recording fees and any third party contractors, such as escrow companies.
- Any necessary condemnation proceedings.
- County will provide the legal descriptions for all parcels in Word format via disc, CD, or E-mail.
- A list of all property owners, with mailing addresses and phone numbers, if available.
- Type of Deeds to be used. Warranty or Quit Claim Deeds. (Quit Claim Deeds were used on previous projects).
- Any Property Management that may be necessary.
- The County will supply enough letterhead for all offers and miscellaneous correspondence.
- The County will provide a letter stating that they will be responsible for perpetuating any public utility easements, road approaches, and smaller items such as mail boxes, affected by the project.

The following will be the responsibility of the **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**:

- Preparation of Deeds, excluding legal descriptions, and any necessary easements using WSDOT forms. The County will choose the type of Deed to be used, Quit Claim or Warranty.
- Do all Appraisal Reviews and provide Determination of Values (DV's).
- Right of Way acquisition to include all negotiations with property owners, including preparing all offer letters, correspondence, diaries, and vouchers required.
- Clearance of all encumbrances in accordance with the WSDOT R/W manual or as directed by the County.
- Provide Administrative Settlements and document those settlements per the separate Administrative Agreement.
- Project updates as required by the County.

The undersigned agree to the conditions and responsibilities set forth herein and hereby agree to provide these services in the manner described in the before mentioned GCA - 3230 Agreement.

Submitted this _____ day of _____, 2009.

BENTON COUNTY

TITLE

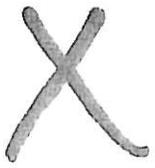
Approved as to Form:

Deputy Prosecuting Attorney Date

Accepted and Approved this _____ day of _____, 2009.

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

Larry L. Hook
Manager, Real Estate Services



RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,
WASHINGTON:**

IN THE MATTER OF PROPERTY ACQUISITIONS, RE: CLODFELTER ROAD, CE 1710
CRP

WHEREAS, Associated Appraisers, LLC of Walla Walla, Washington has completed the
appraisals for Clodfelter Road, CE 1710 CRP, and

WHEREAS, Benton County having an Agreement for Aid with the Washington State
Department of Transportation (WSDOT) desires to employ WSDOT for appraisal review and for
landowner negotiations for the above referenced road project, and

WHEREAS, WSDOT has submitted an Administrative Authority Letter and Task Assignment
for approval by the County to allow them to undertake the request, and

WHEREAS, Public Works is recommending approval of the documents which have been
Approved as to Form by the Prosecuting Attorney's Office, NOW, THEREFORE

BE IT RESOLVED that the Administrative Authority Letter and Task Assignment be approved
and the Chairman of the Board is authorized to sign both documents on behalf of Benton County.

Dated this 2nd day of February 2009.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

RBD:SWB

January 20, 2009

Ross B. Dunfee, P.E.
Benton County Engineer
P.O. Box 1001 - Courthouse
Prosser, WA. 99350-0954

ADMINISTRATIVE AUTHORITY
Benton County, Clodfelter Road, Bently to C. Williams
CE 1778 CRP

Dear Ross:

Below I have cited the Local Agency Guidelines Manual Chapter 25, Administrative Settlements, Section 25.09. In addition, I have also included the Administrative Authority for the Clodfelter Road, Bently to C. Williams road project.

The uniform Act requires that "the head of a federal agency shall make every reasonable effort to expeditiously acquire real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property by agreements with owners to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings, which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize the use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a right-of-way acquisition case in which the agency has administratively approved payment in excess of fair market value as shown by the agency's approved determination of value.

- a. Any administrative settlement, which exceeds the fair market value, must be documented and thoroughly justified in order to be eligible for federal aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region's Local Agency Coordinator.
- b. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information including, but not limited to the following:

1. All available appraisals, including the owner's, and the probable range of testimony in a condemnation trial.
2. Ability of the agency to acquire the property, or possession, through the condemnation process to meet the construction schedule. Impact of construction delay pending acquisition.
3. The negotiator's recorded information.
4. Recent court awards in cases involving similar acquisition and appraisal problems.
5. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
6. Estimate of trial cost weighed against other factors."

Therefore, in concurrence with the aforementioned Administrative Procedure, the WSDOT proposes the following Administrative Settlement Authorities above the Determination of Value (DV) and/or the Administrative Offer Summary (AOS):

R/W Agent	DV/ \$1,500.00
Real Estate Service Manager	DV/ \$5,000.00 or 10% of DV, whichever is greater

The undersigned agrees to the conditions and responsibilities set forth herein.

Submitted this _____ day of _____, 2009.

BENTON COUNTY

TITLE

Approved as to Form:

Sincerely,



Al Rouse,
Local Agency/RW Coordinator
South Central Region

Deputy Prosecuting Attorney Date

TASK ASSIGNMENT

(Pursuant to Paragraph II-A of Governmental Agreement for Aid, GCA - 3230).

PROJECT TITLE: Clodfelter Road, Bently to C.Williams; CE 1778 CRP

PROJECT DESCRIPTION:

TASK DESCRIPTION: Benton County is contracting with the Washington State Department of Transportation, South Central Region, Real Estate Services Office, to do appraisal reviews, negotiate with all property owners and acquire the necessary parcels. This project has 8 parcels with 3 different ownerships. The authority to start work was initiated by Benton County's request for services letter dated December 16, 2008.

It is estimated that the total workforce expenditures to provide the above referenced services will be \$25,000.00. Any costs by Real Estate Services in excess of the above referenced estimate, plus 25 percent, will require additional written authorization by Benton County. Note, the actual cost of the land will be in addition to the workforce expenditures.

The following will be provided by **BENTON COUNTY:**

- Updated Title reports and the authority for the State to order any necessary updates.
- An approved, full and half sized set of R/W plans and a set of construction plans, if available.
- Approval for Administrative Settlements over the authorized limits.
- Concurrence and authorization for Review Appraiser's Determination of Value (DV).
- Authorization for the WSDOT to sign Excise Tax Affidavits.
- Payment of settlement amounts to property owners, title clearance fees, recording fees and any third party contractors, such as escrow companies.
- Any necessary condemnation proceedings.
- County will provide the legal descriptions for all parcels in Word format via disc, CD, or E-mail.
- A list of all property owners, with mailing addresses and phone numbers, if available.
- Type of Deeds to be used. Warranty or Quit Claim Deeds. (Quit Claim Deeds were used on previous projects).
- Any Property Management that may be necessary.
- The County will supply enough letterhead for all offers and miscellaneous correspondence.
- The County will provide a letter stating that they will be responsible for perpetuating any public utility easements, road approaches, and smaller items such as mail boxes, affected by the project.

The following will be the responsibility of the **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**:

- Preparation of Deeds, excluding legal descriptions, and any necessary easements using WSDOT forms. The County will choose the type of Deed to be used, Quit Claim or Warranty.
- Do all Appraisal Reviews and provide Determination of Values (DV's).
- Right of Way acquisition to include all negotiations with property owners, including preparing all offer letters, correspondence, diaries, and vouchers required.
- Clearance of all encumbrances in accordance with the WSDOT R/W manual or as directed by the County.
- Provide Administrative Settlements and document those settlements per the separate Administrative Agreement.
- Project updates as required by the County.

The undersigned agree to the conditions and responsibilities set forth herein and hereby agree to provide these services in the manner described in the before mentioned GCA - 3230 Agreement.

Submitted this _____ day of _____, 2009.

BENTON COUNTY

TITLE

Approved as to Form:

Accepted and Approved this _____ day of _____, 2009. Deputy Prosecuting Attorney Date

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

Larry L. Hook
Manager, Real Estate Services

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 02 Feb 2009 Subject: Elliot Lake letter Memo Date: 28 Jan 2009 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion X Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

SUMMARY & BACKGROUND

The attached letter was requested by Kennewick Irrigation District staff, who in turn provided most of the text. It is pretty self-explanatory. I have no additional information at this time, other than that the Planning Department tells me that the immediate area around Elliot Lake was recently annexed into the City, however the community water system may still serve UGA and unincorporated County areas.

#

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

2 February 2009

Kennewick Irrigation District
Board of Directors – President John Jaksch
12 West Kennewick Avenue
Kennewick, Washington 99336

Re: Elliot Lake Community Water System

Dear Mr. Jaksch,

Benton County recognizes that the infrastructure of the Elliot Lake community water system is in need of upgrades. The system is within the City of Kennewick's water service area and near unincorporated County areas. Benton County supports the Kennewick Irrigation District's application for economic stimulus funding to bring the system in the Elliot Lake community up to current American Water Works Association standards for potability and performance. The system upgrade will improve pressure for fire suppression in the area and improve water service reliability.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Max E. Benitz, Jr., Chairman

cc: KID – Scott Revell

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 02 Feb 2009 Subject: WRIA 31 briefing Memo Date: 28 Jan 2009 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other

9:05

SUMMARY & BACKGROUND

Commissioners will have an opportunity to meet with David McClure, Director for Klickitat County Department of Natural Resources. Dave and I work together on bi-county water issues, namely, Water Resource Inventory Area #31 planning. I am the Chair of the Planning Unit that guides WRIA 31 planning, but Klickitat County staffs the project and manages the grants. I like to bring Dave in to meet with Commissions at least once per year, and he plans to report on the following subjects:

- Status of WRIA 31 Management Plan adoption. We originally planned to adopt the plan late last year, but the SEPA review was held-up for several months. Dave will provide a status update on SEPA and discuss the hearing/adoption process that requires coordination by all three counties (Benton / Klickitat / Yakima).
- How implementation of the Plan ("Phase IV") will proceed after the Plan is adopted – including grant update and contract status.

David is well-versed on these issues and will try to address other non-WRIA 31 specific questions you may have about water resources throughout the greater Simcoe-Horse Heaven area.

###

9:35

AGENDA ITEM: MTG. DATE: February 2, 2009 SUBJECT: Short Plat Vacation - File No. SPV 08-06 - Mario/Sandra Perez Memo Date: January 23, 2009 Prepared By: Donna Hutchinson Reviewed By: Michael Shuttleworth	<u>TYPE OF ACTION</u>		Consent Agenda
	<u>NEEDED</u>		Public Hearing X
	Execute Contract		1st Discussion
	Pass Resolution	X	2nd Discussion
	Pass Ordinance		Other
	Pass Motion	X	
Other			

BACKGROUND INFORMATION

On April 9, 1981, Short Plat 1121 was recorded, which created 4 lots. The recorded short plat included 40-foot natural drainage easements on Lots 1 and 2. The applicant is requesting that these drainage easements be vacated. The applicant is basing his request on the fact that Finley Road has been realigned and the drainage easements are no longer needed.

Property owners of the lots within the short plat and owners of property within 300' of the outer perimeter of said short plat have been notified. All concerned agencies such as Health Department, Benton County Engineer, Benton County Fire Marshal and affected utility companies have been notified of this proposal. Comments that have been received to date stated that there were no objections to the easement vacation. Benton County Public Works has commented that due to the realignment of Finley Road the drainage that historically flowed through Lots 1 and 2 of Short Plat 1121 has been rerouted and that they have no objection to the vacation of the easements. Attached please find maps showing the drainage flows before and after the realignment of Finley Road

The Benton County Code requires the Board of County Commissioners to conduct a public hearing on the proposed vacation and allow for public comments regarding the vacation request. The public hearing notice for application SPV 08-06 was published on January 22, 2009 and the public hearing is scheduled for February 2, 2009 at 9:35 a.m.

SUMMARY

Benton County has received an application requesting the vacation of the 40 foot natural drainage easements located on Lots 1 and 2 of Short Plat 1121. The Board of County Commissioners is scheduled to conduct a public hearing on February 2, 2009 at 9:35 a.m.

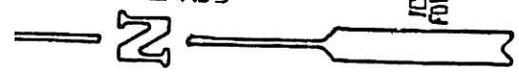
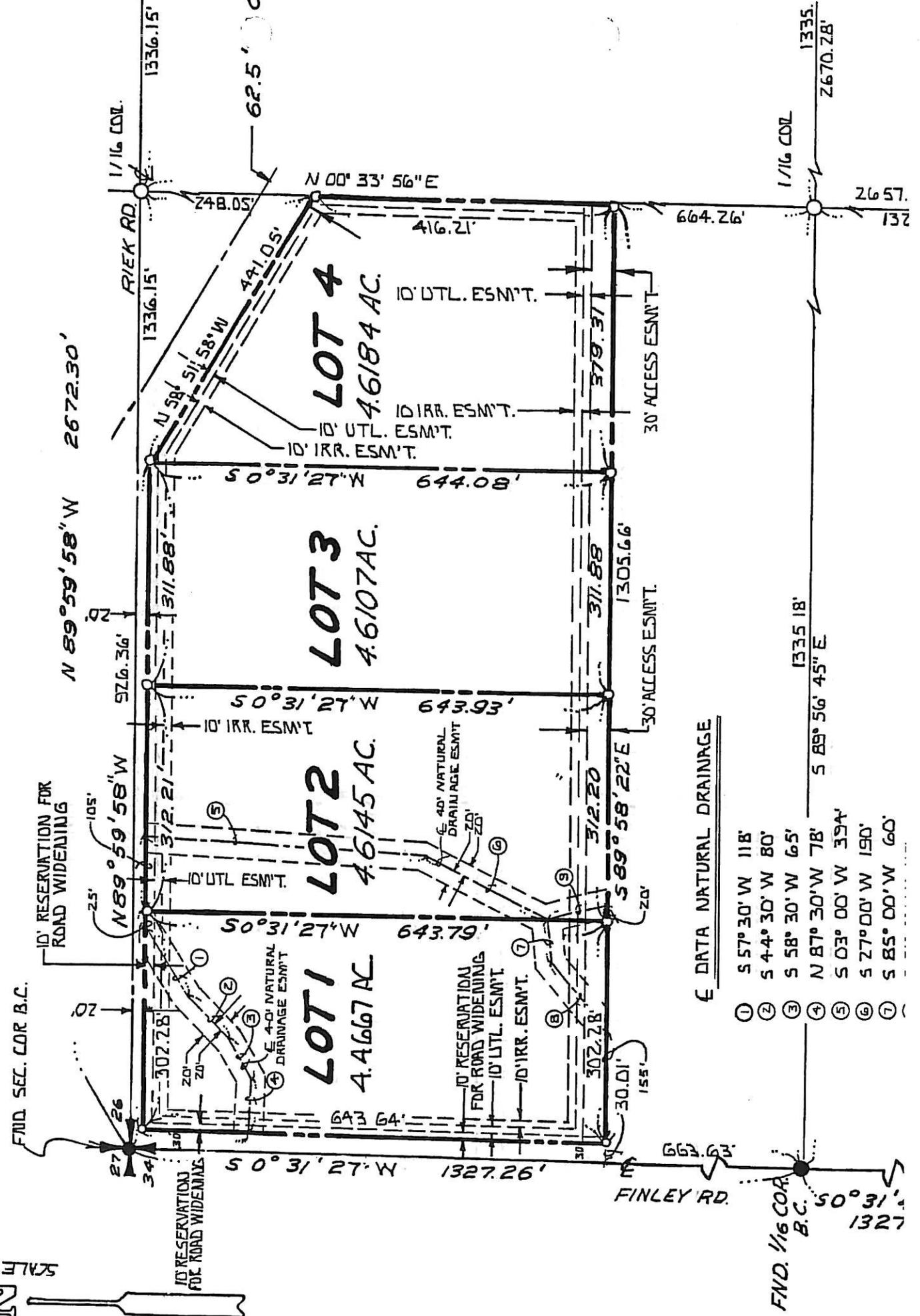
RECOMMENDATION

It is the recommendation of the Planning Department that the Board of County Commissioners conduct a public hearing, and based on the testimony received, either approve or deny the request. Based on the information received thus far, the Planning Department recommends that the proposed vacation of the 40 foot natural drainage easements on Lots 1 and 2 of Short Plat 1121 be vacated.

MOTION

The Benton County Planning Department recommends the following motion: That the Board of County Commissioners approve the vacation of the 40 foot natural drainage easements located on Lots 1 and 2 of Short Plat 1121.

SCALE: 1" = 20'



FND. 1/16 COR. B.C. 50° 31' 1327

SHORT PLAT NO. 1121

DESCRIPTION
 A NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER LINDS SOUTH OF THE COLUMBIA IRRIGATION DISTRICT, SECTIONS 31, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M., IN BEAULTON COUNTY, WASHINGTON, EXCEPT THE WEST 30 FEET FOR ROAD PURPOSES CONVEYED TO BEAULTON COUNTY, BY DOCUMENT RECORDED MARCH 5, 1957, UNDER AUDITOR'S FILE NO. 348145.

OWNERS CERTIFICATE
 WE J.V. LAWLER AND MARIE LAWLER, HUSBAND AND WIFE, HEREBY CERTIFY THAT WE ARE THE OWNERS AS DESCRIBED HEREIN OF THAT TRACT OF LAND DESCRIBED HEREIN THAT WE HAVE CAUSED SAID LAND TO BE SURVEYED AND SHOWN PLATTED INTO LOTS AS SHOWN, AND THAT THE SURVEY AND DEDICATIONS SHOWN ON THIS PLAT ARE HEREBY GRANTED AND CONVEYED FOR THE USES SHOWN HEREON.
 J.V. LAWLER
 MARIE LAWLER

ACKNOWLEDGEMENT
 STATE OF WASHINGTON }
 COUNTY OF BEAULTON } 54

I, THE UNDERSIGNED NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON CERTIFY THAT ON THIS 12TH DAY OF DECEMBER, 1981, I PERSONALLY APPEARED BEFORE ME J.V. LAWLER AND MARIE LAWLER, TO ME KNOWN TO BE THE INDIVIDUALS IN AND WHO EXECUTED THE FOREGOING CERTIFICATE, AND ACKNOWLEDGED TO ME THAT THEY SIGNED THE SAME AS THEIR VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN SET FORTH.
 IN WITNESS WHEREOF I HAVE SET MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.
 NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
 RESIDING AT: ELLIQUHEE
 MY COMMISSION EXPIRES: 4-15-84

SURVEYOR'S CERTIFICATE
 I, ROBERT P. GROW, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF WASHINGTON, HEREBY CERTIFY THAT THE SHORT PLAT AS SHOWN HEREON IS BASED ON AN ACTUAL FIELD SURVEY OF THE LAND DESCRIBED AND THAT ALL ANGLES, COURSES AND DISTANCES ARE CORRECTLY SHOWN AND THAT SAID SHORT PLAT IS TRUE TO THE GROUND AS INDICATED HEREON.
 R.P.G.
 DATE: 12/10/80

APPROVALS
 I, HEREBY CERTIFY THAT THE FEES ON THE LAND DESCRIBED HAVE BEEN PAID TO AND INCLUDING THE YEAR 1981.
 BEAULTON COUNTY TREASURER
 DATE: 12/16/81

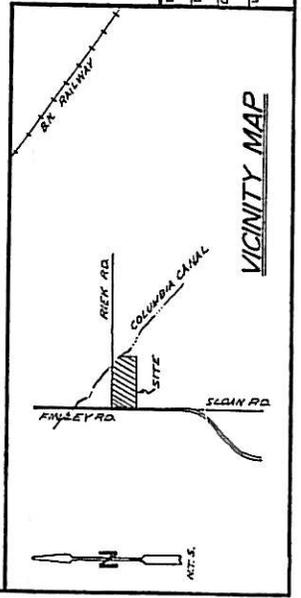
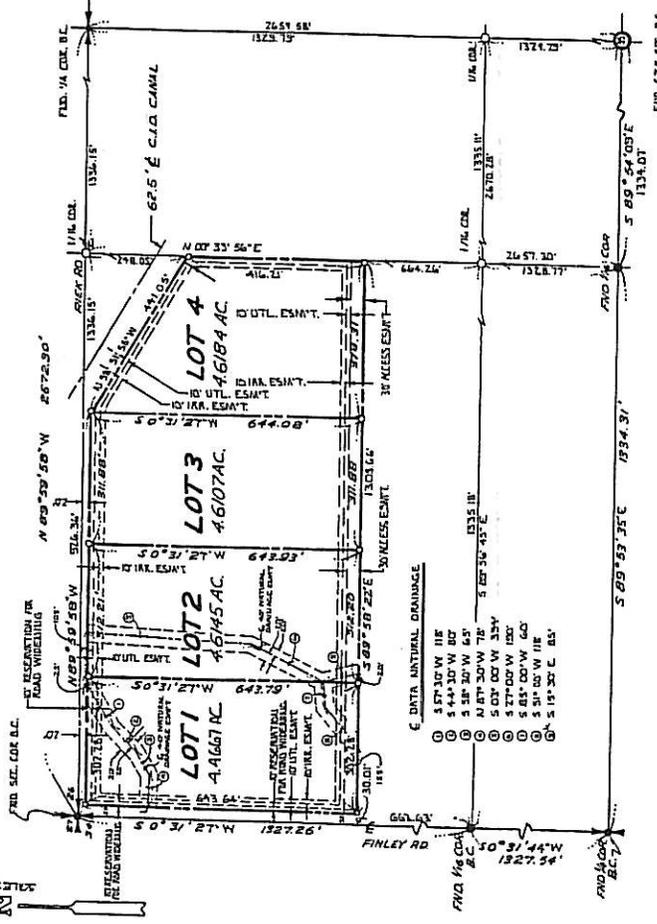
IN NEUTRALITY, IRRECONCILIABLE DISTRICT BUT NOT ASSESSED AT THIS TIME.
 THE UTILITY EASEMENTS ARE HEREBY APPROVED BY BEAULTON COUNTY P.U.D.
 BEAULTON COUNTY P.U.D.
 DATE: 12-15-80
 THE ABOVE-SHOWN SHORT PLAT IS HEREBY APPROVED BY AND FOR THE COUNTY OF BEAULTON
 BEAULTON COUNTY ADMINISTRATOR
 DATE: 12/22/81

AUDITORS CERTIFICATE
 FILED FOR RECORD AT THE REQUEST OF ROBERT P. GROW AT 37 MINUTES PAST 4 P.M. THIS 22ND DAY OF DECEMBER, 1981, AND RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 2321, RECORDS OF BEAULTON COUNTY, WASHINGTON.
 BEAULTON COUNTY AUDITOR
 DATE: 12/22/81

NOTES:
 1 INDICATES FOUR PIN
 0 INDICATES SET PIN

NOTES:
 THE CONSTRUCTION AND MAINTENANCE OF ACCESS EASEMENT ROADS IS JUST THE RESPONSIBILITY OF BEAULTON COUNTY. BEAULTON COUNTY HAS NO OBLIGATIONAL DUTY OR RESPONSIBILITY FOR THE CONSTRUCTION, UPKEEP OR MAINTENANCE OF STORM DRAINAGE FACILITIES LOCATED OUTSIDE COUNTY ROAD RIGHT-OF-WAY.
 ACCESS TO ALL LOTS SHALL BE LIMITED TO THE ACCESS EASEMENT.

THE FEES AND COSTS WITHIN THE ACCESS EASEMENT SHALL BE ACCOUNTED AND THE ONLY MONIES COLLECTED AND APPLIED AS TO COUNTY STORMWATER FUND TO BECOME PART OF BEAULTON COUNTY STORMWATER FUND.



DEIGNED: D.R.P. JR.
 DRAWN: D.R.P. JR.
 CHECKED: R.F.G.
 IN RESPONSIBLE CHARGE: R.F.G.

ROBERT P. GROW
 LAND SURVEYOR
 LICENSE NO. 111

GROW ENGINEERING CO.
 ENGINEERS AND PLANNERS
 WASHINGTON

CLIENT: J.V. LAWLER
 PROJECT: SHORT PLAT

N 1/2, NW 1/4, NW 1/4, SEC. 35, T. 8N, R. 30E, W.M.

DATE: 12-10-80
 DRAWING NUMBER: 80-11-021

SHEET 1 OF 1

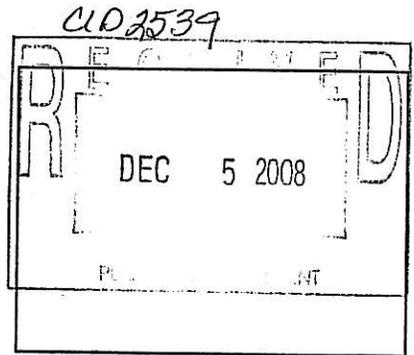
**BENTON COUNTY PLANNING DEPARTMENT
SHORT PLAT VACATION APPLICATION
FILE NO. SPV08-04**

1. Name and address of applicant: Mario and Sandra Perez

Telephone number: Home: _____ Work: _____

2. Legal owners name and address: Same

Telephone number: Home _____ Work _____



3. Parcel Number or Legal description of the short plat to be vacated: lot #1 1-3580-201-1121-001
Lot #2 1-3580-201-1121-002

4. Explain the reason for the requested vacation. Vacate the Drainage easements

5. Describe the existing land uses on the properties to be vacated: residents and Storage
Shed

7. COMMENTS OR PERTINENT INFORMATION: _____

I certify that the information given above is true and complete to the best of my knowledge.

PLEASE SIGN AND THEN PRINT YOUR NAME: Signatures of all persons holding an ownership interest in the real property area is required. (Include Power of attorney when signing for others.)

I certify that the information given above is true and complete to the best of my knowledge.

Mario Perez
Applicant's Signature
Parcel # see line 3

MARIO P. PEREZ
Print Name

12-05-08
Date

Sandra S. Perez
Signature of Legal Owner
Parcel # _____

Sandra S. Perez
Print Name

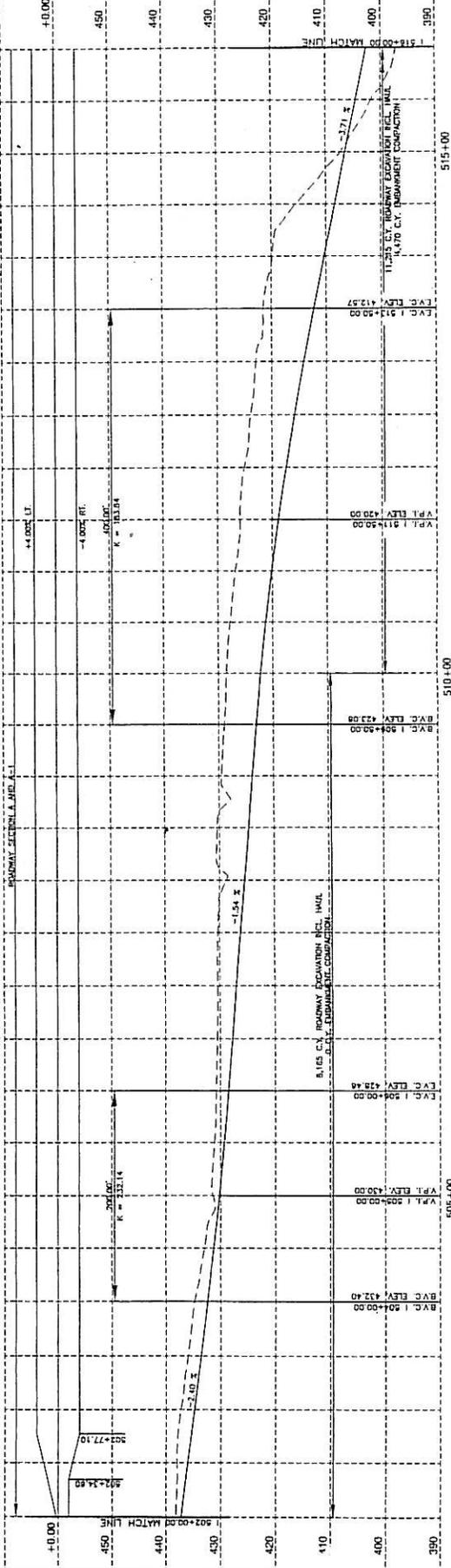
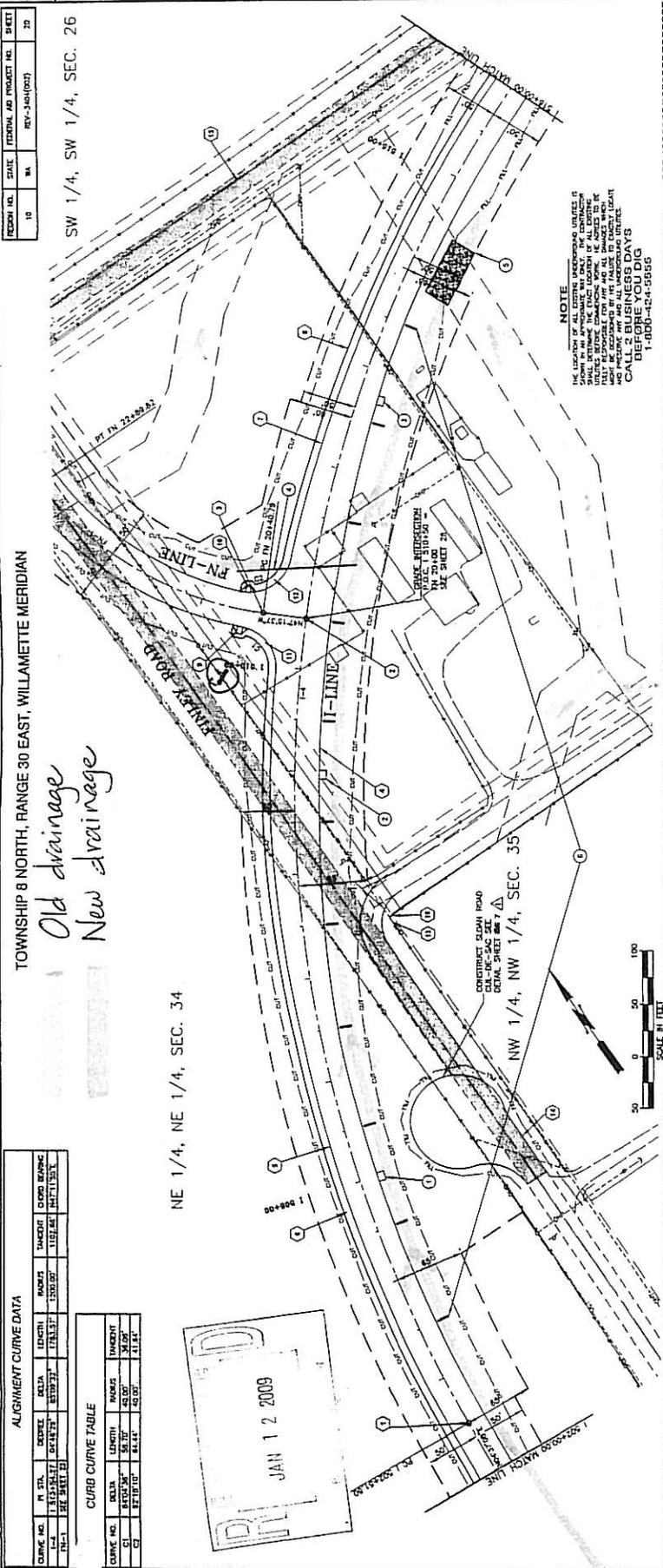
12-05-08
Date

REVISION	DATE	BY	CHKD

STATE OF WASHINGTON
 THE ENGINEER AND THE BOARD OF PROFESSIONAL ENGINEERS HEREBY CERTIFY THAT THE ENGINEER HAS REVIEWED THE PROJECT AND IS A LICENSED PROFESSIONAL ENGINEER.
 STA. 1502+00.00 TO STA. 1516+00.00



PROJECT: 182/SR397 INTERTIE
 PLAN AND PROFILE
 FINLEY RD. TO SR 397
 Benton County
 DATE: 08-11-09
 DRAWN BY: JUB
 CHECKED BY: JUB
 SCALE: AS SHOWN
 AT 1/4" = 100'
 1/4" = 100' VERT. SCALE
 1/4" = 100' HORIZ. SCALE
 SHEET



RECORD NO.	DATE	STATE	FEDERAL AID PROJECT NO.	SHEET
10		WA	WA-344(003)	20

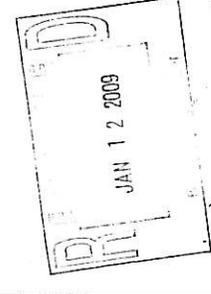
SW 1/4, SW 1/4, SEC. 26

TOWNSHIP 8 NORTH, RANGE 30 EAST, WILLAMETTE MERIDIAN
 Old drainage
 New drainage

NE 1/4, NE 1/4, SEC. 34

CURVE NO.	P.C. STA.	P.T. STA.	LENGTH	DELTA	CHORD BEARING
1	1502+00.00	1507+00.00	500.00	173.13°	M71.1531

CURVE NO.	DELTA	LENGTH	CHORD BEARING	CHORD	PERCENT
1	173.13°	500.00	M71.1531	411.84	4.14%



<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 02 Feb 2009	Execute Contract	Consent Agenda
Subject: Reclamation letter	Pass Resolution	Public Hearing
Memo Date: 28 Jan 2009	Pass Ordinance	1st Discussion
Prepared By: AJF	Pass Motion X	2nd Discussion
Reviewed By:	Other	Other X

9.40

SUMMARY & BACKGROUND

The attached letter offers basic comments to the US Bureau of Reclamation's recently-released *Final Planning Report & Environmental Impact State for the Yakima River Basin Water Storage Feasibility Study* (Study). Benton County previously commented on the draft of this Study in March 2008, and this letter continues to reflect many of the points made then.

I have attached the Bureau's cover letter and the first three pages of the Executive Study to provide you a better feel for the subject. Essentially, the final Study evaluates the merits of three discreet new storage alternatives, plus a fourth alternative they call "No Action". The Study concludes with the No Action Alternative being selected as the "Preferred Alternative" because none of the other three provide enough benefit for the cost.

The core of the comment offered in our letter is that not enough economic aspects of the alternatives were evaluated, that Reclamation should take the time to further consider a broader scope of information, and that "no action" is just not going to be an acceptable long-term path forward.

###

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

**Board of County Commissioners
BENTON COUNTY**

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

02 February 2009

David Kaumhaimer, Environmental Program Manager
United States Bureau of Reclamation – Upper Columbia Area Office
1917 Marsh Road
Yakima, Washington 98901-2058

Re: Yakima River Basin Water Storage Feasibility Study – Final Planning Report and EIS

Dear Mr. Kaumhaimer:

Benton County appreciates the work by the US Bureau of Reclamation (Reclamation) in developing the *Yakima River Basin Water Storage Feasibility Study* (Study) recently issued by your office. As you are aware, the County has been an active participant in this dialogue throughout; and we thank you for the opportunity to review and comment on this report.

Reclamation oversees substantial water storage and conveyance infrastructure that was built as part of the "Yakima Project" during the first third of the 20th Century. However, while the Project's facilities ceased to expand after 1933 (Cle Elum Lake); agriculture, industry, and communities have continued to grow. The Yakima Project's capacity to meet all water needs has been surpassed; and growth and accelerating drought cycles are combining to put strains on the system that the region can no longer absorb the way it could previously. As such, Benton County's primary goal is development of a comprehensive, regionally-supported program of storage and non-storage measures that assure a reliable Yakima River Basin water supply for current and future needs. We have been consistent and forceful in pursuing this goal for many years.

Evaluation and Conclusions

Through its process of creating the Study, Reclamation developed three guiding goals:

- Improve anadromous fish habitat by restoring the flow regimes of the Yakima and Naches Rivers to more closely resemble the natural hydrograph. Through a collaborative process with the Storage Study Technical Work Group (SSTWG) Reclamation developed nonbinding flow objectives to assist in measuring goal achievement.
- Improve the water supply for proratable (junior) irrigation entities by providing a not less than 70-percent irrigation water supply for irrigation districts during dry years relying on diversions subject to proration. This 70-percent goal equates to 896,000 acre-feet of proratable entitlements.

- Meet future municipal water supply needs by maintaining a full municipal water supply for existing users and providing additional surface water supply of 82,000 acre-feet for population growth to the year 2050.

When reviewing the four alternatives presented in the Study, we used these three goals as the primary criteria. In its decision-making process, it appears that Reclamation has also added positive benefit-cost ratio as a criterion. The Study finds that "natural resource benefits" (guiding goal #1, essentially) would positively accrue under all three of the Joint Alternatives. It also found that all three Joint Alternatives would be able to satisfy municipal needs (guiding goal #2). However the Study concludes that only the Black Rock Alternative would also be able to consistently meet the irrigation supply goal (#3). We therefore summarize this analysis as concluding that Reclamation finds the Black Rock Alternative to be the best chance to most successfully meet or exceed all three guiding goals collectively.

It therefore appears that monetary cost is alone, or at least is the prevailing reason why Reclamation defers to the No Action Alternative as its Preferred Alternative in this Study. However, we do not believe that enough inputs have been taken into account in contemplating the benefit-cost analysis. In our Recommendations below, we ask that more variables be considered.

Conclusions

Benton County concludes that the current water supply goals cannot be achieved by any single or combination of Alternatives currently being evaluated internal to the Yakima Basin, and most certainly cannot be achieved through the No Action Alternative. Either importation of water from the Columbia River via a project such as the Black Rock Alternative is required, or the goals must be significantly modified/reduced with respect to water supply needs. Benton County supports continued study of the Black Rock Alternative with emphasis on refining cost numbers and including all ancillary and corollary habitat and economic benefits of Black Rock in the benefit-cost analysis.

As we have stated previously, we further urge Reclamation [and Ecology] not to be constrained to limiting the final decision to a single stand alone alternative. Combinations of alternatives should be evaluated in the context of this study being an element of the on-going Yakima River Basin Water Enhancement Project (YRBWEP) program.

Recommendations

Based on our conclusions, Benton County recommends:

- That the goals of the Study should be considered as a sub-set of the YRBWEP goals; and that the Study should be considered a part of and a continuation of the YRBWEP.
- That the proposed Black Rock Alternative be fully-examined and not merely cast-aside as being 'too expensive'. A more complete examination would include:
 - The synergistic effects of a comprehensive program of habitat restoration coupled with enhanced flow regimes for anadromous fisheries. This should include an estimate of the economic benefits of such fisheries, reflecting the least cost alternative of achieving similar accomplishments.

- o A quantitative analysis of climate change on the Yakima Basin's water resources and its effects on the three "guiding goals".
- o An analysis of integrating pump-generation as a renewable energy component of the Black Rock Alternative.
- o The economic benefits of recreation that would accompany a large reservoir such as Black Rock.

In order for this additional work to be completed, and for the results to be properly melded with the parallel work of the Washington Department of Ecology, we request an appropriate extension of the time limit for the work on the order of 12-18 months, during which time final decisions will be made.

Benton County appreciates the work of the planning team that developed the Study, and the opportunity to provide comment. We commend the collaborative effort involving federal and state agencies, tribal nations, stakeholders, and the public at large. The County looks forward to continuing to work with you to find creative solutions for complex problems in the Yakima Basin.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Max E. Benitz Jr., Chairman

cc: Board of County Commissioners, Kittitas County
 Board of County Commissioners, Klickitat County
 Board of County Commissioners, Yakima County
 Derek I. Sandison, Central Region Director, Washington Department of Ecology
 Jeff Tayer, Region Three Director, Washington Department of Fish and Wildlife
 Yakima Basin Fish and Wildlife Recovery Board
 Yakima Basin Storage Alliance

ajf



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION

Upper Columbia Area Office
1917 Marsh Road
Yakima, Washington 98901-2058



DEC 26 2008

BENTON COUNTY COMMISSIONERS

UCA-1120
PRJ-3.00

DEC 19 2008

Max	<input checked="" type="checkbox"/>
Leo	<input type="checkbox"/>
Claude	<input type="checkbox"/>
David	<input type="checkbox"/>
Loretta	<input type="checkbox"/>
Other	<u>Fyall</u>

To: Interested Individuals, Organizations, and Agencies

Subject: Final Planning Report and Environmental Impact Statement, Yakima River Basin Water Storage Feasibility Study, Kittitas, Yakima, and Benton Counties, Washington

Dear Ladies and Gentlemen:

Enclosed for your review and comment is the Final Planning Report/Environmental Impact Statement (Final PR/EIS) for the Yakima River Basin Water Storage Feasibility Study. This Final PR/EIS, prepared by the Bureau of Reclamation, examines alternatives to create additional water storage for the Yakima River basin for the benefit of threatened and endangered fish, irrigated agriculture, and municipal water supply.

Since the Draft Planning Report/ Environmental Impact Statement (Draft PR/EIS) was released in January 2008, new analyses on seepage mitigation measures for the Black Rock Alternative have been completed. Due to these new analyses, there will be a 45-day review and comment period. After the comment period, Reclamation will complete its Record of Decision which will include Reclamation's responses to any comments and identify the alternative to be implemented.

The Washington Department of Ecology (Ecology) and Reclamation prepared the Draft PR/EIS as joint lead agencies. Some comments received on the Draft PR/EIS suggested that the water supply alternatives could not be evaluated adequately without considering fish habitat and fish passage needs as part of the alternatives analysis. Because Reclamation could focus only on storage alternatives due to the Congressional authorization, Ecology has separated from the joint National Environmental Policy Act/State Environmental Policy Act (NEPA/SEPA) process and will proceed with a separate evaluation of water supply and management alternatives. Ecology continues to participate in this PR/EIS as a cooperating, rather than a joint lead, agency.

Comments may be submitted electronically to storagestudy@pn.usbr.gov or by mail to the Bureau of Reclamation, Attention: Mr. David Kaumheimer at the address below. Comments on this document must be postmarked by February 3, 2009. You should be aware that your entire comment, including your personal identifying information, may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

For further information regarding this proposal or additional copies, please contact:

Bureau of Reclamation
Upper Columbia Area Office
Mr. David Kaumheimer, Environmental Program Manager
1917 Marsh Road
Yakima, Washington 98901-2058
Phone: 509-575-5848, extension 612
Fax: 509-454-5650
Email: storagestudy@pn.usbr.gov

If you would like a copy of the Final PR/EIS as a printed document, on compact disk (CD-ROM), or a copy of the Executive Summary of the Final PR/EIS, please contact Mr. Kaumheimer at the address or phone number given above.

The Final PR/EIS is available for viewing on the Internet at
<http://www.usbr.gov/pn.programs/storagestudy>

Sincerely,



Gerald W. Kelso
Area Manager

Enclosure

RECLAMATION

Managing Water in the West

Final Planning Report/Environmental Impact Statement
Executive Summary

Yakima River Basin Water Storage Feasibility Study

Yakima Project
Washington



U.S. Department of the Interior
Bureau of Reclamation
Pacific Northwest Region
Upper Columbia Area Office
Yakima, Washington

December 2008

EXECUTIVE SUMMARY

Introduction

The Yakima River Basin Water Storage Feasibility Study (Storage Study), as authorized by the Omnibus Appropriations Act of 2003, Public Law 108-7, examines the feasibility and acceptability of storage augmentation for the benefit of fish, irrigation, and future municipal water supply for the Yakima River basin.

The State of Washington, represented by the Department of Ecology (Ecology), and the Bureau of Reclamation (Reclamation), as joint lead agencies, prepared the Draft Planning Report/Environmental Impact Statement for the Storage Study (Draft PR/EIS), released in January 2008. The Draft PR/EIS contained Joint and State Alternatives. Because Public Law 108-7 only authorized storage as a means to augment the water supplies, Reclamation focused its analyses on storage alternatives only and did not address fish habitat restoration, fish passage, or other nonstorage water supply or management issues. The State Alternatives were nonstorage concepts that could be addressed by Ecology through its legislative authorization.

On the basis of comments received on the Draft PR/EIS, Ecology determined that it may not have fulfilled its requirements under Washington State law to identify and evaluate all reasonable water supply alternatives. Those comments suggested that all reasonable water supply alternatives could not be adequately evaluated without considering fish habitat and fish passage needs. Ecology has separated from the joint National Environmental Policy Act/State Environmental Policy Act (NEPA/SEPA) process and will proceed with a separate evaluation of water supply and management alternatives. That evaluation will culminate in a SEPA document. Ecology will respond to comments on the State Alternatives presented in the joint Draft PR/EIS in its Final SEPA EIS. Ecology continues to participate in this PR/EIS process as a cooperating, rather than a joint lead, agency. Reclamation finalized the PR/EIS as directed by the Congress, focusing on the water storage alternatives outlined in the Draft PR/EIS.

The purpose of the Storage Study is to evaluate plans that would create additional water storage for the Yakima River basin and assess each plan's potential to supply the water needed for fish and the aquatic resources that support them, basinwide irrigation, and future municipal demands.

The need for the study is based on the finite existing water supply and limited storage capability of the Yakima River basin. This finite supply and limited storage capability do not meet the water supply demands in all years and result in significant adverse impacts to the Yakima River basin's economy, which is agriculture-based, and to the basin's aquatic resources—specifically those resources supporting anadromous fish.

Through a process of meeting with stakeholders, Tribal, Federal, State, and local agencies and using previous investigations, Reclamation developed the goals for the Storage Study, which include:

- Improve anadromous fish habitat by restoring the flow regimes of the Yakima and Naches Rivers to resemble more closely the natural (unregulated) hydrograph. Through a collaborative process with the Storage Study Technical Work Group (SSTWG),¹ Reclamation developed nonbinding flow objectives to assist in measuring goal achievement (table ES.1).
- Improve the water supply for proratable (junior) irrigation entities by providing a not-less-than 70-percent irrigation water supply for irrigation districts during dry years, relying on diversions subject to proration. This 70-percent goal equates to 896,000 acre-feet of proratable entitlements.
- Meet future municipal water supply needs by maintaining a full municipal water supply for existing users and providing additional surface water supply of 82,000 acre-feet for population growth to the year 2050.

Table ES.1 presents the monthly flow objectives and flow volumes for the Easton reach; the Cle Elum River; and the Ellensburg, Wapato, and lower Naches River reaches.

Table ES.1 Monthly flow objectives (cubic feet per second [cfs]) and flow volumes (acre-feet) for an average water year for the Easton reach; Cle Elum River; and Ellensburg, Wapato, and lower Naches River reaches

Reach		Spring				Summer				Winter			
		Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Easton	Flow objective (cfs)	.722	1,166	1,400	787	450	375	375	375	425	450	450	450
	Volume (acre-feet)	42,943	69,406	83,300	46,856	26,775	22,313	22,313	22,313	25,288	26,775	26,775	26,775
Cle Elum River	Flow objective (cfs)	511	954	1,500	1,301	589	400	400	400	425	425	425	425
	Volume (acre-feet)	30,432	56,777	89,250	77,391	35,061	23,800	23,800	23,800	25,288	25,288	25,288	25,288
Ellensburg	Flow objective (cfs)	1,982	2,424	3,700	2,586	2,000	1,000	1,000	1,000	980	1,016	1,257	1,459
	Volume (acre-feet)	117,938	144,238	220,150	153,849	119,000	59,500	59,500	59,500	58,311	60,446	74,807	86,821
Wapato	Flow objective (cfs)	3,109	2,794	3,500	2,655	1,300	1,300	1,300	1,300	1,758	1,854	2,163	2,460
	Volume (acre-feet)	184,978	166,261	208,250	157,958	77,350	77,350	77,350	77,350	104,616	110,295	128,712	146,389
Lower Naches River	Flow objective (cfs)	1,265	1,802	2,297	2,291	988	550	550	550	500	576	691	720
	Volume (acre-feet)	75,296	107,194	136,682	136,307	58,772	32,725	32,725	32,725	29,779	34,290	41,112	42,834

¹ A biologist work group formed to assist on technical matters related to the Yakima River basin aquatic habitat aspects.

This Final PR/EIS combines a planning report and an environmental impact statement. The storage augmentation alternatives are referred to in this document as “Joint Alternatives.” The following Joint Alternatives are considered:

- Black Rock Alternative
- Wymer Dam and Reservoir Alternative
- Wymer Dam Plus Yakima River Pump Exchange Alternative

Background

The Yakima Project’s surface water supply comes from the unregulated runoff of the Yakima River and its tributaries, irrigation return flows, and releases of stored water from the five main reservoirs in the basin.² Only 30 percent of the average annual natural runoff can be stored in the storage system. The Yakima Project depends heavily on the timing of unregulated spring and summer runoff from snowmelt and rainfall. The spring and early summer natural runoff flows supply most river basin demands through June in an average year. The majority of spring and summer runoff is from snowmelt; as a result, the snowpack is often considered a “sixth reservoir.” In most years, the five major reservoirs are operated to maximize storage in June, which typically coincides with the end of the major natural runoff. The reservoirs have a combined storage capacity of about 1.07 million acre-feet (maf).

Existing water rights, also known as entitlements, from the Yakima River cannot always be met in years with below-average runoff. Though all of the entitlement holders do not call on their full entitlement volume every year, the existing surface water supply does not presently meet all water needs in dry years. A poor water year results in prorationing³ during the irrigation season. In addition, reduced summer and early fall streamflows inhibit migrating, spawning, and rearing conditions for anadromous fish.

Currently, only the cities of Cle Elum and Yakima obtain their municipal and domestic water from the surface waters of the Yakima River basin. Groundwater supplies the remainder of the municipal and domestic needs (83 percent) and is the preferred source for meeting future needs.

² The five major reservoirs (and their acre-foot active capacities) are: Keechelus (157,800); Kachess (239,000); Cle Elum (436,900); Bumping (33,700); and Rimrock/Tieton Dam (198,000).

³ Prorationing refers to the process of equally reducing the amount of water delivered to junior, i.e., “proratable,” water right holders in water-deficient years.

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

**Board of County Commissioners
BENTON COUNTY**

David Sparks
County Administrator
9:45
Loretta Smith Kelty
Deputy County Administrator

CANVASSING BOARD APPOINTMENT

I, Max Benitz Jr, Chair of the Benton County Commissioners, hereby designate myself to serve on the Benton County Canvassing Board for the Special Election to be held on March 10, 2009. I will serve for the timeframe of February 18, 2009 through March 25, 2009.

DATED this _____ day of February, 2009.

MAX BENITZ JR
Chair, Board of County Commissioners

From: Stuart Holmes
To: Marilu Flores
Date: 1/26/2009 11:49 AM
Subject: Commissioner Benitz (Chair) - Canvassing Board Appointment
Attachments: CANV BD APPT LTR - COMM.doc

Marilu,

This is a canvassing board appointment letter that Commissioner Benitz needs to sign and return by February 18th. Please copy the text onto your letterhead and make no changes.

The letter is to appoint him to the canvassing board for the March Special Election.

If you have any questions please let me know.

Stuart Holmes
Election Specialist
Benton County Auditor
PO Box 470
Prosser WA 99350
(509)786-5618 or (509)736-3085
e-mail: Stuart.Holmes@co.benton.wa.us

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 02 Feb 2009 Subject: Park Board update Memo Date: 20 Jan 2009 Prepared By: AJF Reviewed By:	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other

7.50

SUMMARY & BACKGROUND

Bert Lake, Chair of the Benton County Park Board, will give a presentation to Commissioners regarding park activities and projects from the Park Board's point of view. There is no background material, and Commissioners will not be asked to make any decisions. Mr. Lake will give a short PowerPoint presentation, then look to have a conversational workshop with Commissioners. Major topics will include: major events, volunteerism and partnerships, major 2008 completed projects, and major 2009 projects.

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