February 11, 2008

THE BOARD OF BENTON COUNTY COMMISSIONERS AGENDA PACKET

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
February 4, 2008, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Claude Oliver
Commissioner Max Benitz, Jr.
Commissioner Leo Bowman
County Administrator David Sparks
Clerk of the Board Cami McKenzie

County Employees Present: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Sustainable Development; Finance Manager Linda Ivey; Facilities Manager Roy Rogers; Personnel Manager Melina Wenner; Planning Director Terry Marden; DPA Ryan Brown; Central Services Manager Randy Reid; Public Works Director Ross Dunfee; Steve Becken, Public Works; Mike Shuttleworth, Planning; Sue Schuetze, Public Works; Shon Small, Sheriff's Office; Coroner Rick Corson; DPA Kathleen Fitzgerald; Larry Moser and Bryan Thorp, Public Works; and Phil Mees, Planning.

Approval of Minutes

The Minutes of January 14, 2008 were approved. The Bi-County Minutes of January 14, 2008 were approved. The Minutes of January 22, 2008 were approved.

Other Business

Cancellation of Meeting

The Board unanimously cancelled the meeting of February 19, 2008.

Consent Agenda

MOTION: Commissioner Benitz moved to approve the consent agenda items "a" through "ii", pulling "n". Commissioner Bowman seconded and upon vote, the Board approved the following:

Auditor
a. Surplus of Personal Property
Central Services
b. Computer Equipment and Software Purchasing

Commissioners

c. Amendment to Lease Agreement w/Benton-Franklin Health District
d. Benton County Tax Levy for 2008
e. Premium Pay for Facilities Manager
f. Appointment of R Fox to Mid-Columbia Library Board of Trustees
g. Appointment of D Walter to Kennewick Irrigation District
h. Reappointment of L Carnahan to the Kiona Irrigation District
i. Appointment of C Brown to the Kiona Irrigation District
j. Support Letter to Columbia Basin College

Coroner

k. Contract Amendment w/D Selove, MD

Facilities

l. Notice of Completion of Corrections Facility Boiler Replacement
m. Authorization to Purchase Batteries for Use in Uninterruptible Power Supplies

Human Services

o. Recognition of an Administrative Board Member
p. Professional Services Agreement w/Mathew Cummings

Juvenile

q. Authorization to Hire PT Legal Secretary IV for MacArthur Foundation Grant Program
r. County Agreement, #0863-34062, w/St of WA DSHS
s. County Agreement, #0863-34078, w/St of WA DSHS
t. County Agreement, #0863-34090, w/St of WA DSHS

Personnel

u. Establishing Salary Grade for Human Services Deputy Director

Planning

v. Consultant Contract

Prosecuting Attorney

w. Amendment to Road Department Collective Bargaining Agreement

Road/Engineer

x. Travel Reimbursement Approval
y. Approval of Public Hearing for B.C. Water Company, LLC for a Franchise
z. Vacation and Abandonment of a Portion of East 45th Ave.
aa. Agreement w/City of Prosser to Seal Coat Roads
bb. Agreement w/City of Kennewick to Seal Coat Roads
cc. Certification of 2008 Road Levy
dd. Authorization to Schedule Bid Date for Bituminous Surface Treatment 2008
ee. Diverting Road Tax Levy Funds for Traffic Enforcement Purposes
ff. Equipment Rental Rates for County Road Equipment Rental & Revolving Fund 2008

Sheriff

gg. Surplus of Personal Property – K-9
hh. Establishing Cash Drawer for Sheriff's Office Records Division

Workforce Development Council

ii. Memorandum of Understanding w/The One-Stop Partners

Continued Public Hearing – 45th Avenue Right of Way

Chairman Oliver stated that he had a relationship affiliation with Mr. Katzaroff and would recuse himself if the other board members desired.

Both Commissioner Bowman and Benitz said they did not have a problem with Chairman Oliver participating as long as he felt it did not create a problem for himself.

Sue Schuetze summarized the proceedings so far, stating the Board previously voted to vacate the 0.33 acres of unimproved right of way and agreed to sell the remaining 1.43 acres to Mr. Katzaroff. Ms. Schuetze said the Assessor's Office re-appraised the 1.43 acres at $5,000.00. Additionally, the 0.33 acres would officially be attached to Mr. Katzaroff's property once the Assessor received a copy of the recorded deed.

Public Testimony

Jim Katzaroff said if the property were assessed at less than $5,000.00, the County would not need to proceed with sale of the property through the property management policy and wondered if there was a magic formula to the assessment.

Peter Bowder, City of Kennewick, said they were in support of the staff recommendations. Additionally, if the 70 foot right of way were sold in the future, they would agree to Mr. Katzaroff having that so long as the City would be able to purchase the right of way at that same price as Mr. Katzaroff.

There being no further public testimony, the public hearing was closed for further comment.

MOTION: Commissioner Benitz moved for approval of the vacation and abandonment of the right of way, except the South 70 feet and the East 30 feet, contingent on the property being declared surplus and being sold in accordance with the Benton County procedures for land sale. Commissioner Bowman seconded and upon vote, the motion carried.

The Board agreed to advertise a public hearing on February 25, 2008 at 9:20 a.m. to declare the property surplus and then proceed with sale of the property.

Port of Benton – Crow Butte Presentation

Marv Kenney gave a presentation regarding Crow Butte Park, and discussed the following:

- 2007 Completed Projects
- Irrigation System
- Caretaker's House
- Roof Replacement
- Master Site Plan
- Capital Improvements – Financed Percentages
- 2008 Cost Estimates for Improvements

The Board briefly recessed, reconvening at 9:36 a.m.

Public Hearing – Short Plat Appeal – SPA 07-05

Mike Shuttleworth said Mr. Munoz was requesting the Board approve his appeal to the Short Plat Administrator's decision that a 40-foot access easement be provided to serve his plat. He said that based on information provided, Mr. Munoz stated the current access easement was 39 feet. Mr. Shuttleworth indicated the Planning Department recommended approval of the appeal.

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

MOTION: Commissioner Benitz moved to approve the appeal submitted by Mr. Munoz and remand the application to the Administrator with instructions to approve upon compliance of the conditions contained in the December 7, 2007 letter, with the exception that item 6 be deleted from the conditions. Commissioner Bowman seconded and upon vote, the motion carried unanimously.

Other Business

Legislative Steering Committee Report

Commissioner Bowman provided copies to the board members and said to let him know if they had any questions.

TIB

Commissioner Bowman said that TIB has proposed changes in the small city program and urban program and was hoping Mr. Dunfee would have the time to review changes and let the Board know if he had any concerns. He also discussed the Hyak Road project on Snoqualmie Pass.

Meeting with Governor

Commissioner Bowman said the meeting concerned mostly the county fiscal health report. Additionally, he said he had a report available from the WSAC Executive Committee regarding the meeting if the members wanted a copy.

Public Hearing – Franchise Request – Roy E. Clifford

Ross Dunfee presented the application for franchise by applicant Roy E. Clifford.

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

MOTION: Commissioner Benitz moved to approve the franchise application for Roy E. Clifford to place electrical and irrigation lines within Benton County road right of way. Commissioner Bowman seconded and upon vote, the motion carried.

Piert Road Alignment Update

Ross Dunfee stated they had met with Freight Mobility Strategic Investment Board and it did not grant an extension of time; therefore, the County lost the $400,000 grant. However, the Board understood the merits of the project and the County would have the opportunity to apply again.

Paul Branson, Columbia Energy, said they sincerely appreciated the County's support of the project and Columbia Energy was committed to support in any way it could for the reapplication. Additionally, he committed to offering engineering personnel with the re-designing alignment.

Ross Dunfee gave an estimate of $150,000 just for the engineering component, although stated it was not the full design cost (estimated at ¼ million dollars). He said the County still had its TIB grant, but the clock was running on that as well.

Commissioner Bowman said the Board had already adopted the black line as the preferred alignment and recommended it authorize Mr. Dunfee to work with Columbia Energy and JUB to see what the possible outcomes might be for the engineering work.

Commissioner Benitz said during the public hearing process the people overwhelming supported the blue line alignment and that it was time for the Board to make a decision and move forward with the blue line.

Chairman Oliver said he agreed with Commissioner Bowman's recommendation to allow Mr. Dunfee to work out some details and bring back a recommendation at the first meeting in March.

Other Business

Senate Bill 5599

Commissioner Bowman discussed Senate Bill 5599 (thermal electric generating facilities). He said it was proposed a year ago, but was killed, and proposes that Adams County share in the generating fee that comes to Benton County. The Board indicated it was still opposed to this bill.

Request for Supplemental Appropriation

Linda Ivey presented the following supplemental appropriation requests for approval to go to public hearing:

1. Current Expense, Dept. 115, Transfer-out Juvenile, $399,040
2. Juvenile Dept. 171, Operations, $43,976
3. Juvenile Dept. 172, Operations, $10,250
4. Juvenile Dept. 173, Operations, $88,505

The Board agreed to go to public hearing, with Commissioner Benitz opposing.

The Board briefly recessed, reconvening at 10:16 a.m.

CID Water Right Issue

DPA Kathleen Fitzgerald informed the Board of a proposed action by the Columbia Irrigation District to reassign water rights within the district, without any apparent authority to take the proposed actions. She asked the Board if it wanted to take any action on the proposed reassignment.

Commissioner Benitz asked Ms. Fitzgerald to represent the County at the proposed public meeting process and state the County's position that CID did not have any right to reassign water rights.

The Board unanimously agreed that it opposed the action and requested Ms. Fitzgerald to attend the meeting.

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

Bid Opening – Griffin/Johnson Road Improvement

The Board opened the following bids:

HTL Construction, Inc., Ephrata, WA:	$ 785,714.15
North Central Construction, Inc., Moses Lake, WA:	$1,526,231.65
M.A. DeAtley Construction, Inc., Clarkston, WA:	$1,209,102.00
A & B Asphalt, Inc., Benton City, WA:	$ 659,387.00
Transtate Asphalt, Pasco, WA:	$1,009,929.35
Engineer's Estimate:	$ 507,948.00

Mr. Moser stated he would review the bids and bring back a recommendation to the Board.

The Board briefly recessed, reconvening at 10:40 a.m.

Bid Opening – ER&R Purchase of Class 6 Truck Chassis

Jim's Pacific/Biggg Truck, Pasco, WA:	2009 Sterling, $59,533.00
Jim's Pacific/Biggg Truck, Pasco, WA:	2009 Freightliner, $61,413.00
Western Peterbilt, Inc., Pasco, WA:	Peterbilt 335, $65,550.00

Mr. Moser stated he would review the bids and bring back a recommendation to the Board.

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

Department of Ecology – Exempt Wells

DPA Ryan Brown updated the Board on the Department of Ecology exempt wells issue. He said he received a phone call from Mr. Faller at the Department of Ecology, who discussed with him the possibility of an agreement with Benton County to defend the county (although not indemnify) when water permits were required as conditions on short plat applications for new developments. He said they currently were working on an agreement of this type with Kittitas County.

Mr. Brown further discussed the legal issues and lack of clarity under the drilling well exemption and they were still waiting to get clarification on the entire issue. He said the County's position has been to determine if there is potable water, then to not impose the condition of water permits.

Additionally, Mr. Brown said the County currently had nine pending short plat applications to develop 30 or more lots and looked at these as a whole. He said SEPA issued a determination of non-significance on these applications and the Department Ecology said the County did not sufficiently look at groundwater issues and were considering appealing the SEPA determination.

Mike Shuttleworth said there was a new working group that was looking at rulemaking implementation, a separate process from what Kittitas County was doing. He said he would provide the information as the process moved forward.

Furniture Bid Award – Health District Building

Roy Rogers and Lisa Small presented a resolution that awarded the bid to Bella's Office Solution to purchase used office furniture in the amount of $209,575.51. It was stated that no other bids were received.

MOTION: Commissioner Bowman moved to approve the resolution awarding the purchase of previously owned furniture for the office spaces at the Benton County Health District to Bella's Office Solutions, Inc. Commissioner Benitz seconded and upon vote, the motion carried.

BLM - Benton City Land

Ross Dunfee informed the Board that BLM was proposing development of federal property situated in Benton County (gravel pit located in City of Benton City).

Phil Mees said he drafted a letter to BLM regarding their environmental review and flaws in the report, most importantly that it was inconsistent with the City's Urban Growth Boundary.

The Board agreed that it had complied with the law in reviewing the environmental report and that it was Benton City's responsibility to address the issue.

Recruitment Expenses – Safety and Training Coordinator Position

Melina Wenner requested the Board authorize $5,000.00 in relocation expenses to the individual she had offered the position of Safety and Training Coordinator, who currently resided in Iowa.

She also said there were some sample policies out there if the Board were interested in implementing a policy on relocation expenses.
Commissioner Bowman said he was agreeable to offer up $2,000.00 without a policy in place. However, he also requested Ms. Wenner draft a policy to be implemented for future recruitment.

David Sparks indicated the applicant had only asked if it was available, but had not indicated it was a condition of employment.

Commissioner Benitz agreed the County needed to have a policy in place for recruitment expenses and said he would support Ms. Wenner's request in the amount of $5,000.00.

Chairman Oliver said he also agreed with drafting a policy and offering up to $5,000.00 to the applicant, with appropriate verification. Additionally, he said he liked the condition of a two-year employment agreement with reimbursement to the County if he voluntarily left the position within that time.

Melina said she would prepare the appropriate documentation and present at the next board meeting.

Hanford Life Cycle Cost Letter

Mr. Fyall presented a letter to the US Department of Energy Assistant Secretary in support of the Hanford Life Cycle Report concept.

MOTION: Commissioner Bowman moved to approve the letter. Commissioner Benitz seconded, requesting copies be sent to the congressional delegation. Upon vote, the motion carried.

Other Business

Veterans Assistance Waiver

Pat Powell requested the Board consider income waivers for Joseph Rosengren ($18.04 over threshold) and Michael McDonald ($21.39 over threshold).

MOTION: Commissioner Bowman moved to approve the income waiver for Joseph Rosengren. Commissioner Benitz seconded and upon vote, the motion carried.

MOTION: Commissioner Bowman moved to approve the income waiver for Michael McDonald. Commissioner Benitz seconded and upon vote, the motion carried.

Claim for Damages

CC 08-01: Received January 10, 2008 from Scotty Dean Brown for property lost at the Benton County jail.

CC 08-02: Received January 24, 2008 from Roy S. Springer for damage to his vehicle and personal damages caused by an accident with a county vehicle.

Vouchers

Check Date: 01/11/2008
Warrant # 887747-887794
Total all funds: $171,717.08

Check Date: 01/15/2008
Taxes # 10108013-10108014
Total all funds: $35,507.98

Check Date: 01/15/2008
Warrant #: 216395-216638
Total all funds: $214,235.40

Check Date: 01/18/2008
Warrant #: 887976-888491
Total all funds: $16,113.07

Check Date: 01/18/2008
Warrant #: 888492-888862
Total all funds: $880,139.64

Check Date: 01/25/2008
Warrant #: 889250-889478
Total all funds: $1,794,295.29

Check Date: 01/30/2008
Warrant #: 889532-889726
Total all funds: $1,294,365.32

Check Date: 02/01/2008
Warrant #: 889735-889927
Total all funds: $1,137,383.44

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

Resolutions

08-168	Surplus of Personal Property
08-169	Computer Equipment and Software Purchasing
08-170	Amendment to Lease Agreement w/Benton-Franklin Health District
08-171	Benton County Tax Levy for 2008
08-172	Premium Pay for Facilities Manager
08-173	Appointment of R Fox to Mid-Columbia Library Board of Trustees
08-174	Appointment of D Walter to Kennewick Irrigation District
08-175	Reappointment of L Carnahan to the Kiona Irrigation District
08-176	Appointment of C Brown to the Kiona Irrigation District
08-177	Contract Amendment w/D Selove, MD
08-178	Notice of Completion of Corrections Facility Boiler Replacement
08-179	Authorization to Purchase Batteries for Use in Uninterruptible Power Supplies
08-180	Recognition of an Administrative Board Member
08-181	Professional Services Agreement w/Mathew Cummings
08-182	Authorization to Hire PT Legal Secretary IV for MacArthur Foundation Grant Program
08-183	County Agreement, #0863-34062, w/St of WA DSHS
08-184	County Agreement, #0863-34078, w/St of WA DSHS
08-185	County Agreement, #0863-34090, w/St of WA DSHS
08-186	Establishing Salary Grade for Human Services Deputy Director
08-187	Consultant Contract
08-188	Amendment to Road Department Collective Bargaining Agreement
08-189	Approval of Public Hearing for B.C. Water Company, LLC for a Franchise
08-190	Vacation and Abandonment of a Portion of East 45th Ave.
08-191	Agreement w/City of Prosser to Seal Coat Roads
08-192	Agreement w/City of Kennewick to Seal Coat Roads
08-193	Certification of 2008 Road Levy
08-194	Authorization to Schedule Bid Date for Bituminous Surface Treatment 2008
08-195	Diverting Road Tax Levy Funds for Traffic Enforcement Purposes
08-196	Equipment Rental Rates for County Road Equipment Rental & Revolving Fund 2008
08-197	Surplus of Personal Property – K-9
08-198	Establishing Cash Drawer for Sheriff's Office Records Division
08-199	Memorandum of Understanding w/The One-Stop Partners
08-200	Approval of Appeal of Short Plat Administrator's Decision – SHPA 07-05 and SHP 07-157
08-201	Awarding the Procurement of Previously Owned Furniture for Office Space at the Benton County Health District

The meeting adjourned at approximately 11:30 a.m.

Clerk of the Board

Chairman

a

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WA

IN THE MATTER OF AWARD AND CONTRACTING WITH MEDIAJOE INC. FOR THE INSTALLATION OF MULTIMODE FIBER CABLE BETWEEN THE BENTON COUNTY HEALTH DISTRICT AND THE BENTON COUNTY MAINTENANCE BUILDING

WHEREAS, resolution 08-131 allows public works contracts for services or materials involving less than ten thousand dollars ($10,000), advertising and competitive bidding may be dispensed with, and such contracts may be entered into after direct negotiation; and

WHEREAS, MediaJoe, Inc., Spokane, WA provided the Central Services Director a quote in the amount of $8,450.00 excluding WSST for providing and installing multimode fiber between the new Benton County Health District building and the Maintenance building; and

WHEREAS, the Central Services Director has reviewed the quote and recommends award of said services to MediaJoe, Inc.; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board hereby awards MediaJoe Inc., Spokane, WA the contract for multimode fiber cabling between the health building and the maintenance building in the amount of $8,450.00 excluding WSST with an amount not to exceed $10,000 including WSST for any acceptable overages, incidentals and other unanticipated costs; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the contract attached hereto for said services.

Dated this _____ day of _____, 2008

_____
Chairman of the Board

_____
Member

Attest:_____
Clerk of the board

_____
Member

Constituting the Board of County Commissioners of Benton County,

Orig: File – Lisa Small
cc: Auditor; R. Ozuna; Central Services, MediaJoe Inc.

Small

SERVICE AGREEMENT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **MEDIAJOE INC.**, with it principal mailing address at PO Box 18972, Spokane, WA 99228 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and the following exhibits, which are incorporated herein by this reference

A. Exhibit A - Proposal/Scope of Work
B. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The Contractor shall commence work on a date to be specified in the written Notice to Proceed issued by the Owner and shall be complete upon approval of acceptance by the Board of Benton County Commissioners via resolution.

3. SERVICES PROVIDED

CONTRACTOR shall, utilizing its bona fide employees, provide and install one (1) each 12 strand fiber 62.5/125 multimode fiber between the new health district building and the maintenance building; provide and install a new fiber patch panels and necessary connectors in the DMARC of the health building. The existing patch panel in the maintenance building will be used for the new connections; provide and install a 1" inner-duct between buildings to be used by the new fiber run; provide and install a 25 pair cable for future copper needs. This cable will be terminated by BCHD staff. Scope of work, notes and special considerations are all in accordance with contractors proposal dated 1/25/08 referenced herein as Exhibit A.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

a. For CONTRACTOR: Joseph Melton, RCDD
MediaJoe, Inc.
PO Box 18972
Spokane, Washington 99228
(509) 489-8980
(509) 483-8109

b. For COUNTY: Randy Reid
Benton County Central Services
PO Box 608
Prosser, Washington 99350
(509) 786-5603
randy.reid@co.benton.wa.us

A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is eight thousand four hundred fifty dollars and zero cents ($8,450.00) not including W.S.S.T. Total amount payable, including acceptable overages, incidentals and other unanticipated costs shall not exceed ten thousand dollars and zero cents, ($10,000.00) including W.S.S.T. **Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative.** At the completion of the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment and no release of retainage will be made until such affidavit is provided.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date of invoice, less amounts paid on previous invoices. Each invoice shall cover all work

performed for the COUNTY during the billing period. At such time as the first invoice is submitted, or any time thereto, CONTRACTOR, as well as all sub-contractors and sub-sub-contractors which are employed by the CONTRACTOR for the work contemplated by this agreement, shall submit a Statement of Intent to Pay Prevailing Wages in the form and manner required by RCW 39.12.040 to COUNTY'S representative. The CONTRACTOR shall not be paid for services rendered under this Contract until a Statement of Intent to Pay Prevailing Wages has been executed and submitted as required above by all required parties and the services have been performed to the COUNTY's satisfaction. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY; and will remit payment for the accepted work within thirty (30) days after receiving the invoice. PROVIDED that for each invoiced and approved progress payment, COUNTY shall withhold from the earned portion of that payment (ie excluding sales or other tax) 5% as retainage pursuant to RCW 60.28.010, subject to all further provisions of the remainder of RCW chapter 60.28. Within ten (10) days following the execution of this agreement, CONTRACTOR shall submit written notice stating its election of the method of holding of the moneys retained, pursuant to RCW 60.28.010(2). If such written election is not received, then the COUNTY may choose any of the allowed manners of holding the moneys allowed by RCW 60.28.010(2)(a)-(c)."

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract or where work is substandard, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work done by the CONTRACTOR shall be in a workmanlike manner and shall meet or exceed applicable standards generally accepted in the construction industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or

death to persons, damage to property or business, or any other source of liability whatsoever, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

FURTHER PROVIDED that if liability is caused by or results from the concurrent negligence of a) CONTRACTOR or CONTRACTOR'S agents or employees, and b) COUNTY or COUNTY'S agents or employees, then the indemnification contemplated in this section shall only apply to the extent of CONTRACTOR'S negligence.

b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, its employees, agents or subcontractors.

c. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, 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 of type of damages, compensation, or benefits payable by or for the CONTRACTOR 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 CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR 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 CONTRACTOR makes with any subcontractor or agent performing work hereunder.

10. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, the following insurance:

a. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial

umbrella liability insurance.

b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars ($2,000,000) per project. The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.

c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

d. Other Insurance Provisions:

1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

2) The COUNTY, its officers, officials, employees and agents shall be named as additional insured on all required insurance policies, except for any required automobile liability policy.

3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.

4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought,

except with respect to the limits of the insurer's liability.

6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and the CONTRACTOR prior to the commencement of any work by the subcontractor.

7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.

8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy.

9) Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing in advance of commencement of work by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

10) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. The endorsement pages of the policy showing the COUNTY as

an additional insured shall also be furnished to the COUNTY within ten (10) days after effective date of this agreement.

11) Certificates of insurance shall name "Benton County" as additional insured. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

12) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Lisa Small, Contract Administration
Benton County Commissioners
Post Office Box 190
Prosser, Washington 99350

14) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status, as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, contractor must describe its financial condition and the self-insured funding mechanism.

11. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement. PROVIDED that CONTRACTOR may elect, in lieu of the bond, to allow COUNTY to retain 50% of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28, RCW, whichever is later. Either proof of the performance bond, or written notification of the CONTRACTOR'S desire to elect the alternative to the bond described above, must be received by COUNTY within ten (10) days following the execution of this agreement.

12. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

c. In the event of termination as contemplated above, CONTRACTOR and all of its sub-contractors or sub-sub-contractors shall remove all of their tools and equipment by the close of business on the effective date as set out above. PROVIDED that, no tools or equipment purchased specifically for this project, and paid for, or billed to the COUNTY, and no portion of any partially or fully completed structure or curtilage may be damaged, defaced, disassembled or destroyed in the process of removing tools or equipment belonging to CONTRACTOR.

13. COMPLIANCE WITH LAWS AND PREVAILING WAGE

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B shall be paid to all employees, agents, sub-contractors or sub-sub-contractors who do any work for CONTRACTOR on this project. CONTRACTOR shall ensure that all sub-contractors or sub-sub-contractors sign an agreement to pay these same wages, and that such a signed agreement is submitted to COUNTY prior to sub-contractor commencing any work on the project. This schedule

is duplicated from the Washington State Department of Labor & Industries website, is provided for informational purposes only and COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedules contains any such ambiguities or inaccuracies then CONTRACTOR is responsible for contact the Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this contract and relevant law to pay prevailing wages.

14. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

15. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief." Venue for any such judicial proceeding shall be in Benton County, Washington.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR may not assign or delegate its duties as general contractor for the work covered by this agreement without written consent from COUNTY. However, CONTRACTOR is permitted to, using all reasonable care and due diligence, select appropriately skilled sub-contractors and sub-sub-contractors to assist it in completing the work covered by this agreement. If CONTRACTOR chooses to use the services or sub-contractors or sub-sub-contractors, then prior to such sub-contractors or sub-sub-contractors commencing any work, CONTRACTOR shall provide COUNTY with the names of such sub-contractor or sub-sub-contractors. COUNTY, in its sole discretion, may reasonably object to the use of any given sub-contractor or sub-sub-contractor and, if notice is given in writing to CONTRACTOR of such objection within ten (10) days of receipt of CONTRACTOR's intent to utilize the sub-contractor or sub-sub-contractor's services, then CONTRACTOR shall promptly replace the sub-contractor or sub-sub-contractor with another appropriately skilled sub-contractor or sub-sub-

contractor.

17. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

18. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

19. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

- This portion intentionally left blank -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY	**MEDIAJOE INC.**
Claude Oliver, Chairman **Benton County Commissioner**	**Joseph Melton, RCDD**
Dated: _____	Dated: _____

Approved as to Form:

_____
Deputy Prosecuting Attorney

Original: File – Lisa Small
cc: Auditor, PA (R. Ozuna), Central Services

Exhibit A

MediaJoe Inc.

Integrating Everything

System Proposal for: Benton-Franklin Health District
Reference: Backbone to maintenance building
Date: 1/25/08
Contact: Joseph Melton, RCDD
Phone: (509) 489-8980 Fax: (509) 483-8109

System pricing

Backbone to maintenance building	
12 strand multimode fiber	**$4,650.00**
1" Inner-duct	**$1,900.00**
25 pair feed cable	**$1,900.00**

Scope

Provide and install 1ea 12 strand fiber 62.5/125 multimode fiber between the new health district building and the maintenance building. Provide and install a new fiber patch panels and necessary connectors in the DMARC of the Health building. The existing patch panel in the maintenance building will be used for the new connections.

Provide and install a 1" inner-duct between buildings to be used by the new fiber run.

Provide and install a 25 pair cable for future copper needs. This cable will be terminated by BCHD staff.

Notes and Special Considerations

- All fiber connections will be tested to industry standards.
- Any electrical work needed will need to be provided by Benton-Franklin Health District.
- 25 pair voice feed will be terminated by BCHD staff.
- Additional estimates may be needed for any electrical, structural, mechanical and acoustical work needed.
- This document is proprietary and is to be viewed by Benton-Franklin Health District staff only. This is not to be used as a Bid Specification.
- System total excludes local sales tax.
- 60% due at signing.

Thank You,

MediaJoe Inc.

Integrating Everything

SUBMITTED BY: _____ **Date**

Joseph Melton, RCDD
President
MediaJoe Inc.
PO BOX 18972
Spokane WA 99228
(509) 489-8980

ACCEPTED BY: _____ **Date**

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 2-11-2008	Execute Contract	Consent Agenda X
Subject: _____	Pass Resolution	Public Hearing
repared by: Linda Ivey	Pass Ordinance	1st Discussion
	Pass Motion	2nd Discussion
Reviewed by: Loretta	Board Direction	Workshop

b

SUMMARY BACKGROUND INFORMATION

Resolution 05-797 includes a process for new or substantially changed position classification/grade requests to be processed for determination by the Board.

The County Administrator, David Sparks requests $10,800 of appropriated Capital Outlay funds be used for premium pay for the Construction Manager.

The Auditor has created a line item for the new position, Construction Manager 0305101.000.00000.594.110.1947.

Request the funds in line item Capital Outlay Buildings be transferred to the Construction Manager line item as described in Exhibit A.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A LINE ITEM TRANSFER IN THE CAPITAL PROJECTS FUND 0305101, FROM CAPITAL OUTLAY BUILDINGS TO CONSTRUCTION MANAGER

WHEREAS, the Board of Benton County Commissioners approved Resolution 05-797, Personnel Policies and Procedures for Non-Bargaining Employees; and,

WHEREAS, that Resolution includes a process for new position and/or substantially changed position (re)classification/grade requests to be processed for a determination by the Board of Benton County Commissioners; and,

WHEREAS, the County Administrator is requesting to transfer appropriated funds from Capital Outlay Buildings to Construction Manager for premium pay; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners do hereby approve that funds shall be transferred as outlined in Exhibit A, attached hereto.

Dated this ..... day of ....., 20 ....

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc: Auditor, Personnel, Facilities

LJI

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name: Capital Projects

Fund Nbr: 0305101

TRANSFER FROM: Dept 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.110	6412	Capital Outlay Buildings	$10,800
TOTAL			$10,800

TRANSFER TO: Dept 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
594.110	1947	Construction Manager	$10,800
TOTAL			$10,800

Explanation:

Transfer to appropriate funds for Construction Manager premium pay.

Prepared by: Linda Ivey

Date: 05-Feb-2008

Approved ☐

Denied ☐

Date: _____

_____

Chairman

_____

Member

_____

Member

AGENDA ITEM		TYPE OF ACTION NEEDED	
Meeting Date:	2-11-2008	Execute Contract	Consent Agenda X
Subject:		Pass Resolution	Public Hearing
Prepared by:	Linda Ivey	Pass Ordinance	1st Discussion
		Pass Motion	2nd Discussion
Reviewed by:	Rick Corson	Board Direction	Workshop
	Loretta		

C

SUMMARY BACKGROUND INFORMATION

Resolution 05-797 includes a process for new or substantially changed position classification/grade requests to be processed for determination by the Board.

The Coroner, Rick Corson requests $13,500 of appropriated Temporary help funds be used for a new part-time Deputy Coroner.

The Deputy Coroner position is graded a 10 non-bargaining.

The Auditor has created a line item for the new position. Deputy Coroner 0000.101.109.563.200.1179

The funds in line item Temporary Help 0000.101.109.00000.563.200.1905 will be transferred to the part-time Deputy Coroner line item 0000.101.109.00000.563.200.1179.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING A LINE ITEM TRANSFER FROM TEMPORARY HELP TO DEPUTY CORONER.

WHEREAS, the Board of Benton County Commissioners approved Resolution 05-797, Personnel Policies and Procedures for Non-Bargaining Employees; and,

WHEREAS, that Resolution includes a process for new position and/or substantially changed position (re)classification/grade requests to be processed for a determination by the Board of Benton County Commissioners; and,

WHEREAS, the Coroner is requesting to transfer appropriated funds from Temporary Help to Deputy Coroner to fund a part-time position; **NOW THEREFORE**,

BE IT RESOLVED, that the Board of Benton County Commissioners do hereby approve that funds shall be transferred as outlined in Exhibit A, attached hereto.

Dated this ..... day of ....., 20 ....

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc: Payroll and Personnel, Coroner

LJI

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Coroner

Fund Name: Current Expense 0000101.109

TRANSFER FROM: Dept 109 Coroner

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
563.200.	1905	Temporary Help	$13,500
TOTAL			$13,500

Dept Name: Coroner

Fund Name: Current Expense 0000101.109

TRANSFER TO

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
563.200.	1179	Deputy Coroner	$13,500
TOTAL			$13,500

Explanation:

Transfer appropriated funds from Temporary Help to fund a part-time Deputy Coroner position

Prepared by: Linda Ivey

Date: 30-Jan-2008

Approved ☐

Denied ☐

Date: _____

_____
Chairman

_____
Member

_____
Member

RESOLUTION

d

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING JANITORIAL SERVICES AT THE BENTON COUNTY JUSTICE CENTER, BENTON COUNTY CORONER'S OFFICE & BENTON COUNTY HEALTH DISTRICT BUILDING

WHEREAS, per resolution 08-028 dated January 14, 2008, the Board of Benton County Commissioners authorized the Chairman of the Board to sign the invitation to bid documents for the solicitation of janitorial services for the designated portions of the Benton County Justice Center, Benton County Coroner's Office, and the Benton County Health District. The request for bids was published in the Tri-Cities Herald on January 15, 2008; and

WHEREAS, Benton County Facilities Manager received and opened two sealed bids at the public bid opening on January 30, 2008 from Varsity Contractors, Inc., Boise, ID in the amount of $161,568.00 excluding WSST; and American Building Maintenance Company, Corp., Kennewick, WA $165,384.36 excluding WSST; and

WHEREAS, Benton County Facilities Manager reviewed the bid proposal and recommends the award to Varsity Contractor's Inc. as the lowest responsible bidder; **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby concurs with the recommendation and awards the janitorial services for the Benton County Justice Center, Benton County Coroner's Office and the Benton County Health District to Varsity Contractors, Inc, Boise, ID for an amount of $161,568.00 plus WSST.

BE IT FURTHER RESOLVED the Board authorizes the Chairman of the Board to sign the service agreement attached hereto.

BE IT FURTHER RESOLVED upon mutual agreement of both parties, the original terms and conditions of said service agreement may be extended for two (2) additional twelve-month periods.

Dated this _____ day of _____, 2008

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Orig: File – Lisa Small
cc: Auditor; R. Ozuna; Facilities; BCHD; Coroner's Office; Varsity Contractors, Inc.

Small

CONTRACT FOR JANITORIAL SERVICES
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 hereinafter "COUNTY"), and **VARSITY CONTRACTORS, INC.** a corporation organized under the laws of the State of Washington, with it principal address at 2100 S. Cole Road, Boise, ID 83709 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and the following exhibits, which is incorporated herein by this reference

Exhibit "A" - Specifications
Exhibit "B" - Floor Plans
Exhibit "C" - Bid Proposal
Exhibit "D" - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The duration of this service agreement will commence March 1, 2008 and will terminate February 28, 2009. Upon mutual agreement of both parties, the original terms and conditions of said service agreement may be extended for two (2) additional twelve-month periods, and will only be approved with an amendment to this contract.

3. SERVICES PROVIDED

CONTRACTOR shall, utilizing its bona fide employees, to provide janitorial services as more fully defined in Exhibit A for designated portions of the Benton County Justice Center at 7122 W. Okanogan Place, Kennewick, WA; Benton County Coroners Office, 7110 W. Okanogan Place, Bldg. A, Kennewick, WA and Benton County Health District Building, 7102 W. Okanogan Place, Kennewick, WA.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

a. For CONTRACTOR: Don Sorensen, District Manager
Varsity Contractors, Inc.
2100 S. Cole Road
Boise, ID 83709
Phone (208)724-3297

b. For COUNTY: Ms. Loretta Smith Kelty, Deputy County Admin.
Benton County Commissioners
PO Box 190
Prosser, WA 99350
(509) 786-5600 Phone
(509) 786-5625 Fax

Each party must have a contract representative at all times this contract is in force. A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit C attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is one hundred sixty one thousand five hundred sixty eight,dollars and zero cents ($161,568.00) not including W.S.S.T. **Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative.** At the completion of the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment and no release of retainage will be made until such affidavit is provided.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY for services that have been performed no more than one time per calendar month. The CONTRACTOR shall not be paid for services rendered under this Contract until they have been performed to the

COUNTY's satisfaction. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY; and will remit payment, less any retainage or other legally withheld funds, for the accepted work within thirty (30) days after receiving the invoice.

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work submitted by the CONTRACTOR shall be held to applicable standards set forth in the industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons, damage to property or business, or any other source of liability whatsoever, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. In the event that any loss described above in this paragraph results from the concurrent liability of CONTRACTOR and COUNTY, CONTRACTOR shall only be responsible for indemnifying COUNTY for that portion of the loss attributable to the actions or omissions of CONTRACTOR, its officers, employees or agents.

b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, its employees, agents or subcontractors.

c. In any and all claims against the COUNTY, its officers,

officials, employees and agents by any employee of the CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR 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 CONTRACTOR makes with any subcontractor or agent performing work hereunder.

10. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, the following insurance:

a. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.

b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract (per project) and be no less than two million dollars ($2,000,000). The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.

c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than

one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability. CONTRACTOR shall cause the carrier for its automobile liability policy to execute a waiver of subrogation in favor of COUNTY.

d. Other Insurance Provisions:

1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

2) The COUNTY, its officers, officials, employees and agents shall be named as additional insured on all required insurance policies, except for any required automobile liability policy.

3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.

4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and the CONTRACTOR prior to the commencement of any work by the subcontractor.

7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.

8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are

completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy.

9) Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing in advance of commencement of work by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

10) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.

11) Certificates of insurance shall show the certificate holder as "Benton County" and include "C/O" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

12) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Loretta Smith Kelty, Contract Manager

Benton County Commissioners

PO Box 190

Prosser, WA 99350

14) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status, as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, contractor must describe its financial condition and the self-insured funding mechanism.

11. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement.

12. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by

law.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. A current copy of the schedule of prevailing wages for Benton County is attached as Exhibit B. If CONTRACTOR procures any employees subject to prevailing wage regulations but not classified as electronic technicians to do any work related to this contract, CONTRACTOR shall be responsible for determining the appropriate prevailing wages for such employees and shall pay them according to said wages.

14. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

15. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief. Venue for any such judicial proceeding shall be in Benton County, Washington.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR shall perform the services under this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior written consent of the COUNTY.

17. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

18. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

19. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

20. FACILITY SECURITY

a. CONTRACTOR acknowledges that the buildings on the Benton County Justice Center Campus are considered secure facilities and that breach of security by way of employing unfit persons to work in or upon such facilities may be detrimental to the safety of Benton County employees and members of the general public who transact business in such facilities.

b. Prior to being permitted to assume duties pursuant to this contract on County property, Contractor employees shall pass a thorough background investigation administered by the Benton County Sheriff's Office. In order to accomplish that, prior to assigning any employee to duties pursuant to this contract on County property, Contractor shall supply County with all

information on employees who are to assume duties pursuant to this Contract, as required by COUNTY to accomplish this purpose.

c. Security clearances shall be granted or revoked at the sole discretion of the Benton County Sheriff or his designee, and revocation shall be permitted for reasons including any reason related to the trustworthiness, morality or fitness for duty of the subject of the investigation regardless of whether or not the subject has been arrested or convicted of an actual criminal offense. County reserves the right to condition security clearances on any condition it reasonably sees fit at any time prior to or after granting of such clearance. The background investigation process may involve requiring Contractor employees to fill out statements which may or may not be under oath. Contractor shall ensure that such statements are filled out as a pre-condition to passing the background investigation and receiving a security clearance. Contractor shall maintain employees who are recipients of County security clearances above and beyond those actually required to fill current shifts, of such a number as would be sufficient to allow for filling in for absences, emergency staffing or similar needs without resorting to employees who are not the recipient of security clearances.

d. Contractor shall implement policies pertaining to employees who are the subject of County security clearances requiring them to report to Contractor within 24 hours of: being arrested or convicted of any crime, being told they are a suspect in any crime, becoming aware of any complaint being lodged against them with the Washington State Criminal Justice Commission, being served with a summons and complaint relating to their duties pursuant to this Contract or being served with a summons and complaint, whether relating to or not relating to their duties, where an allegation of the complaint relates to allegedly inappropriate sexual conduct including, but not limited to sexual harassment, sexual assault or lewd conduct. Contractor shall, in turn, notify County in writing within 24 hours of receiving any such notification from one of its employees.

e. In the event the Benton County Sheriff determines that it is appropriate to revoke any person's security clearance, he shall do so in writing directed to Contractor and may also precede such written notice with verbal notification to the subject of the revocation. Revocation shall become effective immediately upon verbal notification, if made, as long as it is followed by written notification to Contractor. Upon such notification, it shall be Contractor's duty to replace the employee whose security clearance is revoked, with another

suitable employee.

Nothing in this section shall be construed as infringing in any way upon Contractor's discretion to hire and retain employees of its own choosing.

f. While performing janitorial services on COUNTY premises, CONTRACTOR employees shall not possess any firearms or other deadly weapons, and shall not bring into the Justice Center any weapon or implement prohibited by law or court order.

g. CONTRACTOR employees shall not store any personal items unrelated to the performance of their work in or upon COUNTY premises at any time.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY	**VARSITY CONTRACTORS, INC.**
Leo Bowman, Chairman	**Don Sorensen, District Manager**
Benton County Commissioner	
Dated: _____	Dated: _____

Approved as to Form:

_____
Deputy Prosecuting Attorney

SPECIFICATIONS

1) GENERAL REQUIREMENTS

a) TERM OF CONTRACT SERVICE

i) CONTRACT PERIOD: The period for which janitorial services shall be provided in accordance with these specifications shall be twelve (12) months commencing on March 1, 2008 and concluding on February 28, 2009.

ii) EXTENSION OF CONTRACT: Upon mutual agreement of both parities, the original terms and conditions of the contract may be extended for an additional twelve-month period, for up to two extensions.

b) CONTRACT

The successful bidder (hereinafter called "Contractor") shall execute an appropriate contract (as provided in Exhibit E) with Benton County for a term of twelve (12) months which shall be subject to and incorporate by reference all bid documents including the Invitation, Conditions, Instructions and Specifications within fourteen (14) days after the date of award of the bid.

c) BONDS AND LICENSES

i) The Contractor shall be licensed to do business in the State of Washington and shall submit a copy of their current business license with his/her Qualification Statement.

ii) The Contractor shall furnish an annual performance bond, with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the Contractor of this contract prior to March 1, 2008, and thereafter for each year the contract is extended the bond shall be furnished prior to March 1 of the extended contract year. Failure to furnish this bond will cause the Contractor's proposal to be rejected and the County shall consider other proposals that have met all specified requirements.

iii) The Contractor shall furnish an annual labor and materials payment bond with the sufficient sureties acceptable to Benton County in an amount not less than 100% of the annual contract sum as security for the payment of all persons performing labor or providing materials pursuant to this contract. This bond shall be furnished to Benton County prior to March 1, 2008, and annually prior to March 1 of the extended contract year.

d) CONTRACTOR'S FAILURE TO PERFORM

The Contractor shall be prepared to start work in accordance with the specifications, immediately upon execution of the Contract. Failure to complete the work as scheduled will result in written notice to the Contractor terminating his/her right to proceed as to the whole or any part of the contract. In the event of such termination, the Contractor shall be liable to the County for any excess costs for such services.

2) *SERVICE SPECIFICATIONS*

a) *GENERAL INFORMATION*

i) Areas to be cleaned do not include building equipment, mechanical and emergency power rooms, jail facilities, or court office security areas.

ii) Services performed under this contract shall be subject to inspection and approval of the contracting officer or his/her designee. The Cleaning Quality Requirements set forth in Section 2 C represent minimum standards.

iii) All necessary cleaning equipment and disposable materials needed for the performance of this contract shall be furnished by the Contract and shall conform to existing dispensers.

iv) Limited storage space will be provided for use by the Contractor to store supplies and/or equipment. The Contractor shall maintain the storage area(s), including the sink room(s) in a safe, neat and orderly manner. All tools and equipment shall be maintained in clean and safe condition at all times; and be neatly stored each night in the assigned storage area(s).

v) The County shall not be responsible for any loss of, or damage to, the Contractor's supplies, materials, equipment or the personal belongings of the Contractor's employees caused by fire, theft, vandalism or other conditions.

b) *CONTRACTOR'S SUPERVISION AND QUALITY CONTROL PROGRAM*

i) The Contractor shall provide supervision and quality control inspections of the building areas included in the contract.

ii) The Contractor shall develop an inspection form which shall be subject to approval by the County. Such forms shall evidence that a supervisory employee of Contractor's has inspected the work completed and certifies that it meets with applicable standards pursuant to this Exhibit and the rest of the Contract. Completed forms shall be delivered to the County concurrent with an invoice for payment and shall be a pre-requisite to any payment becoming due.

c) *CONDUCT OF CONTRACTOR'S EMPLOYEES*

i) The Contractor shall prohibit his/her employees from disturbing papers on desks, opening desk drawers or cabinets, or using telephones, computers, copiers, fax machines or other office equipment intended for County use.

ii) All "lost and found" articles will be turned into the Facilities Superintendent.

iii) The Contractor shall require his/her employees comply with the instructions pertaining to conduct and building regulations issued by the contracting officer.

iv) The Contractor's employees shall maintain the building security by not unlocking doors or gates to let anyone into the building during the performance of their duties under the contract.

v) In its performance of services specified in the contract documents, the Contractor shall not permit any employee or agent who has been determined by the County to unsuitable to work or provide services in confidential security areas to perform work or services in any County building.

vi) The County shall have the right to and shall conduct background security checks on the Contractor's employees or agents performing any work or service in the Benton County Justice Center. The County shall have the right to reject any of the Contractor's employees.

d) BUILDING OFFICE HOURS AND CLEANING SCHEDULE

i) BENTON COUNTY JUSTICE CENTER – Janitorial services for high traffic areas, as highlighted in yellow or outlined in blue as in Exhibit B, shall be performed five (5) days per week – Monday through Friday, beginning at 5:00 PM. Janitorial service for low traffic areas, as outlined in pink in Exhibit B, shall be performed three (3) days per week, Monday, Wednesday, and Friday, beginning at 5:00 PM. If a legal holiday occurs on a scheduled cleaning day, the cleaning shall be done on the next workday. The Cleaning Frequency Schedule set forth in Section IV is provided as a minimum recommendation to maintain the building areas at the highest standard.

ii) BENTON COUNTY CORONER'S OFFICE – Janitorial services shall be performed two days per week, Tuesday and Thursday, beginning at 5:00 PM. If a legal holiday occurs on a scheduled cleaning day, the cleaning shall be done on the next workday. The Cleaning Frequency Schedule set forth in Section IV is provided as a minimum recommendation to maintain the building areas at the highest standard.

iii) BENTON COUNTY HEALTH DISTRICT BUILDING – Janitorial services for high traffic areas, as outlined in yellow in Exhibit B, shall be performed five (5) days per week – Monday through Friday, beginning at 5:00 PM. Janitorial service for low traffic areas, as outlined in pink in Exhibit B, shall be performed three (3) days per week, Monday, Wednesday, and Friday, beginning at 5:00 PM. If a legal holiday occurs on a scheduled cleaning day, the cleaning shall be done on the next workday. The Cleaning Frequency Schedule set forth in Section IV is provided as a minimum recommendation to maintain the building areas at the highest standard.

e) SUPPLIES MATERIALS AND EQUIPMENT

The Contractor shall furnish all toilet and rest room supplies, such as hand soaps, toilet paper, paper towels, plastic garbage bags, etc. suitable for the installed dispensers within the designated areas as provided in Exhibit B. The County reserves the right to set standards for quality on all supplies.

f) EMERGENCY WORK

In the case of any emergency condition at the Benton County Justice Center Campus, including but not limited to the flooding of a particular section of the building, the Contractor shall, at the direction of the contracting officer: (1) provide additional resources adequate to respond to janitorial needs created by the emergency, while

performing the work required under this contract (2) divert resources to respond to the janitorial needs created by the emergency.

3) *CLEANING QUALITY REQUIREMENTS (CQR)*

IMPORTANT: CONTRACTOR shall remind its employees that often restrooms continue to be utilized by COUNTY employees after hours. Therefore, when cleaning restrooms utilized by members of the opposite sex as any given CONTRACTOR employee, such employee shall employ appropriate preventative measures to reduce the chances of inadvertent invasion of privacy. These measures shall include announcing loudly into the open restroom door "Janitor – coming in to clean – anyone in there?" at least twice, and then ascertaining that the restroom is unoccupied prior to entering, and propping the door open with a pail or other indicator that the restroom is closed for cleaning, for the entire time the janitor is inside. Under no circumstances shall janitors commence cleaning of a restroom utilized by members of the opposite sex while anyone of the opposite sex is inside for any reason.

This section outlines the minimum acceptable standards for services performed under this contract.

a) *GENERAL CLEAN UP OF AREAS AND SURFACES:* Collect and remove from interior space all garbage from waste cans and all other discarded material. Remove gum and other sticky substances from all surfaces. Wipe dirt, grease, smudges and fingerprints from water fountains, doorjambs and partition glass surfaces. Mop up wet areas resulting from bad weather or accidental spills.

b) *SERVICING:* Maintain an adequate supply of paper towels, toilet paper and seat covers in the installed dispensers in the toilet rooms. Fill soap dispensers. Empty and dispose of material in waste cans.

c) *DUSTING:* Dust shall be removed directly from areas in which it lies by appropriately treated dusting cloths, vacuum tools, or by other methods. Use of a feather duster is not permitted. When doing high cleaning, dust shall not be allowed to fall from high areas onto furniture and equipment below. The following conditions shall exist after the completion of each dusting task:

   i) There shall be no dust streaks.

   ii) Corners, crevices, moldings and ledges shall be free of dust.

   iii) There shall be no oils, spots, or smudges on dusted surfaces caused by dusting tools.

d) *DAMP-WIPING:* Use a clean cloth or sponge soaked in a neutral solution to remove all dirt, spots, streaks, and smudges from walls, glass, and other specified surfaces and then dry to provide a polished appearance. In Toilet areas, disinfectant cleaners shall be used.

e) *BRIGHT METAL POLISHING:* Polishing of bright metal push plates, kick plates, bright brass or door hardware may be performed by damp-wiping and drying with a suitable cloth if a polished appearance is obtained.

f) *FLOOR MAINTENANCE*

i) GENERAL: Upon completion of work, all furniture and equipment must be returned to its original position. Baseboards, walls, stair risers, furniture and equipment shall in no way be splashed, disfigured or damaged during these operations. Corners, crevices, molding, and ledges shall be free of dust and debris. CONTRACTOR will warn occupants of wet and/or slippery floor conditions. All waxed surfaces shall be maintained so as to provide safe, non-slip-walking conditions.

ii) SWEEPING AND DAMP MOPPING: After sweeping and damp mopping operations, all floors shall be clean and free of dirt streaks; no dirt shall be left in corners, behind or under furniture, behind doors, on stair landings or treads, or elevator door tracks. No dirt shall be left where sweepings were picked up. There shall be no dirt, trash or foreign matter under desks, tables or chairs.

iii) WET-MOPPING AND SCRUBBING: The floors shall be thoroughly swept to remove visible dirt and debris. Upon completion of the mopping and scrubbing, the floors shall be clean and free of dirt, water streaks, mop marks, string, etc.; properly rinsed, and dry mopped to present an overall appearance of cleanliness. All surfaces shall be dry, corners and cracks clean.

iv) FLOOR FINISHING: The job or floor finishing includes the cleaning and applying of finish to vinyl and linoleum floor surfaces. In the event of wax buildup, discoloration, intermixing of sand during inclement weather or change to a different brand of wax, complete removal or stripping for former waxes will be required. Extremely stubborn spots, gum, rust, burns, etc. shall be removed. Care shall be exercised so that baseboards, walls and furniture shall not be splashed or marred. Wax shall contain approved non-slip characteristics. In heavy traffic areas, apply 4 coats of wax buffing between coats. Final coat of wax shall be machine polished.

v) CARPETS: Carpets shall be maintained free of spots, traffic dirt, surface dirt, dust balls, and debris to provide a clean appearance at all times.

vi) REST ROOMS AND SHOWERS: Special attention shall be given to floors about urinals and commodes for elimination of odors and stains and to provide a clean appearance throughout. A disinfectant cleaner shall be used; all trash receptacles emptied and paper supplies replenished.

vii) WINDOW WASHING AND GLASS CLEANING: After each washing operation, all glass shall be cleaned and free of dirt, grime and streaks, excessive moisture, and shall not be cloudy. Windows, doors and partition glass shall be washed on both sides. Wipe window sashes, sills, frames, metal, or woodwork with chamois or cloth to remove water spots. Lay protective covering as required preventing damage to adjacent surfaces, fixtures and furniture. Cleaners shall use pads to protect windowsills when standing on or placing material on them and all such pads and/or cloths necessary to protect County property shall be furnished by the Contractor. Windows which require cleaning on both sides will have the inside and outside cleaning performed on the same day, with the exception of the exterior second floor windows which will be cleaned by the County and the interior first floor windows in

the County cleaned security areas only. Exterior first floor windows, in County cleaned security areas, will be cleaned by the Contractor.

viii) PORCELAIN AND CHINA WARE CLEANING: Porcelain and china fixtures (washbasins, urinals, toilets, etc.) shall be clean and bright; there shall be no dust, spots, stains, rust, green mold, encrustation or excess moisture. Walls and floors adjacent to fixtures shall be free of spots, drippings, and water marks.

4) ***CLEANING FREQUENCY SCHEDULE (CFS)***

a) *BENTON COUNTY JUSTICE CENTER* – the following CFS will be used on high traffic areas – **as marked in yellow or outlined in blue on Exhibit B.**

i) DAILY

(1) Rest Room Cleaning: Fixtures and floors shall be cleaned and disinfected, supplies replenished and trash removed.

(2) Room Cleaning: Horizontal surfaces shall be dusted, waste receptacles emptied and cleaned, carpet stains removed, carpet vacuumed, office door glass cleaned and trash removed.

(3) Entrance, Lobbies, Corridors: Floor areas and corners vacuumed and or damp-mopped; entrance glass, metal and wood surfaces cleaned; spots and marks removed from walls and carpets; horizontal and vertical surfaces dusted; and cobwebs removed.

ii) WEEKLY

(1) Room Cleaning: Interior office partition windows washed and floors mopped.

(2) Entrances and Lobbies: Wax, polish and/or buff floor surfaces to maintain clean and shiny floor. Clean marks and spots from courtroom doors.

iii) MONTHLY

(1) Carpets: Shampoo or like cleaning in high traffic areas, i.e. corridors, doorways, etc.

(2) Vertical Fabric Surfaces: Vacuum surfaces.

iv) QUARTERLY

(1) Carpet: Heavy traffic areas shall be deep cleaned and carpet protector applied.

(2) Windows: All exterior wall windows on the first floor, except the inside windows in security areas, shall be washed on the inside and outside. Wash the interior windows on second floor – with the exception of secured areas.

(3) Oak Wood: Cleaned and oiled.

b) *BENTON COUNTY JUSTICE CENTER* - the following CFS will be used on low traffic areas – **as marked in pink with the exception of areas outlined in blue on Exhibit B.**

i) DAILY – Monday, Wednesday, and Friday

(1) Rest Room Cleaning: Fixtures and floors shall be cleaned and disinfected, supplies replenished and trash removed.

(2) Room Cleaning: Horizontal surfaces shall be dusted, waste receptacles emptied and cleaned, carpet stains removed, carpet vacuumed, office door glass cleaned and trash removed.

(3) Entrance, Lobbies, Corridors: Floor areas and corners vacuumed and or damp-mopped; entrance glass, metal and wood surfaces cleaned; spots and marks removed from walls and carpets; horizontal and vertical surfaces dusted; and cobwebs removed.

ii) BI-WEEKLY

(1) Room Cleaning: Interior office partition windows washed and floors mopped.

(2) Entrances and Lobbies: Wax, polish and/or buff floor surfaces to maintain clean and shiny floor. Clean marks and spots from courtroom doors.

iii) MONTHLY

(1) Carpets: Shampoo or like cleaning in high traffic areas, i.e. corridors, doorways, etc.

(2) Vertical Fabric Surfaces: Vacuum surfaces.

iv) *SEMI-ANNUALLY*

(1) Carpet: Heavy traffic areas shall be deep cleaned and carpet protector applied.

(2) Windows: All exterior wall windows on the first floor, except the inside windows in security areas, shall be washed on the inside and outside. Wash the interior windows on second floor – with the exception of secured areas.

(3) Oak Wood: Cleaned and oiled.

c) BENTON COUNTY CORONERS OFFICE

i) DAILY – Tuesday and Thursday **as highlighted in green.**

(1) Rest Room Cleaning: Fixtures and floors shall be cleaned and disinfected, supplies replenished and trash removed.

(2) Room Cleaning: Horizontal surfaces shall be dusted, waste receptacles emptied and cleaned, carpet stains removed, carpet vacuumed, office door glass cleaned and trash removed.

(3) Entrance, Lobbies, Corridors: Floor areas and corners vacuumed and or damp-mopped; entrance glass, metal and wood surfaces cleaned; spots and marks removed from walls and carpets; horizontal and vertical surfaces dusted; and cobwebs removed.

ii) BI-WEEKLY

(1) Room Cleaning: Interior office partition windows washed and floors mopped.

(2) Entrances and Lobbies: Wax, polish and/or buff floor surfaces to maintain clean and shiny floor. Clean marks and spots from courtroom doors.

iii) MONTHLY

(1) Carpets: Shampoo or like cleaning in high traffic areas, i.e. corridors, doorways, etc.

(2) Vertical Fabric Surfaces: Vacuum surfaces.

iv) *SEMI-ANNUALLY*

(1) Carpet: Heavy traffic areas shall be deep cleaned and carpet protector applied.

(2) Windows: All exterior wall windows on the first floor, except the inside windows in security areas, shall be washed on the inside and outside. Wash the interior windows on second floor – with the exception of secured areas.

(3) Oak Wood: Cleaned and oiled.

d) *BENTON COUNTY HEALTH DISTRICT BUILDING* – the following CFS will be used on high traffic areas – **as marked in yellow or outlined in blue on Exhibit B.**

i) DAILY

(1) Rest Room Cleaning: Fixtures and floors shall be cleaned and disinfected, supplies replenished and trash removed.

(2) Room Cleaning: Horizontal surfaces shall be dusted, waste receptacles emptied and cleaned, carpet stains removed, carpet vacuumed, office door glass cleaned and trash removed.

(3) Entrance, Lobbies, Corridors: Floor areas and corners vacuumed and or damp-mopped; entrance glass, metal and wood surfaces cleaned; spots and marks removed from walls and carpets; horizontal and vertical surfaces dusted; and cobwebs removed.

ii) WEEKLY

(1) Room Cleaning: Interior office partition windows washed and floors mopped.

(2) Entrances and Lobbies: Wax, polish and/or buff floor surfaces to maintain clean and shiny floor. Clean marks and spots from courtroom doors.

iii) MONTHLY

(1) Carpets: Shampoo or like cleaning in high traffic areas, i.e. corridors, doorways, etc.

(2) Vertical Fabric Surfaces: Vacuum surfaces.

iv) QUARTERLY

(1) Carpet: Heavy traffic areas shall be deep cleaned and carpet protector applied.

(2) Windows: All exterior wall windows on the first floor, except the inside windows in security areas, shall be washed on the inside and outside. Wash the interior windows on second floor – with the exception of secured areas.

(3) Oak Wood: Cleaned and oiled.

e) BENTON COUNTY HEALTH DISTRICT BUILDING - the following CFS will be used on low traffic areas – **as marked in pink with the exception of areas outlined in blue on Exhibit B.**

i) DAILY – Monday, Wednesday, and Friday

(1) Rest Room Cleaning: Fixtures and floors shall be cleaned and disinfected, supplies replenished and trash removed.

(2) Room Cleaning: Horizontal surfaces shall be dusted, waste receptacles emptied and cleaned, carpet stains removed, carpet vacuumed, office door glass cleaned and trash removed.

(3) Entrance, Lobbies, Corridors: Floor areas and corners vacuumed and or damp-mopped; entrance glass, metal and wood surfaces cleaned; spots and marks removed from walls and carpets; horizontal and vertical surfaces dusted; and cobwebs removed.

ii) BI-WEEKLY

(1) Room Cleaning: Interior office partition windows washed and floors mopped.

(2) Entrances and Lobbies: Wax, polish and/or buff floor surfaces to maintain clean and shiny floor. Clean marks and spots from courtroom doors.

iii) MONTHLY

(1) Carpets: Shampoo or like cleaning in high traffic areas, i.e. corridors, doorways, etc.

(2) Vertical Fabric Surfaces: Vacuum surfaces.

iv) SEMI-ANNUALLY

(1) Carpet: Heavy traffic areas shall be deep cleaned and carpet protector applied.

(2) Windows: All exterior wall windows on the first floor, except the inside windows in security areas, shall be washed on the inside and outside. Wash the interior windows on second floor – with the exception of secured areas.

(3) Oak Wood: Cleaned and oiled.

BID PROPOSAL

To: THE BOARD OF BENTON COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

The undersigned hereby certifies that Varsity Contractors, Inc. **has carefully read all proposal documents, including the Request for Proposals, and Specifications, and thoroughly understands the same and hereby submits the following proposals for the provision of such services.**

Please submit your bid as an annual amount without sales tax on this form.

One Hundred Sixty-One Thousand, Five Hundred ($ 161,568.00)
(Bid amount in words and numbers)
Sixty-Eight Dollars and No Cents.

FIRM NAME: Varsity Contractors, Inc.

ADDRESS: 2100 S. Cole Road, Boise, Idaho, 83709

STATE OF INCORPORATION (if a Corporation): Idaho

SIGNATURE(s) OF AUTHORIZED OFFICIAL(s):

Signature: _____ **Telephone:** 208-724-3297

Name: Don Sorensen **Title:** District Manager

Signature: _____ **Telephone:** _____

Name: _____ **Title:** _____

CONTACT PERSON:

Don Sorensen **Telephone:** 208-724-3297

NOTE: 1) **Indicate after firm name if submitter is proprietorship, partnership, or corporation.** Varsity Contractors, Inc. is a corporation.
2) **Type or print name of person signing below signature and designate position or office (e.g.) managing partner, president, sales manager, etc.**
3) **The supplemental page(s) must also be completed in full as part of the proposal form.**

A. LIST ESTIMATED MAN HOUR REQUIREMENTS FOR EACH TASK TO BE PERFORMED WITHIN THE SPECIFICATIONS OF THIS PROPOSAL:

	DESCRIPTION	EST. MONTHLY MAN HOURS JUSTICE CENTER	CORONER	HEALTH DISTRICT
1.	Light Janitorial Duties	396	17	201.5
2.	Floor Care			
	a) Carpet - Spot Cleaning	28	1	5
	- Deep Cleaning	19	.5	2.5
	b) Tile/Terrazzo – Buffing, Scrubbing, Waxing and Stripping	70	3	27
	c) Vacuuming	80	6	22
3.	Window Washing	1	.5	2
4.	Supervision	80	6	26
	TOTAL MAN-HOURS	674	34	286

B. DESCRIBE QUALITY CONTROL MEASURES AND PROCEDURES BY WHICH THE CONTRACTOR WILL ENSURE THE QUALITY OF WORKMANSHIP ON THIS CONTRACT (EXISTING QUALITY CONTROL FORMS MAY BE ATTACHED). WHO IS RESPONSIBLE FOR QUALITY CONTROL?

Please see the following pages for Varsity's quality control program.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WA

IN THE MATTER OF AWARD AND CONTRACTING WITH INTERMOUNTAIN MATERIALS TESTING FOR MATERIAL TESTING AND SAMPLING SERVICES FOR THE BENTON COUNTY JUSTICE CENTER COURTROOM TI PROJECT

WHEREAS, resolution 08-131 allows public works contracts for services or materials involving less than ten thousand dollars ($10,000), advertising and competitive bidding may be dispensed with, and such contracts may be entered into after direct negotiation; and

WHEREAS, Facilities Manager solicited and received two (2) proposals for the testing and sampling services for the Justice Center Courtroom TI project; and

WHEREAS, the proposals were from Intermountain Materials Testing, Pasco, WA in the amount of $6,667.00 excluding WSST and Quality Inspection Services, Inc., in the amount of $7,024.00 excluding WSST; and

WHEREAS, the Facilities Manager reviewed the proposals and recommends award of said services to Intermountain Materials Testing as lowest responsible bidder; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board hereby agrees with the recommendation and awards Intermountain Materials Testing, Pasco, WA the contract for materials testing and sampling services for a contract amount of $6,667.00 excluding WSST with an amount not to exceed $7,000.00 excluding WSST for any acceptable overages, incidentals and other unanticipated costs for the Benton County Justice Center Courtrooms TI project.

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the contract attached hereto for said services.

Dated this _____ day of _____, 2008

_____
Chairman of the Board

_____
Member

Attest:_____
Clerk of the board

_____
Member

Constituting the Board of County Commissioners of Benton County,

Orig: File - Lisa Small
cc: Auditor; R. Ozuna; Facilities, IMT

Small

SERVICE AGREEMENT FOR MATERIALS TESTING AND SAMPLING
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **INTERMOUNTAIN MATERIALS TESTING**, with it principal mailing address at PO Box 2801, Pasco, Washington 99302 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and the following exhibits, which are incorporated herein by this reference

A. Exhibit A – Proposal/Scope of Work
B. Exhibit B – Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The Contractor shall commence work on a date to be specified in the written Notice to Proceed issued by the Owner and shall be complete upon approval of acceptance by the Board of Benton County Commissioners via resolution.

3. SERVICES PROVIDED

CONTRACTOR shall, utilizing its bona fide employees, provide the service and equipment necessary for material testing and sampling services for the Benton County Justice Center Courtrooms TI project and in accordance with contractors proposal dated 1/30/08 as referenced herein as Exhibit A.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

a. For CONTRACTOR: Scott Walters, Regional Const. Services Mgr.
Intermountain materials Testing
PO Box 2801
Pasco, Washington 99302
(509)545-9217
(509) 545-9243

Original: File - Lisa Small
cc: Auditor, Prosecutor (R. Ozuna), Facilities, IMT

b. For COUNTY: Loretta Smith Kelty, Deputy County Admin.
Benton County Commissioners
PO Box 190
Prosser, Washington 99350
(509)786-5600
(509) 786-5625

A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is six thousand six hundred sixty seven dollars and zero cents ($6,667.00) excluding W.S.S.T. Total amount payable, including acceptable overages, incidentals and other unanticipated costs shall not exceed seven thousand dollars and zero cents, ($7,000.00) excluding W.S.S.T. **Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative.** At the completion of the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment and no release of retainage will be made until such affidavit is provided.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date of invoice, less amounts paid on previous invoices. Each invoice shall cover all work performed for the COUNTY during the billing period. At such time as the first invoice is submitted, or any time thereto, CONTRACTOR, as well as all sub-contractors and sub-sub-contractors which are employed by the CONTRACTOR for the work contemplated by this agreement, shall submit a Statement of Intent to Pay Prevailing Wages in the form and manner required by RCW 39.12.040 to COUNTY'S representative. The CONTRACTOR shall not be paid for services rendered under this Contract until a Statement of Intent to Pay Prevailing Wages has been executed and submitted as required above by all required parties and the services have been performed to the COUNTY's satisfaction. The COUNTY shall authorize payment when the work billed is accepted

by the COUNTY; and will remit payment for the accepted work within thirty (30) days after receiving the invoice. PROVIDED that for each invoiced and approved progress payment, COUNTY shall withhold from the earned portion of that payment (ie excluding sales or other tax) 5% as retainage pursuant to RCW 60.28.010, subject to all further provisions of the remainder of RCW chapter 60.28. Within ten (10) days following the execution of this agreement, CONTRACTOR shall submit written notice stating its election of the method of holding of the moneys retained, pursuant to RCW 60.28.010(2). If such written election is not received, then the COUNTY may choose any of the allowed manners of holding the moneys allowed by RCW 60.28.010(2)(a)-(c)."

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract or where work is substandard, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work done by the CONTRACTOR shall be in a workmanlike manner and shall meet or exceed applicable standards generally accepted in the construction industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons, damage to property or business, or any other source of liability whatsoever, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

FURTHER PROVIDED that if liability is caused by or results from the concurrent negligence of a) CONTRACTOR or CONTRACTOR'S agents or employees, and b) COUNTY or COUNTY'S

agents or employees, then the indemnification contemplated in this section shall only apply to the extent of CONTRACTOR'S negligence.

b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, its employees, agents or subcontractors.

c. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, 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 of type of damages, compensation, or benefits payable by or for the CONTRACTOR 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 CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR 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 CONTRACTOR makes with any subcontractor or agent performing work hereunder.

10. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, the following insurance:

a. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.

b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars ($2,000,000) per project. The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in

fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.

c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

d. Other Insurance Provisions:

1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

2) The COUNTY, its officers, officials, employees and agents shall be named as additional insured on all required insurance policies, except for any required automobile liability policy.

3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.

4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and

the CONTRACTOR prior to the commencement of any work by the subcontractor.

7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.

8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy.

9) Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing in advance of commencement of work by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

10) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. The endorsement pages of the policy showing the COUNTY as an additional insured shall also be furnished to the COUNTY within ten (10) days after effective date of this agreement.

11) Certificates of insurance shall name "Benton County" as additional insured. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

12) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation

Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Lisa Small, Contract Administration
Benton County Commissioners
Post Office Box 190
Prosser, Washington 99350

14) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status, as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, contractor must describe its financial condition and the self-insured funding mechanism.

11. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement. PROVIDED that CONTRACTOR may elect, in lieu of the bond, to allow COUNTY to retain 50% of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28, RCW, whichever is later. Either proof of the performance bond, or written notification of the CONTRACTOR'S desire to elect the alternative to the bond described above, must be received by COUNTY within ten (10) days following the execution of this agreement.

12. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in

performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

c. In the event of termination as contemplated above, CONTRACTOR and all of its sub-contractors or sub-sub-contractors shall remove all of their tools and equipment by the close of business on the effective date as set out above. PROVIDED that, no tools or equipment purchased specifically for this project, and paid for, or billed to the COUNTY, and no portion of any partially or fully completed structure or curtilage may be damaged, defaced, disassembled or destroyed in the process of removing tools or equipment belonging to CONTRACTOR.

13. COMPLIANCE WITH LAWS AND PREVAILING WAGE

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B shall be paid to all employees, agents, sub-contractors or sub-sub-contractors who do any work for CONTRACTOR on this project. CONTRACTOR shall ensure that all sub-contractors or sub-sub-contractors sign an agreement to pay these same wages, and that such a signed agreement is submitted to COUNTY prior to sub-contractor commencing any work on the project. This schedule is duplicated from the Washington State Department of Labor & Industries website, is provided for informational purposes only and COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedules contains any such ambiguities or inaccuracies then CONTRACTOR is responsible for contact the Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this contract and relevant law to pay prevailing wages.

14. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

15. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief. Venue for any such judicial proceeding shall be in Benton County, Washington.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR may not assign or delegate its duties as general contractor for the work covered by this agreement without written consent from COUNTY. However, CONTRACTOR is permitted to, using all reasonable care and due diligence, select appropriately skilled sub-contractors and sub-sub-contractors to assist it in completing the work covered by this agreement. If CONTRACTOR chooses to use the services or sub-contractors or sub-sub-contractors, then prior to such sub-contractors or sub-sub-contractors commencing any work, CONTRACTOR shall provide COUNTY with the names of such sub-contractor or sub-sub-contractors. COUNTY, in its sole discretion, may reasonably object to the use of any given sub-contractor or sub-sub-contractor and, if notice is given in writing to CONTRACTOR of such objection within ten (10) days of receipt of CONTRACTOR's intent to utilize the sub-contractor or sub-sub-contractor's services, then CONTRACTOR shall promptly replace the sub-contractor or sub-sub-contractor with another appropriately skilled sub-contractor or sub-sub-contractor.

17. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

18. NOTICES

Any notices shall be effective if personally served upon the

other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

19. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY	**INTERMOUNTAIN MATERIALS TESTING**
Claude Oliver, Chairman **Benton County Commissioner**	**Scott L. Walters** **Regional Const. Services Mgr.**
Dated: _____	Dated: _____

Approved as to Form:

_____
Deputy Prosecuting Attorney

Original: File - Lisa Small
cc: Auditor, Prosecutor (R. Ozuna), Facilities, IMT

Intermountain Materials Testing
PO Box 2801
Pasco, Washington 99302-2801
(509) 545-9217 fax (509) 545-9243

Exhibit A

Budinger & Associates

Cost Estimate for Materials Testing and Sampling Services

To: Roy Rogers, Benton County C/O
CWH Architects
C. Wayne Hunsucker, A.I.A.
6320 W. Clearwater Avenue, Suite C
Kennewick, WA 99336

Client Fax #: 735-1420
Client Phone #: 736-0581

Revised: 2/4/2008

Project: Benton County Justice Center Courtrooms TI
Kennewick, Washington

Proposal No.: 610M8
Proposal Date: 1/30/2008

Item Description	Units		Unit Price	Totals
Soils/Aggregate Sampling & Testing (1, 2)				
Technician & equipment for sampling & testing, per hr. (3)	9	hrs	45.00	405.00
Maximum density/Optimum Moisture, per test	2	each	110.00	220.00
Sieve Analysis, per test	2	each	85.00	170.00
Concrete/Reinfrcing Steel/Anchor Examination, Sampling & Testing (1, 2)				
Technician & equipment for inspection, sampling and testing, per hr.(3) (includes: slump, air, temp., cylinders cast & report, floor flatness, vapor emission)	18	hrs	45.00	810.00
Compressive strength test, per cyl.	24	each	15.00	360.00
Structural Masonry Examination (1, 2)				
Technician & equipment for inspection, sampling & testing, per hr. (3)	54	hrs	45.00	2430.00
Masonry compressive strength test, per masonry prism	3	each	45.00	135.00
Compresssive Strength, Mortar or Grout, per specimen	6	each	20.00	120.00
CMU Testing, strength, moisture, absorption, per set	1	each	225.00	225.00
Structural Welding/HS Bolting Examination (Shop Welding Not Included) (1, 2)				
Field, Technician & equipment for visual examination, per hr. (3)	18	hrs	59.00	1062.00
NDE Testing (UT, MT, PT), per hour, subcontract, 4 hour minimum	0	hrs	70.00	0.00
Other Items				
Overtime surcharge, per hr., hourly rate plus (excess of 8 hr./day, 40 hr./week, weekends, & holidays)	0	hrs	17.00	0.00
Record Keeping for Nuclear Densometer, per day	3	day	25.00	75.00
Project Manager, per hr. (normally 1/2 hour each week)	5	hrs	75.00	375.00
On-call sample collection or prep., per hr., 1 hour minimum except on days when we are onsite performing other services	7	hrs	40.00	280.00
			Total Estimate	6667.00

1 Services will be provided from portal to portal, on an on-call, part-time basis in accordance with the unit prices listed above.

2 Services require 24 hours advance notice.

3 A 3 hour minimum charge applies to field testing services.

Thank you for the opportunity to submit this estimate. Please call if you have any questions or require additional information.

By: Scott L. Walters

Scott L. Walters
Regional Construction Services Manager
Tri-Cities Office Manager

f

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING PAYMENT TO MEESKE EXCAVATION, LLC FOR EMERGENCY EXCAVATION WORK TO REPAIR A BROKEN MAIN WATER LINE AT THE BENTON COUNTY COURTHOUSE

WHEREAS, on January 7, 2008, the main water line broke at the Benton County Courthouse, Prosser, Washington, causing the immediate closing of the Courthouse and the County declaring the matter an emergency nature; and

WHEREAS, Benton County maintenance employees were not able to repair the broken water line, necessitating the County immediately hire a plumber and excavation company to assist in the excavation, back-hoe work, cleanup, and repair of the main water line; and

WHEREAS, the following companies were contacted by telephone to see if they were available for emergency service: Coy's Plumbing, Apollo Plumbing, Mike Wigley Plumbing, and Meeske Excavation; and

WHEREAS, the plumbing companies were offered the opportunity to contact their choice of companies to perform the excavation, and all companies declined; and

WHEREAS, Mike Wigley Plumbing was paid by separate invoice for his plumbing services; and

WHEREAS, Meeske Excavation, LLC was the only responsive company available to perform the emergency excavation work on short notice; **NOW, THEREFORE,**

BE IT HEREBY RESOLVED that the Board of Benton County Commissioners hereby approves the payment to Meeske Excavation, LLC in the amount of $8,827.53, including Washington State Sales Tax.

Dated this ..... day of ....., 2008

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc: Auditor, Facilities

C. McKenzie

MEESKE EXCAVATION L.L.C
Mitch Meeske, owner
25001 n. Rothrock Rd.
Prosser, wa 99350
Telephone # 509- 973 -2313
Cell # 509-832-2354

Billing Statement:Benton County Facilities [Prosser Court House]

Repair Broken water line ;

1 10 hours back-hoe work , break cement , digging , plumbling etc;. $$90.00 $$ per
$$ 900.00 $$

2 next day clean-up broken cement , spoiles etc .. 4 hours $$ 360.00 $$

3 3 loads debris hauled off to land-fill $$100.00 per load $$ 300.00 $$

4 dump fee ..... $$ 50.00 $$

5 1 load sand [bedding material] ..... $$ 300.00 $$

6 1 load 5/8 crushed rock [compaction material unde cement $$ 300.00 $$

7 wacker rental [compaction] ..... $$125.00 $$

8 5 hours back-hoe [bedding sand, crushed rock @ 90.00$$ $$ 450.00 $$

9 re- pouring cement sidewalk including labor..... $$ 2800.00 $$

10 28 hours labor , plumbling., clean-up,cement, pipe repair etc $$ 1680.00 $$
[$$60.00 $$ per hr.]

11 2x4 form lumber, metal stakes , $$ 100.00 $$

12 helpers labor forming ,wacker labor,clean-up etc 22 hrs @ 23.00
$$ 506.00 $$

13 2 hour [extra] take out cement by backdoor $$ 180.00 $$

14 1 load [cement]hauled to land fill ..... $$100.00 $$

.....

Total Amount Due; $$8151.00 $$

NEXT PAGE →

wsst .083 ..... $$ 676.53 $$

.....

Total Amount Due; $$ 8,827.53 $$

THANK-YOU!! 1-20-08

[redacted] Tax # 602-631-461

THANK-YOU 12-3-07

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	2/11/08	Execute Contract		Consent Agenda	X
Subject:	Pasco Chamber of Commerce	Pass Resolution	X	Public Hearing	
		Pass Ordinance		1st Discussion	
Prepared by:	dgg	Pass Motion		2nd Discussion	
Reviewed by:	lji/lsk	Board Direction		Workshop	

9

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with Pasco Chamber of Commerce. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

This Lease Agreement allows Building 2 to be used on March 18-19, 2008 for a Farm Fair for 5th Grade Students with an attendance of 1,500 students over the two-day event. Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased.

RECOMMENDATION

Move the Pasco Chamber of Commerce Lease Agreement is approved for holding a Farm Fair for 5th Grade Students at the Benton County Fairgrounds.

FISCAL IMPACT

Compensation from the Pasco Chamber of Commerce Farm Fair is $1,150.00.

MOTION

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 PASCO CHAMBER OF COMMERCE

WHEREAS, Pasco Chamber of Commerce will provide Benton County Fairgrounds with $1,150.00 to hold a Farm Fair for 5th Grade Students at the Fairgrounds on March 18-19, 2008; and

WHEREAS, compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased, and per Resolution 04-112, the Lease Agreement must be approved by the Board of Benton County Commissioners **NOW, THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Board authorizes the County Administrator to sign the Pasco Chamber of Commerce Lease Agreement.

Dated this _____ day of _____, 2008

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of County Commissioners of Benton County Washington

Attest: _____

Clerk of the Board

cc: Originals - Fairgrounds, L. Ivey, File

BENTON COUNTY FAIRGROUNDS

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

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2007**

LEASE AGREEMENT NUMBER: **007.08**

EVENT DATE(S): **March 18 and 19, 2008**

NUMBER OF DAYS: **2**

BUILDING(S) / AREA: **Building 2**

LESSEE: **Pasco Chamber of Commerce**

MAILING ADDRESS: **1925 N 20th Ave., Pasco, WA 99301**

CONTACT: **Melissa Neff Hill, Committee Chair**

WORK PHONE: **542-3720** CELLULAR PHONE: **366-4653**

TIME OF THE EVENT: **9:00 am – 3:00 pm each day**

TYPE OF EVENT: **Farm Fair – 5th Grade Students**

ESTIMATED ATTENDANCE: **1500 over the course of the event**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between **Pasco Chamber of Commerce** (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**
   a. FARM FAIR FOR FIFTH GRADE STUDENTS IN BUILDING 2 ON MARCH 18-19, 2008 FROM 9:00 AM UNTIL 3:00 PM EACH DAY WITH AN ESTIMATED ATTENDANCE OF 1500 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 on **March 17, 2008**. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**
   a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of $**1,090.00** (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than **March 3, 2008**. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

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. Camping on the Fairgrounds property is not permitted unless requested by LESSEE in advance when booking the EVENT. Fees, terms and conditions applicable to camping will be furnished on request and attached to a resultant lease when applicable.

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 certifies that no food or beverage concessions will be available at the EVENT and understand that it shall not provide such concession services without the prior written permission of LESSOR.

7. NOVELTIES/SOUVENIRS

a. LESSEE warrants that there will be no novelties, souvenirs or similar merchandise sold at the EVENT.

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. 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.

c. All insurance policies required by this section shall be primary to any insurance policies or policies of self-insurance carried by LESSOR;

d. 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;

e. LESSEE SHALL PROVIDE, NO LATER THAN THIRY (30) DAYS PRIOR TO ANY EVENT COVERED BY THIS AGREEMENT, PROOF OF ALL FORMS OF INSURANCE REQUIRED IN THIS SECTION. THIS PROOF SHALL CONSIST OF A CERTIFICATE OF INSURANCE NAMING "BENTON COUNTY FAIRGROUNDS" AS CERTIFICATE HOLDER, AS WELL AS COPIES OF ALL KEY PROVISIONS, EXCLUSIONS, AND ENDORSEMENTS FROM THE POLICY INCLUDING THE REQUIRED ADDITIONAL INSURED LANGUAGE.

10. PERMITS

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.

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 aright to recoer 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. 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.

14. 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. 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.

15. FAIRGROUNDS CONTACT

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

Jeff	727-5703
Farrin	727-5249
Denise	727-5128

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.

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, **Melissa Neff Hill, Committee Chair** (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind **Pasco Chamber of Commerce** 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.

LESSEE: Pasco Chamber of Commerce

BY: _____
Date: 12-1-07

Name: Melissa Neff Hill
Title: Committee Chair

LESSOR: BENTON COUNTY

BY: _____
David Sparks, County Administrator
or Loretta Smith Kelty, Deputy County Administrator

Date: _____

Approved as to form:

BY: _____
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

Building # 2 $ 320.00 X 2 Days = $ 640.00

BUILDING(S)/AREA TOTAL: $ 640.00

EQUIPMENT RENTAL FEES

Included in Building Rate: Tables and Chairs - All Available Inventory

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	200.00	200.00

REFUSE TOTAL: $ 200.00

NAME: Pasco Chamber of Commerce EVENT DATE: March 18-19, 2008

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	$ 250.00
Building(s)/Area Fees	$ 640.00
Equipment Fees	$ 0
Insurance Fees	$ 0
Security Fees	$ 0
Refuse Disposal Fees	$ 200.00
Other Fees	$ 0

TOTAL FEE: $ 1,150.00

BENTON COUNTY TRAVEL EXPENSE REIMBURSEMENT

RECEIVED
FEB 06 2008
BENTON COUNTY COMMISSIONERS

VENDOR #: 468770

FUND: HUMAN SERVICES #0108-101

IRS PUB 1542
Under www.IRS.GOV/Search for 1542

NAME: Carrie Huie-Pascua

MONTH: Dec. 2007

ADDRESS: [redacted]

NOTE: A receipt for the following must be attached to your form: transportation fares, room charges, parking fees, registration fees, and meals by Commissioners and Department Managers.

MEALS					RECEIPTS REQUIRED				PURPOSE & LOCATION REQUIRED		
DATE	BREAKFAST	LUNCH	DINNER	TOTALS	LODGING	TRANSPORT (AIR/TAXI)	CAR RENTAL/ PARKING	REGISTRATION FEES/OTHER	TRAVEL MILEAGE	PURPOSE	LOCATION
12/03									21	Bi-County Budget Mtg	Pasco
12/05									21	Franklin County	Pasco
12/10									62.5	Benton County	Prosser
12/11									7	SAAC Mtg	Kenn.
12/12									15.5	Governor's Leg. Priorities	Kenn.
12/12									7	Mtg. at CRU	Kenn.
12/13									7	Mtg. at SAAC	Kenn.
12/19									21	Franklin County	Pasco
									Miles: 162		

	Meals	Lodging	Transport	Rental	Other	@ .485/mile (effective 1/22/07)
SUBTOTALS:	$	$	$	$	$	$

TOTAL REIMBURSEMENT REQUEST: $ 78.57

CERTIFICATION

I hereby certify that under penalty of perjury that this is a true and correct claim for necessary expenses incurred by me and that no payments have been received on account thereof.

Signature of Employee: Carrie Huie-Pascua

Job Title: Director of Human Services

Approval: _____ Date: _____

BUDGET CODING

DEPT	BASE SUB	OBJECT	AMOUNT
560	560.110	4301	78.57

5

BENTON COUNTY TRAVEL EXPENSE REIMBURSEMENT

VENDOR #: 468770 **FUND:** HUMAN SERVICES #0108-101

IRS PUB 1542
Under www.IRS.GOV/Search for 1542

NAME: Carrie Huie-Pascua **MONTH:** Jan. 2008

ADDRESS: [redacted]

NOTE: A receipt for the following must be attached to your form: transportation fares, room charges, parking fees, registration fees, and meals by Commissioners and Department Managers.

MEALS					RECEIPTS REQUIRED				PURPOSE & LOCATION REQUIRED		
DATE	BREAKFAST	LUNCH	DINNER	TOTALS	LODGING	TRANSPORT (AIR/TAXI)	CAR RENTAL/ PARKING	REGISTRATION FEES/OTHER	TRAVEL MILEAGE	PURPOSE	LOCATION
1/2								28	21	Franklin Co. Comm.	Pasco
1/2									7	Staff mtg @ SAAC	Kenn.
1/7									21	Mtg w/ Commissioners	Pasco
1/8									62.5	Mtg w/ Commissioner	Prosser
1/9									20.	Continuum of Care	Pasco
1/14									62.5	Benton County	Prosser
1/16									4.0	Mtg. w/ GCBH	Kenn.
1/18									7.0	Staff mtg @ CRC	Kenn.
1/19								231.5	7.0	Staff mtg @ CRC	Kenn.
1/23									7.0	Mtg. w/ Sandy @ SAAC	Kenn
1/24									16.5	Mtg. @ Franklin PUD	Pasco
1/25									9.0	Mtg @ CF & CS	Richland
1/30									15.0	Mtg @ Richland Housing	Richland
					28 @ .485 = 13.58						
					231.5 @ .505 = 116.91						
									Miles 259.5		

	Meals	Lodging	Transport	Rental	Other	@ .485/mile (effective 1/22/07) .505 eff 1/1/08
SUBTOTALS:	$	$	$	$	$	$

TOTAL REIMBURSEMENT REQUEST: $ 130.49

CERTIFICATION

I hereby certify that under penalty of perjury that this is a true and correct claim for necessary expenses incurred by me and that no payments have been received on account thereof.

Signature of Employee: Carrie Huie-Pascua

Job Title: Director of Human Srvcs.

Approval: _____ Date: _____

BUDGET CODING

DEPT	BASE SUB	OBJECT	AMOUNT
560	560.110	4301	130.49

AGENDA ITEM: Consent MEETING DATE: B/C 02-11-08 F/C 02-20-08 SUBJECT: Girl Power Grant from Benton & Franklin Counties Community Public Health and Safety Network Prepared By: Kathryn M. Phillips Reviewed By: Sharon Paradis	TYPE OF ACTION NEEDED Executive Contract xx Pass Resolution xx Pass Ordinance Pass Motion Other	CONSENT AGENDA xx PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER

BACKGROUND INFORMATION

The Benton & Franklin Counties Community Public Health & Safety Networks sent out a request for proposal to examine and reduce the incidence of child abuse and neglect. The Benton-Franklin Counties Juvenile Justice Center was awarded a grant under this RFP to expand the Girl Power program to Phase 2. Girl Power Phase I is a gender responsive program for moderate and high-risk females that have committed a crime and are ordered to a period of Community Supervision. This 10-week program's curriculum develops social skills, obtain resource and personal growth knowledge and increase relationship proficiency. Phase II will increase their self-awareness and self-exploration that will aid them in making better life choices.

SUMMARY

Research shows that most moderate and high-risk females that have committed a crime have been victims of sexual abuse, physical abuse and/or family domestic violence and neglect. Many of the adjudicated females ordered to court supervision lack sufficient coping and social skills that would enable them to overcome their trauma and in turn, make better personal choices. By participating in Phase I and Phase II of Girl Power, these young women increase their chances of becoming productive members of society. The awarded grant is for the period beginning December 17, 2007 and continues through May 31, 2009 with a total monetary award of $9,000.00.

RECOMMENDATION

We recommend that the Boards of County Commissioners authorize their Chairs to sign the Contract for Direct Services with the Benton & Franklin Counties Community Public Health and Safety Network.

FISCAL IMPACT

This is a state-funded grant whereby we are reimbursed for services provided. There is no fiscal impact to the counties.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, Contract for Direct Services with the Benton & Franklin Counties Community Public Health and Safety Network.

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 THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON CONTRACT FOR DIRECT SERVICES BETWEEN THE BENTON-FRANKLIN JUVENILE JUSTICE CENTER AND BENTON & FRANKLIN COUNTIES COMMUNITY PUBLIC HEALTH & SAFETY NETWORKS, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Contract for Direct Services between Benton & Franklin Counties Community Public Health & Safety Networks and Benton-Franklin Juvenile Justice Center be approved as presented for a term commencing December 17, 2007 and terminating on May 31, 2009, **NOW, THEREFORE**

BE IT RESOLVED, that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the Contract for Direct Services.

DATED this 4th day of February 2008.

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

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

ATTEST:

_____
Clerk of the Board

DATED this 20th day of February 2008.

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Chairman Pro Tem

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

ATTEST:

_____
Clerk of the Board

Originals (4): 1-BC Commissioners, 1-FC Commissioners, 1-BFCCPHSN, 1-Juvenile

BENTON & FRANKLIN COUNTIES COMMUNITY PUBLIC HEALTH AND SAFETY NETWORKS

CONTRACT FOR DIRECT SERVICES 2007-2009

PARTIES TO THE CONTRACT:

Benton & Franklin Counties Community Public Health and Safety Networks
401 B North Young Street
Kennewick, WA 99336

And

Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336-2728

The following are attached hereto and incorporated herein by reference: Attachment I, Payment Provisions; Attachment II, Proposed Budget; and Attachment III, Outcome Worksheet. This contract and subsequent work orders are directed by the principles and outcomes described in Chapter 70.190 RCW and the policies of the Washington State Family Policy Council. The Contractor will perform services as described in Attachment III, Outcome Worksheet.

BY THEIR SIGNATURES THE PARTIES AGREE TO THE CONTRACT AND ALL ITS ATTACHMENTS.

Benton-Franklin Counties Juvenile Justice Center, Girl Power

_____	See Signature Page
Date	*Contractor signature*
1-29-08	Judy Schenk
Date	*Judy Schenk, Benton-Franklin Network Coordinator*

Benton-Franklin Counties Juvenile Justice Center, Girl Power Contract is effective on December 17, 2007 and continues through May 31, 2009. One half of the monetary award must be expended by June 30, 2008. This contract may be terminated for failure to meet performance goals and outcome expectations contained herein.

Non Availability of Funds
If amounts sufficient to fund the grant made under this Agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to the Networks for expenditure for this Agreement in any biennial fiscal period, the Network shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If the Networks participation is suspended under this section for a period of one year, the Network's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Networks.

Benton and Franklin Counties Health and Safety Networks
Contract for Direct Services 2007-2009

BY THEIR SIGNATURES THE PARTIES AGREE TO THE CONTRACT AND ALL ITS ATTACHMENTS

Sharon A. Paradis
Benton-Franklin Counties Juvenile Justice Center Administrator

1/25/08
Date

Benton County Approval	Franklin County Approval
Approved as to Form: 1/31/8 Sarah Perry, Civil Deputy Prosecuting Attorney Date By: Name: Claude Oliver Title: Chairman, Benton Board of County Commissioners Date: _____ Attest: Clerk of the Board: _____	Approved as to Form: Agreed Review Performed by Benton County Ryan Verhulp, Civil Deputy Prosecuting Attorney By: Name: Robert E. Koch Title: Chairman, Franklin Board of County Commissioners Date: _____ Attest: Clerk of the Board: _____

Judy Schenk

BENTON & FRANKLIN COUNTIES COMMUNITY PUBLIC HEALTH AND SAFETY NETWORKS

CONTRACT FOR DIRECT SERVICES

Budget: Funding under this agreement shall be as follows:

Contractor: **Benton-Franklin Juvenile Justice Center**
Grant Title: **Benton-Franklin Counties Juvenile Justice Center, Girl Power**

Total Monetary Award: **$9,000.00**

Agency Match: The Contractor shall provide a local match of at least 33%. Details of The exact match breakdown must be kept in Attachment II.

Funding Period: December 17, 2007 through May 31, 2009. One half of the total monetary award must be expended by June 30, 2008.

Allowable Costs:

Funding provided under this agreement may be used for the following:

- Professional and Consultant Services, by a staff member or a subcontracted employee.
- Contractual services, supplies, and materials used for prevention and education activities.
- Travel and meal costs, not to exceed 10% of the total budget.
- Other costs as described in the Contractor's budget of services (Attachment II) and approved by the Network Board

Reporting, Accounting, and Recording Keeping Requirements: The Contractor will be responsible to monitor and provide the Network with documentation of all expenditures in a monthly report format. These expenditures must be in line with the approved budget. A Contractor may not vary budget amounts unless they have written approval for changes by the Network Board. The Contractor must submit records of all expenditures and completed monthly progress report by the third business day of the month following the service delivery. The Network will fund all allowable costs on this reimbursement basis only, subject to approval of the monthly report. Payment to the Contractor will be made within 30 days of the report approval. Checks will only be made to the Contractor and not to any other parties.

Initials:_____Contractor

_____Network

Attachment II

BUDGET

$4,800.00	Personnel Positions: Art facilitators - $97.00 per week for 50 weeks.
$4,150.00	Supplies/Incentives/Food: Phase I – 33 weeks x 10 girls x $5/ea. Phase II – 50 weeks x $5/ea.
$0.00	Other Services/Charges _____
$0.00	Equipment, capital outlay & other non- recurring costs
$0.00	Travel _____
$0.00	Contractual Obligations _____
$0.00	Administrative costs/fees not to exceed 10% _____
$9,000.00	**TOTAL AMOUNT FUNDED**
$2,970.00	A minimum 33% Match Income—Cash or In Kind The 33% match is based on a percentage of juvenile court employees' time and administrative costs
$0.00	Other Funding Sources, Fees, Income, etc.
$11,970.00	**TOTAL PROJECT BUDGET**

Attachment III

Outcome(s) Worksheet

Goal: To reduce the incidence of child abuse and neglect.

Name of Project:	Benton Franklin Counties Juvenile Justice Center Girl Power!
Measurable Result (outcome):	To reduce the incidence of child abuse and neglect by improving protective factors and reducing risk factors among Girl Power! program participants relative to relationships, attitudes, and skills, as measured by the Washington State Juvenile Court Risk Assessment.
How often will progress reports be submitted?	**June 08, Dec. 08, May 09** **Oral report to Network Board**

What activities are you proposing that will affect this outcome?

This project will reduce the incidence of child abuse and neglect in the following ways:

- Teach this high-risk segment of females to develop healthy alternatives to deal with their abuse, direct them toward appropriate resources and teach self-coaching in or that they can avoid their negative behaviors that lead to continued self-harm and criminal activity. Improving the skills and attitudes of program participants to appropriately address their own abuse history will reduce the likelihood that they will be further abused or that they will abuse other vulnerable youth and children.

- Furthermore, by encouraging them to explore their artistic natures, engage in collaboration and teamwork with others and experience a sense of gratification from the art that they create, they will be taking a positive step in the enhancement of self-esteem, improving their relationships and gaining a sense of success. Participation in this program by young women with a history of victimization and negative relationships will serve to strengthen their ability to form positive relationships and improve their self-image, which will decrease the likelihood that program participants will be victims of future abuse or will abuse others.

Specific activities:

- Provide a 10-week ongoing structured gender responsive program to moderate and high risk female juvenile offenders on Community Supervision.

- Provide a regular ongoing weekly artistic class at the Allied Arts for this group to continue with upon completion of the group and past their completion of probation.

What specific indicator/s will you use to indicate program effectiveness?

Protective Factors and Risk Factors relative to relationships, attitudes, and skills, as measured by the Washington State Juvenile Court Risk Assessment.

How will you measure the impact of this project and what data will be collected?

All juveniles referred to participate in Girl Power! have a structured Washington State Juvenile Court Risk Assessment completed. This tool can be used to measure pre and post completion and can provide data as it relates to an increase or decrease in risk and protective factors across 12-domains. We expect that girls who participate in Girl Power! will have a reduction in risk factors relative to their relationships, attitudes, and skills, while also realizing an increase in protective factors. This information can be obtained and measured through comparison of risk and protective factors from pre and post program scores. Anecdotal reports/stories will also be considered in evaluating the impact of this program.

How will you use this information for program improvement?

Each program progress report will include a comparative analysis of Washington State Juvenile Court Risk Assessment data (participant pre and post program scores) and an evaluation of anecdotal information. If assessment data does not show expected outcomes, we will evaluate program components and processes in consideration of best practices and participant feedback. We will then identify and implement improvements to the program that are likely to affect program outcomes.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH DEAN CHUANG, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Dean Chuang for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 07-567; and

WHEREAS, the Board of County Commissioners and Dean Chuang both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Dean Chuang for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 07-567 between Benton County and Dean Chuang, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Dean Chuang; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between **Dean Chuang,** attorney at law, Washington State Bar Association #38095 (Attorney), dba Ajax Law Firm and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008,** and shall continue thereafter through and including the **31st day of December 2012,** 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 1385 George Washington Way, Richland, WA, 99354. Attorney's current local office telephone and fax numbers are (509) 946-7778 and (509) 946-7711, respectively; and Attorney's current office/work e-mail address is dean@ajaxlawfirm.org

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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6818.36 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00**. During calendar years 2011 and 2012, Attorney's monthly compensation hereunder shall be increased by 3.1 percent each year, based on the

calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: Jan 30, 2008

ATTORNEY

38095
Dean Chuang WSBA#

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

K

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH DAWN HICKMAN, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Dawn Hickman for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 05-053; and

WHEREAS, the Board of County Commissioners and Dawn Hickman both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Dawn Hickman for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 05-053 between Benton County and Dawn Hickman, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Dawn Hickman; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between Dawn Hickman, attorney at law, Washington State Bar Association #32597 (Attorney), dba Hickman & Poland, PLLC, and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008,** and shall continue thereafter through and including the **31st day of December 2012,** 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 324 W. Kennewick Avenue, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 582-3291 and (509) 582-6484, respectively; and Attorney's current office/work e-mail address is Dhickman302@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 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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6818.36 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00.** During calendar years 2011 and 2012, Attorney's monthly

compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator

Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 1/30/2008

ATTORNEY

Dawn Hickman

Dawn Hickman WSBA#

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH DAWN HICKMAN, ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT

WHEREAS, the Board of County Commissioners and Dawn Hickman, Attorney at Law, both desire to enter into an agreement effective on January 01, 2008 for legal representation of indigent individuals charged with misdemeanors in 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 Individuals Charged With Misdemeanors In District Court with Dawn Hickman, Attorney at Law for the period January 01, 2008 through December 31, 2012.

Dated this ..... day of ....., 2008.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Original: File
Cc: Rosie Sparks; Dawn Hickman; Jacki Lahtinen; Rosemary Ozuna

JPaxton

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

THIS AGREEMENT is entered into by and between Dawn Hickman, attorney at law, Washington State Bar Association #32597 (Attorney), dba Hickman & Poland, PLLC, and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008**, and shall continue thereafter through and including the **31st day of December 2012**, 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 324 W. Kennewick Avenue, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 582-3291 and (509) 582-6484, respectively; and Attorney's current office/work e-mail address is Dhickman302@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 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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6189.30 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00**. During calendar years 2011 and 2012, Attorney's monthly compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010

annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 1/30/2008

ATTORNEY

Dawn Hickman

Dawn Hickman WSBA#

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH DANIEL KATHREN, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Dawn Hickman for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 05-090; and

WHEREAS, the Board of County Commissioners and Daniel Kathren both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Daniel Kathren for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 05-090 between Benton County and Daniel Kathren, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Daniel Kathren; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between **Daniel Kathren,** attorney at law, Washington State Bar Association #26133, (Attorney) and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008,** and shall continue thereafter through and including the **31st day of December 2012,** 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 1776 Fowler, Suite 6, Richland, WA, 99352. Attorney's current local office telephone and fax numbers are (509) 783-3376 and (509) 783-3206 respectively; and Attorney's current office/work e-mail address is WAATTORNEY@aol.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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6818.36 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00.** During calendar years 2011 and 2012, Attorney's monthly compensation

hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. 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 In addition to the stated monthly compensation, commencing in calendar year 2008hours for that trial day. Commencing in calendar year 2010 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: _____

ATTORNEY

_____

Daniel Kathren WSBA# 26133

Approved as to Content:

_____

Rafael A. Gonzales 1046

Indigent Defense Coordinator

Approved as to Form:

_____

Timothy G. Klashke

Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH GLORIA OCHOA LAWRENCE, ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT

WHEREAS, the Board of County Commissioners and Gloria Ochoa Lawrence, Attorney at Law, both desire to enter into an agreement effective on January 01, 2008 for legal representation of indigent individuals charged with misdemeanors in 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 Individuals Charged With Misdemeanors In District Court with Gloria Ochoa Lawrence, Attorney at Law for the period January 01, 2008 through March 31,2008

Dated this ..... day of ....., 2008.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Original: File
Cc: Rosie Sparks; Gloria Ochoa Lawrence; Jacki Lahtinen; Rosemary Ozuna

JPaxton

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

THIS AGREEMENT is entered into by and between **Gloria Ochoa Lawrence**, attorney at law, Washington State Bar Association #31087 (Attorney), dba Ochoa Lawrence Law Group, and **BENTON COUNTY**, a State of Washington political subdivision (the 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 **January 1, 2008**, and shall continue thereafter through and including the **31st Day of March, 2008**, unless earlier terminated or extended pursuant to the applicable terms and provisions of this Agreement, including but not limited to assumption of a full-time or part-time contract.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 7401 W. Grandridge Boulevard, Suite 102, Kennewick, WA. Attorney's current local office telephone and fax numbers are (509) 734-1345 and (509) 734-4612, respectively; and Attorney's current office/work e-mail address is Gloria.Lawrence@Ochoalawrencelaw.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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during January, February and March of 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

b. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

c. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 1/29/2018

ATTORNEY

Gloria Ochoa Lawrence WSBA# 31087

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH PATRICK D. MCBURNEY JR., ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH CIVIL CONTEMPT IN BENTON COUNTY DISTRICT AND SUPERIOR COURT

WHEREAS, the Board of County Commissioners and Patrick D. McBurney Jr., Attorney at Law, both desire to enter into an agreement effective on January 01, 2008 for legal representation of indigent individuals charged with civil contempt in District and 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 Civil Contempt In District and Superior Court with Patrick D. McBurney Jr., Attorney at Law for the period January 01, 2008 through December 31, 2012.

Dated this ..... day of ....., 2008.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Original: File
Cc: Rosie Sparks; Patrick McBurney Jr.; Jacki Lahtinen; Rosemary Ozuna

JPaxton

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CIVIL CONTEMPT IN BENTON COUNTY DISTRICT COURT AND SUPERIOR COURT

THIS AGREEMENT is entered into by and between **Patrick D. McBurney, Jr.**, attorney at law, Washington State Bar Association #22497 (Attorney), and **BENTON COUNTY**, a State of Washington political subdivision (the County), for and on behalf of the Benton County District and 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 civil contempt who are in jeopardy of punishment or sanction due to civil contempt violations 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 civil contempt violations, and desires to contract with the County to provide legal services to indigent persons subject to civil contempt violations in the Benton County District and/or 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, 2008**, and shall continue thereafter through and including the **31st day of December 2012**, 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 1776 Fowler, Suite 29, Richland, WA, 99352. Attorney's current local office telephone and fax numbers are (509) 374-8996 and (509) 374-1296, respectively; and Attorney's current office/work e-mail address is Procuratio@aol.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 and Superior Court Administrators.

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 and/or 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 civil contempt violations 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 or direct experience in the specific practice areas covered by this agreement; 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 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.** 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 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 and/or 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 matter in which an individual has been charged with civil contempt in Benton County District or Superior Court, is in jeopardy of punishment or sanction by loss of liberty and is otherwise financially unable to obtain legal counsel.

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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a civil contempt violation 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 civil contempt violation 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 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 and/or 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 other than civil contempt;

(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 and/or Superior 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 and/or Superior Court up to a maximum of **sixty (60) 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:

- Each and any appointment to a civil contempt matter in Benton County District and/or Superior Court shall be counted as one-half (1/2) case equivalent and shall receive an additional one-half (1/2) case equivalent for each additional 12-month period during which representation continues.

- ~~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.~~

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 and/or 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 civil contempt violation 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 appearance 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, found to be in contempt, 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 and/or 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 District and/or Superior Court of such possibility for purposes of the 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 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 and/or 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 District and/or Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the 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 and/or Superior Court aware of such development for purposes of the 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 alternatives, review of potential collateral consequences associated with disposition (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of 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. **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 **$1200 per month** (proratable for any partial month), payable on the last business day of the month.

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$1237.20 per month**, (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$1275.55** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month. During calendar years 2011 and 2012, Attorney's monthly compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

d. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, 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 of 60 case equivalents.

13. <u>COSTS AND EXPENSES</u>.

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 and/or 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 appropriate 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 and/or 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 District and/or 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 District and/or Superior Court and/or the District and/or 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.

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 and/or 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 District and/or 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, 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.f. 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 and/or Superior 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 and/or 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 District and/or Superior 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 19a. and 19b. 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 and/or Superior 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 and/or Superior 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 and/or Superior 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 and/or 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 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 and/or Superior 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 and/or 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.

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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 01/29/2008

ATTORNEY

_____

WSBA# 22497

Patrick D McBurney, Jr

Approved as to Content:

_____

Rafael A. Gonzalez

Indigent Defense Coordinator

Approved as to Form:

_____

Timothy G. Klashke

Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH SCOTT NACCARATO, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Scott Naccarato for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 05-120; and

WHEREAS, the Board of County Commissioners and Scott Naccarato both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Scott Naccarato for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 05-120 between Benton County and Scott Naccarato, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Scott Naccarato; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between Scott Naccarato, attorney at law, Washington State Bar Association #20633 (Attorney), and **BENTON COUNTY**, a State of Washington political subdivision (the 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 **January 1, 2008**, and shall continue thereafter through and including the **31st day of December 2012**, 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 7502 W. Deschutes Place, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 783-5551, ext. 309, and (509) 736-1151, respectively; and Attorney's current office/work e-mail address is snacc@3-cities.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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6818.36 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00**. During calendar years 2011 and 2012, Attorney's monthly

compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 1/30/08

ATTORNEY

_____ 2033
Scott Naccarato WSBA#

Approved as to Content:

_____
Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

_____
Timothy G. Klashke
Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH MARY POLAND, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Mary Poland for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 05-041; and

WHEREAS, the Board of County Commissioners and Mary Poland both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Mary Poland for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 05-041 between Benton County and Mary Poland, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Mary Poland; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between Mary S. Poland, attorney at law, Washington State Bar Association #33599 (Attorney), dba Hickman & Poland, PLLC, and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008,** and shall continue thereafter through and including the **31st day of December 2012,** 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 324 W. Kennewick Avenue, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 582-3291 and (509) 582-6484, respectively; and Attorney's current office/work e-mail address is MarySPoland@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 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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6818.36 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00.** During calendar years 2011 and 2012, Attorney's monthly

compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: Jan 30, 2008

ATTORNEY

Mary S. Poland #33599

Approved as to Content:

Rafael A. Gonzales

Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke

Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICE AGREEMENT WITH MARY POLAND, ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT

WHEREAS, the Board of County Commissioners and Mary Poland, Attorney at Law, both desire to enter into an agreement effective on January 01, 2008 for legal representation of indigent individuals charged with misdemeanors in 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 Individuals Charged With Misdemeanors In District Court with Mary Poland, Attorney at Law for the period January 01, 2008 through December 31, 2012.

Dated this ..... day of ....., 2008.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Original: File
Cc: Rosie Sparks; Mary Poland; Jacki Lahtinen; Rosemary Ozuna

JPaxton

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

THIS AGREEMENT is entered into by and between Mary S Poland, attorney at law, Washington State Bar Association #33599 (Attorney), dba Hickman & Poland, PLLC, and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008**, and shall continue thereafter through and including the **31st day of December 2012**, 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 324 W. Kennewick Avenue, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 582-3291 and (509) 582-6484, respectively; and Attorney's current office/work e-mail address is MarySPoland@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 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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. <u>MONTHLY COMPENSATION</u>.

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6189.30 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00**. During calendar years 2011 and 2012, Attorney's monthly compensation hereunder shall be increased by 3.1 percent each year, based on the calendar year 2010

annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 ~~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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: Jan 30, 2008

ATTORNEY

Mary Poland 33599
Mary Poland WSBA#

Approved as to Content:

Rafael A. Gonzalez
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

S

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN ADDENDUM TO PERSONAL SERVICE AGREEMENT WITH NORMA RODRIGUEZ, ATTORNEY AT LAW FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS IN BENTON COUNTY ADULT DRUG COURT

WHEREAS, Resolution 07-133 approved a personal service agreement with Norma Rodriguez, attorney at law, for legal representation of indigent individuals participating in the Benton County Adult Drug Court; and

WHEREAS, the personal service agreement approved by Resolution 07-133 now has expired but the services continue to be required and both the Board of County Commissioners and Norma Rodriguez desire to enter into an addendum to the agreement effective March 1, 2007 through December 31, 2007, to extend the termination date to reflect a term of January 1, 2008, through February 29, 2008, to permit negotiation of a new professional service agreement for legal representation of indigent individuals participating in Benton County Adult Drug Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached addendum to Personal Service Agreement for Legal Representation of Indigent Individuals in Benton County Adult Drug Court for the period January 1, 2008 through February 29, 2008

Dated this ..... day of ....., 2008.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Judy Paxton

Original: File
Cc: Rosie Sparks; Norma Rodriguez; Pat Austin; Rosemary Ozuna

ADDENDUM TO NORMA RODRIGUEZ, ATTORNEY AT LAW, PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS PARTICIPATING IN BENTON COUNTY ADULT DRUG COURT

THIS SPECIFIC AGREEMENT to render additional professional services for indigent persons participating in Benton County Adult Drug Court is entered into by and between Norma Rodriguez, attorney at law, Washington State Bar Association # 22398 (Attorney), and **BENTON COUNTY,** a State of Washington political subdivision (the County), for and on behalf of the Benton County Adult Drug Court.

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

A. The County has the responsibility to provide legal services to indigent persons charged with 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 criminal charges in the Benton County Court system.

C. The Benton County Adult Drug Court is a specific program within the Benton County Court system to offer participants an alternative to full criminal prosecution at the pre-adjudication level.

D. Attorney desires to continue representing those clients under the same terms and conditions as those in the specific Professional Services Agreement now in effect between Attorney and the County to provide such services in the Benton County Adult Drug 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, 2008,** and shall continue thereafter through and including the **29th day of February, 2008,** unless earlier terminated or extended pursuant to the applicable terms and provisions of this Agreement. This agreement is specifically agreed to be and is presented as an addendum to the specific Professional Services Agreement to provide legal representation

to indigent persons in Benton County Adult Drug Court that currently is in effect between the Attorney and the County.

2. **SPECIFIC TERMS AND CONDITIONS OF AGREEMENT.**

a. The general terms and conditions in effect under the specific Professional Services Agreement now in effect between Attorney and the County remain in full force and effect and shall serve as the terms and conditions of this agreement unless specifically stated and agreed otherwise. This agreement specifically incorporates by reference all of the terms and conditions of the previously referenced agreement.

b. Those terms and conditions specifically include but are not limited to those items enumerated in the PSA now in effect.

3. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during January and February of 2008, Attorney's monthly compensation hereunder shall be **$3000 per month** (proratable for any partial month), payable on the last business day of the month.

4. **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.

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

7. **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.

8. **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.

10. **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.

(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

Date: _____

ATTORNEY

_____ 27398

Norma Rodriguez WSBA#

Approved as to Content:

_____

Rafael A. Gonzales
Indigent Defense Coordinator

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH PEYMAN YOUNESI, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH MISDEMEANORS IN BENTON COUNTY DISTRICT COURT, RESCINDING PREVIOUS PERSONAL SERVICE AGREEMENT.

WHEREAS, the Board of County Commissioners previously entered into a Personal Service Agreement with Peyman Younesi for legal representation of indigent individuals charged with misdemeanors in District Court, Resolution 07-760; and

WHEREAS, the Board of County Commissioners and Peyman Younesi both desire to terminate that Personal Service Agreement and enter into a new agreement effective January 01, 2008;

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 Misdemeanors in District Court with Peyman Younesi for the period January 01, 2008 through December 31, 2012;

BE IT FURTHER RESOLVED, that the Personal Service Agreement, Resolution 07-760 between Benton County and Peyman Younesi, previously entered into be and hereby is terminated effective December 31, 2007.

Dated this ..... day of ....., 2008

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: Peyman Younesi; Jacki Lahtinen: Rosie Sparks; Rosemary Ozua

J.Paxton

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

THIS AGREEMENT is entered into by and between **Peyman Younesi,** attorney at law, Washington State Bar Association #36226, (Attorney) dba Peyman Younesi, Esq., PLLC, and **BENTON COUNTY,** a State of Washington political subdivision (the 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 **January 1, 2008**, and shall continue thereafter through and including the **31st day of December 2012**, 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 1030 North Center Parkway, Kennewick, WA, 99336. Attorney's current local office telephone and fax numbers are (509) 396-0241 and (509) 396-0241, respectively; and Attorney's current office/work e-mail address is PY411@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 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 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.** 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 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. 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.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a 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 crime or 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 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 **four hundred (400) 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 misdemeanor appointment shall be counted as one (1) 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. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during February and March of 2008, Attorney's monthly compensation hereunder shall be **$6083.33 per month** (proratable for any partial month), payable on the last business day of the month.

b. During the balance of calendar year 2008, Attorney's monthly compensation hereunder shall be **$5433.33 per month** (proratable for any partial month), payable on the last business day of the month.

c. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6000.00 per month**, (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$72,000.**

d. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6186.00** per month, an increase of 3.1 percent (proratable for any partial month), and payable on the last business day of the month, an annualized compensation of **$74,232.00**. During calendar years 2011 and 2012, Attorney's monthly compensation hereunder shall be increased by 3.1 percent each year, based on the

calendar year 2010 annualized compensation (proratable for any partial month) and payable on the last business day of the month.

e. In addition to the stated monthly compensation, commencing in calendar year 2008, 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 and continuing through calendar year 2012, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial.

f. 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 of 400 case equivalents.

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 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, 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.f. 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 19a. and 19b. 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

Rafael A. Gonzales
Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. 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 employed an 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

Date: 1/30/08

ATTORNEY

36216

Peyman Younesi WSBA#

Approved as to Content:

Rafael A. Gonzales
Indigent Defense Coordinator

Approved as to Form:

Timothy G. Klashke
Attorney at Law

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WA

IN THE MATTER OF AWARD AND CONTRACTING WITH QUALITY BACKHOE SERVICES FOR EXCAVATION SERVICES LOCATED AT HORN RAPIDS PARK

WHEREAS, resolution 08-131 allows public works contracts for services or materials involving less than ten thousand dollars ($10,000), advertising and competitive bidding may be dispensed with, and such contracts may be entered into after direct negotiation; and

WHEREAS, Quality Backhoe Services, Pasco, WA provided the Parks Manager a quote in the amount of $9,963.60 including WSST for excavation of existing material for wet land area; all material excavated to be relocated on site at Horn Rapids Park; and

WHEREAS, the Parks Manager has reviewed the quote and recommends award of said services to Quality Backhoe Services; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board hereby awards Quality Backhoe Services, Pasco, WA the contract for excavation services located at Horn Rapids Park in the amount of $9,963.60 with an amount not to exceed $10,000 including WSST; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the contract attached hereto for said services.

Dated this _____ day of _____, 2008

_____
Chairman of the Board

_____
Member

Attest:_____
Clerk of the board

_____
Member

Constituting the Board of County Commissioners of Benton County,

cc: Auditor; R. Ozuna; parks (A. Fyall), Quality Backhoe; File

Small

CONSTRUCTION AGREEMENT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and Quality Backhoe Services, with it principal mailing address at Post Office Box 3001, Pasco, Washington 99302 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of this agreement and the following exhibits, which are incorporated herein by this reference

A. Exhibit A - Proposal/Scope of Work
B. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The Contractor shall commence work on a date to be specified in the written Notice to Proceed issued by the Owner and shall be complete upon approval of acceptance by the Board of Benton County Commissioners via resolution.

3. SERVICES PROVIDED

CONTRACTOR shall, utilizing its bona fide employees, provide the service and equipment necessary for excavation of soil in an existing depression, and the repositioning of said excavated soil at Horn Rapids Park in accordance with the Scope of Work presented in Exhibit A. Work will include excavation of an area approximately 100-feet long and 60-feet wide for habitat enhancements; then relocation of the excavated soil to another nearby location where the fill is needed for a separate park project.

4. CONTRACT REPRESENTATIVES

The parties' representatives are as follows:

a. For CONTRACTOR: Luis Sanchez
Quality Backhoe Services
Post Office Box 3001
Pasco, Washington 99302
(509)545-0242

b. For COUNTY: Adam J. Fyall
Benton County Facilities and Parks
7122 West Okanogan Place, Bldg A
Kennewick, Washington 99336
(509)736-3053

A party may change its representative by providing prompt written notice to the other party.

5. COMPENSATION

The CONTRACTOR shall be paid in accordance with the proposal provided in Exhibit A attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is nine thousand nine hundred sixty three dollars and sixty cents ($9,963.60) including W.S.S.T. Total amount payable, including acceptable overages, incidentals and other unanticipated costs shall not exceed ten thousand dollars and zero cents, ($10,000.00) including W.S.S.T. **Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative.** At the completion of the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment and no release of retainage will be made until such affidavit is provided.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date of invoice, less amounts paid on previous invoices. Each invoice shall cover all work performed for the COUNTY during the billing period. At such time as the first invoice is submitted, or any time thereto, CONTRACTOR, as well as all sub-contractors and sub-sub-contractors which are employed by the CONTRACTOR for the work contemplated by this agreement, shall submit a Statement of Intent to Pay Prevailing Wages in the form and manner required by RCW 39.12.040 to COUNTY'S representative. The CONTRACTOR shall not be paid for services rendered under this Contract until a Statement of Intent to Pay Prevailing Wages has been executed and submitted as required above by all required parties and the services have been performed to the COUNTY's satisfaction. The COUNTY shall authorize payment when the work billed is accepted

by the COUNTY; and will remit payment for the accepted work within thirty (30) days after receiving the invoice. PROVIDED that for each invoiced and approved progress payment, COUNTY shall withhold from the earned portion of that payment (ie excluding sales or other tax) 5% as retainage pursuant to RCW 60.28.010, subject to all further provisions of the remainder of RCW chapter 60.28. Within ten (10) days following the execution of this agreement, CONTRACTOR shall submit written notice stating its election of the method of holding of the moneys retained, pursuant to RCW 60.28.010(2). If such written election is not received, then the COUNTY may choose any of the allowed manners of holding the moneys allowed by RCW 60.28.010(2)(a)-(c)."

7. DEFECTS

In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract or where work is substandard, the CONTRACTOR shall make any and all necessary corrections without additional compensation. Compensation may be withheld until CONTRACTOR makes such corrections. All work done by the CONTRACTOR shall be in a workmanlike manner and shall meet or exceed applicable standards generally accepted in the construction industry. The Contractor shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

8. AMENDMENT AND CHANGES IN WORK

No amendment, modification or renewal of this contract shall be effective, unless set forth in a written Amendment signed by both parties.

9. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons, damage to property or business, or any other source of liability whatsoever, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

FURTHER PROVIDED that if liability is caused by or results from the concurrent negligence of a) CONTRACTOR or CONTRACTOR'S agents or employees, and b) COUNTY or COUNTY'S

agents or employees, then the indemnification contemplated in this section shall only apply to the extent of CONTRACTOR'S negligence.

b. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, its employees, agents or subcontractors.

c. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, 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 of type of damages, compensation, or benefits payable by or for the CONTRACTOR 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 CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR 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 CONTRACTOR makes with any subcontractor or agent performing work hereunder.

10. INSURANCE

The CONTRACTOR shall obtain and maintain continuously, the following insurance:

a. Workers Compensation: CONTRACTOR shall comply with all Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance.

b. Commercial General Liability Insurance: CONTRACTOR shall maintain commercial general liability coverage for bodily injury, sickness, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars ($2,000,000) per project. The policy shall not contain exclusions or limitations applicable to any activities undertaken, or materials used by CONTRACTOR in

fulfilling this agreement. CONTRACTOR shall cause COUNTY to be added as an additional insured and the policy shall state that it cannot be canceled except with 30 days written notice to COUNTY. This policy shall be primary to any of COUNTY'S other sources of insurance including self-insurance through a risk pool. CONTRACTOR shall provide certificate of such insurance, including the endorsements specified in this paragraph, to County's representative prior to start of work.

c. Automobile Liability: The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out of "Any Auto". CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

d. Other Insurance Provisions:

1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

2) The COUNTY, its officers, officials, employees and agents shall be named as additional insured on all required insurance policies, except for any required automobile liability policy.

3) The CONTRACTORS'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured, and specifically shall not exclude coverage for any indemnification as set out in section 9 above.

4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6) All subcontractors shall comply with the same insurance requirements as are required of the CONTRACTOR as set forth in Section 10(a) through 10(e). Additionally, the insurance policies required of subcontractors shall list the COUNTY (and all of its elected officials, employees and agents) as well as the CONTRACTOR as additional insureds, and the subcontractors shall provide certificates listing these endorsements to the COUNTY and

the CONTRACTOR prior to the commencement of any work by the subcontractor.

7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be indication of exposure nor are they limitations on indemnification.

8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. Any insurance coverage required of CONTRACTOR may not be written as a "claims made" policy.

9) Verification of Coverage and Acceptability of Insurers: All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing in advance of commencement of work by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

10) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificate of insurance of a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision. The endorsement pages of the policy showing the COUNTY as an additional insured shall also be furnished to the COUNTY within ten (10) days after effective date of this agreement.

11) Certificates of insurance shall name "Benton County" as additional insured. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

12) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation

Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

13) All written notices and notice of cancellation or change of required insurance coverage shall be mailed to the COUNTY at the following address:

Lisa Small, Contract Administration
Benton County Commissioners
Post Office Box 190
Prosser, Washington 99350

14) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status, as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, contractor must describe its financial condition and the self-insured funding mechanism.

11. PERFORMANCE BOND

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to 100% of the contract sum as security for the performance by the contractor of this Agreement and payment of all the persons performing labor and supplying materials pursuant to this agreement. PROVIDED that CONTRACTOR may elect, in lieu of the bond, to allow COUNTY to retain 50% of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28, RCW, whichever is later. Either proof of the performance bond, or written notification of the CONTRACTOR'S desire to elect the alternative to the bond described above, must be received by COUNTY within ten (10) days following the execution of this agreement.

12. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in

performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

b. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Article 6, Invoicing. Nothing in this section shall limit the rights of the COUNTY pursuant to this agreement or by law.

c. In the event of termination as contemplated above, CONTRACTOR and all of its sub-contractors or sub-sub-contractors shall remove all of their tools and equipment by the close of business on the effective date as set out above. PROVIDED that, no tools or equipment purchased specifically for this project, and paid for, or billed to the COUNTY, and no portion of any partially or fully completed structure or curtilage may be damaged, defaced, disassembled or destroyed in the process of removing tools or equipment belonging to CONTRACTOR.

13. COMPLIANCE WITH LAWS AND PREVAILING WAGE

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B shall be paid to all employees, agents, sub-contractors or sub-sub-contractors who do any work for CONTRACTOR on this project. CONTRACTOR shall ensure that all sub-contractors or sub-sub-contractors sign an agreement to pay these same wages, and that such a signed agreement is submitted to COUNTY prior to sub-contractor commencing any work on the project. This schedule is duplicated from the Washington State Department of Labor & Industries website, is provided for informational purposes only and COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedules contains any such ambiguities or inaccuracies then CONTRACTOR is responsible for contact the Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this contract and relevant law to pay prevailing wages.

14. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

15. DISPUTES

Disputes over the CONTRACTOR's performance will be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief. Venue for any such judicial proceeding shall be in Benton County, Washington.

16. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

The CONTRACTOR may not assign or delegate its duties as general contractor for the work covered by this agreement without written consent from COUNTY. However, CONTRACTOR is permitted to, using all reasonable care and due diligence, select appropriately skilled sub-contractors and sub-sub-contractors to assist it in completing the work covered by this agreement. If CONTRACTOR chooses to use the services or sub-contractors or sub-sub-contractors, then prior to such sub-contractors or sub-sub-contractors commencing any work, CONTRACTOR shall provide COUNTY with the names of such sub-contractor or sub-sub-contractors. COUNTY, in its sole discretion, may reasonably object to the use of any given sub-contractor or sub-sub-contractor and, if notice is given in writing to CONTRACTOR of such objection within ten (10) days of receipt of CONTRACTOR's intent to utilize the sub-contractor or sub-sub-contractor's services, then CONTRACTOR shall promptly replace the sub-contractor or sub-sub-contractor with another appropriately skilled sub-contractor or sub-sub-contractor.

17. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

18. NOTICES

Any notices shall be effective if personally served upon the

other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Article 4 above. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be effective three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

19. **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and is effective on the last date signed.

The parties specifically certify that the provisions contained within paragraph 9(c) are mutually negotiated.

BENTON COUNTY	**QUALITY BACKHOE SERVICES**
Claude Oliver, Chairman **Benton County Commissioner**	**Luis Sanchez**
Dated:	Dated:

Approved as to Form:

Deputy Prosecuting Attorney

Original: File - Lisa Small
cc: Auditor, Prosecutor (R. Ozuna), Parks (A.J. Fyall), Quality Backhoe Services

RECEIVED
JAN 24 2008
BENTON COUNTY
COMMISSIONERS

QUALITY BACKHOE SERVICES

P.O. Box 3001
Pasco, WA 99302
(509) 545-0242
Office / Fax

PROPOSAL # 052

DATE : 11 - 6 - 07

ATT' N: ADAM FILE

FROM: LUIS SANCHEZ

LOCATION: HORN RAPID PARK (WET LAND)

RE: ECVAVATION

SCOPE OF WORK:

EXCAVATON OF EXISTING MATERIAL FOR WET LAND AREA. EXCAVATION TO CONSIST OF AN AREA APPROX 100' LONG X 60' WIDE AND APPROX 5' IN DEPTH (JUST ABOVE WET EXISTING MATERIAL). ALL MATERIAL EXCAVATED TO BE RELOCATED ON SITE. ALL LABOR EQUIPMENT COST AND TAX ARE IN THIS PRICE.

TOTAL $ 9,200.00
TAX $ 763.60

GRAND TOTAL $ 9,963.60

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: February 11, 2008 **ubject:** Line Item Transfer **Prepared by:** Melina Wenner	**Execute Contract** **Pass Resolution** X **Pass Ordinance** **Pass Motion** **Other**	**Consent Agenda** X **Public Hearing** **1st Discussion** **2nd Discussion** **Other**

BACKGROUND INFORMATION

Please see attached Exhibit A.

SUMMARY

Same as above

RECOMMENDATION

Pass resolution.

FISCAL IMPACT

None

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN THE WORKERS' COMPENSATION BUDGET IN THE AMOUNT OF $500.

BE IT RESOLVED by the Board of Benton County Commissioners, that $500.00 shall be transferred as more clearly defined in Exhibit A attached hereto.

Dated this ..... day of ..... , 20 .....

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

PERFECT PRINTING

BENTON COUNTY
LINE ITEM TRANSFERS

EXHIBIT A
Resolution No.

DEPARTMENT: PERSONNEL **DEPARTMENT NO.** 127

FUND NAME: Work Comp **FUND NO.** 0503-101

TRANSFER FROM: **TRANSFER TO:**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
517.670	1133	Office Ast. II	500.00	517.670	1175	Temporary Help	500.00

EXPLANATION:

Please transfer funds for a temporary clerical support position in Personnel.

Prepared by: Melina Wenner **Date** February 6, 2008

Approved ☐

Denied ☐ **Date** _____

Return to:
Benton County Public Works
P.O. Box 1001
Prosser, WA 99350

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: THE VACATION AND ABANDONMENT OF A PORTION OF COUNTY ROAD RIGHT OF WAY OF EAST 45th AVENUE AND SOUTH OAK STREET, CE 1902 VAC, LOCATED IN SECTION 18, TOWNSHIP 8 NORTH, RANGE 30 EAST, W.M.

WHEREAS, by Resolution 07-729, a public hearing was scheduled for November 5, 2007 to consider the vacation and abandonment a portion of East 45th Avenue lying westerly South Oak Street and northerly of existing East 45th Avenue, requested by Jim Katzaroff, and

WHEREAS, RCW 36.87.050 requires that notice of the public hearing for the vacation and abandonment of right of way be posted in the field a minimum of twenty days prior to the public hearing, and

WHEREAS, the requirements of RCW 36.87.050 were not met,

WHEREAS, the public hearing was rescheduled for November 26, 2007 at which time the hearing was opened for testimony and it was reported that because the right of way adjacent Parcel No. 1-1880-400-0013-001 had been purchased as fee simple, the normal vacation and abandonment methods would not apply, that if the Board voted to vacate the right of way, the right of way would become a parcel of land that would need to be considered surplus property and sold, was continued to December 17, 2007 at which time Public Works was instructed to meet with the City of Kennewick for additional input on the proposed vacation, and

WHEREAS, the County Engineer reported that they had met with the City of Kennewick Municipal Services Executive Director Russ Burtner, Public Works Director Peter Beaudry and, Jim Katzaroff and in that meeting had compiled five alternate recommendations to present to the Board for final consideration; and

WHEREAS, the five alternates were:

1. Vacate all the right of way except the South and East 30 feet of right of way, enter into negotiations with Mr. Katzaroff to sell vacated right of way;

5. The public will be benefited by the vacation and abandonment of the subject right of way and it does not appear to be in the public interest to preserve the subject right of way for the County Road System of the future; NOW, THEREFORE

BE IT RESOLVED that the following described right of way be vacated and abandoned:

A parcel of land in the Southeast ¼ of the Southeast ¼ of Section 18, Township 8 North, Range 30 East, W.M., more particularly described as follows:

Beginning at the Southeast corner of said Section 18, said point being the True Point of Beginning, thence South 89° 53' West along the South line of said Section 18 a distance of 725 feet; thence North 00° 07' West, 150.00 feet; thence North 89° 53' East, 155.00 feet; thence North 00° 07' West, 30.00 feet; thence North 89° 53' East, 170.00 feet; thence South 00° 07' East, 20.00 feet; thence North 89° 53' East, 351.53 feet; thence North 00° 26' East, 291.46 feet to a point on the right of way line of the Columbia Irrigation District canal; thence South 42° 33' 30" East along said South line, 73.33 feet to a point on the East line of said Section 18; thence South 00° 26' West along said East line 397.35 feet to the point of beginning.

Except the South 70.00 feet and the East 50.00 feet thereof.

Said strip of land containing 1.43 acres more or less.

Dated this _____ day of _____, 2008.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

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

RBD:LSS

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF BENTON COUNTY SOLID WASTE MANAGEMENT RE: ACCEPTANCE OF THE BENTON COUNTY COORDINATED PREVENTION GRANT OFFER 2008 AND 2009

WHEREAS, the Washington State Department of Ecology has developed a Coordinated Prevention Grant for 2008 and 2009 to further Moderate Risk Waste Management and Solid Waste Programs; and

WHEREAS, the Benton County Engineer recommends acceptance of the Grant offer, G0800354, which includes participation from the cities within Benton County; NOW, THEREFORE,

BE IT RESOLVED that the Chairman of the Board of County Commissioners is hereby authorized to sign said Grant offer and the Procurement Certification Form on behalf of Benton County.

Dated this 11th day of February, 2008.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

RBD:KM:dlh

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

BENTON COUNTY

Grant No: G0800354, Coordinated Prevention Grant Regular Cycle Agreement.

This is a binding agreement entered into by and between the State of Washington Department of Ecology, hereinafter referred to as ECOLOGY, and Benton County, hereinafter referred to as the RECIPIENT, to carry the activities described herein.

JURISDICTION:	Benton County
MAILING ADDRESS:	P.O. Box 1001
CITY, STATE, ZIP:	Prosser, WA 99350-0954
RECIPIENT GRANT COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us
RECIPIENT BILLING/INVOICE COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us
ECOLOGY GRANT OFFICER:	Darlene M. Frye
TELEPHONE:	509-457-7123
FAX:	509-575-2809
E-MAIL:	dfry461@ecy.wa.gov
FUNDING SOURCE	Local Toxics Control Account
MAXIMUM ELIGIBLE COST	$ 526,293.00
STATE GRANT SHARE	$ 394,720.00
LOCAL SHARE	$ 131,573.00
STATE MAXIMUM GRANT PERCENT	75 %
FEDERAL TAX IDENTIFICATION NO.	91-6001296

For the purpose of this agreement, the RECIPIENT will be allowed to match the state grant share with cash and interlocal in-kind costs in accordance with application instructions.

This agreement is effective on **January 1, 2008**. Any work performed prior to the effective date of this agreement without prior written authorization and specified in the Scope of Work will be at the sole expense and risk of the RECIPIENT. This agreement shall expire no later than **December 31, 2009**.

REGULAR CYCLE SCOPE OF WORK

The project(s) set forth below summarize the RECIPIENT's budget(s) tracked by category, goals and expected outcomes, activities with timeline, method of evaluation, and estimated project cost.* The estimated project cost is for grant officer information only; it will not be used for budget tracking purposes.

Recipient Responsibilities: The RECIPIENT is responsible for implementing activities identified in the local Comprehensive Solid Waste Management Plan and the Hazardous Waste Management Plan.

A. CATEGORY: Moderate Risk Waste

TOTAL CATEGORY COST **CPG-BASE:** $ 447,349.00

1. PROJECT TITLE: Moderate Risk Waste Operations

Summary Description: This project will continue to provide the residents and businesses of Benton County with household hazardous waste (HHW) and small quantity generator (SQG) hazardous waste collection services. Materials collected at the fixed moderate risk waste (MRW) facility located at the Horn Rapids Landfill in Richland include paints, oils, thinners, anti-freeze, propane tanks, batteries, pesticides, and all other household hazardous wastes. The MRW facility is open seven days each week. Residents of Benton County can also deposit latex paints, waste oil, anti-freeze, and car batteries at satellite facilities located in Prosser, Benton City, and Kennewick. This service is provided free to all county residents.

Goal Statement: The collection and proper disposal of HHW and SQG hazardous wastes will remove these toxic substances from the solid waste stream and wastewater collections systems or from being poured on the ground. Proper disposal of MRW will help ensure safe drinking water and health environmental conditions for future generations.

Outcome Statement: This program will divert over 210,000 pounds of MRW per year. Approximately 4,400 residents deposited HHW at the Richland MRW facility this past year. The RECIPIENT anticipates that number to increase by a 1% to 2%.

Work Plan and Activities with Timeline:

Activity	Timeline
1. Operate the MRW facility located in Richland.	On-going
2. Conduct four mobile household hazardous waste collection events each year.	Spring 2008 and 2009
3. Collect and transport latex paints, waste oil, anti-freeze and car batteries collected at the satellite facilities to the MRW facility in Richland for storage and final disposition.	On-going

Method of Evaluation: The weight of MRW processed will be measured and the number of residents using the facility will be tracked.

* **Estimated Project Cost**: $ 473,875.00

B. CATEGORY: Waste Reduction and Recycling

TOTAL CATEGORY COST **CPG-BASE:** $ 78,944.00

1. **PROJECT TITLE:** Waste Reduction, Reuse, and Recycling

Summary Description: The RECIPIENT will continue to administer solid waste recycling and reuse programs including weekly pick-up for a drop box program that collects residential and business paper and cardboard, aluminum, motor oil, car batteries, and anti-freeze; and conduct bi-annual composting clinics; demolition and reuse projects; public woody yardwaste chipping events; and public outreach.

Consistent with the updated Comprehensive Solid Waste Management Plan, the RECIPIENT will also begin implementing the recommendation to focus on organics management, public outreach, and recycling electronics, construction and demolition wastes, tires, plastics, and paper. The goal is to emphasize the concept that wastes can be turned into economic opportunities. The RECIPIENT will work with local agencies, port districts, businesses, universities, and the private sector to hold seminars to discuss how to develop these economic opportunities. The RECIPIENT will facilitate five seminars over the two-year period by finding speakers with expertise on processing and marketing electronic waste, tires, plastics, car batteries, and paper. Best management practices for the use of organic wastes will be studied.

As of January 1, 2009, when implementation of the *Electronics Products Recycling Law (70.95N) begins, collection and processing costs of items covered under the law will not be eligible for CPG reimbursement. The only costs that will be eligible for CPG reimbursement related to electronics include: Public information and involvement, expansion of e-waste recycling beyond covered electronic products and staff time for technical assistance, coordination and collaboration.*

Goal Statement: The goal of this project is to reduce the quantity of waste materials going to the landfill by providing opportunities for the citizens of the county to recycle and reuse these materials, and by looking for and promoting new economic opportunities to reuse and recycle solid wastes.

Outcome Statement: The RECIPIENT anticipates that public outreach efforts to promote established recycling programs will result in more countywide public participation and a 3% increase in Benton County's recycling rate. The seminars will educate the public on product recovery and recycling with the hope that the seminars will stimulate interest in developing local business opportunities.

Work Plan and Activities with Timeline:

Activity	Timeline
1. Organize and facilitate a seminar on product recovery and recycling for each of the following waste streams: electronic waste, tires, plastics, car batteries, and paper.	On-going

2. Operate the drop box program that collects residential and business paper and cardboard, aluminum, motor oil, car batteries, and anti-freeze.	On-going weekly collection.
3. Manage the woody yardwaste collection and chipping program.	On-going year round
4. Participate in the bi-annual composting clinics that furnish participants with a free composting bin and workbook.	March and October 2008 and 2009
5. Participate in Earth Day events which include yardwaste cleanup and woody yardwaste chipping.	April 2008 and 2009
6. Prioritize and initiate new projects based on recommendations in the 2006 Comprehensive Solid Waste Management Plan and as advised by the Solid Waste Advisory Committee.	On-going

Method of Evaluation: Recyclable and reusable materials collected will be measured by weight and compared to previous years. The effectiveness of seminars and other public outreach events will be evaluated through conversations with participants and questionnaires.

*** Estimated Project Cost**: $ 335,208.00

COMMUNICATION

ECOLOGY's regional grant officer (Darlene M. Frye) will contact the RECIPIENT grant coordinator as needed to monitor progress toward goals and check consistency with Work Plans and Timelines. It is the responsibility of the RECIPIENT to contact his or her grant officer with any other questions or concerns regarding the grant. Grant officers are available to provide technical assistance at any time during the grant cycle.

BILLING AND REPORTING

A payment request consists of Forms A-19, B2, C2 and a progress report. Unless stated otherwise in this agreement, the RECIPIENT must submit a payment request (with a progress report) at least quarterly, but no more often than once per month. The RECIPIENT has elected to budget by category and therefore shall itemize by category element on the B2 and C2 forms and as laid out in the following CPG Budget Table. Itemized costs in payment requests must be by category.

ECOLOGY may require additional voucher support documentation be submitted with each payment request. The RECIPIENT has elected to submit only the Ecology requested supporting documentation with each payment request and agrees to be subject to a biennial visit by their Ecology grant officer to verify the required records are available in accordance with the requirements outlined in the most recent revision of Administrative Requirements for Recipients of Ecology Grants and Loans and make these documents available to ECOLOGY staff upon request.

The RECIPIENT must also complete a Final Performance Analysis (FPA) form online through the Information Clearinghouse. The FPA must be submitted before ECOLOGY can process your final payment request. The final payment request and the FPA are due no later than **February 15, 2010** for Regular Cycle grants.

REGULAR CYCLE CPG BUDGET

CATEGORY	TOTAL CATEGORY COST: CPG BASE (174/I17)
1. Moderate Risk Waste	$ 447,349.00
2. Waste Reduction and Recycling	$ 78,944.00
TOTAL MAXIMUM ELIGIBLE COST	$ 526,293.00

FUND SOURCE: CPG BASE (174/I17)

	MAXIMUM ELIGIBLE COST:	$ 526,293.00
FUND	**GRANT PERCENT (%)**	**STATE GRANT SHARE**
Local Toxics Control Account (LTCA)	75 %	$ 394,720.00
MATCH REQUIREMENT	**MATCH PERCENT (%)**	**LOCAL SHARE**
Cash Match or Interlocal Costs	25 %	$ 131,573.00

ADDITIONAL BUDGET CONDITIONS

1. Overhead is eligible; the RECIPIENT may charge 25 percent of salaries and benefits for time devoted specifically to projects outlined in this agreement.

2. The RECIPIENT contact for billing and invoice questions is:

RECIPIENT BILLING/INVOICE COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us

3. Grant payments should be made payable to: Benton County Treasurer

4. Grant payments should be mailed to this address:

JURISDICTION:	Benton County
ATTN:	Benton County Treasurer
MAILING ADDRESS:	P.O. Box 110
CITY, STATE, ZIP:	Prosser, WA 99350-0110

SPECIAL TERMS AND CONDITIONS

A. INTERLOCAL AGREEMENTS

If parties other than the RECIPIENT are contributing to the local share of project costs, memoranda of understanding or other written agreements confirming the contribution must be negotiated. These agreements must specify the exact work to be accomplished and be signed by all parties contributing to the local match of this project. Copies of these agreements shall be submitted to ECOLOGY.

B. PROCUREMENT AND CONTRACTS

1. The RECIPIENT shall follow their standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must comply with the "Standards for Competitive Solicitation", found in the most recent revision of Administrative Requirements for Ecology Grants and Loans.

2. Following execution, at the request of ECOLOGY, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to ECOLOGY.

3. The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall notify ECOLOGY if it used contracts entered into prior to the execution of the grant agreement for performance of grant funded activities.

C. SEPA COMPLIANCE

To ensure that environmental values are considered by the state and local government officials when making decisions, the RECIPIENT shall comply with the provisions of the State Environmental Policy Act (SEPA), Chapter 41.23C RCW, and the SEPA Rules, Chapter 197-11 WAC. Copies of the SEPA documents shall be sent to:

ECOLOGY's Environmental Review and Transportation Section
P.O. Box 47703
Olympia, WA 98504-7703

D. WETLANDS PROTECTION

To comply with the directive of Executive Order 90-04, Protection of Wetlands, all local governments are requested and encouraged to make all of their actions consistent with the intent of this executive order; specifically, (1) to avoid, to the extent possible, adverse impacts associated with the destruction or modification of wetlands, and (2) to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

E. FAILURE TO COMMENCE WORK

ECOLOGY reserves that right to terminate this agreement in the event the RECIPIENT fails to commence work on any of the projects funded herein within six (6) months after the effective date.

F. PROJECT INCOME

Any income directly generated as a result of the activities funded by this grant shall be reported as a credit against the expenses of that activity, as required by ECOLOGY's Administrative Requirements for Ecology Grants and Loans.

G. GRANT REPORTING

1. The RECIPIENT, in conjunction with submission of payment requests, or at the request of the grant officer, shall prepare Progress Reports and submit them to ECOLOGY. The RECIPIENT must also complete and submit a Final Performance Analysis (FPA).

2. The RECIPIENT must submit all backup documentation paperwork along with each payment request or maintain all backup documentation in an accessible location and be subject to biennial documentation check visits by Ecology grant officers.

H. PROMOTIONAL AND EDUCATIONAL MATERIALS

A copy of all promotional and educational materials developed as part of this agreement shall be submitted electronically to ECOLOGY concurrent with public distribution. ECOLOGY shall have the right to use any printed materials developed as part of this agreement in any manner ECOLOGY deems appropriate. The Washington State Department of Ecology will be acknowledged for providing funding in all published material and oral presentations that result from this agreement.

I. AMENDMENTS AND MODIFICATIONS

No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made part of this agreement; *except* a letter of amendment will suffice to redistribute the budget without increasing the total maximum eligible cost or to change ECOLOGY's grant officer or the RECIPIENT's grant coordinator or to extend the period of performance as set forth in this grant agreement.

J. MINORITY AND WOMEN'S BUSINESS PARTICIPATION *(It is not mandatory for the RECIPIENT to abide by Part J of the Special Terms and Conditions; however, it is highly encouraged.)*

The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

In the absence of more stringent goals established by the RECIPIENT's jurisdiction, the RECIPIENT agrees to utilize ECOLOGY's goals for minority- and women-owned business participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE
Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

No contract award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of these goals is encouraged, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications may take the following affirmative steps in any procurement initiated after the effective date of this agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.

3. Divide the total requirements, when economically feasible, into smaller projects or quantities to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT may report to ECOLOGY payments made to qualified firms at the time of submitting each invoice and on forms provided by ECOLOGY; the information should include:

- Name and State OMWBE certification number of any qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
- The total dollar amount paid to qualified firms under this invoice.

K. ALL WRITINGS CONTAINED HEREIN

This agreement, the "General Terms and Conditions", and ECOLOGY's Administrative Requirements for Ecology Grants and Loans, contain the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereby execute this Grant Agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

_____ Date

Acting Program Manager
Solid Waste and Financial Assistance

APPROVED AS TO FORM ONLY
Assistant Attorney General

BENTON COUNTY

_____
Authorized Official Date

_____
Print Name of Authorized Official

_____
Title

PROCUREMENT CERTIFICATION FORM

Recipient: Benton County

Grant Name: Coordinated Prevention Grant

Grant No.: G0800354

The undersigned, on behalf of the Recipient, certifies that the Recipient:

(check and complete one of the following)

___ **will follow Recipient's own adopted procurement procedures and applicable state law in procuring grant-related public works contracts, professional and personal services contracts, and purchase agreements. The procurement procedures were adopted _____(*date*) by _____ (*adopting authority*) and are recorded in _____ (*document name*).**

___ **having no applicable, adopted procurement procedures, will follow the Standards for Competitive Solicitation found in the Administrative Requirements for Ecology Grants and Loans, WDOE 91-18 (Revised October 2005) (the "Yellow Book"), and applicable state laws in procuring grant-related public works contracts, professional and personal services contracts, and purchase agreements.**

_____

AUTHORIZED SIGNATURE **DATE**

_____

TITLE

_____

LEGAL COUNSEL SIGNATURE **DATE**

_____

TITLE

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROAD PURCHASES RE: E. R. & R. PURCHASE OF ONE(1) NEW CURRENT PRODUCTION MODEL CLASS 6 TRUCK CHASSIS

WHEREAS, by resolution dated February 5, 2001, bid call was authorized for ERR Purchase of One (1) NEW CURRENT PRODUCTION MODEL CLASS 6 TRUCK CHASSIS; and

WHEREAS, bids were received as set forth in the attached tabulation; and

WHEREAS, the County Engineer recommends award of the contract to Jim's Pacific Garages, Biggg Truck Parts, Pasco, Washington; NOW, THEREFORE,

BE IT RESOLVED that the business of supplying Benton County with One (1) NEW CURRENT PRODUCTION MODEL CLASS 6 TRUCK CHASSIS be awarded to Jim's Pacific Garages, Biggg Truck Parts in the amount of $59,533.00, plus Washington State Sales Tax in the amount of $5,119.84; and

BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to proceed with the purchase.

Dated this 11th day of February, 2008.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

AGENDA ITEM	TYPE OF ACTION NEEDED			
Meeting Date: Feb. 11, 2008	Execute Agreement		**Consent Agenda**	XX
Subject: Bid for Class 6 Truck Chassis	Pass Resolution	XX	**Public Hearing**	
Prepared by: dlh	Pass Ordinance		**1st Discussion**	
Reviewed by: LJM	Pass Motion		**2nd Discussion**	
	Other		**Other**	

BACKGROUND INFORMATION

The bid opening for One (1) NEW CURRENT PRODUCTION MODEL CLASS 6 TRUCK CHASSIS was held on February 4, 2008. There were three (3) bids received, as shown on the attached Bid Tabulation. The lowest acceptable bid was submitted by Jim's Pacific Garages, Biggg Truck Parts, Pasco, Washington.

SUMMARY

After review by Public Works staff, it was their consensus that the equipment bid by Jim's Pacific Garages should be accepted.

RECOMMENDATION

Approve award of the business to Jim's Pacific Garages, Biggg Truck Parts.

FISCAL IMPACT

`id price of $59,533.00, plus sales tax of $5,119.84, for a total of $64,652.84.

MOTION

Approve the resolution as part of the Consent Agenda.

LOCATION: BENTON COUNTY

LET BY: BOARD OF COUNTY COMMISSIONERS

RE: ONE (1) NEW CURRENT PRODUCTION MODEL CLASS 6 TRUCK CHASSIS

c:excel\my documents\Bid Tab Class 6 Truck Chassis 02-04-08

DATE: February 4, 2008, 10:40 a.m., Local Time

Firm Name and Address	Make and Model	Delivery	Bid Price	Sales Tax	TOTAL
JIM'S PACIFIC/BIGGG TRUCK 2708 North Commercial Avenue Pasco, WA 99301-9507	2009 STERLING ACTERRA	120 days from date of order	$ 59,533.00	5,119.84	$ 64,652.84
JIM'S PACIFIC/BIGGG TRUCK 2708 North Commercial Avenue Pasco, WA 99301-9507	2009 FREIGHTLINER M2-106	120 days from date of order	$ 61,413.00	5,281.52	$ 66,694.52
WESTERN PETERBILT, INC. 1435 E Hillsboro Pasco, WA 99301	PETERBILT #335	May 30, 2008	$ 65,550.00	5,637.30	$ 71,187.30

RESOLUTION

2

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY ROADS RE: ER&R PURCHASE TIRE CHANGER

WHEREAS, resolution 08-131 and RCW 36.32.245 authorize contracts for the purchase of materials, equipment and supplies valued at between $5,000 and $25,000 without advertisement and formal sealed bidding; and

WHEREAS, written quotations were received from two vendors on the Benton County Vendor List; as follows:

MYERS TIRE SUPPLY Portland, Oregon 97232	$6,138.00
CLEARWATER NAPA Kennewick, Washington 99336	$6,981.55
NOLAN'S BODY SHOP Pasco, Washington 99301	$9,307.27

and

WHEREAS, the County Engineer recommends award of the business to MYERS TIRE SUPPLY, Portland, Oregon 97232; NOW, THEREFORE,

BE IT RESOLVED that the business of supplying Benton County Road with a Tire Changer be awarded to Myers Tire Supply, Portland, Oregon, in the amount of $6,138.00, and Washington State Sales Tax in the amount of $509.45; and

BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to proceed with the purchase.

Dated this 11th day of February 2008.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

RBD:LJM:dlh

AGENDA ITEM	TYPE OF ACTION NEEDED			
Meeting Date: Feb. 11, 2008	Execute Agreement		**Consent Agenda**	XX
Subject: ERR Purchase-Tire Changer	Pass Resolution	XX	**Public Hearing**	
Prepared by: dlh	Pass Ordinance		**1st Discussion**	
Reviewed by: LJM	Pass Motion		**2nd Discussion**	
	Other		**Other**	

BACKGROUND INFORMATION

As authorized by Resolution 08-131 and RCW 36.32.345, quotations were solicited for the purchase of a Tire Changer for E. R. & R. Written quotations were received from three vendors on the Benton County Vendor List.

SUMMARY

The following quotations were received from vendors on the Benton County Vendor List:

MYERS TIRE SUPPLY Portland, Oregon 97232	$6,138.00
CLEARWATER NAPA Kennewick, Washington 99336	$6,981.55
NOLAN'S BODY SHOP Pasco, Washington 99301	$9,307.27

RECOMMENDATION

Approve the award of the business to Myers Tire Supply, Portland, Oregon.

FISCAL IMPACT

The quoted price of $6,138.00, plus WSST $509.45.

MOTION

Approve the resolution as part of the consent agenda.

Myers Tire Supply

Quotation

105 N.E. 9th - Portland, OR 97232 / Phone 503-233-8545 / Fax 503-238-2119

www.myerstiresupply.com
kwelfelt@myerstiresupply.com

Quote Number	82300009	Date of Quote	01/07/08
Customer Name	BENTON COUNTY ROAD DEPARTMENT	Quoted By	KWELFELT
Attention	14303 HINZERLING RD	Phone Number	509-786-3663
Shipping Address	PROSSER WA 99350	Fax Number	509-786-3438

Qty	Part	Description	Unit Price	Extended Price
1	51041	COATS 7065AX TIRE CHANGER SERIAL NUMBER REQUIRED ********** price includes freight set-up and training ********** . . Thank You For Your Valued Patronage . QUOTE THANK YOU	6138.0000	6138.00

Merchandise Subtotal:	$	6138.00
Tax Total:		509.45
Freight:		.00
Grand Total:	$	6647.45

Freight Carrier: UPS

Quote Good For

Clearwater NAPA
Kennewick WA

Bid For Benton County Road Department

COATS MODEL 6065AX - FOB Kennewick Shop Including Tax - $6141.87
* COATS MODEL 7060AX - FOB Kennewick Shop Including Tax - $7561.02

NAME Robert Mayhew DATE 01/11/08
SALES MANAGER

BID GOOD FOR THIRTY DAYS

Quoted price = $6,981.55
Sales tax = 579.47
Total = $7,561.02

* Model # 7060 is the old model number for 7065.

JAN-07-2008 12:33 D&K AUTO PARTS

4 EAST COLUMBIA DRIVE
KENNEWICK, WA 99336

Hours: Mon-Fri 8:00-6:00
Sat 8:00-5:00
Sun Closed

D & K AUTO PARTS

A Division of Independent Automotive Warehouse, Inc.

ACCOUNTS WILL BE DUE & PAYABLE ON OR BEFORE THE 10TH OF THE MONTH FOLLOWING DATE OF PURCHASE. ACCOUNTS PAST DUE WILL BE SUBJECT TO A FINANCE CHARGE COMPUTED BY A PERIODIC RATE OF 1½% PER MONTH, (OR A MINIMUM SERVICE CHARGE OF $1.00), THE ANNUAL PERCENTAGE RATE IS 18%. PURCHASER'S RIGHT TO RETURN OR DISPOSE OF THE MERCHANDISE IS CONDITIONAL UPON MAKING PAYMENT. PURCHASER IS RESPONSIBLE FOR ANY LEGAL FEE INCURRED IN COLLECTION. ALL WARRANTIES ON THE PARTS AND OR ACCESSORIES SOLD HEREBY ARE THOSE MADE BY THE MANUFACTURER. WE THE SELLER HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESSED OR IMPLIED.

CUSTOMER
BENTON COUNTY ROAD DEPT
BOX 1001
PROSSER WA 99350-0954
000/0000-0000

CUST# 2000
P.O.#
REF COATES QUOTE
BY B B

#QUOTE# 1947
01-07-08 12:33:00
PAGE 1

QUANTITY U/M	PART NUMBER	DESCRIPTION	DISC	LIST E.A.	OUR COST	EXTENSION	TAX
1	MIS 6065AX	COATES EQUIP	0.00	11064.72	7607.01	7607.01	Y
1	MIS 7060AX	COATES EQUIP	0.00	13537.85	9307.27	9307.27	Y
	NOTE: BUILD TIME COULD BE 2 WEEKS. QUOTE						
	NOTE: EXPIRES 1/31/08 BECAUSE OF PRICE			Bill Reitan			
	NOTE: INCREASE BY COATES EQUIPMENT						

* LINE A REPRINT

ROT. UNITS

SPECIAL ORDERED PRODUCTS ARE NOT RETURNABLE. 10% RESTOCKING FEE ON ALL GOODS RETURNED

RECEIVED BY: X QUOTE >> 18318 17

PA. TAX AMOUNT

QUOTE

TOTAL P.01

Sales tax = 772.50
Total = 10,079.77

* Model # 7060 is the old model number for model # 7065

aa

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: GRIFFIN ROAD AND JOHNSON ROAD INTERSECTION, C.E. 1786 CRP

WHEREAS, by resolution dated October 8, 2007, the County Engineer was authorized to schedule a bid call for the Griffin Road and Johnson Road Intersection, C.E. 1786 CRP; and

WHEREAS, bids were received on February 4, 2008, as shown on the attached bid tabulation; and

WHEREAS, the lowest bid was received from A & B Asphalt, Inc., Benton City, Washington; and

WHEREAS, the lowest bid exceeded the Engineer's Estimate for this project by more than 30%;

WHEREAS, the County Engineer hereby recommends that all bids be rejected; NOW, THEREFORE,

BE IT RESOLVED that all bids received for the Griffin Road and Johnson Road Intersection, C.E. 1786 CRP be rejected and the project be delayed to a future date to be determined by the County Engineer.

Dated this 11th day of February, 2008.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

RBD:LJM:dlh

Benton County Fire Marshal's
Review of Proposed Planning Applications

File No. SUB 07-02
Date 1-10-08
Exhibit No. 11

RECEIVED
JUL 27 2007
BENTON COUNTY

: Mike Shuttleworth
SUB: 07-02 and EA 07-38
Date Received 7-20-07 Date Returned 7-25-07 Received by dyh
Applicant's Comments: Christ Haueter, 79301 Badger Meadow Drive, Kennewick, WA, 99338, 947-9153 proposes to develop 132.78 into 26 residential lots. The smallest lot will be lot 26 (2.01 acres) and the largest is lot 15 (28.08 acres).

Fire Marshal's Comments: Access to the proposed development will be by extending Country Meadow Lane across KID's main irrigation canal. Country Meadow Lane is connected to Badger Road. The proposed plan shows that the extension of Country Meadow Lane will be 60' right-a ways that will terminate at the intersection of Country Meadow Heights Drive. Country Meadow Heights Drive also has 60' right-a ways, and terminates into two cul-de-sacs that have a radius of 55'.

With each lot in excess of 1 acre, a hydrant system will not be required provided **all** buildings have set backs exceeding 25 feet. Individual lots shall have recorded "Minimum setback is 25' unless other county codes require larger setbacks, then they shall govern". With the number of lots less than 50, a second access is not required.

Should the private driveway travel distance to a future home exceed 200', then the below applicable driveway sections will be required. Examples of Approved turnarounds are attached

C roperty whose slopes exceed 15%, it is important that contact be made with the Fire Marshal **before** a l ding permit is applied for. Item C below refer to construction standards for homes on slopes greater than 15%.

Required: For Single Family Development

A. Road design shall comply with Benton County requirements for Suburban Developments.

B. Fire Marshal's requirements for roads:

a. All developments shall be served by one route having a maximum grade of 12% if a graveled road, and if paved, the grade may be between 12% and 15%.
b. Interior roads having a maximum grade of 12% may be a graveled road, and if paved, the grade shall not exceed 15%.
c. Developments with more than 50 lots shall have two entry streets.
d. Residential developments exceeding 16 dwelling units whose lots are less than 1 acre, and are served by a single access road longer than 600 feet shall have a second entry.
e. All drainages, creeks, etc shall be traversed by bridges/culverts shall be capable of supporting the imposed weights.
   1. At a minimum the design shall support the weight of a 60,000-pound fire truck.
   2. A letter from a Washington State Registered Civil Engineer stating that the design meets the imposed loads is required. A second letter from a Washington State Registered Civil Engineer stating that the installation meets the designed loads is required.
   3. A sign on each end of the bridge/culvert that states in pounds the load limits is required.

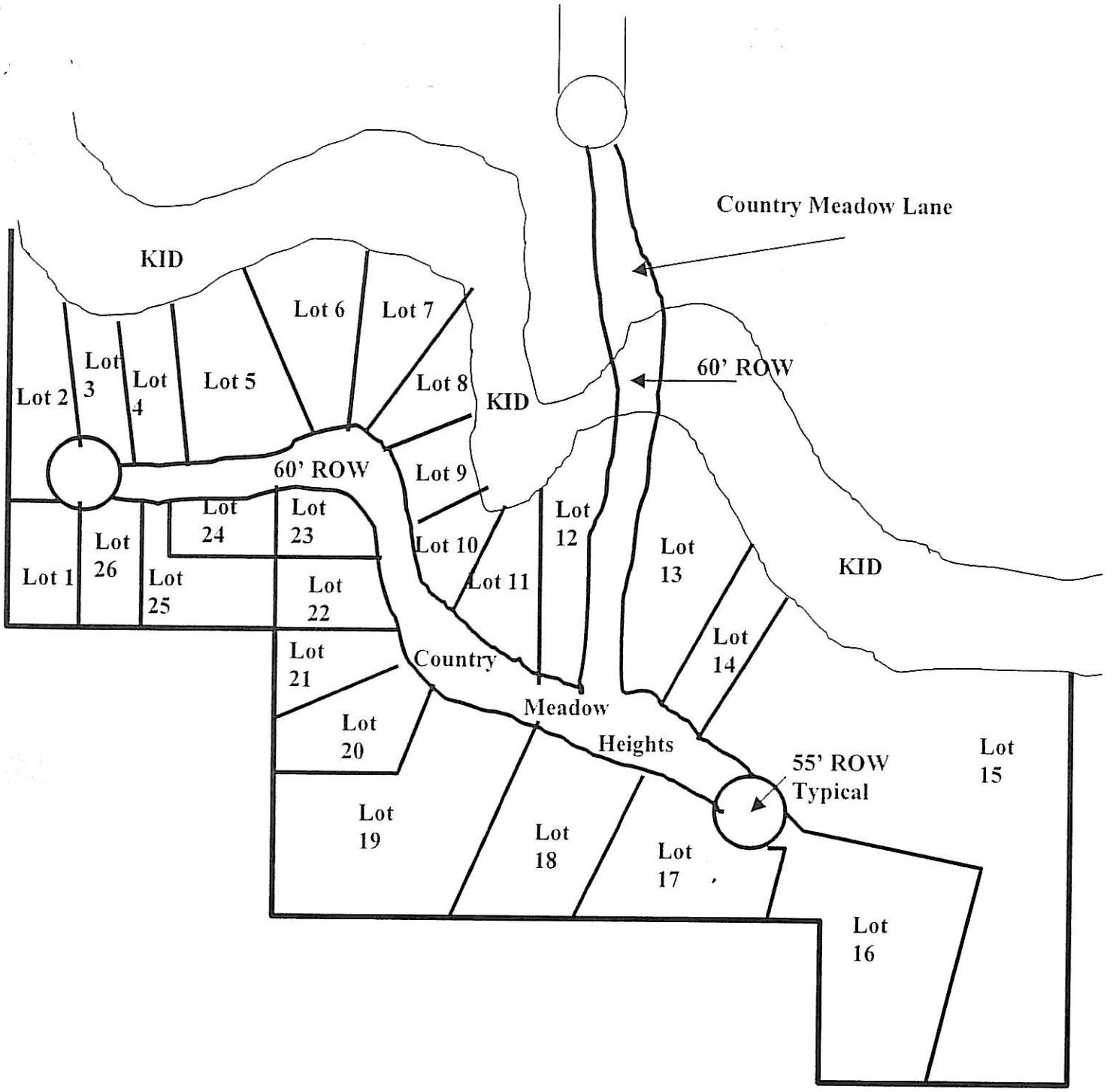
f. Cul-de-sacs Shall not exceed 600 feet, unless approved.
   1. Shall have a turning radius of 50'. The turning radius shall be improved for 45'.

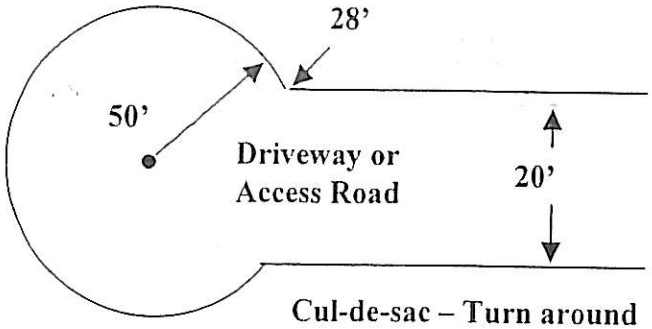
g. Private Driveways over 200 feet long
   1. May be graveled up to a maximum grade of 12%, and if paved, the grade shall not exceed 15%.
   2. Shall have a turning radius of 50'. The turning radius shall be improved for 45'.

h. Graveled Roads
   1. Roads over 150' long and private driveways over 200 feet long with a grade that is less than or equal to 12% are to be finished with 2" of compacted gravel. Minimum gravel size is 5/8 minus crushed rock, but it is recommended to use 1" or 1 1/2" crushed rock. This creates a better roadbed, and the rock will not be lost in the sand as quickly as it would be with 5/8's.

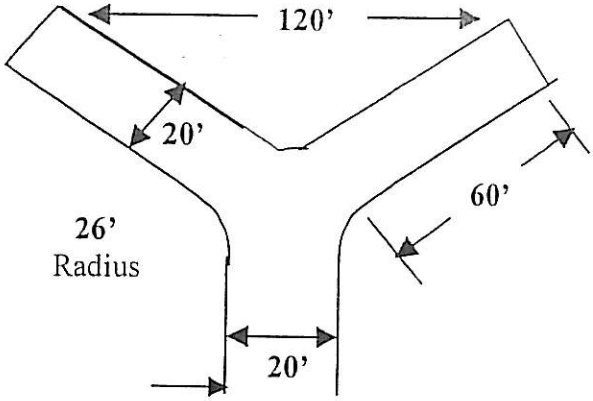
C. Home construction in Benton County is to conform to the IBC and must meet the current standards for fire protection within Benton count at the time of construction. Currently the applicable standards are as follows:

a. Wood roofs are not allowed.
b. When determined by the Fire Marshal, non-combustible siding, skirting and soffit material is required on the down hill side of structures within 30 feet of a 15% or greater grade.
c. When determined by the Fire Marshal, all structures within 30 feet of the property line shall have non-combustible siding, soffits, or skirting on the side adjacent to an undeveloped area of natural vegetation that is in excess of fire contiguous acres.
d. Decks and porches that are 3 feet or less above grade shall have non-combustible skirting if within 30 feet of adjacent undeveloped areas of natural vegetation that is in excess of five contiguous acres, or on the down hill side of structures within 30 feet of a 15% or greater grade.


Country Meadow Lane
KID
Lot 6
Lot 7
Lot 2
Lot 3
Lot 4
Lot 5
Lot 8
KID
60' ROW
60' ROW
Lot 9
Lot 24
Lot 23
Lot 12
Lot 10
Lot 26
Lot 1
Lot 25
Lot 22
Lot 11
Lot 13
KID
Lot 21
Country
Lot 14
Meadow
Heights
Lot 20
55' ROW
Typical
Lot 15
Lot 19
Lot 18
Lot 17
Lot 16

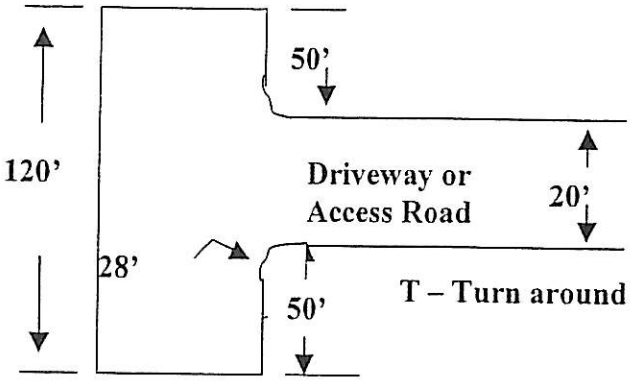


Cul-de-sac – Turn around

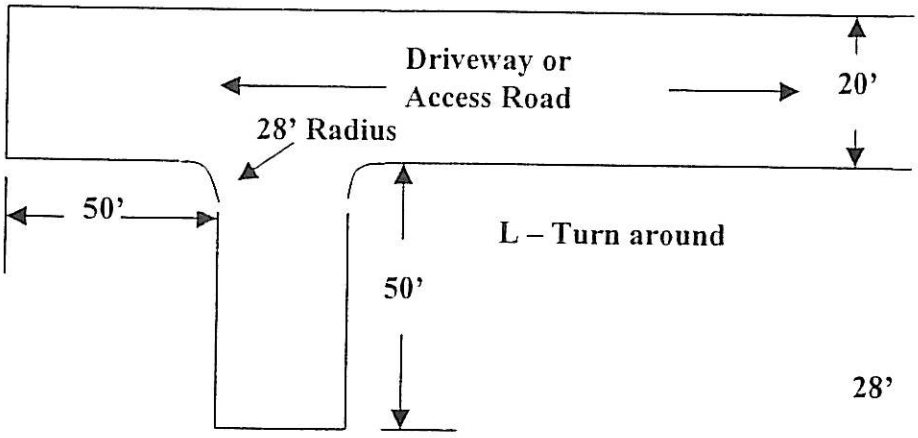


Driveway or
Access Road

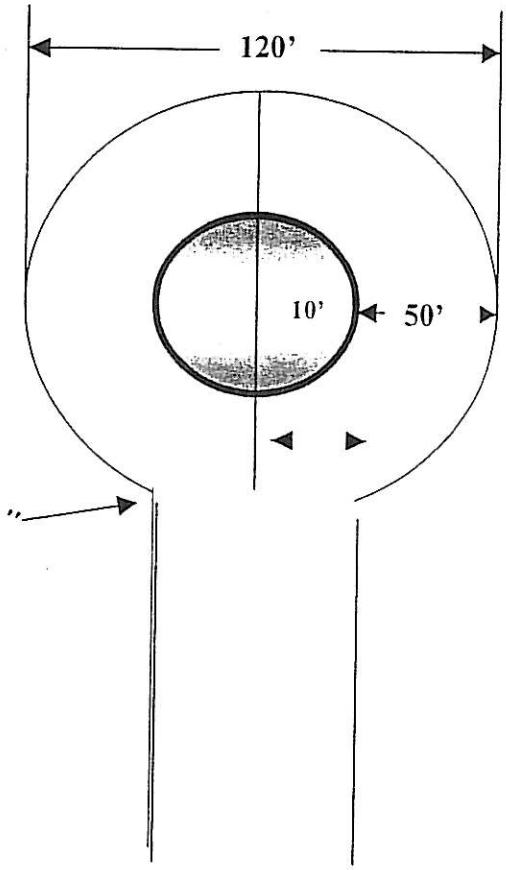
Y – Turn around



T – Turn around



L – Turn around



PUBLIC HEALTH
Prevent • Promote • Protect "Always working for a safer and healthier community."
BENTON-FRANKLIN HEALTH DISTRICT

File No. SUB 07-02
Date 7-10-08
Exhibit No. 12
Received by dyh

RECEIVED
JUL 24 2007
PLANNING DEPARTMENT

July 23, 2007

Benton County Planning Department
P.O. Box 910
Prosser, WA 99350

RE: Preliminary Plat of Country Meadow Heights

Dear Mr. Shuttleworth:

This office has reviewed the above referenced preliminary plat in accordance with our current land development policies and requirements for new subdivisions. Our findings are listed below:

1. There are 26 lots proposed.
2. Proposed land use is for single family residences.
3. The proposed lots are to be served by single family wells.
4. Soil testing on the lots has revealed Type V (Silt Loam) soils over the entire plat.
5. There are areas on the plat where slopes appear to be greater than 20%.
6. Natural drainage areas encumber lots 1,2,10,11,12,13,14,15,16,17,18,19,21,22 and may adversely affect the placement of on-site sewage disposal systems.

These findings indicate the above referenced plat may meet our requirements for plats utilizing on-site sewage disposal systems and single family wells, provided:

1. All proposed lots must be a minimum of two acres and contain a minimum of 20,000 square feet of usable land area exclusive of easements and other encumbrances. Slopes in excess of 20% are considered unusable and unsuitable for the placement of on-site sewage systems.
2. Drainage easements must be established by a 100-year storm water run off analysis.
3. All easements and encumbrances must be shown on the plat.

4. Show all permanent and seasonal surface waters within 100-ft on the plat map.

5. Prior to issuance of on-site sewage disposal permits, additional test holes will be required on some lots to verify acceptable area for initial and replacement sewage disposal system and design criteria such as trench depth on each lot.

6. The following statement is placed on the plat:

   a) "This plat appears to have suitable conditions for the use of on-site sewage disposal systems. However, because of the testing methods used, we have no way of determining whether each lot can comply with Benton-Franklin Department Rules and Regulations at the time of permit issuance.

   Further, be advised this departments approval of any lot within this plat for the use of on-site sewage disposal systems may be contingent upon that lot passing additional soil inspections/percolation tests, and/or other requirements at a later date."

7. Prior to final approval, this office must be given the opportunity to review the final plat for compliance with Benton-Franklin Health Department Rules and Regulations No. 2, and WAC 246-272, and issue appropriate comments to the Benton County Planning Department.

"

Our general recommendation is based upon present known site conditions and does not guarantee the granting of on-site sewage disposal system permits. Our approval of any lot within this plat may be contingent upon that lot passing additional soil inspections/percolation tests, and/or other requirements at a later date. Should adverse site conditions be revealed at a later date, the Health Department reserves the right to impose restrictions or deny the issuance of any on-site sewage disposal system permits.

The preceding recommendation shall be valid for a period not to exceed 12 months from this date, and will be deemed null and void should this proposal not be developed by July 20, 2008.

If you have any further questions, please contact the Kennewick Environmental Health office at (509) 582-7761, Ext. 265.

Sincerely,

Nicole Jensen
Environmental Health Specialist

File No. SUB 07-02
Date 1-10-08
Exhibit No. 13
Received by djh

RECEIVED
JUL 24 2007
SKAGIT COUNTY
PLANNING DEPARTMENT

Please check each one that you feel is appropriate for your agency.

If you have any comments or objections - please elaborate under item no. 9.

		Approval	~~Object~~ Concern
	Small lots / Large Lots.		
1.	Lot size of 2.45 & 14.26 Average		
2.	Access (Roads, alleys & other public ways)		
3.	Water Supply		✓
4.	Sanitary waste disposal systems		✓
5.	Parks and Playgrounds		
6.	Fire protection facilities		
7.	Drainage and storm water easements		
8.	Utility easements (Phone, water, gas, etc.)		

9. Ecology will need to evaluate water right for 20 wells. Average lot size for 21 = 2.45 the remaining 5 is 14.26. Can the sanitary control area for the 100 feet be met around the well head? What about drain field? Concern over the smaller Lots & sanitary area for wells. Do they have water rights?

I certify that the above recommendations are adequate for this agency.

Signature Chris Collins 456-2457

Agency Wash. State Dept. of Health, ERO

Date 6/23/07

Project Name Country Meadow Heights

File No. SUB 07-02/EA 07-38

RECEIVED
JUL 30 2007
BENTON COUNTY
PLANNING DEPARTMENT

verizon

Verizon Northwest, Inc.
4916 W Clearwater Ave
Kennewick, WA 99336

RECEIVED
JUL 27 2007
BENTON COUNTY
BUILDING DEPT.

File No. SUB 07-02
Date 1-10-08
Exhibit No. 14
Received by dyh

July 26. 2007

Chris Haueter
26907 Country Meadow Lane
Kennewick, WA 99337

RE: Country Meadow Heights

Dear Chris:

Please note the developer is required to provide 4" PVC schedule 40 conduit with pull string (a minimum of 200 lb. jetline) for Verizon. Schedule 80 conduit is required for all road crossings. The developer is also required to provide utility easement access to each lot. I will issue a conduit drawing displaying the layout of conduit within the subdivision approximately four weeks after receiving a copy of the Richland Energy Services notice of intent to construct or remove facilities.

The developer is also required to provide a #6 ground wire bonded to the transformer ground electrode system. A 5/8" by 8 feet galvanized ground rod must be driven and a #6 ground wire attached for Verizon's use.

A developer packet is attached which details these and other requirements.

In addition, 10 ft utility easements are required along both sides of the road right of way shown.

If you have any questions, please feel free to contact me at (509) 735-5318.

Sincerely,

Shawn M McVay
Network Engineer – Network Engineering

Cc
Hall Engineering
10 S. Auburn St
Kennewick, WA 99336

Worley Surveying Service, Inc., P.S.
121 S. Ely Street
Kennewick, WA 99336

Terry Marden, Director
Benton County Planning & Building Department
5600 W Canal Drive, Suite C 105A
Kennewick, WA 99336

Approval for the Proposed Plat for
COUNTRY MEADOW HEIGHTS-SUB 07-38
For 2008/2009 tax year

Date: **July 23, 2007**

File No. SUB 07-02
Date 1-10-08
Exhibit No. 15
Received by dyh

To: **Mike Shuttleworth-Planning Department**

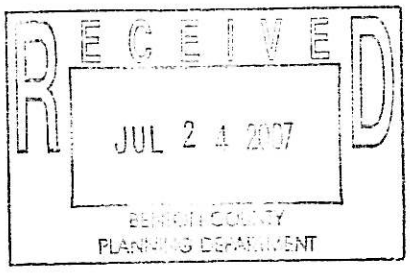
From: **Patty Yahne – Assessor's Office**

P.Y.

Comments:

Looks good Mike.

Address's to be added later.



From: "Bush, Lee" <LBush@bces.wa.gov>
To: "Mike Shuttleworth" <mike_shuttleworth@co.benton.wa.us>
Date: 7/23/2007 4:27:48 PM
Subject: Road Name: COUNTRY MEADOW HEIGHTS DR in PLAT NAME: Country Meadow Heights File No.Sub 07-02/EA 07-38

Mike,
The road name: COUNTRY MEADOW HEIGHTS DR, is not being used by any other addressing jurisdiction in the greater Benton County area.

File No. SUB 07-02
Date 1-10-08
Exhibit No. 110
Received by dyh

Lee Bush
Project Assistant
Southeast Communications (SE-COMM)
651 Truman Av
Richland, WA 99352

Work: (509) 628-8571
Fax: (509) 628-2622

Ross B. Dunfee, P.E.
Public Works Director / County Engineer
Steven W. Becken
Asst. Director/Asst. County Engineer

Benton County

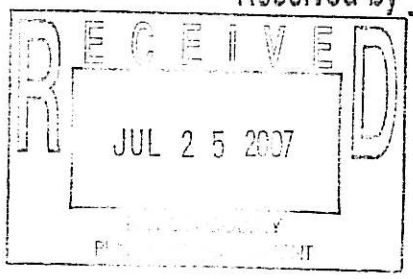
Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

Area Code 509
Prosser 786-5611
Tri-Cities 736-3084
Ext. 5664
Fax 786-5627

File No. SUB 07-02
Date 1-10-08
Exhibit No. 17
Received by djh

July 24, 2007



Mr. Michael Shuttleworth, Senior Planner
Benton County Planning & Building Department
P.O. Box 910
Prosser, WA 99350

RE: ENVIRONMENTAL ASSESSMENT
EA 7-38 HAUETER

Dear Mr. Shuttleworth:

This office has one comment on our review of the EA 7-38 for Haueter:

A. 10. Background: The applicant will need to gain a permit granting a canal crossing to Benton County by the KID.

B. 10 Aesthetics: After telephone communication with a landowner this morning, this office would like to ask the question: Will the lots in the plat of Country Meadows Phase 1 conform to the current Landowners Association Rules after the road has been completed?

If you have any questions, please contact this office.

Sincerely,

Sue Schuetze
Engineer II

Ross B. Dunfee, P.E.
Public Works Director / County Engineer
Steven W. Becken
Asst. Director/Asst. County Engineer

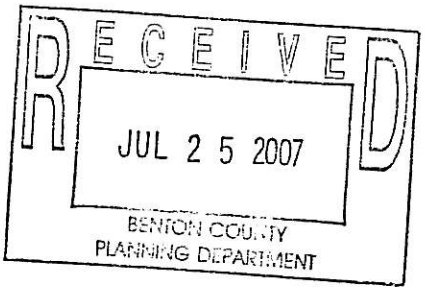
Benton County
Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

Area Code 509
Prosser 786-5611
Tri-Cities 736-3084
Ext. 5664
Fax 786-5627

July 25, 2007

Mr. Michael Shuttleworth, Senior Planner
Benton County Planning & Building Department
P.O. Box 910
Prosser, WA 99350



RE: SUB 07-02
Country Meadow Heights
Preliminary Plat Review #1

Dear Mr. Shuttleworth:

This office has reviewed the preliminary plat for Country Meadow Heights. We have several comments:

1. The road name of Country Meadow Heights Drive is too long. Only 3 words will be allowed.
2. Country Meadow Heights Drive exceeds the 600 feet maximum length required by the Benton County Fire Marshal. The Fire marshal must be consulted and approve the length.
3. The cul-de-sac radius must be 60' not 55'.
4. There are several drainages that need to be protected with easements. Show easement widths, bearings, and distances – and they all need to be tied to the lot corners they exist in. Show all existing easements and pipe locations and sizes across the KID canal that exists for storm water runoff. Tie these easements to property corners with bearings and distances.
5. The KID has changed their application process. Instead of submitting a paper request to begin with, they require a personal meeting with the County and your Engineer to discuss the crossing structure. Once a decision is made on the type of structure they will require, you fill out an application and return it to us. We will process it through the KID on your behalf.
6. All right of way lying outside the plat must be deeded to Benton County prior to the plat being recorded. A title report must accompany the deed.
7. Show all existing easements and pipe locations and sizes across the KID canal that exists for storm water runoff. Tie these easements to property corners with bearings and distances.

If you have any questions, please contact this office.

Sincerely,

Sue Schuetze

Sue Schuetze, Engineer II

"BENTON COUNTY PUBLIC WORKS DEPARTMENT IS A DRUG FREE WORKPLACE AND AN EQUAL OPPORTUNITY EMPLOYER"

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

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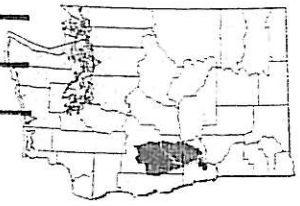
AUG 2 2007

August 1, 2007

File No. SUB 07-02
Date 1-10-08
Exhibit No. 18
Received by dfb



Your address is in the **Lower Yakima** watershed

Michael Shuttleworth
Benton County Planning
P.O. Box 910
Prosser, WA 99350

Dear Mr. Shuttleworth:

Thank you for the opportunity to comment on the pre-threshold determination for the Country Meadow Heights subdivision of 132.78 acres into 26 lots. This project is proposed by Chris Haueter of HPM Properties [SUB 07-02/EA 07-38]. We have reviewed the environmental checklist and have the following comment.

Water Resources

The water purveyor is responsible for ensuring that the proposed use(s) are within the limitations of its water rights. If the proposal's actions are different than the existing water right (source, purpose, the place of use, or period of use), then it is subject to approval from the Department of Ecology pursuant to Sections 90.03.380 RCW and 90.44.100 RCW.

Any ground water development proposal that will withdraw water in excess of 5,000 gallons per day for single or group domestic supply, or for industrial purpose, or for the irrigation of more than ½ acre of lawn or non commercial garden will require a permit from the Department of Ecology.

In Washington State, prospective water users must obtain authorization from the Department of Ecology before diverting surface water or withdrawing ground water, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, industrial purposes, stock watering or for the irrigation of up to one-half acre of lawn and garden are exempt from the permitting process. Water use under the RCW 90.44.050 exemption establishes a water right that is subject to the same privileges, restrictions, laws and regulations as a water right permit or certificate obtained directly from Ecology.

On March 28, 2002 the Washington State Supreme Court ruled that the RCW 90.44.050 permit exemption does not apply where a developer of a residential subdivision proposes multiple wells to serve each lot in the development if in combination, the withdrawal will exceed the exemption criteria.

Use of water under the groundwater exemption has been interpreted in two Attorney General Opinions (AGO 1997 and AGO 2005) and by the Supreme Court in the Campbell & Gwinn decision. The 1997 AGO states that a group of wells drilled by the same person or group of persons, at or about the same time, in the same area, for the same purpose or project should be considered a single withdrawal and would not be exempt from the permitting requirement contained in RCW 90.44.050, if the total amount withdrawn for domestic purposes exceeds 5,000 gallons per day or if a total of more than 0.5 acre of lawn and garden are irrigated.

Chapter 173-150 WAC provides for the protection of existing rights against impairment, i.e. interruption or interference in the availability of water. If water supply in your area becomes limited, your use could be curtailed by those with senior water rights.

All water wells constructed shall be in accordance with the provisions of Chapter 173-160 WAC by a driller licensed in the State of Washington. All wells must be located a minimum of 100 feet from any known, suspected, or potential source of contamination and shall not be located within 1,000 feet of the property boundary of solid waste landfills. A well report must be submitted to the Department of Ecology within thirty days after the completion of a well.

According to the Washington State Department of Health Group A regulations, a development is classified as a Group A water system if there are 15 or more connections or if 25 or more people will reside in the proposed development. The proposed development may not be classified as a Group B water system at build out if 25 or more people are being served. It is likely that over 25 people will live in this proposed development. Ecology recommends that the County coordinate with the Washington State Department of Health on the requirements of a Group A water system, which will include water conservation requirements, an operators certificate, a water system plan, and other elements.

An average residence uses 400 gallons of water per day. This subdivision would require 10,400 gallons per day. Any ground water withdrawals in excess of 5,000 gallons per day or for the irrigation of more than ½ acre of lawn or noncommercial garden will require a permit from the Department of Ecology. Therefore, this project would not be exempt from the permitting process and would need a water right.

If you have any questions concerning the Water Resources comments, please contact Breean Zimmerman at (509) 454-7647.

Water Quality

Dividing or platting of a piece of property is often the first step in a proposed development. If a subsequent individual or common plan of development exceeds 1 acre of disturbed ground in size an NPDES Construction Stormwater Permit may be required. Ground disturbance includes all utility placements and building or upgrading existing roads. The process requires going through SEPA, developing a stormwater pollution prevention plan, submitting an application and a 30 day public notice process. This may take 45-60 days. A permit and a stormwater plan are required prior to beginning ground-breaking activities. Please contact Cory Hixon with the Department of Ecology, (509) 454-4103, with questions about this permit.

Sincerely,

Gwen Clear

Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012

1164

File No. SUB 07-02
Date 1-10-08
Exhibit No. 20
Received by dlh

RECEIVED
AUG – 6 2007
BENTON COUNTY
BUILDING DEPT.

1211 S. Irby St.
Kennewick, WA 9938
(509) 783-4451

Benton County Planning Department
PO Box 910
Prosser, WA 99350

ATTN: Michael Shuttleworth

SUBJ: Application (File No. SUB 07-02/EA 07-38) Country Meadow Heights

Dear Sirs:

The Colby Family Partnership requests that an easement be reserved for future access to the Colby property west of this proposed subdivison. It seems counter productive to expect each potential subdivision to provide separate access to Badger Road across the KID canal.

The family would be agreeable to some sort of easement structure along the lines provided by the county in its approval of subdivison 01-3 dated April 23, 2001.

Thank you for your consideration.

Respectfully,

Sallie J. McMillin

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AUG – 6 2007
BENTON COUNTY
PLANNING DEPARTMENT

cc: Bruce Spanner

File No. SUB 07-02
Date 1-10-08
Exhibit No. 21
Received by dyh

July 26, 2007

Michael Shuttleworth
Benton County Planning Department
PO Box 910
Prosser, Wa. 99350

RE: Proposal for Country Meadow Heights

Dear Mr. Shuttleworth,

We received the notice of application regarding the proposed subdivision of Country Meadows Heights. Our house backs up to the canal road off of 816 PRSE in Hue Estates.

We moved here for the quiet, the view of the hills and canyon and the distance from neighbors and other homes. Naturally we are opposing this as it will generate traffic behind our home, noise, and change a beautiful natural canyon into another housing development. I am sure the residents who live off of Country Meadows Lane do not want additional traffic through their neighborhood either.

We are hopeful this can be stopped and allow our peaceful, private and quiet way of life to continue.

Sincerely,
Bob Davenport Jan Davenport

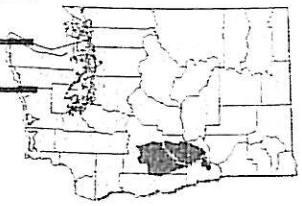
Jan and Bob Davenport
30105 S. 816 PRSE
Kennewick, Wa. 99338
628-8567

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

RECEIVED
JAN - 2 2008
PLANNING DEPARTMENT

File No. SUB 07-02
Date 1-10-08
Exhibit No. 19
Received by dph

January 2, 2008



Your address is in the **Lower Yakima** watershed

Michael Shuttleworth
Benton County Planning
P.O. Box 910
Prosser, WA 99350

Dear Mr. Shuttleworth:

Thank you for the opportunity to comment on the determination of nonsignificance for the Country Meadow Heights subdivision, proposed by Chris Haueter and HPM Properties [EA 07-38]. We have reviewed the documents and have the following comments.

Water Quality

Project Greater-Than 1 Acre With Potential To Discharge Off-Site
An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with more than one acre of disturbed ground. This permit requires that the SEPA checklist fully disclose anticipated activities including building, road construction and utility placements. Obtaining a permit is a minimum of a 38 day process and may take up to 60 days if the original SEPA does not disclose all proposed activities.

The permit requires that Stormwater Pollution Prevention Plan (Erosion Sediment Control Plan) is prepared and implemented for all permitted construction sites. These control measures must be able to prevent soil from being carried into surface water (this includes storm drains) by stormwater runoff. Permit coverage and erosion control measures must be in place prior to any clearing, grading or construction.

More information on the stormwater program may be found on Ecology's stormwater website at: http://www.ecy.wa.gov/programs/wq/stormwater/construction/ . Please

submit an application or contact Cory Hixon at the Dept. of Ecology, (509) 454-4103, with questions about this permit.

Sincerely,

Gwen Clear

Gwen Clear
Environmental Review Coordinator
Central Regional Office
(509) 575-2012

2213

File No. SUB 07-02
Date ~~December 29, 2007~~ 1-10-08
Exhibit No. 22
Received by djn

RECEIVED
JAN - 2 2008
PLANNING DEPARTMENT

Benton County Planning /Building Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Attn: Mr. Michael Shuttleworth, Senior Planner

Subject: Letter dated 12/27/07, "Notice of Public Hearing"

Reference: Country Meadow Heights Application File No. SUB 07-02/EA 07-38

Dear Mr. Shuttleworth:

Since I will be out of town on the date of said Hearing, and at your suggestion, I am putting forth in writing the matter that I and my wife discussed with both you and Ms. Sue Schuetzer and Mr. Steven W. Becken of the Engineering Department, personally and on the telephone on several occasions regarding the above referenced application.

We own approximately 52 acres directly to the east of the proposed Country Meadow Heights, on the south side of the KID canal. Our property is totally unaccessible. I believe both the Planning Department and the Engineering Department would agree with this assessment. (See Section 21 of your Subdivision Application SUB 07-02 to see our property.

Therefore, in accordance with Benton County Subdivision Ordinance, paragraph 9.08.050, subparagraphs (b) "Street patterns shall take into consideration access needed to develop adjacent properties presently unsubdivided" and subparagraph (e) "When dead-end streets are created by the development of a portion of a larger plat or because of the desirability of continuing a street into a presently unplatted parcel, not presently owned by the applicant, a temporary turn shall be provided unless the county engineer's office recommends against provision of such a turnaround. If such a turnaround includes some private property, such turnaround right-of-way shall be protected by an easement until such time as the street is extended and the need for turnaround has ceased to exist."

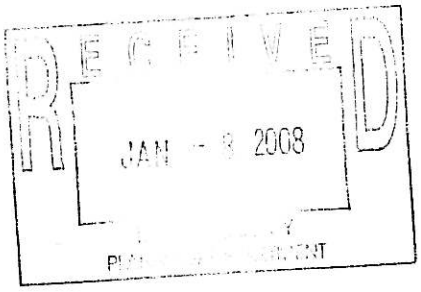
Therefore, I request a 60 foot non-exclusive and perpetual easement or right-of-way for ingress and egress from the east end of Country Meadow Lane to the west edge of my property.

Respectfully submitted,

M J Simmons

Michael J. Simmons
2843 Hawkstone Court
Richland, WA 99354

File No. SUB 07-02
Date 1-10-08
Exhibit No. 23
Received by cjh



SPERLINE ▪ TELQUIST ▪ ZIOBRO ▪ RAEKES

ATTORNEYS AT LAW ▪ PLLC

January 7, 2008

Michael Shuttleworth
Senior Planner
Benton County Planning/Billing Department
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Re: Country Meadow Heights (File No. SUB07-2/EA 07-38)

Dear Mr. Shuttleworth:

I am writing on behalf of John & Sally McMillen, who represent the interest of the Johanna Colby limited partnership which owns the property to the west of the Country Meadow Heights property. I have attached for your reference a Benton County GIS map which shows the Colby limited partnership in relation to the HPM Properties.

On behalf of the Colby limited partnership, the following comments are submitted as follows:

1. Street layout.

   a) BCC 9.08.050(b) states:

   Streets shall continue as an extension of existing streets unless good site planning dictates a different solution. *Street patterns shall take into consideration access needed to develop adjacent properties presently un-subdivided.* Sketches of a proposed street system for adjoining properties may be required if owned by the subdivider or if the arrangement of the large tracts makes it necessary to provide future access to the property under consideration.

Jeffrey T. Sperline ▪ George E. Telquist ▪ John S. Ziobro ▪ John P. Raekes

8518 West Gage Boulevard ▪ Suite B ▪ Kennewick, WA 99336
(509) 737-8500 ▪ Toll Free (877) STZ-LAW1 ▪ Fax (509) 737-9500 ▪ www.stzrlaw.com

b) Similarly, 9.08.050(e) provides:

> When dead end streets are created by the development of a portion of a larger plat or because of the desireability of continuing a street into a presently unplatted parcel not presently owned by the applicant, a temporary turn around shall be provided unless the county engineer's office recommends against provision of a a turn around. If such a turnaround includes some private property, such turn around right-of-way shall be protected by an easement until such time as the street is extended and the need for the turn around has ceased to exist.

Comment: Country Meadow Phase I presently has a cul-de-sac at the south end of Country Meadows Lane which has an easement reserved which will serve Country Meadow Heights. However, it does not appear that either of the Country Meadow Heights cul-de-sacs have a similarly required easement to any of the southern properties. You will notice from the attached map that the Colby property is currently landlocked. In addition to BCC 9.08.050, Washington courts favor a public policy that prevents landlocked property from being rendered useless. Accordingly, the Colby limited partnership requests that the staff explore require the applicant to reserve a 60 foot easement to the Colby property to prevent the property from being landlocked.

2. Cul-de-sacs.

a) BCC 9.08.050(f) provides:

> Cul-de-sacs will be permitted where topography or other conditions justify the use. They should not exceed 300 feet, but will be permitted up to 500 feet in length. Cul-de-sacs exceeding 500 feet may be approved if conditions warrant the need and are documented by the planning commission.

Comment: Country Meadow Heights Drive appears to be two long cul-de-sacs in excess of 500 feet. The Colby family partnership requests that the planning staff evaluate compliance with this code sub-section.

3. Secondary Access.

> Before approving a subdivision development, local governmental entities must consider the adequacy of access to the proposed development and may condition approval of a plat on provision of adequate access. *Isla Verde Intern. Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 765 (2002). The applicant's proposal does not appear to provide for secondary access for emergency ingress or egress. The Colby family partnership requests that the applicant comply with any fire code standards or other safety standards that require secondary access into a subdivision.

I plan on attending the planning commission hearing on January 15, 2008 at 7:00 p.m. Please contact me at your earliest convenience if this hearing will be canceled or re-scheduled. If there are any questions or comments that need clarification, please feel free to give me a call.

Very truly yours,

JOHN S. ZIOBRO

JSZ/jr
pc: John McMillan

Jeffrey T. Sperline • George E. Telquist • John S. Ziobro • John P. Raekes

8518 West Gage Boulevard • Suite B • Kennewick, WA 99336
(509) 737-8500 • Toll Free (877) STZ-LAW1 • Fax (509) 737-9500 • www.stzrlaw.com

BENTON COUNTY
GEOGRAPHIC
INFORMATION
SYSTEMS
DEPARTMENT
DEPT OF NATURAL RESOURCES
REESE ESTHER M

United States Department of the Interior

BUREAU OF RECLAMATION
Ephrata Field Office
P.O. Box 815
Ephrata, Washington 98823

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

EPH-2233
LND-6.00

JAN 2 2008

RECEIVED
JAN - 2 2008

File No. SUB07-02
Date 1-10-08
Exhibit No. 24
Received by dyh

Mr. Michael Shuttleworth
Benton County Planning Department
P.O. Box 910
Prosser, WA 99350

Subject: Chris Haueter/ HPM Properties Determination of Non Significance (File # EA 07-38) within Sections 20 and 21, Township 8 North, Range 28 East, Willamette Meridian, Benton County, Kennewick Irrigation District (District), Yakima Project (Project), Washington

Dear Mr. Shuttleworth:

We appreciate the opportunity to review and comment on the subject proposal. This letter is in response to your request for comments due January 2, 2008.

The plat shows a proposed crossing on the Main Canal Division III. The proponent must contact the Bureau of Reclamation before any work can begin on this or any proposed crossing of Reclamation facilities.

Landowners should be aware of existing Reclamation and District rights to construct, reconstruct, operate, and maintain Project facilities as necessary. Any work that will involve these facilities or the existing rights-of-way must be reviewed and approved by Reclamation and the District prior to proceeding. Structures are prohibited from encroaching upon existing right-of-way corridors without Reclamation's and the District's prior approval. This includes but is not limited to temporary improvements such as paving, fencing, and landscaping.

Reclamation is concerned that runoff contained and stored on-site during construction has the potential to infiltrate Project facilities, such as Main Canal Division III, and detrimentally affect water quality. To reduce this possibility, runoff conduits and holding areas should be lined with impervious materials and protective barriers should be constructed to intercept runoff.

It is important to note that Reclamation's concurrence to this proposal is conditioned upon the assumption that there are no encroachments upon Project facilities or rights-of-way.

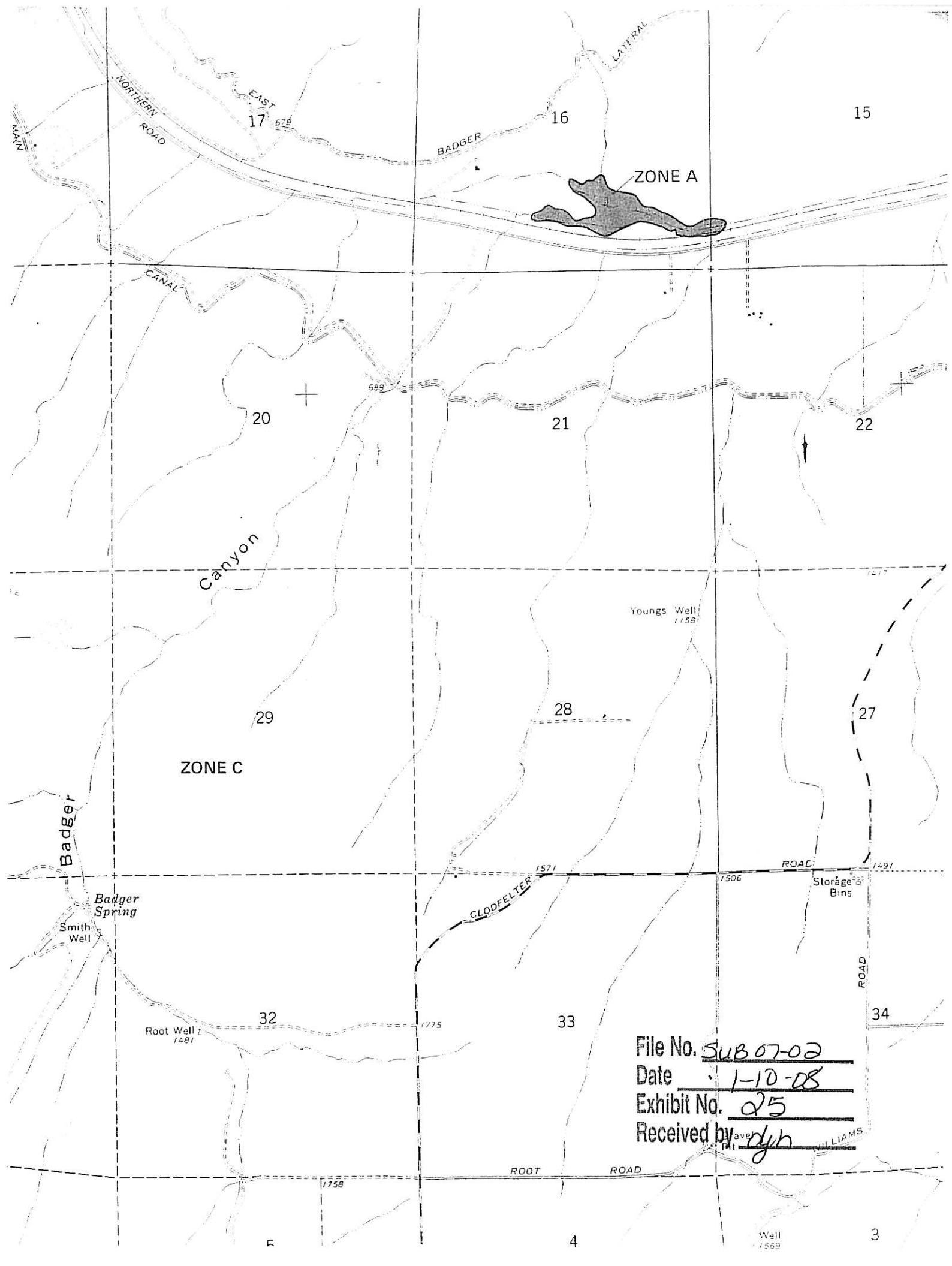
Thank you for your assistance and cooperation. If you have any questions, please contact Stephanie Utter, Resource Management Manager, at 509-754-0261.

Sincerely,

ACTING FOR

William Gray
Assistant Area Manager

cc: Kennewick Irrigation District
12 West Kennewick Ave.
Kennewick, WA 99336



File No. SUB 07-02
Date 1-10-08
Exhibit No. 25
Received by dyh

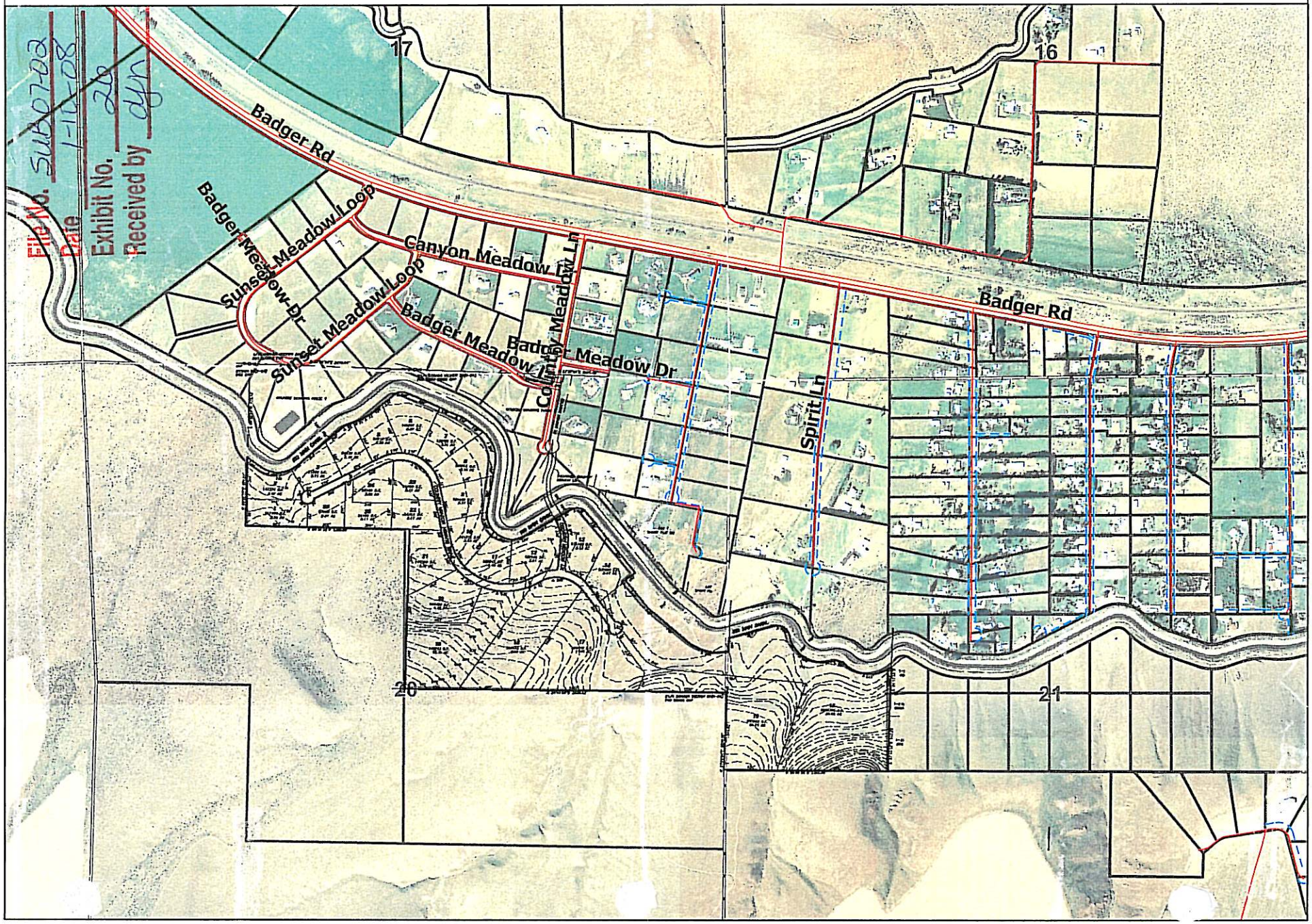
BENTON COUNTY

PLANNING DEPARTMENT

SUB 07-02
PRELIMINARY PLAT OF COUNTRY MEADOWS HEIGHTS
Scale: N/A
Date Printed: 1/8/08

Benton County does not warrant, guarantee, or accept any liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warrantee, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown herein is a preliminary product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.

File No. SUB07-02
Date 1-10-08
Exhibit No. 28
Received by dyn

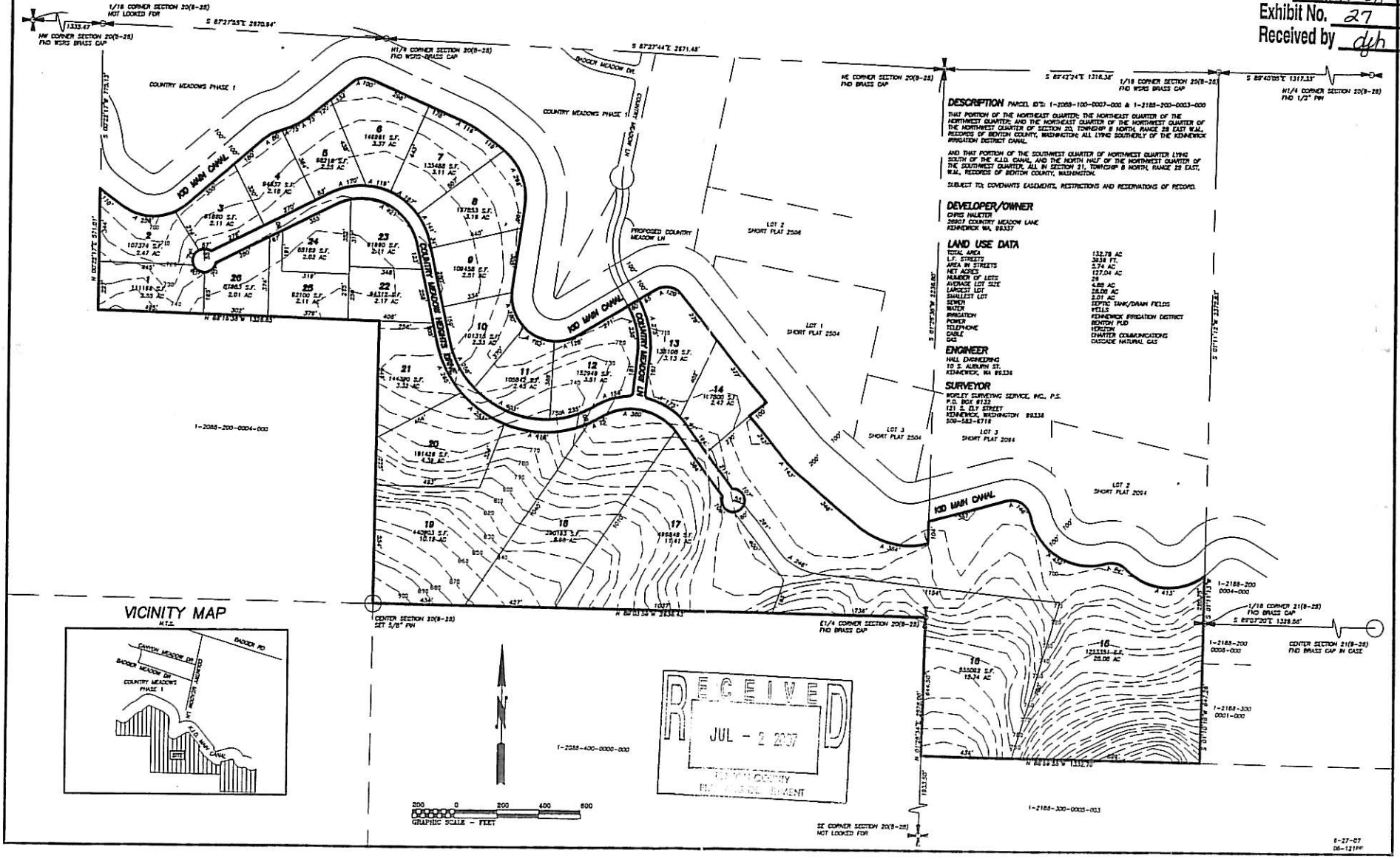


Reduced Copy

File No. SUB 07-02
Date 1-10-08
Exhibit No. 27
Received by dfh

PRELIMINARY PLAT
COUNTRY MEADOW HEIGHTS

PORTION SECTIONS 20 & 21 T. 8 N., R. 28 E., W.M.
BENTON COUNTY, WASHINGTON



DESCRIPTION

PARCEL ID'S: 1-2088-100-0007-000 & 1-2188-200-0003-000

THAT PORTION OF THE NORTHEAST QUARTER; THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER; AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 8 NORTH, RANGE 28 EAST W.M., RECORDS OF BENTON COUNTY, WASHINGTON; ALL LYING SOUTHERLY OF THE KENNEWICK IRRIGATION DISTRICT CANAL.

AND THAT PORTION OF THE SOUTHWEST QUARTER OF NORTHWEST QUARTER LYING SOUTH OF THE K.I.D. CANAL, AND THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, ALL IN SECTION 21, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M., RECORDS OF BENTON COUNTY, WASHINGTON.

SUBJECT TO; COVENANTS EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

DEVELOPER/OWNER

CHRIS PAUETTER
28807 COUNTRY MEADOW LANE
KENNEWICK WA, 99337

LAND USE DATA

TOTAL AREA	132.78 AC
L.F. STREETS	3038 FT.
AREA IN STREETS	5.74 AC.
NET ACRES	127.04 AC
NUMBER OF LOTS	29
AVERAGE LOT SIZE	4.88 AC.
LARGEST LOT	28.08 AC
SMALLEST LOT	2.01 AC
SEWER	SEPTIC TANK/DRAIN FIELDS
WATER	WELLS
IRRIGATION	KENNEWICK IRRIGATION DISTRICT
POWER	BENTON PUD
TELEPHONE	VERIZON
CABLE	CHARTER COMMUNICATIONS
GAS	CASCADE NATURAL GAS

ENGINEER

HALL ENGINEERING
10 S. AUBURN ST.
KENNEWICK, WA 99336

SURVEYOR

WORLEY SURVEYING SERVICE, INC., P.S.
P.O. BOX 8122
121 S. ELY STREET
KENNEWICK, WASHINGTON 99336
509-582-8718

VICINITY MAP

RECEIVED
JUL - 2 2007
BENTON COUNTY
PLANNING DEPARTMENT

6-27-07
06-121PP

Ross B. Dunfee, P.E.
Public Works Director / County Engineer
Steven W. Becken
Asst. Director/Asst. County Engineer

Benton County

Department of Public Works

Post Office Box 1001 - Courthouse
Prosser, Washington 99350-0954

Area Code 509
Prosser 786-5611
Tri-Cities 736-3084
Ext. 5664
Fax 786-5627

RECEIVED
JAN 10 2008
PLANNING DEPARTMENT

January 10, 2008

Mr. Mike Shuttleworth, Senior Planner
Benton County Planning Department
P.O. Box 910
Prosser, WA 99350

File No. SUB 07-02
Date 1-10-08
Exhibit No. 28
Received by ajh

RE: STZR Letter
Country Meadow Heights
CE 1892 CRP

Dear Mr. Shuttleworth:

Item 1: Due to the topography of the ground and the difficulty of obtaining the minimum allowable grades for the roads, this office did not request the roads be extended to property lines. Should the developer desire to do that or should the Planning Commissioner require it, we would not oppose it as long as the roads met our minimum standards.

We would oppose a 60 foot easement for ingress and egress. Our standards call for all roads for public use to be brought to minimum County standards. If the proposed easement were to be for the Colbys only and not for developmental purposes we may reconsider. If the Colbys are planning to develop the property, the road should be constructed to County standards.

Item 2: The length of a cul de sac is not a Public Works standard. This needs to be addressed by another department.

Item 3: A secondary access is preferred, however, in some cases it is not possible. Are the Colbys planning to connect to the developer's road and loop back out to Badger Road or are they looking to create a longer cul de sac?

It is interesting to note that Mr. Ziobro is asking that the Colbys be provided access through the developer's property but there is no offer to help finance the cost of an extension of the road.

If you have any questions, please contact this office.

Sincerely,

Steven W. Becken
Asst. Director/Asst. County Engineer

9:20

Memorandum

To: Benton County Board of Commissioners

CC: Bobbie Gagner, Duane Davidson, Barbara Wagner, Ross Dunfee, Marianne Ophardt; Terry Marden, Roy Rogers, Melina Wenner, and Randy Reid

From: David Sparks, Loretta Smith Kelty, and Roy Rogers

Date: 2/5/2008

Re: Space Needs Request

On December 17, 2007, the Benton County Board of Commissioners asked the County Administrator to research the space needs of county departments. Over a course of 2 weeks the following departments were interviewed and their space requests and additional comments are attached (see spreadsheet labeled SPACE NEEDS REQUESTS FOR KENNEWICK ADMINISTRATION BUIULDING):

- Auditor
- Treasurer
- Assessor
- Road
- Co-Op
- Building
- Facilities
- Personnel/Civil Service
- Central Services
- Commissioners
- Board of Equalization

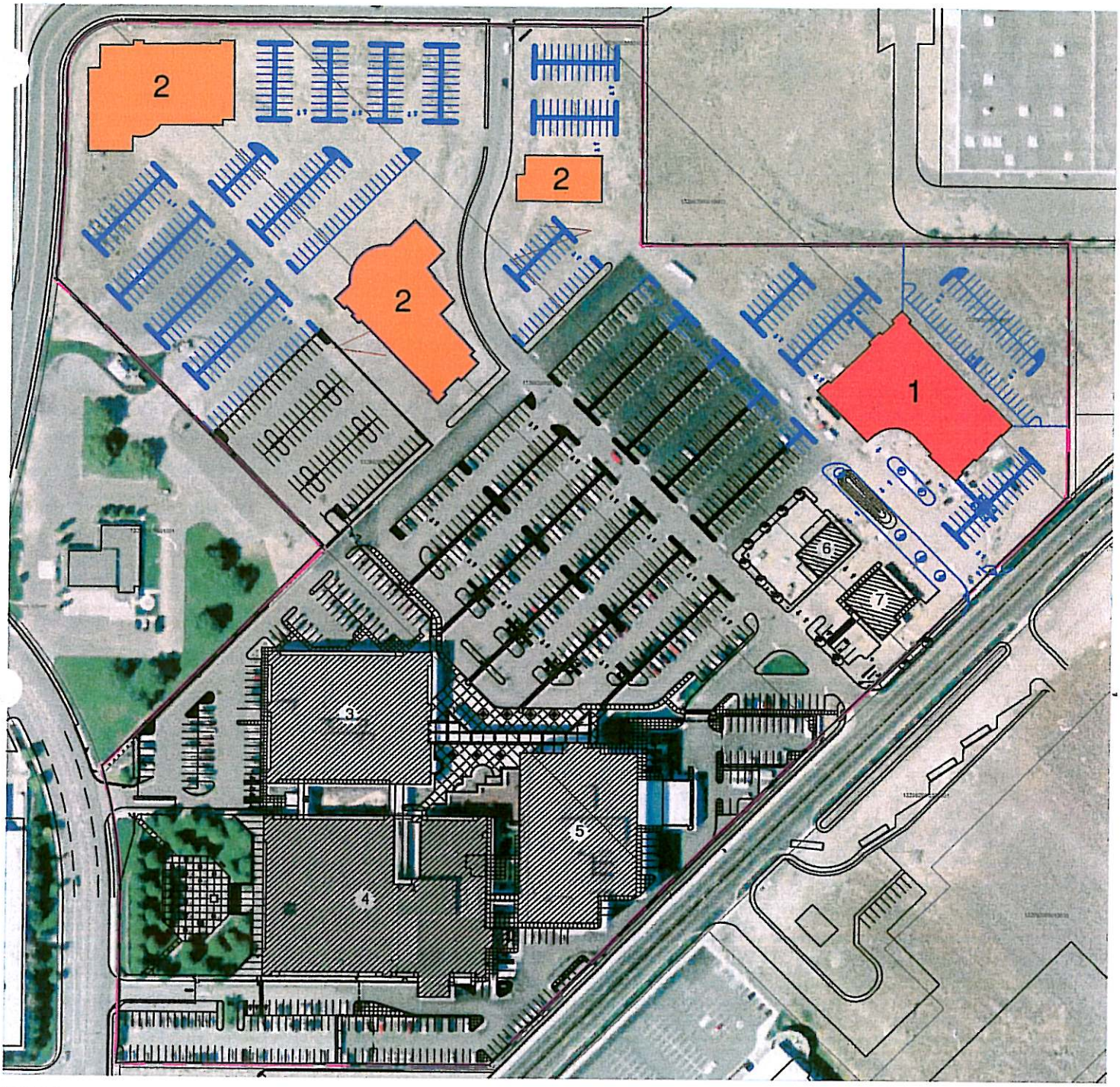
It was determined that currently these departments occupy 6,242 square feet of the total 111,172 square feet at the Kennewick Justice Center and 8,064 square feet of the total 9,900 square feet at the Kennewick Annex on Canal Street. This equates to an occupied 14,306 total square feet and the remaining 106,766 square feet encompass the court systems and other ancillary departments (see attached spreadsheet labeled BUILDING). It was also determined that based on the departments current usage, actual required usage, and projected growth increases, that roughly 30,000 square feet is requested. Based on this information, a 40,000 square foot administrative building, located in Kennewick, with a 20,000 square foot underground parking area will eliminate overcrowding at the Kennewick Annex Building on Canal Street and free up much needed space at the Kennewick Justice Center for the court systems and other ancillary departments.

We have attached a depiction of the current Kennewick Campus with future county buildings (labeled 2), which only gives Benton County a remaining 92,000 square feet in which to expand.

Recommendation
An estimate of total project cost for a 40,000 square foot Administrative Building is $11,343,750.
An estimate of total project cost for a Courthouse Remodel is $3,832,485.
Financing this project would require $15,176,235 with average annual payments between $1,043,187 and $1,278,470.

If County Seat Moves
An estimate of total project cost for an 80,000 square foot Administrative Building is $30,937,500.
Financing this project would require $30,937,500 with average annual payments between $2,156,133 and $2,407,635.

If you have any other questions we would be happy to address them.



BUILDING LEGEND

1. PROPOSED BENTON FRANKLIN HEALTH DEPARTMENT
2. FUTURE COUNTY BUILDING
3. 2002 COUNTY COURTS BUILDING ADDITION
4. 1984 BENTON COUNTY JUSTICE CENTER
5. 2004 COUNTY JAIL ADDITION
6. 2004 MAINTENANCE FACILITY
7. 2004 CORONER'S OFFICE

EXISTING BUILDINGS	= 292,000 SF
PROPOSED & FUTURE BUILDINGS	= 132,000 SF
EXISTING PARKING	= 680 STALLS
FUTURE ADDITIONAL PARKING	= 505 STALLS

CWH ARCHITECTS PA

architecture ▪ planning ▪ design

6320 Clearwater Ave. Suite C Kennewick, WA 99336
phone: 509.736.0581 fax: 208.735.1420

ADMINISTRATION BUILDING

Administration Building	Square Ft.		40,000
Underground Parking	Square Ft.		20,000
Estimated Garage Parking Spaces with Mail Room			100
Estimated Number of County Spaces Needed			70
Estimated Administration Building Construction Costs	$ 165	$	6,600,000
Estimated Underground Parking Construction Costs	$ 83	$	1,650,000
Estimated Administration Costs	38%	$	3,093,750
Total WAG		**$**	**11,343,750**

COURTHOUSE REMODEL

New Building	Square Ft.		9,380
New Building Construction Costs	$ 214	$	2,008,399
Remodel Courthouse Construction Costs	$ 67	$	628,446
Administration Costs	40%	$	1,065,286
Additional Work		$	130,354
Total		**$**	**3,832,485**

FINANCING AN ADMINISTRATIVE BUILDING & COURTHOUSE REMODEL

20 Years	$	15,176,235
Average Annual Payments	$	1,278,470
25 Years	$	15,176,235
Average Annual Payments	$	1,043,187

CAPITAL COSTS FOR A NEW COURTHOUSE (only) MOVE

Administration Building	Square Ft.		80,000
Underground Parking	Square Ft.		40,000
Estimated Garage Parking Spaces with Mail Room			200
Estimated Number of County Spaces Needed			140
Estimated Administration Building Construction Costs	$ 225	$	18,000,000
Estimated Underground Parking Construction Costs	$ 113	$	4,500,000
Estimated Administration Costs	38%	$	8,437,500
Total WAG		**$**	**30,937,500**

FINANCING CAPITAL COSTS FOR A NEW COURTHOUSE (only) MOVE

20 Years	$	30,937,500
Average Annual Payments	$	2,407,635
25 Years	$	30,937,500
Average Annual Payments	$	2,156,133

CAPITAL PROJECTS FUND

2008 Beginning Fund Balance	$ 13,874,248
Estimated Low Level Waste Surcharge	23,130
Estimated PILT	837,600
Estimated Operating Transfer In from Current Expense	2,780,886
Estimated Health Building Costs	(2,500,000)
Courtrooms Cost	(3,899,169)
Port of Benton Interlocal (Crow Butte Park)	(50,000)
Estimated Webber Caynon Road CE 1620	(2,300,000)
Estimated Piert Road	(100,000)
2008 Ending Fund Balance	**$ 8,666,695**

SPACE NEEDS REQUEST FOR KENNEWICK ADMINISTRATION BUILDING

	Current Square Ft. @ Kennewick Justice Center	Current Square Ft. @ Kennewick Annex	Total Current Square Ft.	Estimated Square Ft.	Why the Increase Comments
Auditor	-	1,500	1,500	6,000	need room in Kennewick to accommodate 10 to 15 temporary employees during elections; easier to hire Kelly temps and observers; setup that limits walk thru traffic during elections; We will need to have (3) Three secure rooms in the Election Department area of the annex office. One for the voting system hardware (equipment), we call that space the Hart room. One (1) room for voted ballots, and one (1) room for unvoted ballots. 3 private offices; vault room for licensing & recording; drive-thru window for tabs only; Richland office remains; accounting department employees will remain in Prosser; open lobby; office for supervisor; 3 extra workstations: indexing; title company; and scanning; storage needs in Prosser and Kennewick: 3 county vehicles; growth - 5 employees
Treasurer	-	630	630	2,000	utilize new banking contract; move remittance machine to Kennewick (tax statements); office for Treasurer and area for manager; unmarked office for waiting title company representatives; kiosk in lobby; move Rose Garden plaque to a pole; if employees move to Kennewick Administration Building Prosser will be remodeled for future growth; 2 county vehicles
Assessor	-	1,663	1,663	3,500	office; won't have to drag mail back and forth; area for public to view information; better applicants come from the Tri-Cities; computer speed would increase; some remodeling in Prosser; storage needs in Prosser and Kennewick; 8 county vehicles; growth - 3 employees
Road	-	-	-	-	Long & short plats, surveys need to remain close to Auditor recording; will hire consultants not employees; don't need satellite offices will use maintenance shops to log on; already have 1 workstation for 3 surveyor crew members but would like 1 more for a construction member; add 1 office in Prosser (Solid Waste Coordinator); storage needs in Prosser; would like to have a real reception area for the public; 20 vehicles; no growth
Co-Op	-	2,630	2,630	4,000	Don't currently have room to accommodate grant supported employees and are limited in getting grants because of this lack of work space; would like at least one room on 1st floor for plant clinic for easy access for residents bringing in plant and insect samples; special refrigerator in clinic for plant; remainder of offices could be located on 2nd floor; need small conference room and a large teaching/meeting room with a teaching kitchen with refrigerator for teaching supplies; 4-6 extra workstations: 2 master gardeners April to October; volunteer staff; and grant funded employees; considerable storage needs for teaching supplies and educational materials in Kennewick; fruit production agricultural educator is located in county extension office building in Prosser; would like to remodel current Prosser location or move into the remodeled Prosser Courthouse on the first floor location with a separate entrance or office located close to the entrance because of plant and insect samples intakes.

Note: Current occupied space at the Prosser Courthouse, Planning Annex, Kennewick Annex, and WSU/CO-OP Extension equates to 37,683.

SPACE NEEDS REQUEST FOR KENNEWICK ADMINISTRATION BUILDING

	Current Square Ft. @ Kennewick Justice Center	Current Square Ft. @ Kennewick Annex	Total Current Square Ft.	Estimated Square Ft.	Why the Increase Comments
Building	-	1,641	**1,641**	**4,000**	Currently have Kennewick storage at the Justice Center, but need a room to store plans (fire proof) that is close by. The front counter has to be at least 8 feet wide (4 employees), with a lobby to wait (chairs). Area to clean up, prefer an outside entrance but also need to keep in mind the lobby carpet (prefer tile for contractor boots). Low counter to accommodate the disabled, 7 private offices and 2 counter employees with 2 offices large enough to accommodate 2 employees each (2 code enforcement officers and 2 plan reviewers). 1office for a planner, a multimedia room for plotter and printer, and a conference room large enough for 50 to 100 public citizens (code enforcement). 2 workstation for public use, additional storage needs in Kennewick, 7 county vehicles and will grow by 4 employees (permit technician and building inspector).
Facilities	1,201	-	**1,201**	**900**	1 employee will be needed for the new Kennewick Administration Building. O 4 employees actually need offices or space as the other 5 employees are either located in the maintenance shop or work a different shift. 2 additional workstations are needed for program testing. There are 2 county vehicles; growth - 1 employee
Personnel/Civil Service	1,368	-	**1,368**	**3,000**	3 to 4 private offices (office manager to observe front counter); secure storage for all files, supplies, and shredding; space for some temporary help during benefits; fire proof vault for insurance policies; room for orientations; lobby for waiting customers and counter/table to fill out forms; secretarial pool?; low counter for the disabled; gym; 6 workstations - testing; storage needs in Kennewick; 2 county vehicles; growth - 4 employees; conference; training; and break rooms
Central Services	1,858	-	**1,858**	**600**	Growth dependent on growth within County departments. Minimum in new admin building: equivalent of oversized electrical room to allow for racks, some workspace, and additional phone system equipment. If majority of departments in Prosser also move to new admin building: the existing computer room at the new courts building will have to expanded to accommodate up to 8 servers that would be moved from Prosser (which would improve response time); also office area would need to be expanded to accommodate moving 1 technician from Prosser. If mail services moved to new admin building, minimum needs: office space (80 sqft) for two clerical employees (1 from Prosser & 1 new) plus space for mail processing equipment (100 sqft) and sorting outgoing mail (100 sqft); incoming mail distribution would require space for lobby & lock boxes (144 sqft), sorting (96 sqft); mail processing would need to be near loading area. Need for surplus equipment storage will be less going forward as all computers and monitors are in Dell asset recovery program; still need space to collect surplus computers for palletizing and shipping; ongoing need for other peripherals could be accommodated in expansion to existing office at new courts building. 3 county vehicles.
Commissioners	1,815	-	**1,815**	**6,000**	3 commissioners and 8 employees; 2 commissioners and 5 employees split their time between Prosser and Kennewick; 1 employee is matrixed to the sheriff's department; remodel Prosser; 5 county vehicles
Board of Equalization	-	-	-	-	204 cases heard annually; may increase as it is more convenient; conference room only; mileage incurred
Total Square Ft.	6,242	8,064	**14,306**	**30,000**	

Note: Current occupied space at the Prosser Courthouse, Planning Annex, Kennewick Annex, and WSU/CO-OP Extension equates to 37,683.

BUILDING	Building Sq. Ft.	Occupied Sq. Ft.	% of Building	Department Budget Cost
JUSTICE CENTER	**111,172**			
District Court		21,716	24%	$ 184,598
Clerk Facilitator		116	0%	$ 986
Probation		884	1%	$ 7,514
Superior Court		14,206	16%	$ 120,759
Superior Court Clerk		14,571	16%	$ 123,861
Clerk Collections		295	0%	$ 2,508
Prosecuting Attorney		13,881	15%	$ 117,996
Sheriff		18,612	21%	$ 158,212
Personnel		1,223	1%	$ 10,396
Commissioners		1,670	2%	$ 14,196
~~Coroner~~		———	~~0%~~	~~$ ———~~
Facilities & Parks		1,201	1%	$ 10,209
Sustainable Development		145	0%	$ 1,233
Civil Service		145	0%	$ 1,233
Central Services		1,858	2%	$ 15,794
		90,523	**100%**	**$ 769,494**
percent of building that is occupied		*81%*		
COURTHOUSE	**32,700**			
District Court		2,219	10%	$ 21,508
Commissioners		2,247	10%	$ 21,780
Superior Court Clerk		1,143	5%	$ 11,079
Central Services		1,974	8%	$ 19,134
Assessor		3,449	15%	$ 33,431
Board of Equalization		282	1%	$ 2,733
Personnel		90	0%	$ 872
Treasurer		2,942	13%	$ 28,516
Public Works		4,258	18%	$ 41,272
Prosecuting Attorney		434	2%	$ 4,207
Auditor		4,313	18%	$ 41,805
		23,351	**100%**	**$ 226,338**
percent of building that is occupied		*71%*		
PLANNING ANNEX	**3,776**	**3,776**	**100%**	**$ 26,136**
WSU/COOP EXT	**1,960**			
WSU/Coop Ext		1,360	69%	$ 9,413
Auditor (Storage Only)		600	31%	$ 4,153
		1,960	**100%**	**$ 13,566.4**
percent of building that is occupied		*100%*		
~~**AUDITOR-RICHLAND**~~	———	———	**#DIV/0!**	**#DIV/0!**
KENNEWICK ANNEX	**9,900**			
Coop Ext		2,630	31%	$ 20,965
Auditor		1,500	17%	$ 11,957
Treasurer		630	7%	$ 5,022
Building		1,641	19%	$ 13,081
Assessor		1,663	19%	$ 13,257
Juvenile Court		532	6%	$ 4,241
		8,596	**100%**	**$ 68,524.3**
percent of building that is occupied		*87%*		
CORONER	**4,045**	**3,236**	**100%**	**$ 27,998**
FACILITIES	**-**	**-**	**#DIV/0!**	**#DIV/0!**
TOTALS	**163,553**	**131,442**		

9:50

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	2/11/08	**Execute Contract**		**Consent Agenda**	
Subject:	Clodfelter Pit	**Pass Resolution**		**Public Hearing**	
Prepared by:	L. Small	**Pass Ordinance**		**1st Discussion**	X
Reviewed by:	L. Kelty	**Pass Motion**		**2nd Discussion**	
				Other Business	

BACKGROUND INFORMATION

Per resolution 06-310 dated June 5, 2006 the Board of Benton County Commissioners agreed to determined parcel 1-1488-100-0006-000 surplus and authorized property management personnel to negotiate through sealed bids, private negotiation, and/or other methods consistent with the Benton County personal and real property management policies and procedures.

This parcel was previously used by the County Road Department as a gravel pit. They have also been using this area for some time to dump waste such as asphalt, tree branches, non-toxic materials, and, however not confirmed, there was mention that there could be some carcasses.

The county appraiser researched this parcel to re-evaluate the current appraisal and Mr. Hillerman indicated that they have the property valued appropriately, unless there is something that is detrimental to this property that he is not aware of.

Larry Moser confirmed there is no record of irrigation assessments that has been paid by the county on this parcel, nor any billings from KID. (I will have a verbal confirmation for the Board on Monday if there are any water rights for this parcel or not.)

Benton County received an offer from Mr. Frankie Cruz Jr., Los Angeles, CA for said parcel for a proposed offer of $20,000; his plans are to subdivide in half keeping one section for the family and place the other on the market. I have emailed Mr. Cruz to make sure he has researched this parcel and is comfortable with the information he has obtained; to date, he has not clearly indicated that he has researched this parcel, but has inquired a couple different times on the status of his proposal.

We also had Ms. Lewis from Richland, WA interested in this parcel this last past month. She physically visited the site, and was accompanied with someone she knew that had the equipment to clear and level the site in order to short plat and put on the market. This individual indicated to Ms. Lewis it would take hundreds of thousands of dollars to get the property cleaned up and ready for the market. Ms. Lewis is no longer interested in this parcel.

RECOMMENDATION

The recommendation is for the Board of Commissioners to move forward with the sale of parcel 1-1488-100-0006-000, known as the Clodfelter Pit, in the amount of $20,000 and get this parcel back on the tax rolls, and authorize property management to prepare the Quit Claim Deed and Tax Affidavit to be placed on the consent agenda for signature on February 25, 2008.

Memorandum

To: M. Benitz; L. Bowman; C. Oliver; D. Sparks; L. Smith Kelty

CC:

From: Lisa Small

Date: 02/06/08

Re: Property Offer 1-1488-100-0006-000

Per Resolution 06-310 dated June 5, 2006 the Board of Benton County Commissioners declared parcel 1-1488-100-0006-000 surplus. Below is a summary report on said parcel.

1. Assessed Value; $70,580
2. Fair Market Value Appraisal; $70,580 (Assessor's office indicated they have the property valued appropriately, unless there is something that is detrimental to the property that he is not aware of.
3. Area; Kennewick
4. Date Acquired; 1964
5. Price Paid by County; N/A
6. Easements of Record; see attached legal description.
7. Improvements; N/A
8. Liens or Interests of Record; N/A
9. Zoning; N/A
10. Marketing Plan; None, as Benton County was approached by private negotiations.

Recommendation: Accept the offer and get this parcel back on the tax rolls.

BENTON COUNTY

Property Account Summary

Account No.:	114881000006000	**Alternate Property Number:**	
Account Type:	Real Property		
TCA:	1731		
Situs Address:	UNDETERMINED WA		
Legal:	S 1/2 SW NE EXC PTN LYG N WLY OF SELY LN OF CNL		

Parties:

Role	Name & Address
Mortgage Company	BENTON COUNTY ROAD DEPT P O BOX 1001 PROSSER WA 993500000
Owner	BENTON COUNTY, R-110 CLODFELTER QUARRY 0 0000
Taxpayer	BENTON COUNTY ERR FUND C/O R-110 CLODFELTER QUARRY PO BOX 1001 PROSSER WA 99350

Property Values:

Value Name	2008	2007	2006
Taxable Value Regular	$0	$0	$0
Market Total	$70,580	$70,580	$70,580
Assessed Value	$70,580	$70,580	$70,580
Market Land	$70,580	$70,580	$70,580
Market Improvement	$0	$0	$0
New Construction			$0
Added Improvement			$0

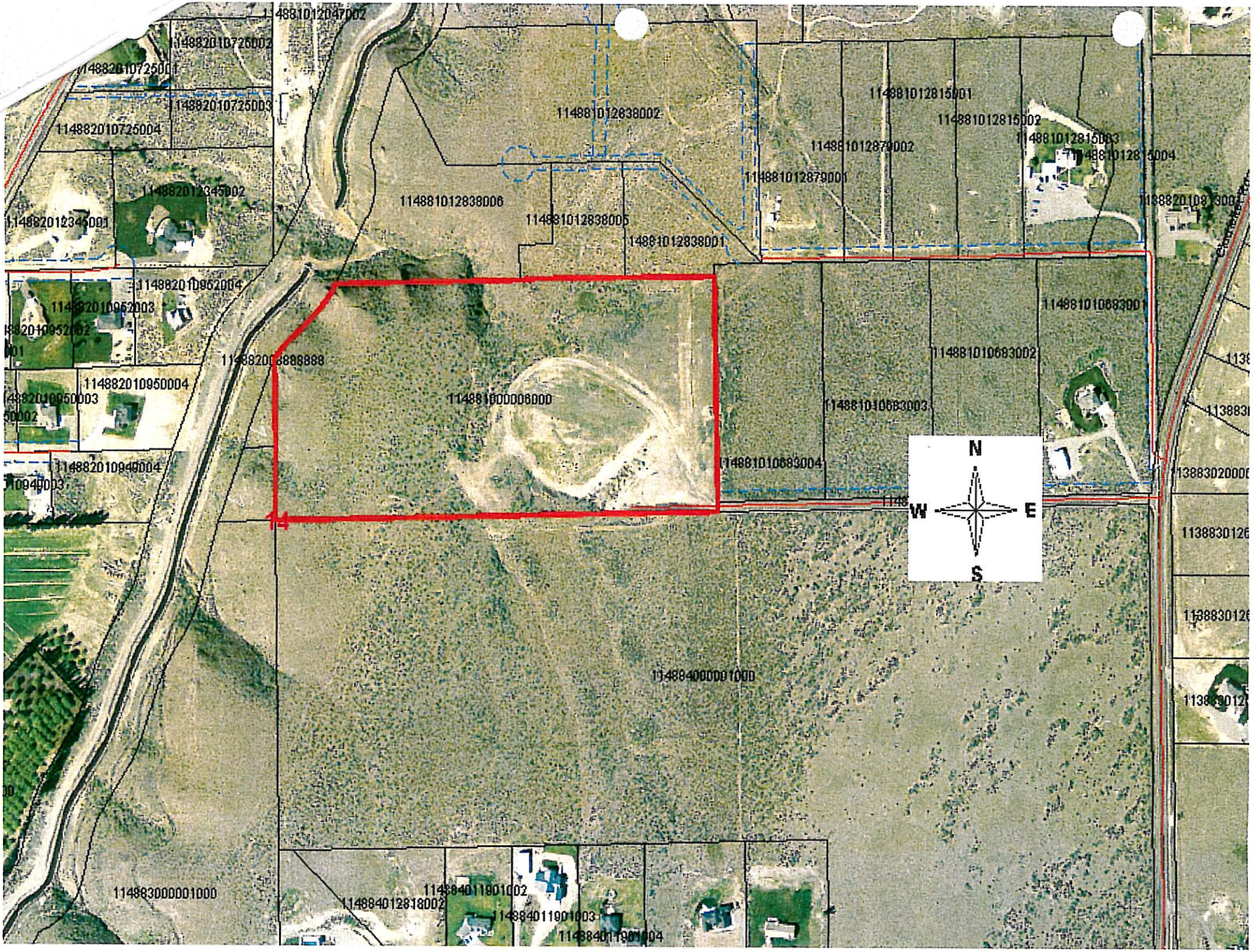
Property Characteristics:

Tax Year	Characteristic	Value
2008	Use Code	32 Manf - Stone/Glass
	Unit of Measure	Acre(s)
	Size	20.80
	WED Noxious Weed	20.8
	Kennewick Irrigation District	

Exemptions:

Tax Year	Description	Count	Amount	Assessment Basis
2008	Government Property	1	$70,580	Assessed Value
2007	Government Property	1	$70,580	Assessed Value
2006	Government Property	1	$70,580	Assessed Value

(End of Report)


N
W
E
S

Frankie Cruz Jr.
700 S St. Louis
Los Angeles, CA 90023

Date: 1/17/2008

Dear Sir/Madame,

I would like to inform you just how great Lisa has been in assisting me in the purchase of property in Benton County. I have been looking for property for to invest in, and Lisa has been instrumental in assisting me through this process.

She is a great asset to the county!

I would like to formally make a proposal for the purchase of property number: 114-8810-0000-600-0

For the given property I would like to make an offer in the amount of $20,000.00 to be paid immediately upon acceptance of this offer.

Our plans for the Parcel: to sub plot in half and keep one for the family and to place the other on the Market.

Due to the nature of the situation , a speedy reply would be very much appreciated.

Thank you.

Frankie Cruz Jr.
Phone 323-253-3457
Address 700 S St Louis
Los Angeles, CA 90023

email address pistolitas@earthlink.net

Frankie Cruz

10:00

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	2/11/08	**Execute Contract**		**Consent Agenda**	
Subject:	Property	**Pass Resolution**		**Public Hearing**	
Prepared by:	L. Small	**Pass Ordinance**		**1st Discussion**	
Reviewed by:	L. Kelty	**Pass Motion**		**2nd Discussion**	X
				Other Business	

BACKGROUND INFORMATION

Per resolution 07-084 dated February 5, 2007 the Board of Benton County Commissioners agreed to sale parcel 1-1680-100-0009-000 (Chemical Pit) to Columbia Irrigation District (CID) in the amount of $36,000 after direct negotiation.

During this same time frame, CID was in the processes of trying to relinquish water rights from Benton County on five (5) different parcels, with the Chemical Pit being one of them. This water right issue was brought before the board and after the Board opposed this action, CID backed out of the purchase of the Chemical Pit property.

Today, we have a proposal on the table from Mr. Cameron Shoemaker, owner of Shoemaker Excavation, with an interest to purchase the Chemical Pit property with intentions to subdivide and develop into residential lots, as current zoning will allow.

There is a tremendous amount of clean up to be done on this parcel and Mr. Shoemaker has indicated that he has the equipment and resources to restore the property to a marketable condition.

Mr. Shoemaker is offering $15,000 with water rights included for said parcel.

This amount is considerably lower than the low end of the fair market value, however, if the board were to choose to decline the proposal or counter offer with a larger amount, we may run into a situation of loosing an opportunity to get this parcel back on the tax rolls. If Department of Ecology were to come in and exercise their authority to relinquish the water rights from this parcel, this would in fact have a detrimental effect on the value of this parcel.

RECOMMENDATION

The recommendation is for the Board of Commissioners to move forward with the sale of parcel 1-1680-100-0009-000, known as the Chemical Pit, in the amount of $15,000 and get this parcel back on the tax rolls; and authorize property management to prepare the Quit Claim Deed and Tax Affidavit to be placed on the consent agenda for signature on February 25, 2008.

Memorandum

To: M. Benitz; L. Bowman; C. Oliver; D. Sparks; L. Smith Kelty

CC:

From: Lisa Small

Date: 02/06/08

Re: Property Offer 1-1680-100-0009-000

Per Resolution 05-133 dated March 14, 2005 the Board of Benton County Commissioners declared parcel 1-1680-100-0009-000 surplus. Below is a summary report on said parcel.

1. Assessed Value; $163,190 - **NOTE: -** August of 2003 the BOCC rejected a proposal from Mr. Lizotte in the amount of $38,840 per Ross Dunfee as he has an appraisal done by Markel and Associates that indicated the property was valued at $80,650.

2. Fair Market Value Appraisal; 2007 County Appraiser – $5,000 per acre / $89,600

3. Area; Finley, East side of State Road 397 (formerly Chemical Drive)

4. Date Acquired; January 1960

5. Price Paid by County; N/A

6. Easements of Record; see attached legal description.

7. Improvements; N/A

8. Liens or Interests of Record; N/A

9. Zoning; N/A

10. Marketing Plan; None, as Benton County was approached by private negotiations.

Recommendation: Except the offer and get this parcel back on the tax rolls.

BENTON COUNTY

Property Account Summary

Account No.:	116801000009000	**Alternate Property Number:**	
Account Type:	Real Property		
TCA:	1331		
Situs Address:	UNDETERMINED WA		

Legal: SECTION 16 TOWNSHIP 8 NORTH RANGE 30: PORTION IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER DEFINED AS FOLLOWS: THAT PORTION OF THE S.P. AND S. RAILWAY COMPANY RIGHT OF WAY, AS SAME EXISTED MARCH

30, 1960, IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, LYING NORTHEASTERLY OF THE LINE LYING 40 FEET SOUTH- WESTERLY OF THE FOLLOWING DESCRIBED COUNTY ROAD CENTERLINE: COMMENCING AT THE

NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER: THENCE SOUTH 89 DEGREES 40' EAST ALONG THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 247.57 FEET TO A POINT ON CURVE: THE TRUE

POINT OF BEGINNING (THE TANGENT TO THE CURVE AT THIS POINT BEARS SOUTH 49 DEGEES 55' EAST): THENCE SOUTHEASTERLY ON THE ARC OF A 2 DEGREE CURVE TO THE RIGHT A DISTANCE OF 355.25 FEET THROUGH AN ANGLE

OF 07 DEGREES 06': THENCE SOUTH 42 DEGREES 49' EAST A DISTANCE OF 924.97 FEET: THENCE ON THE ARC OF A 2 DEGREE CURVE TO THE RIGHT A DISTANCE OF 640.83 FEET THROUGH AN ANGLE OF 12 DEGREES 49':

CONTAINING 3.07 ACRES, MORE OR LESS, (BARGAIN AND SALE DEED GIVEN TO BENTON COUNTY FROM S.P. AND S. RAIL- WAY COMPANY ON NOVEMBER 14, 1960, VOL. 188, PG 523). THE NORTH ONE/HALF OF THE SOUTHWEST

QUARTER OF THE NORTHEAST QUARTER, NORTHERLY RIGHT OF WAY: LESS RAILWAY RIGHT OF WAY. PUD EASEMENT 1-17-73, 8-11-54.

Parties:

Role	Name & Address
Mortgage Company	BENTON COUNTY ROAD DEPT P O BOX 1001 PROSSER WA 993500000
Owner	BENTON COUNTY, R-95 CHEMICAL PIT 0 0000
Taxpayer	BENTON COUNTY ERR FUND C/O R-95 CHEMICAL PIT PO BOX 1001 PROSSER WA 99350

Property Values:

Value Name	2008	2007	2006
Taxable Value Regular	$0	$0	$0
Market Total	$163,190	$163,190	$163,190
Assessed Value	$163,190	$163,190	$163,190
Market Land	$163,190	$163,190	$163,190
Market Improvement	$0	$0	$0
New Construction			
Added Improvement			

Property Characteristics:

Tax Year	Characteristic	Value
2008	Use Code	85 Mining
	Unit of Measure	Acre(s)
	Size	17.92

WED Noxious Weed	17.92	

Exemptions:

Tax Year	Description	Count	Amount	Assessment Basis
2008	Government Property	1	$163,190	Assessed Value
2007	Government Property	1	$163,190	Assessed Value
2006	Government Property	1	$163,190	Assessed Value

(End of Report)

Lisa Small - surplus property proposal

From: "Cameron Shoemaker" <twinshoe@gte.net>
To: <LISA.small@co.benton.wa.us>
Date: 1/30/2008 7:13:08 PM
Subject: surplus property proposal

Dear Benton County Commissioners:

My name is Cameron Shoemaker my wife and I are interested in purchasing a piece of surplus property in Finley parcel # 1-1680-100-0009-000. We would like to subdivide and develop into residential lots as current zoning will allow. We own Shoemaker Excavation and have the equipment and resources to restore the property to a marketable condition. We are willing to pay $15000.00 for the parcel with water rights. I can be contacted any time at 509-727-3864.

Thank you for your time.

Cameron and Lisa Shoemaker
33004 S GERARDS RD
KENNEWICK WA 99337

10:10

Executive Session

CID Water Rights

K Fitzgerald

10:30

AGENDA ITEM		TYPE OF ACTION NEEDED	
Meeting Date:	February 11, 2008	Execute Contract	Consent Agenda X
Subject:	Line Item Transfer	Pass Resolution X	Public Hearing
Prepared by:	Melina Wenner	Pass Ordinance	1st Discussion
		Pass Motion	2nd Discussion
		Other	Other

BACKGROUND INFORMATION

The Personnel/Risk Manager has researched comparative counties and their Personnel Resource organizations. Based on the information received, the Personnel/Risk Manager recommends an organizational change in the Benton County Personnel Resource Office. The proposed changes are represented on the attached organization chart. The Personnel/Risk Manager requests $25,000 of appropriated Office Assistant II funds be transferred for a new Personnel Secretary position. Please see attached Exhibit A and the Personnel Resources Organizational Chart.

SUMMARY

Same as above

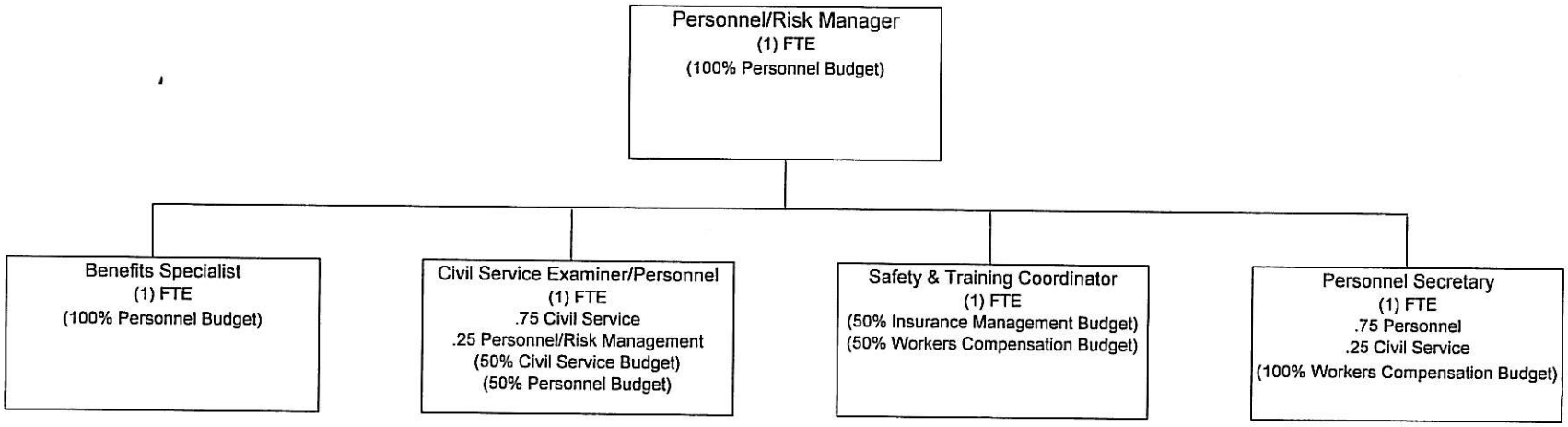
RECOMMENDATION

, ass resolution.

FISCAL IMPACT

None

PERSONNEL ORGANIZATION CHART 2008



5:08 PM on 2/6/2008

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN THE WORKERS' COMPENSATION BUDGET IN THE AMOUNT OF $25,000.

BE IT RESOLVED by the Board of Benton County Commissioners, that $25,000.00 shall be transferred as more clearly defined in Exhibit A attached hereto.

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
LINE ITEM TRANSFERS

EXHIBIT
Resolution No.

DEPARTMENT: PERSONNEL **DEPARTMENT NO.** 127

FUND NAME: Work Comp **FUND NO.** 0503-101

TRANSFER FROM: **TRANSFER TO:**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
517.670	1133	Office Ast. II	25000.00	517.670	1130 (New)	Personnel Secretary (New)	25000.00

EXPLANATION:

Please transfer funds for a Personnel Secertary position.

Prepared by: Melina Wenner **Date** February 6, 2008

Approved 0

Denied 9 **Date**

PROJECT: CE 1786 CRP - GRIFFIN & JOHNSON ROAD INTERSECTION IMPROVEMENT

LOCATION: BENTON COUNTY
LET BY: BOARD OF COUNTY COMMISSIONERS
DATE: February 4, 2006; 10:30 a.m., Local Time

ITEM NO.	ITEM DESCRIPTION	QTY.	UNIT	A & B ASPHALT, INC. P O Box 5280 Benton City, WA 99320-5280		HLT CONSTRUCTION, INC. 4207 North Garr Road Spokane, WA 99206		GRANITE NORTHWEST, INC. dba TRANSTATE ASPHALT P O Box 2738 Pasco, WA 99302		M. A. DeATLEY CONSTRUCTION, INC. P O Box 490 Clarkston, WA 99403		NORTH CENTRAL CONSTRUCTION, INC. P O Box 850 Moses Lake, WA 98837		ENGINEER'S ESTIMATE	
				UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT	UNIT PRICE	BID AMOUNT
1	MOBILIZATION	L.S.	L.S.	Lump Sum	32,000.00	Lump Sum	44,890.00	Lump Sum	40,000.00	Lump Sum	120,000.00	Lump Sum	135,000.00	Lump Sum	20,000.00
2	CLEARING AND GRUBBING	L.S.	L.S.	Lump Sum	7,000.00	Lump Sum	12,250.00	Lump Sum	8,800.00	Lump Sum	5,000.00	Lump Sum	10,000.00	Lump Sum	5,000.00
3	ROADWAY EXCAVATION INCLUDING HAUL	42,780	C.Y.	8.80	376,464.00	9.12	390,153.60	14.00	598,920.00	18.75	802,125.00	24.00	1,026,720.00	5.00	213,900.00
4	EMBANKMENT COMPACTION	3,435	C.Y.	0.50	1,717.50	2.75	9,446.25	0.01	34.35	1.00	3,435.00	7.15	24,560.25	2.00	6,870.00
5	FURNISHING AND PLACING CRUSHED SURFACING TOP COURSE INCL. HAUL	2,670	TON	9.00	24,030.00	12.65	33,775.50	20.00	53,400.00	13.00	34,710.00	15.50	41,385.00	13.00	34,710.00
6	FURNISHING AND PLACING CRUSHED SURFACING BASE COURSE INCL. HAUL	6,550	TON	9.00	58,950.00	12.65	82,857.50	16.00	104,800.00	13.00	85,150.00	15.50	101,525.00	11.50	75,325.00
7	HMA CLASS 1/2" (PG 64-28) INCLUDING PAVING ASPHALT	1,995	TON	60.50	120,697.50	75.50	150,622.50	70.00	139,650.00	60.50	120,697.50	70.00	139,650.00	52.00	103,740.00
8	PLAIN STEEL CULVERT PIPE 0.064 INCH THICK 12 INCH DIAMETER	420	L.F.	30.00	12,600.00	38.84	16,312.80	35.00	14,700.00	35.00	14,700.00	35.00	14,700.00	22.00	9,240.00
9	PROJECT TEMPORARY TRAFFIC CONTROL	L.S.	L.S.	Lump Sum	1,500.00	Lump Sum	6,500.00	Lump Sum	4,400.00	Lump Sum	4,000.00	Lump Sum	7,500.00	Lump Sum	2,500.00
10	PAVEMENT MARKINGS	L.S.	L.S.	Lump Sum	1,500.00	Lump Sum	1,500.00	Lump Sum	850.00	Lump Sum	750.00	Lump Sum	1,560.00	Lump Sum	3,000.00
11	MAILBOX SUPPORT TYPE 1 STEEL POST	6	EA	200.00	1,200.00	200.00	1,200.00	500.00	3,000.00	245.00	1,470.00	260.00	1,560.00	275.00	1,650.00
12	MAILBOX SUPPORT TYPE 2 STEEL POST	1	EA	300.00	300.00	250.00	250.00	650.00	650.00	525.00	525.00	546.00	546.00	375.00	375.00
13	WIRE FENCE TYPE 2	1,708	L.F.	5.00	8,540.00	10.00	17,080.00	11.50	19,642.00	4.35	7,429.80	4.50	7,686.00	8.00	13,664.00
14	CHAIN LINK FENCE TYPE 6	40	L.F.	30.00	1,200.00	25.00	1,000.00	26.50	1,060.00	24.25	970.00	25.00	1,000.00	20.00	800.00
15	10' POWDER RIVER PANEL GATES	2	EA	700.00	1,400.00	700.00	1,400.00	1,100.00	2,200.00	500.00	1,000.00	525.00	1,050.00	600.00	1,200.00
16	REMOVE AND RESET WIRE FENCE TYPE 2 WITH ROCK BASKETS	998	L.F.	6.00	5,988.00	12.00	11,976.00	13.50	13,473.00	5.15	5,139.70	5.30	5,289.40	13.00	12,974.00
17	TRIMMING AND CLEANUP	L.S.	L.S.	Lump Sum	4,000.00	Lump Sum	3,500.00	Lump Sum	4,000.00	Lump Sum	1,000.00	Lump Sum	6,000.00	Lump Sum	2,500.00
18	SPCC PLAN	L.S.	L.S.	Lump Sum	300.00	Lump Sum	1,000.00	Lump Sum	350.00	Lump Sum	1,000.00	Lump Sum	500.00	Lump Sum	500.00
	TOTAL				**659,387.00**		**785,714.15**		**1,009,929.35**		**1,209,102.00**		**1,526,231.65**		**507,948.00**

AGENDA ITEM	TYPE OF ACTION NEEDED			
Meeting Date: Feb. 11, 2008	Execute Agreement		**Consent Agenda**	**X**
Subject: Griffin/Johnson Int.	Pass Resolution	X	**Public Hearing**	
Prepared by: dlh	Pass Ordinance		**1st Discussion**	
Reviewed by: BLT	Pass Motion		**2nd Discussion**	
	Other		**Other**	

BACKGROUND INFORMATION

On February 4, 2008, bids were received for the Griffin Road/Johnson Road Intersection project as shown on the attached bid tabulation. The lowest bid was received from A & B Asphalt, Inc., Benton City, Washington and exceeded the Engineer's Estimate for this project by more than 30%.

We have received an HES grant in the amount of $180,000. A portion of this grant has been spent and the remainder can be applied to the cost of the project, leaving a shortfall of approximately $500,000 that will need to be funded by the County. The County Engineer recommends that all bids be rejected, and the project be delayed until sometime in the future when more monies become available. We will be required to return the unspent HES funds, but can reapply for funding the future.

RECOMMENDATION

All bids be rejected, and the project be delayed to a future date to be determined by the County Engineer.

FISCAL IMPACT

To accept the lowest bid would create a funding shortfall of approximately $500,000.

MOTION

Approve as part of the Consent Agenda.

BENTON COUNTY
SALARY REQUEST STATEMENT

bb

REASON FOR REQUEST See attachment A

POSITION Deputy

Erik Magnuson

NAME OF AFFECTED EMPLOYEE/CANDIDATE

EFFECTIVE DATE 1/01/08

OFFICE/DEPARTMENT Sheriff

SALARY FROM $3,829 TO $3,984

ELECTED OFFICIAL/DEPARTMENT DIRECTOR
ATE

APPROVED _____

DENIED _____

CHAIRMAN

MEMBER

MEMBER

DATE

BACKGROUND INFORMATION (Attach documentation; organizational chart, application, contract language, budgetary approval, appraisal, Resolution, etc.)

BASIS: See attachment

FISCAL IMPACT AND REVIEW

FIRST YEAR IMPACT: —

AGGREGATE IMPACT: —

Attach the Employment Opportunity, if applicable, and Classification Description document(s). State how this individual meets or exceeds the criteria listed in these documents.

List names of other employees who hold the same classification. Include grade, step, and salary.

White--Personnel
BCPERS 0014/95

Yellow--Payroll

Pink--Commissioners

Goldenrod--Department

b1

BENTON COUNTY
SALARY REQUEST STATEMENT

REASON FOR REQUEST See attachment A

POSITION Corrections Officer

Brant Smith

NAME OF AFFECTED EMPLOYEE/CANDIDATE

EFFECTIVE DATE 2/11/08

OFFICE/DEPARTMENT Sheriff

SALARY FROM @ 3,357 TO @ 3,492

ELECTED OFFICIAL/DEPARTMENT DIRECTOR
\TE

APPROVED_____

DENIED _____

CHAIRMAN

MEMBER

MEMBER

DATE

BACKGROUND INFORMATION (Attach documentation; organizational chart, application, contract language, budgetary approval, appraisal, Resolution, etc.)

BASIS: See attachment A

FISCAL IMPACT AND REVIEW

FIRST YEAR IMPACT: —

AGGREGATE IMPACT: —

Attach the Employment Opportunity, if applicable, and Classification Description document(s). State how this individual meets or exceeds the criteria listed in these documents.

List names of other employees who hold the same classification. Include grade, step, and salary.

White--Personnel
BCPERS 0014/95

Yellow--Payroll

Pink--Commissioners

Goldenrod--Department

AGENDA ITEM	TYPE OF ACTION NEEDED	
.eeting Date: February 11, 2008 Subject: Authorization to Purchase Prepared By: J. Thompson Reviewed By:	Execute Contract Pass Resolution xxxx Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

The Benton County Sheriff's Office purchases supplies in large quantities due to inmate population and Resolution 08-131 authorize contracts for the purchase of materials, equipment and supplies valued at between $5,000 and $25,000 without advertisement and formal sealed bidding.

SUMMARY

The Sheriff's Office obtained three price quotes that excludes sales tax for the bi-annual toilet paper order: 1) Service Paper Company @ $41.69 a case, 2) West Coast Paper of Yakima, WA @ $34.69 a case, and 3) Stevens Paper Supply of Pendleton, OR @ $24.70. Officer Dan Farrell from the Sheriff's Office reviewed the quotes and recommends Stevens Paper Supply as the best reasonable quote.

RECOMMENDATION

.uthorize purchase.

FISCAL IMPACT

-0- the amount is already budgeted for in the 2008 expenditure budget.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PURCHASING JAIL OPERATION SUPPLIES FOR THE SHERIFF'S OFFICE

WHEREAS, the Benton County Sheriff's Office purchases supplies in large quantities due to inmate population, and

WHEREAS, resolution 08-131 authorize contracts for the purchase of materials, equipment and supplies valued at between $5,000 and $25,000 without advertisement and formal sealed bidding; and

WHEREAS, the Sheriff's Office obtained three price quotes that excludes sales tax for the bi-annual toilet paper order: 1) Service Paper Company @ $41.69 a case, 2) West Coast Paper of Yakima, WA @ $34.69 a case, and 3) Stevens Paper Supply of Pendleton, OR @ $24.70;and

WHEREAS, Officer Dan Farrell from the Sheriff's Office reviewed the quotes and recommends Stevens Paper Supply as the best reasonable quote, **NOW, THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners, that the Sheriff's office proceed with the purchase of the bi-annual toilet paper order in the amount of $24,700 (excluding wsst).

Dated this 11 day of February 2008.

_____
Chairman of the Board

_____
Member

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

Attest: _____ J. Thompson

CC: BCSO, Auditor Office

BENTON COUNTY SHERIFF'S DEPARTMENT
PURCHASE ORDER
ORDER NUMBER 010308FARRELL

Vendor: Stevens paper **Date: 01/03/08**

Sold To: **Benton County Sheriff's Office**
7122 W. Okanogan Pl #B.
Kennewick, Wa. 99336
Attention: **Dan Farrell or Carrie Gates**

Ship To: Same **Ship: Via Best** **Needed By: ASAP**

Payment: Account

Please except the above purchase order for the following item(s):

1000 Cases of toilet paper @ $24.70 per case /sub total $24,700.00
tax $2050.10
total $26750.10

Ordered by Dan Farrell

Toilet paper comparison Jan 08

This is a presentation of three bids for our bi annual toilet paper perchase

Company	Number of cases	Number of sheets per role	Number of rolls in case	Price per case	Price per roll	Price per ft	Total
Service Paper	500	500	96	$45.25	$0.47	$0.00094	$22,625.00
Service Paper	700	500	96	$43.65	$0.45	$0.00091	$30,555.00
Service Paper	1000	500	96	$41.69	$0.43	$0.00087	$41,690.00
West coast paper	500	500	96	$35.43	$0.37	$0.00074	$17,715.00
West coast paper	700	500	96	$35.06	$0.37	$0.00073	$24,542.00
West coast paper	1000	500	96	$34.69	$0.36	$0.00072	$34,690.00
Stevens Paper	500	500	96	$25.81	$0.27	$0.00054	$12,905.00
Stevens Paper	750	500	96	$25.45	$0.27	$0.00053	$19,087.50
Stevens Paper	1000	500	96	$24.70	$0.26	$0.00051	$24,700.00

Service paper very high priced national company

west coast better than Service paper but still very high copmared to Stevens paper

Stevens Paper has secured a special price for us once again time is very important however. On 1/2 Mr.. Stevens had access to 1125 cases. As of 1330 on 1/3 he can only get 750 or so. As soon as we commit to use him he can secure as many as he can
Mr. Stevens has lowered his price from last year when other companies have significantly raised their price.

Dennis Adams
1-800-829-0081, X-107, toll free
(509) 536-8163, warehouse fax
(509) 235-6681, office fax
(509) 879-5454 cell
email; dadams@servicepaper.com

Service Paper Company

Fax

To:	Mr. Farrell @ Benton CO. Jail	**From:**	Dennis @ SPC
Fax:		**Pages:**	1
Phone:		**Date:**	12/19/2007
Re:	2 ply tp.	**CC:**	

☐ **Urgent** X **For Review** ☐ **Please Comment**

• Comments Here is your numbers for Scott 96\500 2 ply tissue

#5135, 96\500 reg size sheets, 500cs @ 45.25, 700cs @ 43.65, 1000cs @ 41.69

#5137, 96\500 short sheet, 500cs @ 40.24, 700cs @ 38.82, 1000cs @ 37.07

Feel free to call me if you need any information. I can have samples sent direct to you if you provide a ship to address.

Sincerely, Dennis @ Service Paper Co

509-879-5454 cell, dadams@servicepaper.com, email, 800-829-0081,x107 toll free.

Price Quote

WestCoastPaper

Quote # £00706£00000 Description Benton County Sheriff

DAN FARRELL
BENTON COUNTY SHERIFF'S OFFICE
7122 W OKANOGAN PLACE
KENNEWICK, WA 99336
509 735 6555

JOHN SOUSLEY CW
WEST COAST PAPER
1801 AVALANCHE AVENUE
YAKIMA, WA 98908
509 952 1728

Item #	Description	Price	Prc UOM
SCATM1616	TM1616 MAINSTREET WHT 2PLY RATH TISSUE 96RI /500SH/CS	34.69 *	CS

* 1,000 CASES @ $34.69/CASE $34,690.00
8.3% TAX 2,879.27
TOTAL $37,569.27

700 CASES @ $35.06/CASE $24,542.00
8.3% TAX 2,036.99
TOTAL $26,578.99

500 CASES @ $35.43/CASE $17,715.00
8.3% TAX 1,470.35
TOTAL $19,185.35

John Sousley
12/31/07

STEPHENS PAPER & SUPPLY

119 SW 18th Street
Pendleton, OR 97801
Phone (541) 966-1002

DATE	DATE SHIP.	
1/3/08		
SHIP VIA		P.O.#
		TERMS

TO: Benton County Jail

SHIP TO: Quote

Dan Fenel

QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
500	cs	Bath Tissue 2ply 96roll 500Sheets	25.81	
750	cs	" " "	25.45	
1000	cs	" " "	24.70	
		Pending availability - as of 1/2/08 there is 1120 cases at this cost.		

AUTHORIZED SIGNATURE: Jerry Stephens

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: February 11, 2008 Subject: Contract Extension Prepared By: J. Thompson Reviewed By:	Execute Contract Extension XXX Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda XXX Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

The Benton County entered into a contract with Olympic Security on January 1, 2005, whereby they would provide screen station guard security services in 2005 for the Benton County.

The contract specified that upon mutual agreement of the parties, the contract terms and conditions may be extended for four (4) subsequent one-year periods, which have been made for 2006 and 2007.

Benton County is satisfied with the services provided by Olympic Security and wish to extended the contract for an additional year.

SUMMARY

The Benton County Sheriff's recommends extending the contract through December 31, 2008.

RECOMMENDATION

Pass Consent Agenda item extending Olympic Security contract for 2008.

FISCAL IMPACT

-0- Already in the 2008 budget.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUESTING APPROVAL TO EXTEND THE CONTRACT BETWEEN OLYMPIC SECURITY AND BENTON COUNTY THROUGH 2008.

WHEREAS, the Benton County and Olympic Security entered into a Professional Service Contract for screen station guard services on January 1, 2001; and

WHEREAS, the Benton County was satisfied with the services provided by Olympic Security and entered into a new contract January 1, 2005 through December 31, 2005; and

WHEREAS, the contract provides for the extension of the contract for four (4) subsequent one year periods upon the terms specified in the contract, which have been made for 2006 and 2007; and

WHEREAS, the Benton County is satisfied with the services provided by Olympic Security and wish to extend the contract for an additional year; **NOW, THEREFORE,**

BE IT RESOLVED, by that the Board of Benton County Commissioners approves the contract extension between Benton County and Olympic Security, for screen station guard services for the calendar year of 2008 based on the terms specified in the contract.

Dated this 11th day of February, 2008.

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

J. Thompson

CC: File, Original - Sheriff's Office, Prosecutor (Rosemary), Auditors Office, and Olympic Security

THE CONTRACT IS HEREBY AMENDED AS FOLLOWS (additional language is underlined):

Until stated otherwise, the following amendments pertain to SECTION 1 "Scope of Work and Services".

The following language shall be inserted after the title to this section but before the sub-heading entitled "A. SCREENING STATION":

"Any of the provisions herein that describe the qualifications of Contractor employees shall be regarded as minimum qualifications of employees in order for County to consent to have such employee assigned to discharge duties contemplated by this agreement. Contractor maintains complete discretion as to hiring and retention practices, and the qualifications specified herein shall not be regarded as an attempt to influence or dictate such hiring and retention practices."

The following amendments relate to Section A sub-heading "7", entitled "Health and Physical Fitness Requirements":

Add the word "shall" between the word "Contractor" and "employees" in the fourth line of this paragraph.

Strike the last sentence in this paragraph in its entirety.

The following amendment relates to Section A sub-heading "8", entitled "Appearance and Behavior:

Strike this entire section and replace with the following:

"Contractor shall implement policies related to its employees performing any work contemplated by this Contract in order that all such employees maintain an appearance, attitude and job knowledge consistent with the County's desire to maintain a favorable and professional public image. Such policies shall include, but is not necessarily limited to: ensuring that employees do not: make or receive phone calls, chew gum or tobacco, smoke, eat, read unauthorized material, groom themselves or display excessive amounts of, or inappropriate, body art or body/facial piercings while in public view and discharging Contractor's duties pursuant to this Contract. Ensuring that employees do: wear the uniform provided by Contractor and approved by County, wear County provided and approved identification, and wear a Contractor provided and County approved badge, at all times while in public view and discharging Contractor's duties pursuant to this Contract. Such uniform and badge are subject to prior approval by the Benton County Sheriff or his designee, shall prominently identify the wearer as a security officer and shall display the name of Contractor in the case of the uniform, may not imply with use of the words "police," "law enforcement," "Sheriff," or similar word/phrase, affiliation or employment by a certified law enforcement agency, and shall not imply in any way that the wearer is an employee of Benton County."

County reserves the right, at any time and in its sole discretion, to direct Contractor to remove

any of its employees from performance of duties pursuant to this contract on County premises for non-compliance with the provisions in this section. Immediately upon receiving notification by County of the unsuitability of an employee assigned to discharge duties pursuant to this contract, Contractor shall recall such employee and replace the employee with another suitable employee immediately. Under such circumstances, such employee may not be placed back on duty pursuant to this Contract until County has been assured in writing that any problems have been rectified and corrective action has been taken to ensure that future non-compliance is less likely to occur. Contractor maintains sole discretion as to what, if any, disciplinary action needs to be taken under these circumstances.

The following amendments relate to Section A sub-heading "9" entitled "Arrest/Detainment:"

The sub-heading title is struck and replaced with: "Use of Force by Contractor Employees"

The entire paragraph is struck and replaced with the following language:

"Contractor employees performing duties pursuant to this Contract have no County vested arrest powers and shall not utilize common-law "citizen's arrest" powers in the course of their duties pursuant to this Contract. Contractor employees shall detain persons for only such time as is necessary to check such persons and their belongings for prohibited items utilizing the walk-through metal detector, luggage scanner, hand-held metal detector and pat-downs when necessary and appropriate. Contractor employees shall not utilize physical force to detain persons while they are being checked for prohibited items. Contractor employees shall not use force on any persons during the performance of their duties pursuant to this Contract except under the following circumstances: a) to defend themselves from a threat of harm; b) to defend a third-person from a threat of harm; c) when directed by a peace officer to assist. Such force may include, if reasonable, physically detaining an aggressor until such time as a commissioned peace officer is able to take the aggressor into custody. In all circumstances where Contractor employees are authorized to use force, such force utilized shall be reasonable under the circumstances reasonable apparent to such employee.

The following amendments relate to Section A sub-heading "10" entitled "Weapons/Use of Force:"

The subheading title is struck and replaced with: "Possession of Weapons by Contractor Employees"

The entire paragraph is struck and replaced with the following language:

"Contractor employees shall not possess, on their persons or readily accessible to their persons, while on County property discharging duties pursuant to this Contract, any weapon prohibited by Benton County District Court Order No 05-2-00001-2 entitled "Order Re: Weapons Prohibited, Areas, and Security Screening" attached to this Amendment as Exhibit A except as necessary in the course of their duties in removing such prohibited weapons from the persons or belongings of people being screened, or in taking temporary custody of prohibited but legal items that are being

entrusted to them while the owner conducts business within the justice center. In all cases where prohibited and illegal weapons are confiscated from the person or belongings of people being screened, Contractor employees shall immediately, or as soon as practicable, request the attendance of the Benton County Sheriff's Office Court Security Deputy or other fully-commissioned Deputy (not courtroom bailiffs), utilizing radio communications if appropriate, in order for such prohibited and illegal weapon to be secured. The prohibition against possession of weapons by Contractor employees does not apply to legally owned and possessed weapons properly secured in an employee's privately owned vehicle while such vehicle is parked in a County parking lot."

The following amendments relate to Section A sub-heading "11" entitled "Termination for Weapons and/or Use of Force:"

The subheading title is struck and replaced with "Revocation of security clearance"

The entire paragraph is struck and replaced with the following language:

"Upon a finding of any violation of the provisions in sub-heading 9 Use of Force by Contractor Employees or sub-heading 10 Possession of Weapons by Contractor Employees the Benton County Sheriff may elect to revoke a violator's security clearance. Under such circumstances, immediately upon written notification to Contractor, Contractor shall ensure that such violator is no longer assigned to discharge Contractor's duties pursuant to this Contract. Also, under such circumstances, the violator may be barred from entry upon County property immediately upon verbal notification by the Benton County Sheriff or his designee. Any other disciplinary measures, including discharge of the employee, is completely within the discretion of Contractor. Nothing herein excuses Contractor from discharging its duties pursuant to this Contract in any way and, if any employee has his/her security clearance revoked and/or is barred from County premises, Contractor shall promptly replace him/her with a suitable replacement employee.

The following amendment relates to Section B sub-heading "1" entitled "Contract Supervision"

The entire section is stricken.

The following amendment relates to Section B sub-heading "4" entitled "Work Scheduling Procedures:"

The line entitled "e" is stricken in its entirety and replaced with the following language:

"Contractor shall maintain a telephone number by which a responsible person may be reached by any County representative 24 hours a day, 365 days a year in order to communicate or discuss matters of importance related to this Contract such as emergency scheduling, emergencies, etc. The availability of Contractor via this telephone number shall be regarded as "on-call" availability and shall not be grounds for any further compensation."

The following amendment relates to Section B sub-heading "5" entitled "Permits and

Licenses:"

The word "including" is substituted for the word "and" between the words "agreement" and "WAC" in line three of this paragraph.

The following amendments relate to Section B subheading "13" entitled "Personnel/Security Clearance"

The first sentence following the subheading title is stricken and replaced with the following language:

"Prior to being permitted to assume duties pursuant to this contract on County property, Contractor employees shall pass a thorough background investigation administered by the Benton County Sheriff's Office. In order to accomplish that, prior to assigning any employee to duties pursuant to this contract on County property, Contractor shall supply County with the following information on the employee:"

Add the following language at the end of the existing paragraph and prior to the beginning of the next sub-heading title:

"Security clearances shall be granted or revoked at the sole discretion of the Benton County Sheriff or his designee, and revocation shall be permitted reasons including any reason related to the trustworthiness, morality or fitness for duty of the subject of the investigation regardless of whether or not the subject has been arrested or convicted of an actual criminal offense. County reserves the right to condition security clearances on any condition it reasonably sees fit at any time prior to or after granting of such clearance. The background investigation process may involve requiring Contractor employees to fill out statements which may or may not be under oath. Contractor shall ensure that such statements are filled out as a pre-condition to passing the background investigation and receiving a security clearance. Contractor shall maintain employees who are recipients of County security clearances above and beyond those actually required to fill current shifts, of such a number as would be sufficient to allow for filling in for absences, emergency staffing or similar needs without resorting to employees who are not the recipient of security clearances.

Contractor shall implement policies pertaining to employees who are the subject of County security clearances requiring them to report to Contractor within 24 hours of: being arrested or convicted of any crime, being told they are a suspect in any crime, becoming aware of any complaint being lodged against them with the Washington State Criminal Justice Commission, being served with a summons and complaint relating to their duties pursuant to this Contract or being served with a summons and complaint, whether relating to or not relating to their duties, where an allegation of the complaint relates to allegedly inappropriate sexual conduct including, but not limited to sexual harassment, sexual assault or lewd conduct. Contractor shall, in turn, notify County in writing within 24 hours of receiving any such notification from one of its employees.

In the event the Benton County Sheriff determines that it is appropriate to revoke any person's

security clearance, he shall do so in writing directed to Contractor and may also precede such written notice with verbal notification to the subject of the revocation. Revocation shall become effective immediately upon verbal notification, if made, as long as it is followed by written notification to Contractor. Upon such notification, it shall be Contractor's duty to replace the employee who's security clearance is revoked, with another suitable employee.

Nothing in this section shall be construed as infringing in any way upon Contractor's discretion to hire and retain employees of its own choosing.

The following amendment relates to SECTION V "Maintenance of Records"

The words "the County may require you to" in line two of this paragraph are stricken and replaced with "it may be required by County."

The following sentence shall be added at the end of the existing paragraph: "All records shall be maintained for a period of 6 years in a format approved by the Washington State Archivist."

The following amendment relates to SECTION XII "Notices"

The words "by facsimile," are inserted between the words "personally" and "or" in line two of the paragraph.

The last sentence in this paragraph is stricken and replaced with the following language:

"Notices served by mail shall be deemed to have been received on the third day following mailing, including weekends but not holidays, and inclusive of the day of mailing. Notices served by facsimile shall be deemed to have been received on the next business day following successful transmission. Notices served by personal service are effective immediately upon service.

Each party shall have a designated contract representative during at times this contract is in effect. Notices shall be served on the designated contract representative at the listed address or facsimile number. Each party may, with written notice to the other, change its contract representative at any time. The contract representatives at this time are:

For the COUNTY: Officer Tim French
Benton County Sheriff's Office
7122 W Okanogan Pl, Bldg A
Kennewick, WA 99336
Tel: 509-736-3067
Fax: 509-736-3895

For the CONTRACTOR: Mark Vinson
Olympic Security Services, Inc.
631 Strander Blvd, Ste A
Tukwila, WA 98188

Tel: 206-575-8531
Fax: 206-575-8640

DURATION OF CONTRACT

The term of this Contract shall begin **January 1, 2008,** and shall expire on **December 31, 2008.** The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.
The parties to this Contract have executed this Contract to take effect as of 1/01/2008.

DATED:

BENTON COUNTY BOARD OF

Chairman

Member

Member

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

Attest: Clerk of the Board

Approved as to Content:

Larry D. Taylor
Sheriff

Approved as to Form:

Eric Hsu,
Deputy Prosecuting Attorney

DATED: February 5, 2008

CONTRACTOR

Mark Vinson

AGENDA ITEM	TYPE OF ACTION NEEDED	
,eeting Date: February 11, 2008 Subject: Contract Extension Prepared By: J. Thompson Reviewed By:	Execute Contract XXX Pass Resolution XXX Pass Ordinance Pass Motion Other	Consent Agenda XXX Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

The Benton County Sheriff's Office entered into an agreement with Consolidated Food Management on December 17, 2001 whereby they would provide food services for the Benton County Sheriff's Office. The contract has been extended through 2008.

The agreement specified that upon mutual agreement of the parties, the contract terms and conditions may be extended on a year-to-year basis. Benton County Sheriff's Offices wishes to extend our contract through June 30, 2008 to allow sufficient time to encompass all past agreements into one agreement.

SUMMARY

We wish to extend our contract through June 30, 2008.

ECOMMENDATION

Pass Consent Agenda extending Consolidated Food Management contract.

FISCAL IMPACT

Already accounted for in the 2008 budget.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF PROVIDING FOOD SERVICES TO INMATES OF THE BENTON COUNTY JAIL

WHEREAS, proposals for the provision of food services to inmates of the Benton County Jail, located within the premises of the Benton County Justice Center, 7122 W. Okanogan Place, Kennewick, Washington, were solicited from interested providers in 2001; and

WHEREAS, an agreement was entered into on December 17, 2001 between Benton County and Consolidated Food Management Inc., for provision of food services to inmates of the jail for calendar year 2002 (see Resolution 01 698); and

WHEREAS, Benton County has been satisfied with the food service provided by Consolidated Food Management Inc; and

WHEREAS, the parties' 2001 agreement provides for annual extensions of the agreement, which have been made for 2003, 2004, 2005, 2006 and 2007; and

WHEREAS, the parties wish to extend the agreement through June 30, 2008; **NOW, THEREFORE,**

BE IT HEREBY RESOLVED, that the Chairman of the Board of County Commissioners is authorized to sign, on behalf of the Board, the Extension Agreement attached hereto between Benton County and Consolidated Food Management Inc., for the provision for food services to the jail for through June 30th, 2008 under the terms enumerated in the Extension Agreement.

Dated this . . . . . day of . . . . . , 2008

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: . . . . . .
Clerk of the Board

EXTENSION AGREEMENT

THIS AGREEMENT is made and entered into by and between BENTON COUNTY, a political subdivision of the State of Washington (hereinafter the "County") and CONSOLIDATED FOOD MANAGEMENT, INC., a Washington corporation (hereinafter the "Contractor").

WITNESSETH:

WHEREAS, the parties entered into an agreement with a term commencing January 1, 2002, and concluding on December 31, 2002, whereby the Contractor would provide food services, as more fully defined in the contract documents, to inmates of the Benton County Corrections Facility (hereinafter "Facility") located within the premises of the Benton County Justice Center, 7122 W. Okanogan Place, Bldg. B, Kennewick, Washington, and

WHEREAS, the Special Provisions section, paragraph 2.1 of that agreement provides that upon the mutual written consent of the parties, the agreement may be renewed for periods of one year, and

WHEREAS, the parties previously renewed the agreement for the years 2003, 2004, 2005,2006 and 2007, and

WHEREAS, the parties wish to renew the agreement for another period of one year commencing January 1, 2008 and expiring June 30, 2008, and to modify the agreement.

NOW, THEREFORE, in consideration of the payments, provisions and agreements set forth in the parties', 2002 agreement, the parties agree as follows:

1. This Extension Agreement, and the parties' existing agreement and all contract documents incorporated therein constitute the integrated agreement between parties.

2. The Contractor shall provide food services, as more fully defined in the parties' existing agreement, to inmates of the Facility commencing January 1, 2008, and concluding on June 30, 2008.

3. The costs per meal will be as set forth on Attachment A.

4. It is further agreed by the parties that, except as provided hereinabove, terms of the aforementioned agreement and all related contract documents shall remain unchanged and be in full force and effect.

5. This Extension Agreement shall be effective January 1, 2008 through June 30, 2008.

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman

_____
Member

_____
Member

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

_____
Attest:
Clerk of the Board

Approved as to Content:

_____
Larry D. Taylor
Sheriff

Approved as to Form:

_____
Eric Hsu, Deputy
Prosecuting Attorney

DATED: _____

CONSOLIDATED FOOD MANAGEMENT, INC.

_____
Ken Chow

Benton County Corrections

Budget cost per meal for year of 2008

Current Operation Menu

1-Jun-07

Inmates	Daily Meals	Cost/Meal 2007	Cost/Meal 2008	Cost/Year 2008	Projection Cost/Meal 2009 3% CPI increase
650	1951 - 2000	$0.957	0.987		$1.016
667	2001 - 2050	$0.946	0.976		$1.005
684	2051 - 2100	$0.936	0.965		$0.994
700	2101 - 2150	$0.926	0.955		$0.984
717	2151 - 2200	$0.917	0.945		$0.974
734	2201 - 2250	$0.908	0.936		$0.964
750	2251 - 2300	$0.900	0.927	$761,895.987	$0.955
767	2301 - 2350	$0.891	0.919		$0.946
784	2351 - 2400	$0.884	0.911		$0.938
800	2401 - 2450	$0.876	0.903		$0.930
817	2451 - 2500	$0.869	0.896		$0.923
834	2501 - 2550	$0.865	0.891		$0.918
850	2551 - 2600	$0.860	0.886		$0.913
867	2601 - 2650	$0.854	0.880		$0.906
884	2651 - 2700	$0.848	0.873		$0.899
900	2701 - 2750	$0.842	0.867		$0.893

* Due to the high price on energy, cost per meal will increase approximately $0.027 per meal, comparing with 2007. Currently we are serving an average of 734-750 inmates per day.

AGENDA ITEM	TYPE OF ACTION NEEDED	
.eeting Date: February 11, 2008 Subject: Horse Boarding Prepared By: Julie Thompson Reviewed By:	Execute Contract xxxx Pass Resolution xxxx Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

The Benton County Sheriff's Office currently has a criminal investigation involving the care of two horses that were seized. This prompted a need for a contract to care for the seized horses.

SUMMARY

The Benton County Sheriff's Office contacted the owners of "Lazy Spur" to utilize their services. Shauna and Brandon Byington were eager to accommodate the needs of the two seized horses and agreed to a Professional Service Contract between "Lazy Spur" and Benton County.

RECOMMENDATION

Pass resolution and execute contract.

¯ISCAL IMPACT

This amount will be paid from existing budgeted areas for this purpose.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY BOARD OF COMMISSIONERS TO SIGN THE AGREEMENT BETWEEN BENTON COUNTY AND "LAZY SPUR" TO CARE FOR SEIZED EQUINE

WHEREAS, per resolution 04-534 contracts for non-public works services need not advertise or follow a formal competitive bidding procedure, but shall evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost; and

WHEREAS, Shauna and Brandon Byington, private individuals, doing business as "Lazy Spur" provide board and care for equine; and

WHEREAS, Benton County Sheriff's Office wishes to utilize the services of "Lazy Spur" to provide board and care for seized equine and hereby recommends the Board of Benton County Commissioners to enter into an agreement with "Lazy Spur" for equine board and care services; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby concurs with the recommendation and is hereby authorized to sign the agreement between Benton County and "Lazy Spur" with an expiration of December 31, 2008.

Dated this 11 day of February 2008

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Orig: File – Julie Thompson BCSO
cc: Auditor, R. Ozuna,

PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **SHAUNA BYINGTON AND BRANDON BYINGTON**, private individuals, doing business as **"LAZY SPUR"** with its principal offices at **198706 E. 25th Ave, Kennewick, WA**, (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. **CONTRACT DOCUMENTS**

This Contract consists of the following documents **[This Section should list any exhibits and/or attachments used]:**

a. **[Terms and Conditions;]**
b. **[Exhibit A, Scope of Work; and]**
c. **[Exhibit B, Compensation.]**

2. **DURATION OF CONTRACT**

The term of this Contract shall begin **immediately upon execution**, and shall expire on **December 31, 2008 unless terminated by one of the means specified in the TERMINATION section herein.**

3. **SERVICES PROVIDED**

The CONTRACTOR shall perform the following services:

a. CONTRACTOR shall provide room, board and care, including medical care, for any and all horses seized by the Benton County Sheriff's Office pursuant to a criminal investigation at 70504 N. Lob Ln, Benton County, WA, under criminal investigation #07-14915.

b. The CONTRACTOR agrees to provide its own labor and materials including food and other equipment or supplies necessary for appropriate care of said horses.

c. The CONTRACTOR shall perform the work specified in the Contract according to standard industry practice and shall ensure that the care provided to the horses comply with state law regarding cruelty to animals, and also is

to commonly accepted standards of animal husbandry.

d. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

e. CONTRACTOR shall provide the equipment and personnel necessary to transport the horses from the site of seizure to the place where they are to be boarded, and, upon termination by any of the methods listed in the TERMINATION section herein, shall transport the horses to any location specified by COUNTY.

f. CONTRACTOR shall maintain custody of the horses such that at any given time, upon query, it can account for the whereabouts and condition of any of the horses covered by this Contract. Except upon prior written permission from COUNTY, CONTRACTOR shall not transport horses to a different location than its principal place of business, except for emergency situations.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For CONTRACTOR:

Shauna Byington
198706 E. 25th Ave
Kennewick, WA 99336
(509) 308-1902

b. For COUNTY:

Lt. Steve Keane
Benton County Sheriff's Office
7122 W. Okanogan Pl, Bldg A
Kennewick, WA 99336
(509) 735-6555

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

a. CONTRACTOR shall be compensated in the amount of $5.00 per day per boarded horse;

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed $3,600.

c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

d. The CONTRACTOR may, in accordance with **this compensation plan**, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

g. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

h. In the event that, in the opinion of a licensed veterinarian, the horses need medical care or routine medical attention, CONTRACTOR shall advance such costs but may apply to COUNTY for reimbursement. COUNTY shall reimburse CONTRACTOR for such costs as long as a request for reimbursement is accompanied by proof that such costs have been paid as well as a detailed description of services rendered. Provided that for any reasonably

necessary medical services that are anticipated to exceed a cost of $100, CONTRACTOR shall contact COUNTY at least 3 hours in advance of the rendering of such services and inform COUNTY of the necessity of such services and provide COUNTY with the opportunity to retain a veterinarian of its choosing to examine and/or treat the horse, or retake temporary custody of the horse for purposes of effectuating cost effective treatment on its own. If COUNTY elects to take temporary custody of the horse pursuant to this provision, then CONTRACTOR shall transport the horse to and from the destination of COUNTY's choice, and is entitled to actual costs incurred in such transport.

6. **AMENDMENTS AND CHANGES IN WORK**

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation

b. No amendment, modification or renewal shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. **HOLD HARMLESS AND INDEMNIFICATION**

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing this Contract, the CONTRACTOR 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 CONTRACTOR makes with any subcontractor or agent performing work hereunder.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

8. **INSURANCE**

a. **Commercial General Liability and Employers Liability Insurance:** CONTRACTOR shall maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than one million dollars ($1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars ($2,000,000).

The CONTRACTOR will provide commercial general liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

b. **Automobile Liability: [This section required if services involve the use of vehicles by CONTRACTOR or the transportation of COUNTY employees or third parties].** The CONTRACTOR shall maintain business automobile liability insurance with a limit of not less than one million dollars ($1,000,000) per accident, using a combined single limit for bodily injury and property damages. Such coverage shall cover liability arising out

of "Any Auto." CONTRACTOR waives all rights against the COUNTY for the recovery of damages to the extent they are covered by business auto liability.

c. **Other Insurance Provisions:**

(1) The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.

(2) The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.

(3) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

(4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

(5) The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(6) The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

(7) The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.

(8) The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies,

and endorsements expiring before completion of services shall be promptly replaced. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

d. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this CONTRACT shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved by the Benton County Prosecutor's Office. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

(1) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance within ten (10) days after the effective date of this Contract. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision.

(2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY as an additional insured.

(3) Certificates of insurance shall show the certificate holder as "Benton County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.

(4) The CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Benton County that CONTRACTOR is currently paying workers compensation.

(5) All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:

Risk Manager
Benton County Prosecuting Attorney's Office
7320 W. Quinault Avenue
Kennewick, WA 99336

(6) The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager.

(7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

9. **TERMINATION**

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR.

After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract.

d. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion, that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

e. Upon issuance, by a court of competent jurisdiction, of an order directing the restoring of the horses to the custody of their original owners, or otherwise directing the transfer of the horses to any third person, this contract shall terminate and CONTRACTOR shall transfer the horses forthwith to the original owners or other third party as directed by the court order. CONTRACTOR shall be entitled to compensation at the rate established in the COMPENSATION section herein for all days and portions thereof until the horses are transported and relinquished according to the court order.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of the Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage

fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section **[Five]** of this Contract, and the CONTRACTOR is not entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to COUNTY employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.

d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

16. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

17. DISPUTES

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

18. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their employees shall maintain the confidentiality of all information

provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

19. **CHOICE OF LAW, JURISDICTION AND VENUE**

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

20. **SUCCESSORS AND ASSIGNS**

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

21. **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

22. **ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written

representations or understandings not incorporated in this Contract are specifically excluded.

23. **NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Contract Representatives Section of this Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form:

_____
Deputy Prosecuting Attorney

DATED: 1-31-2008

CONTRACTOR

Shauna Byington
SHAUNA BYINGTON

_____
BRANDON BYINGTON

99

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF OBTAINING PROFESSIONAL SERVICES FOR ARBITRAGE CALCULATIONS AND COMPLIANCE

WHEREAS, it is the desire of the County Commissioners and County Treasurer to obtain professional services to maintain the County's compliance with Arbitrage regulations; and

WHEREAS, on January 7, 2008, representatives from the County Treasurer's Office and Commissioners' office reviewed the proposals from the firms responding to the "Request for Qualifications"; and,

WHEREAS, documented in the meeting minutes (Exhibit A) the firm selected as best suited to provide services to the county is Arbitrage Compliance Specialists; **NOW THEREFORE,**

BE IT RESOLVED, that the Benton County Treasurer, Duane A. Davidson, is hereby authorized to sign the Engagement Letters needed to obtain services with Arbitrage Compliance Services Incorporated, to prepare arbitrage compliance computations for the reporting period January 1, 2007 to December 31, 2010; and

BE IT FURTHER RESOLVED the Treasurer is allowed to sign all needed Engagement Letters using the terms and costs set forth in the attached proposal (Exhibit B) and only for amounts allowed within the Treasurer's Office's Current Expense Budget.

Dated this 11th day of February, 2008.

_____
Chairman of the Board

_____
Member

_____
Member

Approved as to form:

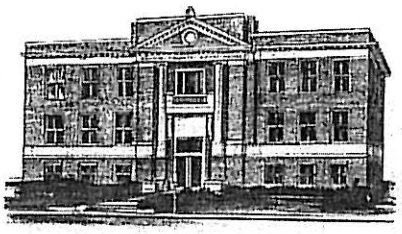
Kathleen Fitzgerald, Deputy PA

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

Prepared by D. Davidson

CC: Treasurer, Auditor



DUANE A. DAVIDSON, CPA
Benton County Treasurer

PO Box 630, Prosser, WA 99350
Prosser 509-786-2255 Fax 786-5628
509-736-3087
Kennewick 509-735-8505 Fax 736-2705
www.co.benton.wa.us/html/treasurer

MEETING MINUTES
January 7, 2008

Meeting Attendance:

Duane Davidson	
Sam Schneider	
Erhiza Rivera	
Loretta Smith-Kelty	

Start: 1:10PM

1. Request for Qualifications

Erhiza presented a comparison of two firms', Arbitrage Compliance Specialists and Bondlogistix, Request for Qualifications submitted to the Treasurer's Office for Arbitrage Services the 2008 Calendar year. Erhiza presented facts provided by each firm in regards to each firm's overall company and staff experience, philosophy, work scope, fee schedule, and client list.

It was discussed that Arbitrage Compliance Specialists (ACS) was established earlier and had more years of arbitrage rebate calculation experience by its directors and staff as compared to BondLogistix (BL). However, BL had completed more calculations than ACS.

The two companies differed in respect to their legal advisors. ACS's managing director is the in-house tax attorney, whereas BL is externally provided by Orrick's Public Finance Tax Group. Loretta added that this necessarily was not an advantage to BL just because they had external review. Erhiza confirmed and added that before Orrick's was a separate entity, they were the finance division of BL.

Erhiza pointed out the difference of services provided by the two companies. ACS strictly provided arbitrage calculation, whereas BL provided additional financial services. The scope of arbitrage services was similar for each company.

Discussion of the fee schedule showed that ACS charged less for fixed rate annual issues, spending exceptions, refunding bonds w/transferred proceeds allocation, and allocation/review/verification of commingled funds. BL fees had advantages in regards to 5yr variable rate issues, extension fees, and yield reduction/restriction calculation. Overall, ACS had cost savings of atleast $275. Duane commented that each issue

wouldn't have each charge presented. Erhiza agreed and went into discuss those charges that would apply for issues to be calculated in 2008.

The two issues pending report calculations in 2008 had engagement fees expected to total $5,700 by ACS. Duane asked if those engagement fees tied to the fee schedule ACS provided. Erhiza confirmed that they did and added that the fee schedule did not however include the initial set up fee as well as discounts. In comparing the engagement services to BL's fee schedule, BL costs would be $200 less than ACS. Erhiza pointed out that the reason was based on BL's lesser charge for the extension fee.

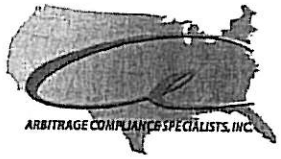
Duane questioned why BL's fee for refunding bonds w/transferred proceeds allocation was so high in comparison to ACS ($1,000-$2,000 vs. $250) and Erhiza responded that BL treated this as a new report fee. Duane asked Loretta if the County would be refunding bonds in 2008. Loretta said the Commissioners' could refund bonds if D.A. Davidson made that recommendation.

With this information, Duane, Loretta, Sam, and Erhiza agreed that it would be best to stay with the current provider, ACS. Although the current issues would have a cost saving of $250, with the expectation of a refunding bond to occur, the County would not benefit due to BL's fee for this specific service.

Duane will write a resolution to have ACS continue to provide arbitrage services for the annual contract 2008 to be approved by the board in their next meeting. Loretta agreed with Duane that the resolution should be open to all engagements, perhaps with a maximum dollar amount that could be amended if needed giving the Board's designee authority to approve each engagement.

End: 1:30 PM

Experience at the Highest Level



6. FEE SCHEDULE:

Rebate report fees are determined based on the number of years included in the calculation as well as activity levels and the complexity of an issue under consideration. Other firms may convey that open ended hourly rates are necessary and will maximize their ability to complete the rebate calculations, however ACS believes that an issuer should not be subject to extraneous hourly charges for services that should be included in every analysis. On occasions there are extremely complex analyses that will require additional consideration. ACS's "Additional Compliance Fees" are fixed fees per report to cover such consideration. ACS will review each bond issue to determine if the debt issue is subject to arbitrage rebate at no charge. If it is determined that a bond is subject to arbitrage rebate ACS will proceed with the calculations under the fee schedule listed below at the direction of the County.

SERVICES	FEES
FIXED RATE ISSUES	
Annual Report Fee (for 1 year report)	$1,000
5 Year Report Fee (covering 5 years)	$3,500
VARIABLE RATE ISSUES	
Annual Report Fee (for 1 year report)	$1,250
5 Year Report Fee (covering 5 years)	$4,250
ADDITIONAL COMPLIANCE FEES (IF APPLIABLE)	
Spending Exception Calculations - Per Semi-Annual Spending Period	$ 850
Yield Reduction/Restriction Calculations (per report)	$1,000
Refunding Bonds with Transferred Proceeds Allocations ($250/per report)	$ 250
Allocation/Review/Verification of Commingled Funds ($250/per report)	$ 250
Preparation of Form 8038-T	$ 0
IRS AUDIT REPRESENTATION	
IRS audit representation	NEGOTIATED SEPARATELY

7400 East Orchard Road, Suite 270 • Greenwood Village • Colorado • 80111
Phone: (800) 672-9993 • Fax: (800) 756-6505 • E-mail: Robert@RebatebyACS.com
LOCATIONS NATIONWIDE: Greenwood Village, CO | La Jolla, CA | Orlando, FL | Nashville, TN | Houston, TX | Salt Lake City, UT | Seattle, WA

9:05

AGENDA ITEM	TYPE OF ACTION NEEDED			
MTG. DATE: February 11, 2008	Execute Contract		Consent Agenda	
SUBJECT: Prel. Plat of Country Meadow Heights– SUB 07-02	Pass Resolution	X	Public Hearing	
MEMO DATE: February 5, 2008	Pass Ordinance		Public Meeting	X
Prepared By: Michael Shuttleworth	Pass Motion	X	1st Discussion	
Reviewed By: Terry A. Marden	Other		2nd Discussion	
			Other	

BACKGROUND INFORMATION

On January 15, 2008, the Benton County Planning Commission conducted public hearing on the proposed preliminary plat of Country Meadow Heights – SUB 07-02. This subdivision consists of 132.78 acres to be divided into 26 single-family lots. After closing the Open Record Hearing and discussing the proposed plat, the Planning Commission made a recommendation to approve the preliminary plat of Country Meadow Heights as presented with conditions. The Planning Commission's record and recommendation for SUB 07-02 are being submitted for your review and decision. A public meeting with the Board has been scheduled for February 11, 2008 at 9:05 a.m. to review the record and recommendation of the Planning Commission.

The Board must make a final decision on the preliminary plat application based on the Planning Commission's Open Record Hearing. The Board may not hold its own Open Record Hearing if the Planning Commission held an Open Record Hearing. In this case, the Planning Commission held an Open Record Hearing on January 15, 2008 and therefore, the Board cannot consider any testimony other than that testimony that was presented to the Planning Commission at their Open Record Hearing. The only information the Board can consider is the clarification of statements made at the Open Record Hearing with reference to testimony and information submitted to the Planning Commission in their record prepared for this preliminary plat application. Attached for the Board's review is a copy of the CD and all information presented at the Planning Commission Open Record Hearing. Also attached is the signed Recommendation, Findings and Conclusion of the Planning Commission Open Record Hearing.

SUMMARY

The Benton County Planning Commission has completed the open record hearing for the preliminary plat application of Country Meadow Heights – SUB 07-02. The Board of County Commissioners will consider the preliminary plat and recommendation of the Planning Commission at a public meeting on February 11, 2008.

RECOMMENDATION

After closing the Open Record Hearing and discussing the issue, the Planning Commission voted to recommend approval of the preliminary plat as presented with conditions. After reviewing the information presented at the public meeting, the Planning staff recommends that the Board adopt the Planning Commission's recommendation, Findings and Conclusions **(See attached)** and approve the proposed preliminary plat.

FISCAL IMPACT: None.

MOTION

If the Board agrees with the Planning Commission and Planning Department, the Board can adopt the Planning Commission recommendation, Findings and Conclusions as their own and approve the preliminary plat of Country Meadow Heights – SUB 07-02 with conditions.

If however, the Board disagrees with the Planning Commission and Planning Department's recommendation then the Board will have to complete your own Findings and either approve the plat with additional conditions or deny the plat. If based on the Planning Commission's record, you wish to complete your own findings; the Planning Department could draft the Board's findings and conclusions for approval.

RECOMMENDATION OF THE
BENTON COUNTY PLANNING COMMISSION

RE: Preliminary Plat of approximately 132.78 acres into 26 lots in a portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20,and the West Half of the West Half, of Section 21,Township 8 North, Range 28 East, W.M. lying South of the KID Canal

File No. SUB 07-02
RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS

RECOMMENDATION

SUB 07-02: A proposal by HPM Properties to subdivide approximately 132.78 acres into 26 single-family residential lots with an average lot size of 4.88 acres is hereby recommended to be APPROVED WITH CONDITIONS. This action is based upon the following findings pursuant to RCW 58.17.110.

LEGAL DESCRIPTION

The area covered by the proposed preliminary plat is generally described as that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20 and the West Half of the West Half Section 21, Township 8 North, Range 28 East, W.M. lying South of the Kennewick Irrigation District Canal.

RESOLUTION

WHEREAS, the Legal notification pursuant to the Benton County Code, Title 9, Chapter 9.08 was given Thursday, January 3, 2008; and,

WHEREAS, public notice procedures, pursuant to RCW 58.17.080 and 58.17.090, were carried out including: notice to affected jurisdictions, (July 17, 2007); publication of legal notices in the Tri-City Herald (January 3, 2008); adjacent landowners (December 27, 2007); and,

WHEREAS, the public hearing was held on January 15, 2008 at 7:00 p.m., in the Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350; and,

WHEREAS, the following members were present: Jon Lindeman, Faye Nelson, Eugene Johnson, James Willard, Lloyd Coughlin and Martin Sheeran; and,

WHEREAS, the Planning Commission considered all testimony and, after questions to those giving testimony, closed the public hearing; and,

WHEREAS, the Planning Commission at an open record public hearing held on January 15, 2008, considered the evidence submitted and voted six in favor with one absent to recommend **approval with conditions** of the proposal; and,

WHEREAS, the Planning Commission is entering its written findings, conclusions and recommendations

concerning this matter, and is forwarding the same to the Board of County Commissioners.

FINDINGS AND CONCLUSIONS

A. A majority of the Planning Commission members find that adequate provisions have been made for the Public Health and Safety based on the following facts:

1. The Benton Franklin District Health Dept. has indicated that septic tanks in this area would be feasible with conditions as outlined in Exhibit #12.
2. The conditions as outlined in the staff report provide adequate provisions for Public Health and Safety.

B. A majority of the Planning Commission members find that adequate provisions have been made for open spaces based on the following facts:

1. That the Benton County Code does not require open space dedications for this type of preliminary plat.
2. The preliminary plat has an average lot size of 4.88 acres. The lots range in size from 2 acres to 28.08 acres; however, the larger lots cannot be further subdivided because the densities for those lots were used for the whole subdivision [.BCC 9.08.050(d)].

C. A majority of the Planning Commission members find that adequate provisions have been made for drainage ways based on the following facts:

1. Pursuant to the Planning Staff memo dated January 10, 2008, the Benton County Dept. of Public Works will review the proposed plat to insure that it meets the requirements of the Benton County Hydrology Manual.
2. A Determination of Non Significance was issued on December 19, 2007 (Exhibit #7).
3. A 100 year storm water run-off analysis must be completed and all drainage ways are to be protected by the dedication of drainage easements.

D. A majority of the Planning Commission members find that adequate provisions have been made for streets or roads, alleys, and other public ways based on the following facts:

1. This proposal must meet fire code requirements and the requirements of the Public Works Department.
2. All roads must be constructed or bonded prior to the final plat hearing.
3. The proposed preliminary plat must meet the requirements of the Benton County Dept. of Public Works.
4. The Benton County Department of Public Works must approve proposed street names within the proposed plat
5. All lots within the proposed development will front onto a dedicated street.
6. The preliminary plat will require the construction of a bridge over the Kennewick Irrigation District Canal.
7. The proposed development includes a cul-de-sac that will exceed 500 fee and must be granted a variance to the requirements by the Planning Commission.
8. A second access is not required for this development since the number of lots is less than 50. However, the Planning Commission felt that the proposed road should be extended to the west property line, and a temporary cul-de-sac put at the end of the proposed road in order to provide for future development of the adjacent property and to prevent the property from becoming landlocked. The extension of road must be built to County Standards.
9. Extending the road on the east side of the preliminary plat is not feasible due to the steep slopes located at that end of the preliminary plat.

A majority of the Planning Commission members find that adequate provisions have been made for transit stops based the following facts:

1. The proposed plat does not have a location for a public transit stop and no evidence was presented that a transit stop is required.
2. The proposed plat and surrounding area is not served by public transit.

F. A majority of the Planning Commission members find that adequate provisions have been made for potable water supplies based on the following facts:

1. Water will be provided by wells developed by individual land owners..
2. Proof of potable water must be provided before building permits will be issued for lots within the subdivision.
4. A Geotechnical Engineering Study was completed for this development and indicated that there was sufficient water to supply the proposed lots within the preliminary plat and that adjacent wells would be impacted only minimally and well below the levels DOE labels as impairment.

G. A majority of the Planning Commission members find that adequate provisions have been made for sanitary wastes based on the following facts :

1. The plat generally meets the requirements of the Benton Franklin District Health Department for plats utilizing on-site sewage disposal systems as stated in their letter received by the Planning Dept. on July 23, 2007.
2. Health Department approval for septic systems is required before obtaining building permits.

H. A majority of the Planning Commission members find that appropriate provisions have been made for parks, recreation, and playgrounds based on the following facts:

1. The proposed plat does not provide for parks or recreation opportunities.
2. No evidence was presented that park, recreation or playground areas are needed or required.

I. A majority of the Planning Commission members find that appropriate provisions have been made for schools and school grounds and for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school based on the following facts:

1. This proposed plat is within the Kennewick School District and all students will be bused to school.

J. A majority of the Planning Commission members conclude that the requirements of the State Environmental Policy Act have been met based on the following:

1. An Environmental Checklist was submitted and the Planning Department issued a Determination of Non Significance on December 19, 2007.
2. The conditions outlined in the Staff Memo requires that calculations for a 100 year storm event completed and copies submitted to the Benton Franklin District Health Department and County Public Works Dept.

K. A majority of the Planning Commission members find that the proposed use is in conformance with the intent of the Comprehensive Plan based on the following facts:

1. The gross acreage was used in determining the number of lots and the density for this area at the time of submittal was one dwelling unit per 5 acres. The applicant meets the density requirements as he is creating larger lots due to steep slopes.

L. A majority of the Planning Commission members find that the proposed plat is consistent with the applicable zoning requirements of the Benton County Code, Title 11, based on the following facts:

1. The Planning Commission incorporates by reference and adopts the Planning Department's Findings of Fact as set forth in its January 10, 2008 staff memo, except to the extent any such findings are inconsistent with any of the Planning Commission findings stated above.

2. This proposal is allowed within the Agricultural Zoning District.

M. The Commission has considered the physical characteristics of the proposed subdivision site and finds that the proposed plat is not situated in a flood control zone.

A majority of the Planning Commission members conclude, based on the foregoing findings, that the public interest will be served by the subdivision and dedication.

THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION, through its chairman as authorized by motion of the Board, adopts these findings and conclusions with respect to File No. SUB 07-02, the preliminary plat of Country Meadow Heights, proposed by HPM Properties and such plat is hereby recommended to the Board of County Commissioners for APPROVAL WITH CONDITIONS (attached).

1/28/08

JON LINDEMAN< Chairman Date
BENTON COUNTY PLANNING COMMISSION

CONDITIONS OF APPROVAL - SUB 07-02

1. That all lots in the final plat meet the design standards for final plat approval as specified in Benton County Code 9.08 as amended, and meet all of the zoning requirements as specified in BCC Title No.11, as amended.

2. That each of the proposed lots contain a minimum usable land area of 20,000 square feet after easements and encumbrances placed on the plat are subtracted. That the final plat be reviewed and approved in writing by the Benton Franklin District Health Department prior to sending the final plat to the Planning Commission for signature. If any specific statements or set aside areas are requested by the Benton Franklin District Health Department these must be shown on the final plat as per their requirements. At a minimum the following statements must appear on the final plat:

> "This plat appears to have suitable conditions for the use of on-site sewage disposal systems. However, because of the testing methods used, we have no way of determining whether each lot can comply with Benton Franklin Health District Rules and Regulations at the time of permit issuance."
>
> "Further, be advised that the Benton Franklin Health District's approval of any lot within this plat for the use of on-site sewage disposal systems may be contingent upon that lot passing additional soil inspections/percolation tests, and/or other requirements at a later date.

3. The location and size of all irrigation and utility easements necessary for electric power, telephone service, water, sewer and cable T.V. be coordinated with the proper utilities and/or reviewing agencies and shown on the final plat. The developer will need to open the utility trenches, including road crossings, based on individual utility requirements and specifications. All such easements must be shown on the final plats.

4. All natural drainage ways are to be kept open and protected by the dedication of a drainage easement. Easements need to be established, or proven to be unnecessary by the developer's engineer through the conducting of a 100-year storm water run-off analysis for all drainage areas within the planned development. Any site modifications occurring as a result of this development, which change the run-off conditions, must be considered in the analysis. Copies of the storm analysis must be provided to the Benton-Franklin District Health Department and the Benton County Department of Public Works. The requirements of the Benton County Hydrology Manual shall be met. The storm drainage analysis shall include the information presented by the Bureau of Reclamation.

5. Provisions shall be made to assure safe walking and/or waiting areas for students who will walk to and from school and for bus turn out areas. Written approval by the Kennewick School District and the Benton County Department of Public Works must be provided to the planning department prior to setting the meeting date for the final plat.

6. Contour lines shall be shown on the final plat or on a separate sheet at a maximum of 5' intervals.

7. That the following statement must appear on the final plat:

> "Address numbers [Noted in Brackets] are subject to change until the exact location of access onto the lot is determined."

8. All roads must be constructed or bonded prior to the final plat hearing and if bonded the following statement must appear on the final plat:

"No building permit shall be issued until the roads are constructed to at least subgrade standards."

9. That the following statement must appear on the final plat:

"No building permit or placement permit for structures requiring potable water will be issued until evidence of a potable water supply is provided. The applicant for building permits must comply with RCW 90.44.050 regarding ground water."

10. That the following statement must appear on the final plat:

"That all structure shall be setback from all property lines at least 25 feet, unless a larger setback is required by Benton County Code."

"Landowners should be aware of existing Reclamation and District rights to construct, reconstruct operate, and maintain Project facilities as necessary. Any work that will involve these facilities or the existing rights-of-way must be reviewed and approved by Reclamation and the District prior to proceeding. Structures are prohibited from encroaching upon existing right-of-way corridors without Reclamation's and District's prior approval. This includes but is not limited to temporary improvements such as paving, fencing, and landscaping."

11. Lots with slopes greater then 15% must be designated on the plat. The following notes shall appear on the final plats and apply to lots with slopes that exceed 15%:

"Portions of this plat are located within a critical resource area classified as geologically hazardous (steep slopes and landslide). No building permits or FAS permits will be issued on these areas until a determination of consistency is issued finding that the site and development are assured of long term stability and structural integrity."

"Development on slopes of 15% or greater within this plat must be engineered by a licensed professional engineer registered in the State of Washington and showing experience and knowledge in the practice of soils mechanics, to ensure safety and long term structural integrity according to the geologic conditions of each lot."

"Hillside development standards shall be utilized for lot design in this plat. An engineered foundation plan must be submitted for each lot with a slope of 20% greater prior to issuance of any building permit."

"A Geotechnical Engineer must be retained to review the location of proposed structures and any significant grading that will occur on Lots 15 through 20 of this plat."

12. The Planning Commission hereby grants a variance to length requirements for the proposed cul de sac.

13. A second access is not required for this development since the number of lots is less than 50 but the

proposed road should be extended to the west property line, and a temporary cul-de-sac put at the end of ıe proposed road in order to provide for future development of the adjacent property and to prevent the property from becoming landlocked. The extension of road must be built to County Standards. The location of the extension is to be decided between the developer and the County.

14. That the preliminary plat is modified in all necessary respects so that the final plat will reflect the requirements of approval. If the final plat will be in conflict with any of the conditions of approval adopted by the Planning Commission as a result of the modifications, then the final plat must be reviewed by the Planning Commission at a public meeting for approval prior to sending the final plat to the Board of County Commissioners.

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910, 1002 Dudley Avenue
Prosser, WA 99350
Prosser Office: (509) 786-5612
From Tri-Cities: (509) 736-3086
Fax: (509) 786-5629

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105A
Kennewick WA 99336
Tri-Cities Office: (509) 735-3500
From Prosser: (509) 786-5622
Fax: (509) 736-2732

File No. SUB 07-02
Date 1-10-08
Exhibit No. 1
Received by clb

DATE: JANUARY 10, 2008

TO: BENTON COUNTY PLANNING COMMISSION

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: PRELIMINARY PLAT APPLICATION SUB 07-02 – COUNTRY MEADOWS HEIGHTS

APPLICANT: HPM PROPERTIES LLC, 79301 BADGER MEADOW DRIVE, KENNEWICK, WA 99338

SPECIFIC REQUEST:
The applicant is requesting preliminary plat approval to subdivide 2 contiguous parcels, consisting of 132.78 acres into 26 single-family residential lots with an average lot size of 4.88 acres, a minimum lot size of 2.01 acres and the largest lot size of 28.08 acres.

LEGAL NOTICE PUBLISHED:
The Notice of Application required by BCC 17.10.100 for the Preliminary Plat of Country Meadows Heights was published on July 23, 2007. The Notice of Application was sent to the owners of properties that are located within 300 feet of the boundaries of the property in this application on July 19, 2007.

The legal notice required by BCC 9.08.032, for the Planning Commission's Open Record Hearing for the Preliminary Plat of Country Meadows Heights was published in the Tri-City Herald on Thursday January 3, 2007. The legal notice was sent to the owners of properties that are located within 300 feet of the boundaries of the property in this application on December 27, 2007. The Open Record Hearing is scheduled for Tuesday, January 15 at 7:00 p.m.

LOCATION:
The site is located in that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20, Township 8 North, Range 28 East, and the West Half or the West Half of Section 21, Township 8 North, Range 28 East, W.M. all lying south of the KID canal right-of-way.

LAND USE:
The subject property is currently undeveloped. The parcels to the south are

undeveloped; the parcels to the east are undeveloped; the parcels to the north are (north of the irrigation canal) are developed into single-family dwellings; and the parcels to the west are undeveloped.

ZONING:
The site is zoned Agricultural. The surrounding parcels are zoned Agricultural.

COMPREHENSIVE PLAN:
The Benton County Comprehensive Plan at the time of application designates the site as "Rural Lands 5"

Direction	Land Use	Zoning	Comprehensive Plan
North	Residential	Agricultural	Rural Lands 5
Northwest	Residential	Agricultural	Rural Lands 5
West	Vacant	Agricultural	Rural Lands 5 and GMA Agricultural
Southwest	Vacant	Agricultural	Rural Lands 5 and GMA Agricultural
South	Vacant	Agricultural	Rural Lands 5 and GMA Agricultural
Southeast	Vacant	Agricultural	Rural Lands 5 and GMA Agricultural
East	Vacant	Agricultural	Rural Lands 5
Northeast	Residential	Agricultural	Rural Lands 5

STATE ENVIRONMENTAL POLICY ACT:
The Preliminary Plat of Country Meadows Heights has been reviewed under the requirements of the State Environmental Policy Act and a Determination of Non-Significance (DNS) was issued on December 19, 2007. Copies of the Environmental Checklist and the Determination of Non-Significance are attached to this memorandum.

EXIBITS:
Listed below are the exhibits to date concerning this application:

Exhibit 1 Staff Memo dated January 10, 2008
Exhibit 2: SUB 07-02 Preliminary Plat Application.
Exhibit 3: Preliminary review of development drainage system designs.
Exhibit 4: Notice of Application published July 23, 2007.
Exhibit 5: Notice of Open Record Hearing, published January 3, 2007.
Exhibit 6: Environmental checklist.
Exhibit 7: Environmental Determination for SUB 07-02 dated December 19, 2007

Exhibit 8:	Letter dated August 30, 2007 to Chris Haueter/HTM properties from Benton County Planning requesting additional information related to the environmental determination for EA 07-38.
Exhibit 9:	Water study for the proposed preliminary plat completed by Water Man Consulting received by Benton County Planning on November 5, 2007.
Exhibit 10:	Geotechnical Engineering study for the proposed preliminary plat completed by Shannon & Wilson Inc. received by Benton County Planning on November 30, 2007.
Exhibit 11:	Comments from Benton County Fire Marshal dated July 25, 2007.
Exhibit 12:	Comments from Benton-Franklin Health District dated July 23, 2007.
Exhibit 13:	Comments from Washington State Department of Health dated July 23, 2007.
Exhibit 14:	Comments from Verizon Telephone dated July 26, 2007.
Exhibit 15:	Comments from the Benton County Assessor's Office dated July 23, 2007
Exhibit 16:	Comments from Southeast Communication Center dated July 23, 2007.
Exhibit 17:	Comments form Benton County Department of Public Works dated July 24, 2007.
Exhibit 18:	Comments from Washington State Department of Ecology dated August 1, 2007.
Exhibit 19:	Comments from Washington State Department of Ecology dated January 2, 2008.
Exhibit 20:	Comments from Sallie J. McMillin dated August 6, 2007.
Exhibit 21:	Comments from Jan and Bob Davenport dated July 26, 2007.
Exhibit 22:	Comments from Michael Simmons dated January 2, 2008.
Exhibit 23:	Comments from John S. Ziobro dated January 7, 2008.
Exhibit 24:	Comments from the Bureau of Reclamation dated January 2, 2008
Exhibit 25:	FEMA Flood Insurance Rate Map 530237 0600 B.
Exhibit 26:	Aerial Photo of the Site.
Exhibit 27:	Preliminary Plat map for Country Meadows

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APPLICABLE DEVELOPMENT REGULATIONS:

1. Benton County Code Section 9.08.014 provides:

> "PLANNING COMMISSION. No plat shall be presented for filling until it has been reviewed and received recommendation for preliminary and final approval by the Benton County Planning Commission. The Benton County Planning Commission may recommend the denial of any plat which does not adequately plan for and provide adequate provisions for public health, safety and general welfare or any plat in

which it finds the public use and interest will not be served."

2. Benton County Code Section 9.08.015 provides:

> "CONFORMANCE WITH STANDARDS AND POLICES. All installation of improvements, including those serving a subdivision but located outside the subdivision shall be installed in conformance with all applicable ordinances, codes and policies adopted by Benton County."

3. Benton County Code Section 9.08.050 provides design standards for preliminary plats.

> 9.08.050 DESIGN AND CONSTRUCTION STANDARDS – GENERAL LAYOUT DESIGN STANDARDS.
>
> (a) Arrangement of arterial streets in the subdivision shall conform to the Comprehensive Plan as adopted by the County Planning Commission and the Board of County Commissioners.
>
> (b) Street shall continue as an extension of existing streets unless good site planning dictates a different solution. Street patterns shall take into consideration access needed to develop adjacent properties presently unsubsidized. Sketches of a proposed street system for adjoining properties may be required if owned by the subdivider or if the arrangement of the large tracts makes it necessary to provide future access through the property under consideration.
>
> (c) Access streets shall be planned so as to discourage through traffic and to conveniently channel traffic onto primary and secondary arterials.
>
> (d) When a tract is subdivided into larger than normal lots or parcels, such parcels shall be so arranged as to permit the logical resubdivision and opening of future streets with provision for adequate utility connections for such resubdivisions.
>
> (e) When dead-end streets are created by the development of a portion of a larger plat or because of the desirability of continuing a street into a presently unplatted parcel, not presently owned by the applicant, a temporary turnaround

shall be provided unless the county engineer's office recommends against provision of such turnaround. If such a turnaround includes some private property, such turnaround right-of-way shall be protected by an easement until such time as the street is extended and the need for the turnaround has ceased to exist.

(f) Cul-de-sacs will be permitted where topography or other conditions justify their use. They should not exceed three hundred (300) feet but will be permitted up to five hundred (500) feet in length. Cul-de-sacs exceeding 500 feet may be approved if conditions warrant the need and are documented by the Planning Commission. Every cul-de-sac shall have a turnaround at its closed end with a minimum outside diameter of the right-of-way one hundred (100) feet.

(g) Street names shall be assigned to conform to existing streets on the same or similar alignment. New street names shall not be so similar to existing street names as may cause confusion.

(h) Streets shall be laid out so as to intersect as nearly as possible at right angles EXCEPT where topography or other conditions justify variations. The minimum angles of intersection of streets shall be seventy-five (75) degrees, unless specifically waived by the county engineer.

(i) Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall not be permitted unless specifically approved by the county engineer.

(j) Wherever the proposed subdivision contains or is adjacent to a railroad right-of-way or the right-of-way of a limited access highway, freeway, or primary arterial, provision may be required for a marginal or frontal access street at a distance appropriate to the proposed use of land between the right-of-way and the marginal access street. Such distance shall be determined with due consideration to future grade separations and for required lot depths.

(k) Corner lots in residential areas shall be ten (10) percent wider than minimum lot widths to allow for adequate setback of a building from both streets.

(l) Sidelines of lots shall be approximately at right angles to the

street in front or radial to curved street lines.

(m) Lots with double frontage shall be avoided wherever possible.

(n) All lots shall front on a dedicated street other than an alley.

(o) In developments where individual sewage disposal systems are to be used, the size of the lots shall be subject to the approval of the County Health Officer.

(p) Drainage easements for storm sewers or open channel ditches may be required where it is not feasible to carry storm drainage under the streets or right-of-way. Open channel easements may be required where there is evidence of a present or future natural drainage pattern that may carry water at such time as the general water table of the area is raised, or increased runoff will result from altered land use.

4. RCW 58.17.110 provides the following for the County to use when determining to approve or disapprove a proposed subdivision:

> **"RCW 58.17.110 Approval or disapproval of subdivision and dedication--Factors to be considered--Conditions for approval--Finding--Release from damages.**
> (1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all relevant facts including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.
>
> (2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all relevant facts

including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvement to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through RCW 82.02.090 may be required as a condition of subdivision approval. Dedication shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through RCW 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition of the approval of any subdivision require a release from damage to be procured from other property owners."

STAFF"S FINDINGS OF FACT:

Based on the application and information received as of the date of this memo, the planning staff makes the following findings:

1. The applicant and property owner for SUB 07-02 is HPM Properties LLC, 79301 Badger Meadow Drive, Kennewick, WA 99338.

2. Preliminary Plat Application SUB 07-02 is requesting preliminary plat approval to subdivide 132.78 acres into 26 single-family residential lots with an average lot size of 4.88 acres, a minimum lot size of 2.01 acres and the largest lot will be 28 acres in size.

3. The 132.78-acre parcel is located that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20, Township 8 North, Range 28 East, and the West Half or the West Half of Section 21, Township 8 North, Range 28 East, W.M. all lying south of the KID Canal right-of-way.

4. Preliminary Plat Application SUB 07-02 was submitted on June 29, 2007 and determined to be an incomplete application on July 6, 2007. The application was resubmitted on July 18, 2007 and determined to be a complete application on July 19, 2007. The Notice of Application required by BCC 17.10.100 was published on July 23, 2007 and sent to the property owners with 300 feet of the proposed plat on July 19, 2007.

5. The affected agencies review letter was sent on July 19, 2007. The comments of

those agencies that responded are attached to this staff memo.

6. The notice for the Benton County Planning Commission's Open Record Hearing for application SUB 07-02 was published on January 3, 2008 in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel on December 27, 2007. The Open Record Hearing is scheduled for Tuesday, January 15, 2008.

7. The Preliminary Plat of Country Meadows Heights has been reviewed under the requirements of the State Environmental Policy Act and a Determination of Non-Significance (DNS) was issued on December 19, 2007.

8. The property is zoned Agricultural, which requires a minimum lot area of ten thousand (10,000) square feet and an average lot width of not less than ninety-(90) feet. The lots proposed in the Preliminary Plat of Country Meadows Heights comply with the minimum lot area and lot width for the Agricultural Zoning District. Residential dwellings are an allowed use in the Agricultural Zoning District.

9. The Benton County Comprehensive Plan designates this parcel as Rural Lands 5 with a density of one dwelling unit per 5 acres. The proposed preliminary plat has an average lot area of 4.88 acres and a density of one dwelling unit per 5.10 acres. (.19 dwelling units per acre). This development is consistent with the density contained in the Benton County Comprehensive Plan.

10. The Benton County Comprehensive Plan does not address the arrangement of arterial streets within the proposed subdivision. However, the subdivision will be accessed by Badger Road, which is classified as a Major Collector Rural and is shown on the transportation potion of the Benton County Comprehensive Plan. (BCC 9.08.050(a))

11. The preliminary plat includes the construction of a new County road that will provide access to the proposed subdivision only. The proposed new roads must be constructed to Benton County Department of Public Works standards including cul-de-sac right-of-way of 60'. The new road will also require the construction of a bridge over the Kennewick Irrigation District Canal. (BCC 9.08.050(b))

12. Access to lots within the proposed preliminary plat is to be through the use of the new road right of way. (BCC 9.08.050(c))

13. The lots within the proposed preliminary plat will not be larger than normal lots or parcels within the Agricultural Zoning District and with a density of one dwelling unit per 5 acres. The lots range in size from 2 acres to 28.08 acres. However, the larger lots cannot be further subdivided because the densities for those lots were used for the whole subdivision. (BCC 9.08.050(d))

14. A new street is proposed as part of this proposed plat. All lots would access onto the new County road right of way. (BCC 9.08.050(e))

15. This proposal does include a cul-de-sac. The proposed cul-de-sac will exceed 500 feet. (BCC 9.08.050(f))

16. A new street is proposed as part of this proposed plat. However, the Department of Public Works has commented that the name is too long and must be shorter. The Benton County Engineers Office and Southeast Communication Center must approve the name of the road. (BCC 9.08.050(g))

17. The proposed new road will extend the existing road right of way for Country Meadows Lane. (BCC 9.08.050(h))

18. There are no street jogs with centerline offsets of less than one hundred twenty-five (125) feet within the proposed plat. . (BCC 9.08.050(i))

19. The proposed development is adjacent to the Kennewick Irrigation District Canal right-of-way. No frontage street is proposed and no access to Kennewick Irrigation District Canal will be permitted from the proposed plat. (BCC 9.08.050(j))

20. The corner lots within the proposed preliminary plat are designed to be ten (10) percent wider than minimum lot widths to allow for adequate setback of a building from both streets. (BCC 9.08.050(k))

21. The sidelines of lots within the proposed plat are approximately at right angles to the street in front or radial to curved street lines. (BCC 9.08.050 (l))

22. None of the lots within the proposed plat would have double frontage. (BCC 9.08.050(m))

23. All lots within the proposed development would front onto a dedicated street. (BCC 9.08.050(n))

24. The applicant has proposed that the preliminary plat be served by on site septic systems. The Benton-Franklin Health District (BFHD) reviewed the proposed plat and provided a letter to the Benton County Planning Department on August 28, 2006. The letter stated that the Benton-Franklin Health found that it generally meets their requirements for plats utilizing on-site septic systems, provided the applicants comply with the conditions outlined in the letter.

    - All proposed lots must be a minimum of two acres and contain a minimum of 20,000 square feet of usable land area exclusive of

easements and other encumbrances. Slopes in excess of 20% are considered unusable and unsuitable for the placement of on-site sewage systems.

- Drainage easement(s) must be established by 100-year storm water run off analysis.
- All easements and encumbrances must be shown on the plat.
- Show all permanent and seasonal surface waters within 100-ft on the plat map.
- Prior to issuance of on-site sewage disposal permits, additional test holes will be required on some lots to verify acceptable area for initial and replacement sewage disposal system and design criteria such as trench depth.
- The following statements are placed on the plat:
    - "This plat appears to have suitable conditions for the use of on-site sewage disposal systems. However, because of the testing methods used, we have no way of determining whether each lot can comply with Benton Franklin Health District Rules and Regulations at the time of permit issuance."
    - "Further, be advised that the Benton Franklin Health District's approval of any lot within this plat for the use of on-site sewage disposal systems may be contingent upon that lot passing additional soil inspections/percolation tests, and/or other requirements at a later date.
- Prior to final approval, this office must be given opportunity to review the final plat for compliance with Benton-Franklin Health Department Rules and Regulations No. 2, and WAC 246-272, and issue appropriate comments to the Benton County Planning Department.

25. One finding that must be made to approve this application is that adequate provisions for potable water supply have been made. The application for the Preliminary Plat of Country Meadows Heights shows the proposed lots within the plat will be served by individual wells. The Washington State Department of Ecology stated in their letter dated August 1, 2007:

> "Any ground water development proposal that will withdraw water in excess of 5,000 gallons per day for single or group domestic supply, or for industrial purpose, or for the irrigation of more than ½ acre of

lawn or non commercial garden will require a permit form the Department of Ecology.

In Washington State, prospective water users must obtain authorization from the Department of Ecology before diverting surface water or withdrawing ground water, with one exception. Ground water withdrawals of up to 5,000 gallons per day used for single or group domestic supply, including industrial purposes, stock watering or for the irrigation of up to one-half acre of lawn and garden are exempt from the permitting process. Water use under RCW 90.44.050 exemption establishes a water right permit or certificate obtained directly from Ecology.

On March 28, 2002 the Washington State Supreme Court ruled that the RCW 90.44.050 permit exemption does not apply where a developer of a residential subdivision proposes multiple wells to serve each lot in the development if in combination, the withdrawal will exceed the exemption criteria.

Use of water under the groundwater exemption has been interpreted in two Attorney General Opinions (AGO 1997 and AGO 2005) and by the Supreme Court in the Campbell & Gwinn decision. The 1997 AGO states that a group of wells drilled by the same person or group of persons, at or about the same time, in the same area, for the same purpose or project should be considered a single withdrawal and would not be exempt from the permitting requirement contained in RCW 90.44.050, if the total amount withdrawn for domestic purposes exceeds 5,000 gallons per day or if a total of more than .5 acres of lawn and garden irrigated.

Chapter 173-150 WAC provides for the protection of existing water rights against impairment. I.e. interruption or interference in the availability of water. If water supply in your area becomes limited, your use could be curtailed by those with senior water rights. .

All water well constructed shall be in accordance with the provisions of Chapter 173-160 WAC by a driller licensed in the State of Washington. All wells must be located a minimum of 100 feet from any known suspected, or potential source of contamination and shall not be located within 1,000 feet of the property boundary of solid waste landfills. A well report must be submitted to the Department of Ecology within thirty days after the completion of a well.

An average residence uses 400 gallons of water per day. This

subdivision would require 10,400 gallons per day. Any ground water withdrawals in excess of 5,000 gallons per day or for irrigation of more than ½ acre of lawn or noncommercial garden will require a permit from the Department of Ecology. Therefore, this project wound not be exempt from permitting process and would need a water right. "

During the review of this proposed plat the Planning Commission must determine if, regardless of the legal requirements, there is physically available sufficient water in quantity and quality to support the proposed uses. Attached to this memo is a report completed by Thomas Buchholtz, P.E. of Water Man Consulting. The purpose of the report was to look at the ability to provide water to the 26 lots associated with the Country Meadows Heights proposed subdivision and the impact on surrounding water users. According to the report it is the intention of the developer to sell the 26 lots and have each of those purchasers provide their own water through drilling of individual wells.

The report concluded the following: "In conclusion it is my opinion that after reviewing adjacent well logs, and having a working knowledge of the area, that the overburden water table aquifer, that is anticipated to be utilized by the 26 exempt domestic wells associated with the Country Meadow Heights subdivision, will have more than adequate capacity to supply those wells. Additionally, it is my opinion that adjacent wells should be impacted only minimally by these new exempt wells, and certainly well below the levels DOE labels as impairment."

If information is presented at the public hearing that is sufficient for the Planning Commission to determine that there is physically available sufficient water in quantity and quality to support the proposed uses, the Planning Department recommends that the Planning Commission find that adequate provisions have been made for potable water supply, provided, that prior to the granting of a Building or Factory Assembled Structure Permit for each lot by the County, the applicant for a building or FAS permit must comply with RCW 90.44.050 regarding public ground water. The applicant for a Building or FAS Permit must demonstrate that potable water is legally available by presenting: (a) evidence of a valid water right permit from the Washington State Department of Ecology for the proposed wells for each lot; (b) a water well report filed and received by Washington State Department of Ecology for an exempted well that complies with the 5,000 gallon per day exemption described in RCW 90.44.050; or (c) a written approval of the Washington State Department of Health that a Group A or Group B public water supply system has been installed and is available for providing potable water to the lot.

26. The Benton County Department of Public Works will review the storm drainage issue during their review of the proposed plans for the construction of the

proposed county roads. (BCC 9.08.050(p))

27 The proposed Preliminary Plat of Country Meadows Heights does not contain land to be designated for open space. The Benton County Code does not require open space dedications for this type of preliminary plat.

28. The proposed preliminary plat will add additional paved road to the County road system. The design of the road will be reviewed and approved by the Benton County Department of Public Works.

29. The Ben Franklin Transit did not provided comments.

30. The proposed development is not located within an Irrigation District. However, a bridge will provide access for the subdivision across the Kennewick Irrigation District Canal Right-of-Way. .

31. The proposed plat is located adjacent to the Kennewick Irrigation District Canal. The canal is also operated by the United States Department of the Interior – Bureau of Reclamation (BUR). The Bureau commented that: "The plat shows a proposed crossing on the Main Canal Division III. The proponent must contact the Bureau of Reclamation before any work can begin on this or any proposed crossing of Reclamation facilities.

Landowners should be aware of existing Reclamation and District rights to construct, reconstruct operate, and maintain Project facilities as necessary. Any work that will involve these facilities or the existing rights-of-way must be reviewed and approved by Reclamation and the District prior to proceeding. Structures are prohibited from encroaching upon existing right-of-way corridors without Reclamation's and District's prior approval. This includes but is not limited to temporary improvements such as paving, fencing, and landscaping.

Reclamation is concerned that runoff contained and stored on-site during construction has the potential to infiltrate Project facilities, such as Main Canal Division III, and detrimentally affect water quality. To reduce this possibility, runoff conduits and holding areas should be lined with impervious materials and protective barriers should be constructed to intercept runoff.

It is important to note that Reclamation's concurrence to this proposal is conditioned upon the assumption that there are no encroachment upon Project facilities or right-of-way."

32. The Benton County Fire Marshal commented that: "With each lot in excess of 1 acre, a hydrant system will not be required provided all buildings have set backs exceeding 25 feet. Individual lots shall have recorded: "Minimum setback is 25

feet, unless other County codes require larger setbacks, then they shall govern." With the number of lots less than 50, a second access is not required.

33. The proposed plat does not provide for parks or recreation opportunities.

34. This proposed plat is within the Kennewick School District. The school district did not comment on this proposal. Student within this subdivision will be bused to school.

35. The proposed development is not within a flood control zone as outlined on the Federal Emergency Management Agency Flood Insurance Rate Map 530237 0600 B.

36. Comments were submitted by adjacent property owners requesting that the proposed roads be extended to the west and east so as to access the adjacent properties. Benton County Code Section 9.08.050(b) states:

> "Street shall continue as an extension of existing streets unless good site planning dictates a different solution. Street patterns shall take into consideration access needed to develop adjacent properties presently unsubsidized. Sketches of a proposed street system for adjoining properties may be required if owned by the subdivider or if the arrangement of the large tracts makes it necessary to provide future access through the property under consideration."

These requests have been sent to the Benton County Public Works for their review, but as of the date of this memo they have not commented on the requests. Extending the proposed road to the west or southwest may be possible. Extending the proposed roads to the east may be difficult because of the slopes in the area. More information on this issue will be presented at the open record hearing.

37. During the review of the proposed plat the applicant contracted with Shannon & Wilson, INC. to complete a geotechnical engineering study for the proposed subdivision. A copy of the study is attached to this memo. One of the conclusions of the study is that Shannon & Wilson review the location of any proposed structures and any significant grading that would occur on Lots 15 through 20.

DISPOSITION OF THE APPLICANT'S REQUEST:

A proposed subdivision and dedication shall not be approved unless the County makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and

school grounds, and shall consider all relevant facts including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

If the Preliminary Plat of Country Meadows Heights were approved, this office would recommend that the following conditions be attached to such an approval.

1. That all lots in the final plat meet the design standards for final plat approval as specified in Benton County Code 9.08 as amended, and meet all of the zoning requirements as specified in BCC Title No.11, as amended.

2. That each of the proposed lots contain a minimum usable land area of 20,000 square feet after easements and encumbrances placed on the plat are subtracted. That the final plat be reviewed and approved in writing by the Benton Franklin District Health Department prior to sending the final plat to the Planning Commission for signature. If any specific statements or set aside areas are requested by the Benton Franklin District Health Department these must be shown on the final plat as per their requirements. At a minimum the following statements must appear on the final plat:

> "This plat appears to have suitable conditions for the use of on-site sewage disposal systems. However, because of the testing methods used, we have no way of determining whether each lot can comply with Benton Franklin Health District Rules and Regulations at the time of permit issuance."
>
> "Further, be advised that the Benton Franklin Health District's approval of any lot within this plat for the use of on-site sewage disposal systems may be contingent upon that lot passing additional soil inspections/percolation tests, and/or other requirements at a later date.

3. The location and size of all irrigation and utility easements necessary for electric power, telephone service, water, sewer and cable T.V. be coordinated with the proper utilities and/or reviewing agencies and shown on the final plat. The developer will need to open the utility trenches, including road crossings, based on individual utility requirements and specifications. All such easements must be shown on the final plats.

4. All natural drainage ways are to be kept open and protected by the dedication of a drainage easement. Easements need to be established, or proven to be unnecessary by the developer's engineer through the conducting of a 100-year storm water run-off analysis for all drainage areas within the planned development. Any site modifications occurring as a result of this development, which change the run-off conditions, must be

considered in the analysis. Copies of the storm analysis must be provided to the Benton-Franklin District Health Department and the Benton County Department of Public Works. The requirements of the Benton County Hydrology Manual shall be met. The storm drainage analysis shall include the information presented by the Bureau of Reclamation.

5. Provisions shall be made to assure safe walking and/or waiting areas for students who will walk to and from school and for bus turn out areas. Written approval by the Kennewick School District and the Benton County Department of Public Works must be provided to the planning department prior to setting the meeting date for the final plat.

6. Contour lines shall be shown on the final plat or on a separate sheet at a maximum of 5' intervals.

7. That the following statement must appear on the final plat:

"Address numbers [Noted in Brackets] are subject to change until the exact location of access onto the lot is determined."

8. All roads must be constructed or bonded prior to the final plat hearing and if bonded the following statement must appear on the final plat:

"No building permit shall be issued until the roads are constructed to at least subgrade standards."

9. That the following statement must appear on the final plat:

"No building permit or placement permit for structures requiring potable water will be issued until evidence of a potable water supply is provided. The applicant for building permits must comply with RCW 90.44.050 regarding ground water."

10. That the following statement must appear on the final plat:

"That all structure shall be setback from all property lines at least 25 feet, unless a larger setback is required by Benton County Code."

"Landowners should be aware of existing Reclamation and District rights to construct, reconstruct operate, and maintain Project facilities as necessary. Any work that will involve these facilities or the existing rights-of-way must be reviewed and approved by Reclamation and the District prior to proceeding. Structures are prohibited from encroaching upon existing right-of-way corridors without Reclamation's and District's prior approval. This

includes but is not limited to temporary improvements such as paving, fencing, and landscaping."

11. Lots with slopes greater then 15% must be designated on the plat. The following notes shall appear on the final plats and apply to lots with slopes that exceed 15%:

"Portions of this plat are located within a critical resource area classified as geologically hazardous (steep slopes and landslide). No building permits or FAS permits will be issued on these areas until a determination of consistency is issued finding that the site and development are assured of long term stability and structural integrity."

"Development on slopes of 15% or greater within this plat must be engineered by a licensed professional engineer registered in the State of Washington and showing experience and knowledge in the practice of soils mechanics, to ensure safety and long term structural integrity according to the geologic conditions of each lot."

"Hillside development standards shall be utilized for lot design in this plat. An engineered foundation plan must be submitted for each lot with a slope of 20% greater prior to issuance of any building permit."

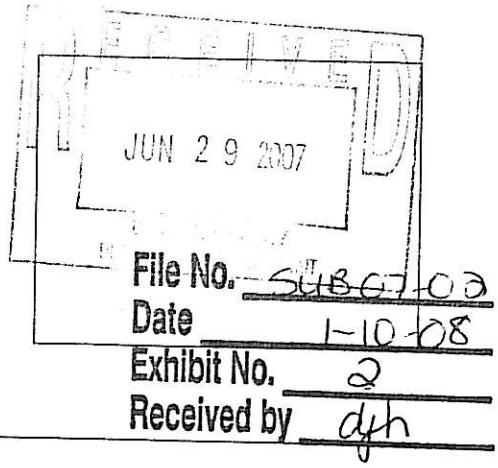
"A Geotechnical Engineer must be retained to review the location of proposed structures and any significant grading that will occur on Lots 15 through 20 of this plat."

12. That the preliminary plat is modified in all necessary respects so that the final plats will reflect the requirements of approval. If the final plat will be in conflict with any of the conditions of approval as adopted by the Planning Commission as a result of the modifications, then the final plat must be reviewed by the Planning Commission at a public meeting for approval prior to sending the final plat to the Board of County Commission.

BENTON COUNTY PRELIMINARY PLAT APPLICATION

SUB
File No. 07-02/EA07-38

CID 12996
HPM



1. Applicant Name: Chris Haueter 206183
   Applicant Address: ~~79301 Badger Meadow Drive Kennewick, WA 99338~~
   Telephone number: Home Work 509-947-9153

2. Legal Owners Name: HPM Properties
   Legal Owners Address: 79301 Badger Meadow Drive Kennewick, WA 99338
   Telephone number: Home Work 509-947-9153

4. Name and address of land surveyor David G. Christenson
   P.O. Box 6132 Kennewick, WA 99336
   Telephone 509-582-6716

5. Name and address of engineer Hall Engineering Associates
   10 S. Auburn Kennewick, WA 99336
   Telephone 509-582-2200

6. Parcel number and Legal description of property included in the preliminary plat:
   ~~1-2088-100-0007-000 and 1-2188-200-000003-000~~
   Ptn NE1/4 NE1/4 NW1/4 Section 20, T8N, R28E, WM, lying Southerly of KID Canal
   ~~Ptn SW1/4 NW1/4 Lying S of KID Canal and N1/2 NW1/4 SW1/4 Section 21, T8N, R28E,~~ W.M.

7. **Land Use Information:**
   a. Total area involved 132.78 acres
   b. Total number of lots 26
   c. Smallest lot area 2.01 ac
   d. Average lot area 4.89 ac
   e. Acreage in parks 0
   f. Length of public streets 3936 l.f.
   g. Total acreage of public streets 5.74 ac

8. Proposed annexation plans None

9. Plat will be served by:
Water: Individual Wells x City Water _____
Name of City Provider _____
Private Water System _____ Name & Address of Private System _____
_____
Sewer: Septic Tank x City Sewer _____ Private System _____
Power: P.U.D. x R.E.A. _____
Telephone: Verizon Telephone x Sprint Telephone _____
Natural Gas: Yes _____ No x Name of Utility _____
Cable T.V. Yes x No _____ Name of Utility _____
Irrigation: Yes x No _____ Name of Utility Kennewick Irr District
Private Irrigation Lines: Yes _____ No x

10. School District Kennewick School District No. 17
11. Fire District Benton County Fire District No. 1
12. Any other comments or information that is significant
Canal cross permit will be required from Kennewick Irrigation District
_____
13. Will this plat be finalized in phases? Yes _____ No x
14. Comprehensive Plan Designation Residential 1 dwelling per 5 acres
15. Zoning Designation Unclassified

IF YOU HAVE ANY ADDITIONAL COMMENTS PLEASE ATTACH THEM ON A SEPARATE SHEET OF PAPER.

I hereby state that I/we are the applicant(s) of this application and that the owner of the property hereby approves this application. I/we also certify that the information given in this application is true and complete to the best of my/our knowledge.

Applicant's Signature — Chris Haueter (Print Name) — 6-28-07 (Date)

Signature of Legal Owners — Chris Haueter (Print Name) — 6-28-07 (Date)

Christopher Parkinson — Christopher Parkinson — 6-28-07

Signature of Person with additional ownership interest — Print Name — Date

Travis Mullins — TRAVIS MULLINS — 6-28-07

Signature of Person with additional ownership interest — Print Name — Date

Any information submitted to the Benton County Planning/Building Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

(ALL persons with an ownership interest in the property on which the land use action is proposed must sign the application other than interests exclusively limited to ownership of the parcel's mineral rights.)

FEE: $350.00 plus $10.00 per lot, submitted with the application. Checks are to be **made payable to the Benton County Treasurer. THIS FEE IS NON-REFUNDABLE. THE RECORDING FEE IS $85.00 PLUS $1.00 FOR EACH ADDITIONAL PAGE TO BE PAID AT THE TIME OF RECORDING.** ***Effective August 1, 2005 the Recording Fee will be $98.00 plus $1.00 for each additional page - said fee to be paid at the time of recording.***

File No. SUB 07-02
Date 1-10-08
Exhibit No. 3
Received by dfh

RECEIVED
JUN 20 2007
PLANNING DEPARTMENT

PRELIMINARY REVIEW OF DEVELOPMENT DRAINAGE SYSTEM DESIGNS

Country Meadow Heights
(Proposed Development Name)

Section 20 and 21 Township 8 Range 28

June 25, 2007	Chris Haueter	509-947-9153
(Submittal Date)	(Submitted By)	(Phone)

(Approval Date)	(Approved By)

Submittal Content Shown on Topographic Map:

✓ 1. Type of Development. Residential

___ 2. Vicinity Map. See Preliminary plat

✓ 3. North Arrow.

✓ 4. Scale (reasonable, but never greater than 1:62,500).

✓ 5. Contour Interval (reasonable, but never greater than 20').

✓ 6. Shows the boundaries of the Total Drainage Basin that the proposed Development is located within.

✓ 7. Shows the location and boundaries of the proposed Development.

___ 8. Shows all Throughflow areas tributary to the Development, their entry location, and their conveyance means.

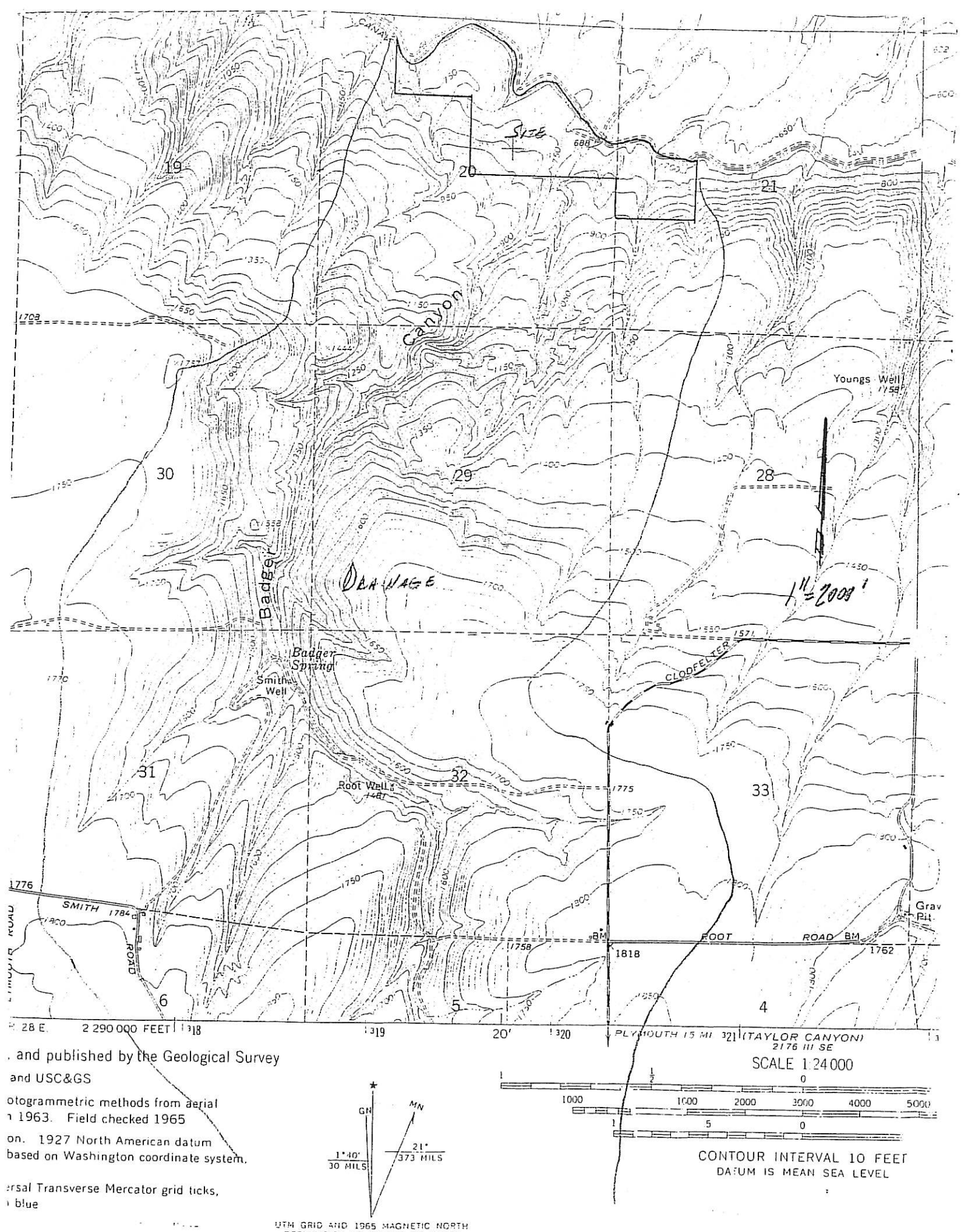
___ 9. Shows all existing ponding areas and drainage channels, either natural or manmade, within the Development boundaries.

___ 10. Shows the proposed Outflow locations from the Development and where each one flows to.

___ 11. Shows the Natural State highwater zone.

___ 12. Shows the Ultimate State highwater zone.

___ 13. Shows, for the Development as a whole, a preliminary Surface Water Runoff Inventory/Balance in tabular form as suggested in Figure 3 on Page 3-2 of the Hydrology Manual.



, and published by the Geological Survey

and USC&GS

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1963. Field checked 1965

on. 1927 North American datum
based on Washington coordinate system.

ersal Transverse Mercator grid ticks,
blue

UTM GRID AND 1965 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910, 1002 Dudley Avenue
Prosser WA 99350
Prosser Office: (509) 786-5612
From Tri-Cities: (509) 736-3086
Fax: (509) 786-5629

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105A
Kennewick WA 99336
Tri-Cities Office: (509) 735-3500
From Prosser: (509) 786-5622
Fax: (509) 736-2732

File No. SUB 07-02
Date 1-10-08
Exhibit No. 4
Received by dyh

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that there has been proposed to the Benton County Planning Department, an application (File No. SUB 07-02/EA 07-38) dated June 29, 2007 for the preliminary plat of Country Meadow Heights a subdivision of 132.78 acres into 26 lots by: Chris Haueter/HPM Properties, 79301 Badger Meadow Drive, Kennewick WA 99338. The date of the written determination of completeness on this action is July 19, 2007. The site is located in that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20 and the West Half of the West Half of Section 21, Township 8 North, Range 28 East, W.M. lying South of the Kennewick Irrigation District Canal.

NOTICE IS GIVEN that the Planning Department will review the application and a public hearing will be scheduled at a later date. When a public hearing is scheduled, property owners within 300 feet of the boundaries of the project action will receive a public hearing notice. All concerned persons will have fourteen (14) days from the date of publication of this notice to comment in writing on this action. Please comment to Benton County Planning Department, P.O. Box 910, Prosser WA 99350.

NOTICE IS FURTHER GIVEN that said proposal will be reviewed under the requirements of the State Environmental Policy Act, as amended. After the fourteen-day comment period is up a determination will be made on this action as to the environmental impacts of the proposal.

More information concerning this action can be obtained by contacting Michael Shuttleworth, Senior Planner at the Benton County Planning Dept. P.O. Box 910, Prosser, WA, or by calling Prosser - 786-5612 or Tri-Cities - 736-3086.

Dated at Prosser, Washington on this 19th day of July, 2007

MICHAEL SHUTTLEWORTH, Senior Planner
PLANNING/BUILDING DEPARTMENT

PUBLISH ON: July 23, 2007

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910, 1002 Dudley Avenue
Prosser WA 99350
Prosser Office: (509) 786-5612
From Tri-Cities: (509) 736-3086
Fax: (509) 786-5629

File No. SUB 07-02
Date 1-10-08
Exhibit No. 5
Received by dfb

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105
Kennewick WA 99
Tri-Cities Office: (509) 735-3
From Prosser: (509) 786-5622
Fax: (509) 736-2732

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that there has been proposed to the Planning Commission of Benton County, Washington, an application (File No. SUB 07-02/EA 07-38) the preliminary plat of Country Meadow Heights consisting of 26 lots on 132.78 acres by: Chris Haueter/HPM Properties, 29301 Badger Meadow Drive, Kennewick WA 99338. The date of the written determination of completeness on this action is December 19, 2007. The site is located in that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20 and the West Half of the West Half of Section 21, Township 8 North, Range 28 East, W.M. lying South of the Kennewick Irrigation District Canal.

NOTICE IS FURTHER GIVEN that said application will be considered by the Planning Commission of Benton County, Washington, at a public hearing on January 15, 2008 at the hour of 7:00 p.m. in the Hearing Room, Benton County Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350. It is suggested that if you plan on attending the hearing that you call the Benton County Planning Department by 4 p.m. the afternoon of the hearing to confirm that the hearing will be conducted as scheduled.

NOTICE IS FURTHER GIVEN that said proposal has been reviewed under the requirements of the State Environmental Policy Act, as amended, along with the Environmental Checklist and other information. A determination has been made as to the environmental impacts of the proposal and a Determination of Non-Significance has been issued. Accordingly, an Environmental Impact Statement is not required. This determination was made on December 19, 2007. Any comments regarding the determination and the environmental impacts of the proposal can be made at the hearing before the Planning Commission at the time and place indicated above, or be made in writing to the Planning Department by 5 p.m. on January 15, 2008.

At this hearing, the Planning Commission may recommend approval, conditional approval or disapproval of the application to the Benton County Board of Commissioners. All parties concerned may appear and present any support or objections for the application. Information concerning the application can be obtained at the Benton County Planning Department, P.O. Box 910, 1002 Dudley Avenue, Prosser, Washington 99350 or by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

Benton County welcomes full participation in public meetings by all citizens. No qualified individual with a disability shall be excluded or denied the benefit of participating in such meetings. If you wish to use auxiliary aids or require assistance to comment at this public meeting, please contact the Benton County Planning Department at the above stated phone numbers and/or address at least ten days prior to the date of the meeting to make arrangements for special needs.

DATED at Prosser, Washington on this 27th day of December 2007

Jon Lindeman, Chairman
BENTON COUNTY PLANNING COMMISSION

MICHAEL SHUTTLEWORTH, Senior Planner
BENTON COUNTY PLANNING/BUILDING DEPT.

PUBLISH: January 3, 2008

RECEIVED
JUN
BENTON COUNTY
PLANNING DEPARTMENT

ENVIRONMENTAL CHECKLIST

EA 07-38

File No. SUB07-02
Date 1-10-08
Exhibit No. 6
Received by dh

A. BACKGROUND

1. Name of proposed project, if applicable:
   Country Meadow Heights

2. Name of applicant:

   Chris Haueter

3. Address and phone number of applicant and contact person:

   79301 Badger Meadow Drive
   Kennewick, WA 99338 509-947-9153

4. Date checklist prepared:

   June 23, 2007

5. Agency requesting checklist:
   Benton County Planning Department

6. Proposed timing or schedule (including phasing, if applicable):
   Upon approval of preliminary plat

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?
   No

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

   None

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
   No

10. List any government approvals or permits that will be needed for your proposal, if known.
    Benton Franklin District Health Department approval of septic tank/drainfields
    Benton County approval of preliminary and final plats and utility plans

11. Give brief, complete description of your proposal, including the proposed uses and the size of the ject and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may

modify this form to include additional specific information on project description.)

Create 26 single family residential lots on 132 acres with an average density of one dwelling per 5 acres

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

Property is located in NW1/4 Section 20 and W1/2 Section 21, T8N, R28E, W.M., Benton County, Washington, lying Southerly of Kennewick Irrigation District canal

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other:

b. What is the steepest slope on the site (approximate percent slope)?

25%

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

Warden silt loam from USDA Soil Survey of Benton County 1971

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

No

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

Grading for street and house sites will be required

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

Wind erosion is possible during construction

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

6%

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

Water will be used for dust control

2. Air

2) Describe waster material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage, industrial, containing the following chemicals. . . , agricultural, etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

Domestic household sewage will be discharged to the ground through the used of approved septic tank/drainfield systems

c. Water Runoff (including storm water):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Storm water will continue to runoff the surrounding hills and will not be collected or diverted from the current runoff areas

2) Could waste materials enter ground or surface waters? If so, generally describe.

No

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

On site storm water will be controlled by approved Benton County methods

4. **Plants**

a. Circle types of vegetation found on the site: deciduous tree: alder, maple, aspen, other; evergreen tree: fir, cedar, pine, other; shrubs; grass; pasture' crop or grain; wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other; water plants: water lily, eelgrass, milfoil, other; other types of vegetation.

Sagebrush and native grasses

b. What kind and amount of vegetation will be removed or altered?

Sagebrush and native grasses will be removed for street and home sites

c. List threatened or endangered species known to be on or near the site.

None

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

None

5. **Animals**

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site: birds: hawk, heron, eagle, songbirds, other: Pheasant

mammals: deer, bear, elk, beaver, other: None

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial, wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if know.

During construction dust is a possibility. After construction is completed there should be no emissions to the air

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No

c. Proposed measures to reduce or control emissions or other impacts toair, if any:

Water will be used for dust control

3. **Water**

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Kennewick Irrigation District main canal forms the North boundary of the site. This is seasonal during the irrigation months

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

Yes, Canal crossing will be required

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water, or wetlands, and indicate the area of the site that would be affected. Indicate the source of ill material.

None

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if know.

No

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

No

6) Does the proposal involve any discharge of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

No

b. Ground:

1) Will ground water be withdrawn, or will water be discharge to ground water? Give general description, purpose, and approximate quantities if know.

Yes, individual wells will be required for the homes

fish: bass, salmon, trout, herring, shellfish, other: None

b. List any threatened or endangered species known to be on or near the site.

None

c. Is the site part of a migration route? If so, explain.

No

d. Proposed measures to preserve or enhance wildlife, if any:

None

6. **Energy and Natural Resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Electricity will be used for home heating and lighting

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No

c. What kinds of energy conservation feature are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, ifany:

Normal house building energy saving steps will be taken.

7. **Environmental Health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

No

1) Describe special emergency services that might be required.

None

2) Proposed measures to reduce or control environmental health hazards, if any:

None

b. **Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Construction noise will occur during the construction phase

2) What types and levels of noise would be created by or associate with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Noise from increased automobile traffic will occur

3) Proposed measures to reduce or control noise impacts, if any:

None

8. **Land and Shoreline Use**

a. What is the current use of the site and adjacent properties?

Housing development exists to the North, undeveloped property to the East, West and South

b. Has the site been used for agriculture? If so, describe.

No

c. Describe any structures on the site.

None

d. Will any structures be demolished? If so, what?

No

e. What is the current zoning classification of the site?

Residential one dwelling per 5 acres

f. What is the current comprehensive plan designation for the site?

Residential

g. If applicable, what is the current shoreline master program designation of the site?

N/A

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

No

I. Approximately how many people would reside or work in the completed project?

75 to 100

j. Approximately how many people would the completed project displace?

None

k. Proposed measures to avoid or reduce displacement impacts, if any:

None

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Project is compatible woth the residential development just to the North

9. **Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

None

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

None

c. Proposed measures to reduce or control housing impacts, if any:

None

10. **Aesthetics**

a. What is the tallest height of any proposed structures(s) not including antennas; what is the principal exterior building material(s) proposed?

Two story wood exterior houses

b. What views in the immediate vicinity would be altered or obstructed?

None

c. Proposed measures to reduce or control aesthetic impacts, if any:

None

11. **Lights and Glare**

a. What type of light or glare will be the proposal produce? What time of day would it mainly occur?

Normal residential nighttime lighting can be expected

b. Could light or glare from the finished project be a safety hazard or interfere with views?

No

c. What existing off-site sources of light or glare may affect your proposal?

None

d. Proposed measures to reduce or control light and glare impacts, if any:

None

12. **Recreation**

a. What designated and informal recreational opportunities are in the immediate vicinity?

ATV riding and horseback riding

b. Would the proposed project displace any existing recreational uses? If so, describe.

No

c. Proposed measures to reduce or control impacts or recreation, including recreation opportunities to be provided by the project or applicant, if any:

None

13. **Historic and Cultural Preservation**

a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

No

b. Generally describe any landmarks or evidence of historic, archeological, scientific, or cultural importance know to be on or next to the site.

None

c. Proposed measures to reduce or control impacts, if any:

None

14. **Transportation**

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plan, if any.

Badger Road is the main road and the site will be serve from Country Meadows Lane

b. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

No, 6 miles

c. How many parking spaces would the completed project have? How many would the project eliminate?

None designated

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

Yes, a new road will be required to serve the proposed lots

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No

f. How many vehicular trips per day would be generated by the completed project? If know, indicate when peak volumes would occur.

250 trips per day

g. Proposed measures to reduce or control transportation impacts, if any:

None

15. **Public Services**

a. Would the project result in an increased need for public services (for example, fire protection, police protection, health care, schools, etc.)? If so, generally describe.

The services will be required but the project by itself will not result in an increase in the above services

b. Proposed measures to reduce or control direct impacts on public services, if any.

None

16. **Utilities**

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

None

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Benton PUD for electricity, Verizon Northwest for telephone, Chater Communications for cable TV (if available) will need to be installed

ESA LISTED SALMONIDS CHECKLIST

The Listed Salmonids Checklist is provided in order that the county may initially identify a project's potential impacts (if any) on salmonids that have been listed as "threatened" or "endangered" under the Federal Endangered Species Act (ESA). A salmonid is any fish species that spends part of its life cycle in the ocean and returns to fresh water. Potential project impacts that mayresult in a "taking" of listed salmonids must be avoided, or mitigated to insignificant levels. Generally, under ESA, a "taking" is broadly defined as any action that causes the death of, or harm to, the listed species. Such actions include those that affect the environmental in ways that interfere with or reduce the level of reproduction of the species.

If ESA listed species are present or ever were present in the watershed where your project will be located, your project has the potential for affecting them, and you need to comply with the ESA. The questions in this section will help determine if the ESA listing will impact your project. The Fish Program Manager at the appropriate Department of Fish and Wildlife (DFW) regional office can provide information for the following two questions. Please contact the Dept. of Fish and Wildlife at 1701 S. 24th, Yakima WA 98902-5720, Phone No. 509-575-2740.

1. Are ESA listed salmonids currently present in the watershed in which your project will be?
YES_x_ NO____
Please Describe.
Lower Yakima River

2. Has there ever been an ESA listed salmonid stock present in this watershed? YES_x_ NO____
Please Describe.
Yakima River has salmon

If you answered "yes" to either of the above questions, you should complete the remainder of this checklist.

PROJECT SPECIFIC: The questions in this section are specific to the project and vicinity.

A1. Name of watershed Lower Yakima River

A2. Name of nearest waterbody Yakaima River

A3. What is the distance from this project to the nearest body ofwater? 8 miles
Often a buffer between the project and a stream can reduce the chance of a negative impact to fish.

A4. What is the current land use between the project and the potentially affected water body (parking lots, farmland, etc.)
Residential and farmland

A5. Is the project above a:

Natural permanent barrier (waterfall)	YES____	NO x
Natural temporary barrier (beaver pond)	YES____	NO x
Man-made barrier (culvert, dam)	YES x	NO____

Other (explain)

A6 If yes, are there any resident salmonid populations above the blockage? YES____ NO_x__
Don't Know _____

A7. What percentage of the project will be impervious surface (including pavement & roof area)?

6%

FISH MIGRATION: The following questions will help determine if this project could interfere with migration of adult and juvenile fish. Both increases and decreases in water flows can affect fish migration.

B1. Does the project require the withdrawal of

a. Surface water? Yes_____ No_x___
Amount_____
Name of surface water body_____

b. Ground water? Yes_x___ No_____
Amount 26 individual wells will be required
From Where_____
Depth of well _____

B2. Will any water be rerouted? YES_____ NO_x____
If yes, will this require a channel change?

B3. Will there be retention ponds? YES_____ NO_x___
If yes, will this be an infiltration pond or a surface discharge to either a municipal storm water system or a surface water body?

If to a surface water discharge, please give the name of the waterbody.

B4. Will this project require the building of new roads? Increased road mileage may affect the timing of water reaching a stream and may, thus, impact fish habitat.

Yes

B5. Are culverts proposed as part of this project?
Yes_x___ No_____

B6. Will topography changes affect the duration/direction of runoff flows?
Yes_____ No_x___

If yes describe the changes.

B7. Will the project involve any reduction of the floodway or floodplain by filling or other partial blockage of flows? Yes_____ No_x___

If yes, how will the loss of flood storage be mitigated by your project?

WATER QUALITY: The following questions will help determine if this project could adversely impact water quality. Such impacts can cause problems for listed species. Water quality can be made worse by runoff from impervious surfaces, altering water temperature, discharging contaminants, etc.

C1. Do you know of any problems with water quality in any of the streams within this watershed?
YES____ NO_x__

If yes please describe.

_____

_____

C2. Will your project either reduce or increase shade along or over a waterbody?
YES____ NO_x___ Removal of shading vegetation or the building of structures such as docks or floats often result in a change in shade.

C3. Will the project increase nutrient loading or have the potential to increase nutrient loading or contaminants (fertilizers, other waste discharges, or runoff) to the waterbody?
YES____ NO_x__

C4. Will turbidity be increased because of construction of the project or during operation of the project? In-water or near water work will often increase turbidity.
YES____ NO_x__

C5. Will your project require long term maintenance, i.e., bridge cleaning, highway salting, chemical sprays for vegetation management, clearing of parking lots?
YES____ NO_x___
Please Describe.

_____

_____

DETERMINATION OF NONSIGNIFICANCE

Description of proposal: The preliminary plat of Country Meadow Heights a subdivision of 132.78 acres into 26 lots

File No. SUB 07-02
Date 1-10-08
Exhibit No. 7
Received by dyh

Proponent Chris Haueter/HPM Properties
79301 Badger Meadow Drive
Kennewick WA 99338.

File No. EA 07-38

Location of proposal, including street address, if any: The site is located in that portion of the Northeast Quarter and the Northeast Quarter of the Northwest Quarter of Section 20 and the West Half of the West Half of Section 21, Township 8 North, Range 28 East, W.M. lying South of the Kennewick Irrigation District Canal.

Lead agency **BENTON COUNTY**

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by January 4, 2008.

Responsible Official **TERRY A. MARDEN, Director**
Benton County Planning & Building Dept.
Post Office Box 910 **PHONE: (509) 786-5612**
Prosser, WA 99350-0910 **(509) 736-3086**

Date **December 19, 2007**

Signature
Michael Shuttleworth, Senior Planner

You may appeal this determination to **TERRY A. MARDEN**, at **Post Office Box 910, Prosser, WA 99350**, no later than **January 4, 2008** by **Written notice. The fee for a threshold determination Appeal is $100.00 plus legal advertising costs. An appeal of the determination must be made in writing to the Benton County Planning Department and a public hearing will be scheduled and the appellant will be notified of the date, time, and place.** You should be prepared to make specific factual objections. Contact the planning department to read or ask about the procedures for SEPA appeals.

DISTRIBUTION:
Applicant
News Media (Encl. map or plot plan)
Benton County Building Office
Department of Natural Resources-Olympia
Department of Natural Resources -Ellensburg
Benton Clean Air Authority
Bureau of Reclamation
Benton County Public Works
Benton-Franklin Dist. Health Department
Kennewick Irrigation District
Department of Transportation
Washington State Department of Health
Department of Ecology - Olympia Yakima
Fire District #1
Fire Marshal
Bureau of Land Management
Department of Fish and Wildlife
Dept. of Archaeology & Historic Preservation
Futurewise

Benton County Planning/Building Department

Terry A. Marden, Director

PLANNING
Planning Annex
P.O. Box 910 1002 Dudley Avenue
Prosser WA 99350
Prosser Office (509) 786-5612
From Tri-Cities (509) 736-3086
Fax (509) 786-5629

BUILDING
Kennewick Annex
5600 W. Canal Drive, Suite C 105A
Kennewick WA 99336
Tri-Cities Office (509) 735-3500
From Prosser (509) 786-5612
Fax (509) 736-2732

File No. SUB 07-02
Date 1-10-08
Exhibit No. 8
Received by dyb

August 30, 2007

FILE COPY

Chris Haueter/HTM Properties
79301 Badger Meadow Dr.
Kennewick, WA 99338

RE: Additional information for the environmental review of EA 07-38 and SUB 07-02.

Dear Mr. Haueter:

Benton County Planning is requesting additional information related to the environmental review for your Environmental Checklist EA 07-38, to create 26 lots out of 132.78 acres. The County has reviewed the environmental checklist, information that you submitted, information submitted by reviewing agencies and comments from surrounding property owners. Upon review of your proposal it has been determined that additional information is needed to address certain potential impacts of the proposal.

1. The impact on existing ground water must be reviewed under SEPA and one of the findings that must be made before a subdivision is approved is that proposed lots are served by adequate means of water supply. The Washington State Department of Ecology (see attached letter) and surrounding property owners have presented concerns that the existing ground water in the area is not adequate to provide for 26 new homes through individual wells. The Department of Ecology has also commented that a water right would be required for your proposed development. You will need to contact Department of Ecology about the water rights. The contact person is in the attached letter.

   In order to complete the environmental review and subdivision review, a study will need to be completed by you that addresses the impact on ground water from the proposed 26 individual wells and to determine if there is enough ground water in the area to provide for 26 new individual wells without impacting the existing wells in the area. The study is to be prepared by a professional engineer or other professional that has technical training, experience and demonstrate stature as a qualified professional in that field.

2. During the review of the preliminary plat, your site for the proposed preliminary plat was found to be located in a Critical Resource Area known as Geologically Hazardous (steep slopes) as defined in BCC 15.35.010. In order to complete the environmental determination and the analysis of the geologically hazardous area, additional information must be provided to the Planning Department. The purpose

of this additional information is to adequately evaluate the proposal and all potential significant impacts on the geologically hazardous area. The information must be provided by a professional who is licensed and qualified as an expert in geologically hazardous areas and must include the resume of the principal author(s) of the information being provided.

Per Benton County Code 15.35.050 the following information shall be provided to complete the review and site analysis:

A. The physical features of the site, including identification of surface and subsurface soil types, vegetation, streams, canyons, drainage ways and any location of any filled areas.

B. The geologic, topographic, and hydrologic factors that might contribute to slope instability and the location of sites susceptible to instability.

C. Suitable building areas taking into consideration the long term stability and maintenance requirements of roads and all other permanent infrastructure needs that would be affected by both the underlying geology and soils.

D. Recommended setbacks from unbuildable areas, to protect the geologic and topographic features.

E. The rate and extent of any potential hazards such as erosion, sliding, slumping, etc must be analyzed in light of the potential impact to the public health, safety and welfare.

F. The potential impact of residential landscaping irrigation, drain fields, and storm drainage from the site and general requirements to mitigate those impacts.

Prior to the initiation of the studies, please provide the résumé of the principal author(s) you select for the study to this office for review. The resume must disclose technical training and experience and demonstrate stature as a qualified professional in that field. To avoid completing a study that does not address an issue adequately, it is strongly advised that the Scope of Work for the study be submitted to this office for review prior to the initiation of any work tasks in the study.

This additional information is to assist in determining the environmental impacts of your proposal. While the additional information is being prepared, the environmental determination and review of your subdivision application will be on hold. When the information is completed and submitted to the Benton County Planning Department, the environmental determination can be made and the review of your applications will continue.

If you have any questions about this letter please contact me at (509) 736-3086.

Sincerely,

TERRY A. MARDEN, Director
PLANNING/BUILD DEPT.

MICHAEL SHUTTLEWORTH
Senior Planner

CC: Department of Ecology

Attachment

File No. SUB 07-02
Date 1-10-08
Exhibit No. 9
Received by djh

COUNTRY MEADOW HEIGHTS
Water Availability Report
November 5, 2007

I, Thomas R. Buchholtz, being a Professional Agricultural Engineer in the State of Washington, and being the owner/operator of Water Man Consulting am over twenty one years of age and qualified to make the statements provided herein. I recently retired from practicing Agricultural Engineering for the Washington State Department of Natural Resources. I worked for that agency from 1976 to 2007, and from 1981 to 2007 as a Professional Agricultural Engineer. I established Water Man Consulting in 2007. I have dealt with water rights, wells and water issues for over 31 years.

The purpose of this report is to look at the ability to provide water for the 26 lots associated with the Country Meadow Heights subdivision, and the potential impacts that providing that water may have on adjacent well owners. It is the intention of the developer to sell the 26 individual lots, and to have each of those lot purchasers provide their own culinary water through the drilling of an exempt well, producing 5,000 gallons per day or less.

Utilizing the Washington State Department of Ecology's (DOE) Well Report and Well Log Viewing tool, logs of several adjacent wells have been scrutinized. Those well logs are attached for reference. Additionally, a map from that same DOE web site is attached that shows the general location of adjacent wells. Note: The well locations associated with the attached logs are not accurately represented on the DOE provided map, but are located in Section 20, north of the KID canal rather than south of the canal as shown. These are representative of the wells that are closest to the proposed exempt wells that will be drilled under this proposal.

In looking at those well logs, all of these wells were completed within the unconsolidated sediments, and produce from what appears to be a water table aquifer. The depths of these wells range from 98' to 220', with static water levels ranging from 47' to 110'. The logs note various estimates of yield ranging from 30 gallons per minute to 100 gallons per minute. These yields far exceed the normal requirements for a well being utilized for domestic requirements under the 5,000 gallons per day exemption. All of these wells were completed by installing unperforated steel casing for their entire depths. This construction allows for water to enter the well only from the very bottom of the well, making for a low efficiency well. The fact that these wells produce the quantities of water they do, with this type of construction, supports the fact that the aquifer supplying them appears to be highly productive. The gravel formations that were encountered in all of these adjacent wells lend additional credence to this notion, as saturated gravel formations are normally very good water producers.

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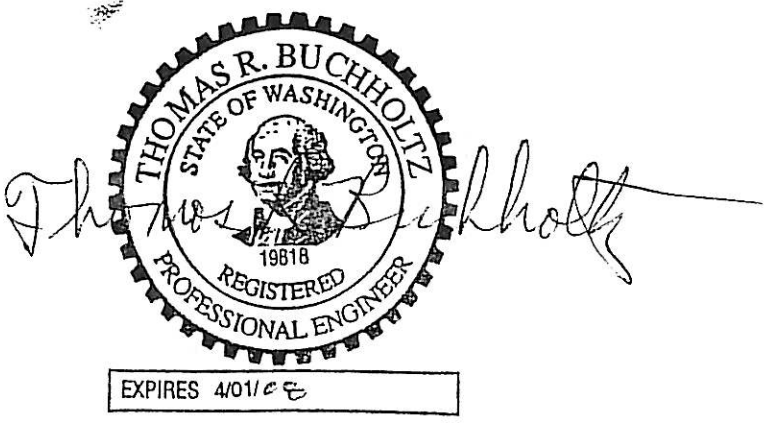
NOV - 5 2007
BENTON COUNTY
PLANNING DEPARTMENT

In addition to having high yielding potential due to the make up of the aquifer, ie coarse gravel layer, this aquifer is topographically and physically located where significant recharge will take place. This sub-division is located near the bottom of Badger Canyon. Badger Canyon is one of the natural drainages in the area where any surface water collects. Owing to the very coarse nature of the soils in Badger Canyon much of this surface water percolates down to the water table. Additionally, several thousand acres of crops are irrigated in the general vicinity of Badger Canyon. A portion of the irrigation water applied to those crops percolates down to the water table. Since Badger Canyon is a low point some of that deep percolated irrigation water finds its way to the water table aquifer that will be utilized by the 26 wells. Finally, this sub-division lies adjacent to the KID canal. It has been shown that even with the best efforts some water will escape from irrigation canals. It has been noted that this may be the case near this sub-division, with water levels seeming to increase significantly during the irrigation season. Whether this is the result of the canal leaking, or significant over irrigation in the area, there appears to be a significant source of recharge to the water table aquifer during the summer irrigation season. Note: That this would also be the peak demand period for utilizing the 26 exempt wells.

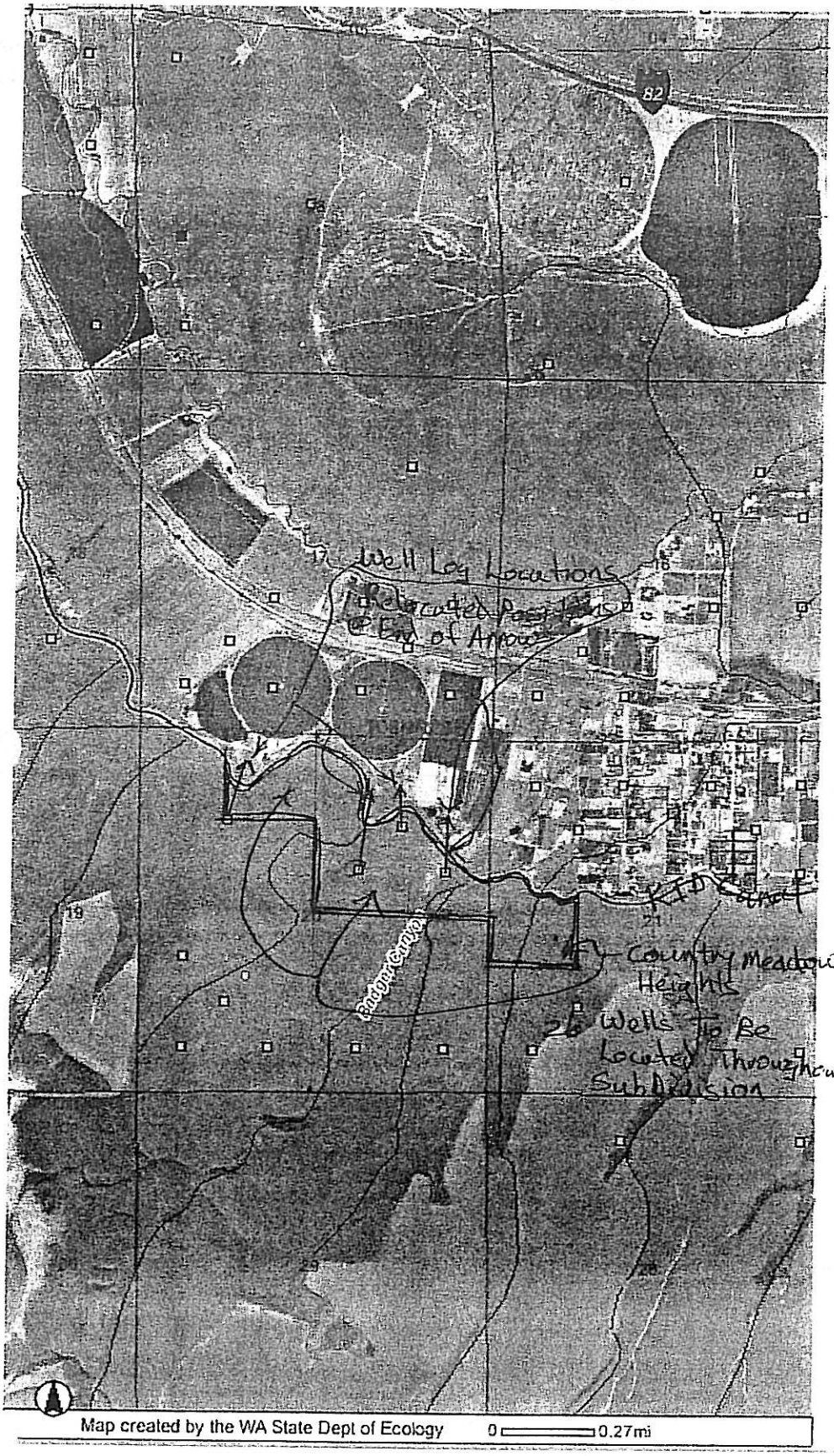
When looking at 26 exempt wells pumping at a worst case scenario of each pumping at 5,000 gallons a day for 365 days a year, this is the equivalent of a single well pumping at 90 gallons per minute continuously. In comparison a single center pivot requires 750 gallons per minute. Additionally, the total annual withdrawal of 145 acre-feet of water during a year is the amount of water required to irrigate a 50 acre field in the area. Given the fact that all 26 homes will not come anywhere close to pumping the authorized 5,000 gallons each and every day, the actual water withdrawn will be significantly less than the maximum amounts noted above.

In conclusion it is my opinion that after reviewing adjacent well logs, and having a working knowledge of the area, that the overburden water table aquifer, that is anticipated to be utilized by the 26 exempt domestic wells associated with the Country Meadow Heights sub-division, will have more than adequate capacity to supply those wells. Additionally, it is my opinion that adjacent wells should be impacted only minimally by these new exempt wells, and certainly well below the levels DOE labels as impairment.

Thomas R. Buchholtz PE
Water Man Consulting



Chris Haueter



Well Log Locations

- Water Supply
- Resource Protection
- Decommissioned
- Multiple Well Types

Major Roads

- State Highway
- US Highway
- Interstate
- Streets

- Sections
- Cities
- Counties

Water Bodies

- Reservoir
- Glacier
- Marsh
- Rock
- Island
- Water
- Streams

Map created by the WA State Dept of Ecology 0 0.27mi

File Original with
Department of Ecology
Second Copy Owner's Copy
Third Copy Driller's Copy 82537

WATER WELL REPORT

STATE OF WASHINGTON

Notice of Intent WQ87700
UNIQUE WELL I D # AHH 031
Water Right Permit No

(1) OWNER Name Gregory Rose Address 27903 S 816 PRSE Kent 9803

(2) LOCATION OF WELL County Benton 1/4 NW 1/4 Sec 20 T 8 N R 28E WM

(2a) STREET ADDRESS OF WELL (or nearest address)

TAX PARCEL NO cdef

(3) PROPOSED USE
☒ Domestic ☐ Industrial ☐ Municipal
☐ Irrigation ☐ Test Well ☐ Other
☐ DeWater

(4) TYPE OF WORK Owner's number of well (if more than one)
☒ New Well Method
☐ Deepened ☐ Dug ☐ Bored
☐ Reconditioned ☐ Cable ☐ Driven
☐ Decommission ☒ Rotary ☐ Jetted

(5) DIMENSIONS Diameter of well 6 inches
Drilled 98 feet Depth of completed well 98 ft

(6) CONSTRUCTION DETAILS
Casing Installed
☒ Welded 6 Diam from +1 ft to 98 ft
☐ Liner installed Diam from ft to ft
☐ Threaded Diam from ft to ft

Perforations ☐ Yes ☒ No
Type of perforator used
SIZE of perforations in by in
perforations from ft to ft

Screens ☐ Yes ☒ No ☐ K Pac Location
Manufacturer's Name
Type Model No
Diam Slot Size from ft to ft
Diam Slot Size from ft to ft

Gravel/Filter packed ☐ Yes ☒ No ☐ Size of gravel/sand
Material placed from ft to ft

Surface seal ☒ Yes ☐ No To what depth? 20 ft
Material used in seal Bentonite
Did any strata contain unusable water? ☐ Yes ☒ No
Type of water? Depth of strata
Method of sealing strata off

(7) PUMP Manufacturer's Name
Type HP

(8) WATER LEVELS Land surface elevation above mean sea level ft
Static level 47 ft below top of well Date 6-30-00
Artesian pressure lbs per square inch Date
Artesian water is controlled by
(Cap valve etc)

(9) WELL TESTS Drawdown is amount water level is lowered below static level
Was a pump test made? ☐ Yes ☐ No If yes by whom?
Yield gal /min with ft drawdown after hrs
Yield gal /min with ft drawdown after hrs
Yield gal /min with ft drawdown after hrs
Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test
Bailer test gal /min with ft drawdown after hrs
Airtest 50 gal /min with 10 ft drawdown after 2 hrs
Artesian flow g p m Date
Temperature of water Was a chemical analysis made? ☐ Yes ☐ No

ECY 050 1 20 (11/98) 82537

(10) WELL LOG or DECOMMISSIONING PROCEDURE DESCRIPTION
Formation Describe by color character size of material and structure and the kind and nature of the material in each stratum penetrated with at least one entry for each change of information Indicate all water encountered

MATERIAL	FROM	TO
Sand Tan Silty	0	16
Gravel, Basalt angular, Sand Tan Silty	16	98

DEPT OF ECOLOGY Received JUL 28 2000 CENTRAL REGIONAL OFFICE

Work Started 6-29 00 Completed 6-30 00

WELL CONSTRUCTION CERTIFICATION

I constructed and/or accept responsibility for construction of this well and its compliance with all Washington well construction standards Materials used and the information reported above are true to my best knowledge and belief

Type or Print Name Jim Nelson License No 361
(Licensed Driller/Engineer)

Trainee Name License No
Drilling Company Nelson Well Drilling Inc
(Signed) Jim Nelson License No 361
(Licensed Driller/Engineer)
Address 8200 W Argent Pasco
Contractor's Registration No NELSOWD198LQ Date 6-30-00

(USE ADDITIONAL SHEETS IF NECESSARY)

Ecology is an Equal Opportunity and Affirmative Action employer For special accommodation needs contact the Water Resources Program at (360) 407 6600 The TDD number is (360) 407 6006

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

W148974
TAG# AGM-125

File Original with Department of Ecology
Second Copy - Owner's Copy
Third Copy - Driller's Copy 109961

WATER WELL REPORT

STATE OF WASHINGTON

Notice of Intent W148974
UNIQUE WELL I D # AGM125
Water Right Permit No

(1) OWNER: Name Don Pratt Construction Address 7535 W Clearwater Suite C

(2) LOCATION OF WELL: County Benton 1/4 NW 1/4 Sec 20 T 8 N R 28E WM

(2a) STREET ADDRESS OF WELL: (or nearest address) Lot 11 Blk Country Meadows Phase 2 CDEF

TAX PARCEL NO.

(3) PROPOSED USE: ☒ Domestic ☐ Industrial ☐ Municipal ☐ Irrigation ☐ Test Well ☐ Other ☐ DeWater

(4) TYPE OF WORK: Owner's number of well (if more than one)
☒ New Well ☐ Deepened ☐ Reconditioned ☐ Decommission
Method: ☐ Dug ☐ Bored ☐ Cable ☐ Driven ☒ Rotary ☐ Jetted

(5) DIMENSIONS: Diameter of well 6 inches
Drilled 99 ft Depth of completed well 99 ft

(6) CONSTRUCTION DETAILS
Casing Installed: ☒ Welded 6 Diam from +1 ft to 99-8 ft
☐ Liner installed Diam from ft to ft
☐ Threaded Diam from ft to ft

Perforations: ☐ Yes ☒ No
Type of perforator used
SIZE of perforations in by in.
perforations from ft to ft

Screens: ☐ Yes ☒ No ☐ K-Pac Location
Manufacturer's Name
Type Model No
Diam Slot Size from ft to ft
Diam Slot Size from ft to ft

Gravel/Filter packed: ☐ Yes ☒ No ☐ Size of gravel/sand
Material placed from ft to ft

Surface seal: ☒ Yes ☐ No To what depth? 23 ft
Material used in seal Bentonite
Did any strata contain unusable water? ☐ Yes ☐ No
Type of water? Depth of strata
Method of sealing strata off

(7) PUMP: Manufacturer's Name
Type H P

(8) WATER LEVELS: Land-surface elevation above mean sea level ft
Static level 62 ft below top of well Date 1-28-02
Artesian pressure lbs per square inch Date
Artesian water is controlled by (Cap, valve, etc)

(9) WELL TESTS: Drawdown is amount water level is lowered below static level
Was a pump test made? ☐ Yes ☐ No If yes, by whom?
Yield gal/min with ft drawdown after hrs
Yield gal/min with ft drawdown after hrs
Yield gal/min with ft drawdown after hrs
Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test
Bailer test gal/min with ft drawdown after hrs
Airtest 30 gal/min with 20 ft drawdown after 2 hrs
Artesian flow g p m Date
Temperature of water Was a chemical analysis made? ☐ Yes ☐ No

(10) WELL LOG or DECOMMISSIONING PROCEDURE DESCRIPTION
Formation Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information Indicate all water encountered

MATERIAL	FROM	TO
Sand Silt & Top Soil	0	26
Basalt Gravel Sand Top Soil & Clay	26	52
Silt Brown	52	58
Gravel, Sand Top Soil Silt	58	83
Gravel Basalt Type Angular Sand Top	83	99-8

DEPT OF ECOLOGY Received FEB 20 2002 CENTRAL REGION OFFICE

Work Started 1-28-02 Completed 1-28-02

WELL CONSTRUCTION CERTIFICATION:

I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards Materials used and the information reported above are true to my best knowledge and belief

Type or Print Name Jim Nelson License No 361
(Licensed Driller/Engineer)

Trainee Name License No
Drilling Company Nelson Well Drilling Inc
(Signed) Jim Nelson License No 361
(Licensed Driller/Engineer)
Address 9200 W Arpent Pasco
Contractor's Registration No NELSOWP198CQ Date 1-29-02

(USE ADDITIONAL SHEETS IF NECESSARY)

Ecology is an Equal Opportunity and Affirmative Action employer For special accommodation needs, contact the Water Resources Program at (360) 407-

ECY 050-1-20 (11/98)

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

82536

File Original with Department of Ecology
Second Copy Owner's Copy
Third Copy - Driller's Copy

WATER WELL REPORT
STATE OF WASHINGTON

Notice of Intent W 104599
UNIQUE WELL I D # AFH 029
Water Right Permit No

(1) OWNER Name O J Brooks Address

(2) LOCATION OF WELL County Benton 1/4 NW 1/4 Sec 20 T 8 N R 28E WM
(2a) STREET ADDRESS OF WELL (or nearest address)
TAX PARCEL NO 1-2088-201-2495-002 cdef

(3) PROPOSED USE
- [X] Domestic
- [ ] Industrial
- [ ] Municipal
- [ ] Irrigation
- [ ] Test Well
- [ ] Other
- [ ] DeWater

(4) TYPE OF WORK
Owner's number of well (if more than one)
- [X] New Well
- [ ] Deepened
- [ ] Reconditioned
- [ ] Decommission

Method
- [ ] Dug
- [ ] Bored
- [ ] Cable
- [ ] Driven
- [X] Rotary
- [ ] Jetted

(5) DIMENSIONS Diameter of well 6 inches
Drilled 118 feet Depth of completed well 118 ft

(6) CONSTRUCTION DETAILS
Casing Installed
- [X] Welded 6 " Diam from +1 ft to 118 ft
- [ ] Liner installed " Diam from ft to ft
- [ ] Threaded " Diam from ft to ft

Perforations [ ] Yes [X] No
Type of perforator used
SIZE of perforations in by in
perforations from ft to ft

Screens [ ] Yes [X] No [ ] K-Pac Location
Manufacturer's Name
Type Model No
Diam Slot Size from ft to ft
Diam Slot Size from ft to ft

Gravel/Filter packed [ ] Yes [X] No [ ] Size of gravel/sand
Material placed from ft to ft

Surface seal [X] Yes [ ] No To what depth? 20 ft
Material used in seal Bentonite
Did any strata contain unusable water? [ ] Yes [X] No
Type of water? Depth of strata
Method of sealing strata off

(7) PUMP Manufacturer's Name
Type H P

(8) WATER LEVELS Land surface elevation above mean sea level ft
Static level 64 ft below top of well Date 6-2700
Artesian pressure lbs per square inch Date
Artesian water is controlled by (Cap, valve, etc)

(9) WELL TESTS Drawdown is amount water level is lowered below static level
Was a pump test made? [ ] Yes [ ] No If yes, by whom?
Yield gal /min with ft drawdown after hrs
Yield gal /min with ft drawdown after hrs
Yield gal /min with ft drawdown after hrs
Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test
Bailer test gal /min with ft drawdown after hrs
Airtest 30 gal /min with 115 ft drawdown after 2 hrs
Artesian flow g p m Date
Temperature of water Was a chemical analysis made? [ ] Yes [ ] No

(10) WELL LOG or DECOMMISSIONING PROCEDURE DESCRIPTION
Formation Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information Indicate all water encountered

MATERIAL	FROM	TO
Sand Talk Silty	0	23
Basalt Gravel, sand Talk Silty	23	
water Bearing @ 63'		118

STATE OF WASHINGTON JUL 24 2000 WATER RESOURCES

Work Started 6-26 Completed 6-27-00

WELL CONSTRUCTION CERTIFICATION

I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards Materials used and the information reported above are true to my best knowledge and belief

Type or Print Name Jim Nelson License No 361
(Licensed Driller/Engineer)

Trainee Name License No
Drilling Company Nelson Well Drilling INC
(Signed) Jim Nelson License No 361
(Licensed Driller/Engineer)
Address 3200 W Argent Pasco
Contractor s Registration No NELSOW019866 Date 6-27-00

(USE ADDITIONAL SHEETS IF NECESSARY)

Ecology is an Equal Opportunity and Affirmative Action employer For special accommodation needs, contact the Water Resources Program at (360) 407

ECY 050 1-20 (11/98) 82536

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

WATER WELL REPORT

ECOLOGY Original & 1st copy Ecology 2nd copy owner 3rd copy driller

Construction/Decommission (x in circle)
- (x) Construction
- ( ) Decommission *ORIGINAL CONSTRUCTION Notice of Intent Number* 154820

CURRENT
Notice of Intent No W-176963
Unique Ecology Well ID Tag No AKJ-567
Water Right Permit No
Property Owner Name Norman Nunn G
Well Street Address Lot 8 Sunset Meadows LP
City Kinn County Benton
Location SW 1/4 1/4 NE 1/4 Sec 20 Twn 8 R 28 (EWM or WWM) circle one
Lat/Long (s,t,r still REQUIRED) Lat Deg ____ Lat Min/Sec ____ Long Deg ____ Long Min/Sec ____
Tax Parcel No 1-2088-303-0000-008

PROPOSED USE (x) Domestic ( ) Industrial ( ) Municipal ( ) DeWater ( ) Irrigation ( ) Test Well ( ) Other

TYPE OF WORK Owner's number of well (if more than one)
(x) New Well ( ) Reconditioned ( ) Deepened
Method ( ) Dug ( ) Bored ( ) Driven ( ) Cable (x) Rotary ( ) Jetted

DIMENSIONS Diameter of well 6 inches drilled 220 ft
Depth of completed well 220 ft

CONSTRUCTION DETAILS
Casing Installed (x) Welded 6 Diam from 0 ft to 220 ft
( ) Liner installed ____ Diam from ____ ft to ____ ft
( ) Threaded ____ Diam from ____ ft to ____ ft

Perforations ( ) Yes (x) No
Type of perforator used
SIZE of perfs ____ in by ____ in and no of perfs ____ from ____ ft to ____ ft

Screens ( ) Yes (x) No ( ) K Pac Location
Manufacturer's Name
Type Model No
Diam ____ Slot Size ____ from ____ ft to ____ ft
Diam ____ Slot Size ____ from ____ ft to ____ ft

Gravel/Filter packed ( ) Yes (x) No ( ) Size of gravel/sand
Materials placed from ____ ft to ____ ft

Surface Seal (x) Yes ( ) No To what depth? 20 ft
Materials used in seal Bentonite
Did any strata contain unusable water? ( ) Yes (x) No
Type of water? Depth of strata
Method of sealing strata off

PUMP Manufacturer's Name
Type H P

WATER LEVELS Land surface elevation above mean sea level ____ ft
Static level 110 ft below top of well Date 8-3-04
Artesian pressure ____ lbs per square inch Date
Artesian water is controlled by (cap valve etc)

WELL TESTS Drawdown is amount water level is lowered below static level
Was a pump test made? ( ) Yes ( ) No If yes by whom?
Yield ____ gal/min with ____ ft drawdown after ____ hrs
Yield ____ gal/min with ____ ft drawdown after ____ hrs
Yield ____ gal/min with ____ ft drawdown after ____ hrs
Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test
Bailer test ____ gal/min with ____ ft drawdown after ____ hrs
Airtest 60+ gal/min with stem set at 200 ft for 4 hrs
Artesian flow ____ g p m Date
Temperature of water ____ Was a chemical analysis made? ( ) Yes (x) No

CONSTRUCTION OR DECOMMISSION PROCEDURE
Formation Describe by color character size of material and structure and the kind and nature of the material in each stratum penetrated with at least one entry for each change of information Indicate all water encountered (USE ADDITIONAL SHEETS IF NECESSARY)

MATERIAL	FROM	TO
Silty Topsoil	0	45
Basalt & Clay	45	148
Clay	148	165
Basalt & Clay	165	205
Water Bearing Gravel	205	220
60+ GPM		

DEPT OF ECOLOGY Received AUG 23 2004 CENTRAL REGIONAL OFFICE

Start Date 7-22-04 Completed Date 8-3-04

WELL CONSTRUCTION CERTIFICATION I constructed and/or accept responsibility for construction of this well and its compliance with all Washington well construction standards Materials used and the information reported above are true to my best knowledge and belief

(x) Driller ( ) Engineer ( ) Trainee Name (Print) Todd Haney
Driller/Engineer/Trainee Signature
Driller or Trainee License No 2843

If trainee, licensed driller's Signature and License no

Drilling Company Statewide Well Drilling
Address 101 KAG Thomas Rd
City State Zip Pasco Wa 99301
Contractor's Registration No STATEWDO15LZ Date 4/06

Ecology is an Equal Opportunity Employer ECY 050 1 20 (Rev 4/01)

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

WATER WELL REPORT

ECOLOGY Original & 1st copy - Ecology, 2nd copy - owner, 3rd copy - driller

Construction/Decommission ("x" in circle)
☒ Construction 162603
○ Decommission *ORIGINAL CONSTRUCTION Notice of Intent Number*_____

CURRENT
Notice of Intent No. W-176977
Unique Ecology Well ID Tag No. AKJ-578
Water Right Permit No. _____
Property Owner Name Glenn Davison
Well Street Address 24903 Country Meadows Dr.
City Kenn. County: Benton
Location SW 1/4- 1/4 NE 1/4 Sec 20 Twn 8 R 28 (EWM) circle one or WWM
Lat/Long: (s,t,r still REQUIRED) Lat Deg _____ Lat Min/Sec _____ Long Deg _____ Long Min/Sec _____
Tax Parcel No. 1-1788-302-0007-003

PROPOSED USE: ☒ Domestic ☐ Industrial ☐ Municipal ☐ DeWater ☐ Irrigation ☐ Test Well ☐ Other_____

TYPE OF WORK: Owner's number of well (if more than one)_____
☒ New Well ☐ Reconditioned *Method:* ☐ Dug ☐ Bored ☐ Driven ☐ Deepened ☐ Cable ☒ Rotary ☐ Jetted

DIMENSIONS: Diameter of well 6 inches, drilled 200 ft.
Depth of completed well 200 ft.

CONSTRUCTION DETAILS
Casing Installed: ☒ Welded 6 " Diam. from 0 ft. to 200 ft.
☐ Liner installed _____ " Diam. from _____ ft. to _____ ft.
☐ Threaded _____ " Diam. from _____ ft. to _____ ft.

Perforations: ☐ Yes ☒ No
Type of perforator used_____
SIZE of perfs____in. by____in. and no. of perfs____ from____ft. to____ft.

Screens: ☐ Yes ☒ No ☐ K-Pac Location_____
Manufacturer's Name_____
Type_____ Model No._____
Diam._____ Slot Size_____ from_____ft. to_____ft.
Diam._____ Slot Size_____ from_____ft. to_____ft.

Gravel/Filter packed: ☐ Yes ☒ No ☐ Size of gravel/sand_____
Materials placed from_____ft. to_____ft.

Surface Seal: ☒ Yes ☐ No To what depth? 20 ft
Materials used in seal Bentonite
Did any strata contain unusable water? ☐ Yes ☐ No
Type of water?_____ Depth of strata_____
Method of sealing strata off_____

PUMP: Manufacturer's Name_____
Type:_____ H.P._____

WATER LEVELS: Land-surface elevation above mean sea level_____ ft.
Static level 65 ft. below top of well Date 11-26-04
Artesian pressure_____ lbs. per square inch Date_____
Artesian water is controlled by_____ (cap,valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level.
Was a pump test made? ☐ Yes ☐ No If yes, by whom?_____
Yield:____gal./min. with____ft. drawdown after____hrs.
Yield:____gal./min. with____ft. drawdown after____hrs.
Yield:____gal./min. with____ft. drawdown after____hrs.
Recovery data (time taken as zero when pump turned off)(water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test_____
Bailer test____gal./min. with____ft. drawdown after____hrs.
Airtest 40+ gal./min. with stem set at 180 ft. for 4 hrs.
Artesian flow_____g.p.m. Date_____
Temperature of water____ Was a chemical analysis made? ☐ Yes ☒ No

CONSTRUCTION OR DECOMMISSION PROCEDURE
Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information. Indicate all water encountered. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
Brown Clay	0	165
Frac. Basalt & Cobbles	165	176
Black Sand	176	184
Water Bearing Gravel	184	200

DEPT. OF ECOLOGY Received DEC 29 2004 CENTRAL REGION OFFICE

Start Date 11-23-04 Completed Date 11-26-04

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

☒ Driller ☐ Engineer ☐ Trainee Name (Print) Todd Haney
Driller/Engineer/Trainee Signature _____
Driller or Trainee License No. 2343

If trainee, licensed driller's Signature and License no._____

Drilling Company Statewide Well Drilling
Address 101 RAU Trail rd.
City, State, Zip Pasco Wa 99301
Contractor's Registration No. STATEWDO15522 Date 4/06

Ecology is an Equal Opportunity Employer. ECY 050-1-20 (Rev 4/01)

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

WATER WELL REPORT

Original & 1st copy – Ecology, 2nd copy – owner, 3rd copy – driller

Construction/Decommission *("x" in circle)*

⊗ Construction 259735

○ Decommission *ORIGINAL INSTALLATION Notice of Intent Number* _____

CURRENT

Notice of Intent No. W 256425

Unique Ecology Well ID Tag No. APG 027

Water Right Permit No. _____

Property Owner Name Billy Ike Kellyp

Well Street Address Hue Estates

City Kenn County Benton

Location __ 1/4-1/4 NE 1/4 Sec 20 Twn 9N R 28E (EWM or WWM) circle one ABGH

Lat/Long (s, t, r Still REQUIRED) Lat Deg _____ Lat Min/Sec _____

Long Deg _____ Long Min/Sec _____

Tax Parcel No. 1-2088-601-2495-004

PROPOSED USE: ☒ Domestic ☐ Industrial ☐ Municipal ☐ DeWater ☐ Irrigation ☐ Test Well ☐ Other _____

TYPE OF WORK: Owner's number of well (if more than one) _____

☒ New well ☐ Reconditioned *Method:* ☐ Dug ☐ Bored ☐ Driven ☐ Deepened ☐ Cable ☒ Rotary ☐ Jetted

DIMENSIONS: Diameter of well 6 inches, drilled 99 ft.

Depth of completed well 99 ft.

CONSTRUCTION DETAILS

Casing Installed: ☒ Welded 6" Diam. from +1 ft. to 98 ft.

☐ Liner installed _____" Diam. from _____ ft. to _____ ft.

☐ Threaded _____" Diam. from _____ ft. to _____ ft.

Perforations: ☐ Yes ☒ No

Type of perforator used _____

SIZE of perfs _____ in. by _____ in. and no. of perfs ____ from ____ ft. to ____ ft.

Screens: ☐ Yes ☒ No ☐ K-Pac Location _____

Manufacturer's Name _____

Type _____ Model No. _____

Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Gravel/Filter packed: ☐ Yes ☒ No ☐ Size of gravel/sand _____

Materials placed from _____ ft. to _____ ft.

Surface Seal: ☒ Yes ☐ No To what depth? 99 ft.

Material used in seal BENTONITE & CASING

Did any strata contain unusable water? ☐ Yes ☒ No

Type of water? _____ Depth of strata _____

Method of sealing strata off _____

PUMP: Manufacturer's Name _____

Type: _____ H.P. _____

WATER LEVELS: Land-surface elevation above mean sea level _____ ft.

Static level 48 ft. below top of well Date 2/27/07

Artesian pressure _____ lbs. per square inch Date _____

Artesian water is controlled by _____ (cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level

Was a pump test made? ☐ Yes ☒ No If yes, by whom? _____

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test _____

Bailer test _____ gal./min. with _____ ft. drawdown after _____ hrs.

Airtest 30 gal./min. with stem set at +80 ft. for 2 hrs.

Artesian flow _____ g.p.m. Date _____

Temperature of water _____ Was a chemical analysis made? ☐ Yes ☒ No

CONSTRUCTION OR DECOMMISSION PROCEDURE

Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
SILT	0	18
TAN SILT & BASALT GRAVEL	18	34
BROWN SILT & BASALT GRAVEL	34	62
TAN SILT & BASALT GRAVEL	62	91
BROWN SILT & BASALT GRAVEL	91	99

DEPT OF ECOLOGY Received MAY 02 2007 CENTRAL REGIONAL

Start Date 2-26-07 Completed Date 2-27-07

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

☒ Driller ☐ Engineer ☐ Trainee Name (Print) Jeremy Rude

Driller/Engineer/Trainee Signature _____

ler or trainee License No. 2651

Drilling Company Nelson Well Drilling Inc

Address 2505 W Court

City, State, Zip Pasco Wa 99301

Contractor's Registration No. NELSOWD198CQ Date 2-27-07

If TRAINEE, Driller's Licensed No. _____

Driller's Signature _____

Ecology is an Equal Opportunity Employer

 The Department of Ecology does NOT warranty the Data and/or Information on this Well Report.

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

Please print, sign and return to the Department of Ecology

Water Well Report

Original – Ecology, 1st copy – owner, 2nd copy – driller

Construction/Decommission

☒ Construction
☐ Decommission *ORIGINAL INSTALLATION Notice of Intent Number* 180886

Current Notice of Intent No. (W) 224154

Unique Ecology Well ID Tag No. AAC 725

Water Right Permit No. ABGH

Property Owner Name Michael Hollenberg

Well Street Address BK 1049 QE

City Buckeye County Benton

Location ___1/4-1/4 NE 1/4 Sec 20 Twn 9N R 28 E/W M or WWM (circle one)

Lat/Long (s, t, r still REQUIRED) Lat Deg _____ Lat Min/Sec _____

Long Deg _____ Long Min/Sec _____

Tax Parcel No. _____

PROPOSED USE: ☒ Domestic ☐ Industrial ☐ Municipal ☐ DeWater ☐ Irrigation ☐ Test Well ☐ Other _____

TYPE OF WORK: Owner's number of well (if more than one) _____

☒ New well ☐ Reconditioned ☐ Deepened *Method:* ☐ Dug ☐ Bored ☐ Driven ☐ Cable ☒ Rotary ☐ Jetted

DIMENSIONS: Diameter of well 6 inches, drilled 125 ft.
Depth of completed well 125 ft.

CONSTRUCTION DETAILS

Casing Installed: ☒ Welded 6" Diam. from +1 ft. to 122.5 ft.
☐ Liner installed ___" Diam. from ___ ft. to ___ ft.
☐ Threaded ___" Diam. from ___ ft. to ___ ft.

Perforations: ☐ Yes ☒ No
Type of perforator used _____
SIZE of perfs ___ in. by ___ in. and no. of perfs ___ from ___ ft. to ___ ft.

Screens: ☐ Yes ☒ No ☐ K-Pac Location _____
Manufacturer's Name _____
Type _____ Model No. _____
Diam. ___ Slot size ___ from ___ ft. to ___ ft.
Diam. ___ Slot size ___ from ___ ft. to ___ ft.

Gravel/Filter packed: ☐ Yes ☒ No ☐ Size of gravel/sand _____
Materials placed from ___ ft. to ___ ft.

Surface Seal: ☒ Yes ☐ No To what depth? 122.5 ft.
Material used in seal BENTONITE & CASING
Did any strata contain unusable water? ☐ Yes ☐ No
Type of water? _____ Depth of strata _____
Method of sealing strata off _____

PUMP: Manufacturer's Name _____
Type: _____ H.P. _____

WATER LEVELS: Land-surface elevation above mean sea level _____ ft.
Static level 60.2 ft. below top of well Date 9/29/05
Artesian pressure _____ lbs. per square inch Date _____
Artesian water is controlled by _____ (cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level
Was a pump test made? ☐ Yes ☒ No If yes, by whom? _____
Yield: ___ gal./min. with ___ ft. drawdown after ___ hrs.
Yield: ___ gal./min. with ___ ft. drawdown after ___ hrs.
Yield: ___ gal./min. with ___ ft. drawdown after ___ hrs.

Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test _____
Bailer test ___ gal./min. with ___ ft. drawdown after ___ hrs.
Airtest 40 gal./min. with stem set at 100 ft. for 2 hrs.
Artesian flow _____ g.p.m. Date _____
Temperature of water _____ Was a chemical analysis made? ☐ Yes ☐ No

CONSTRUCTION OR DECOMMISSION PROCEDURE

Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information indicate all water encountered. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
TAN SILT	0	23
BROKEN BASALT, GRAVEL & SILT	23	65
BROKEN BASALT & GRAVEL W/ SILT	65	125

DEPT OF ECOLOGY Received OCT 05 2005 CENTRAL REGION OFFICE

Start Date 9/28/05 Completed Date 9/25/05

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

Driller/Engineer/Trainee Name (Print) CLEMENT RUDE
Driller/Engineer/Trainee Signature _____
Driller or trainee License No. 2651

Drilling Company NELSON WELL DRILLING
Address 7505 W. COURT ST.
City, State, Zip PASCO WA. 99301
Contractor's Registration No. NELSWDKBCQ Date 9/30/05

If TRAINEE,
Driller's Licensed No. _____
Driller's Signature _____

Ecology is an Equal Opportunity Employer. ECY 050-1-20 (Rev 2/03)

WATER WELL REPORT

ECOLOGY Original & 1st copy Ecology 2nd copy owner 3rd copy driller

Construction/Decommission (x in circle)
- (X) Construction 152817
- ( ) Decommission ORIGINAL CONSTRUCTION Notice of Intent Number

CURRENT Notice of Intent No W168842

Unique Ecology Well ID Tag No AKW 927

Water Right Permit No ABGH

Property Owner Name Robert Nichols

Well Street Address Hix Estates

City Kent County Benton

Location 1/4 1/4 NE 1/4 Sec 20 Twn 8N R 28E (EWM) or WWM circle one

Lat/Long (s t r still REQUIRED) Lat Deg ____ Lat Min/Sec ____ Long Deg ____ Long Min/Sec ____

Tax Parcel No 1-2088-101-2505-002

PROPOSED USE (X) Domestic ( ) Industrial ( ) Municipal ( ) DeWater ( ) Irrigation ( ) Test Well ( ) Other

TYPE OF WORK Owner's number of well (if more than one) ____
(X) New Well ( ) Reconditioned Method ( ) Dug ( ) Bored ( ) Driven ( ) Deepened ( ) Cable (X) Rotary ( ) Jetted

DIMENSIONS Diameter of well 6" inches drilled 124 ft
Depth of completed well 124 ft

CONSTRUCTION DETAILS
Casing Installed (X) Welded 6" Diam from 10" ft to 123'9" ft
( ) Liner installed ____ Diam from ____ ft to ____ ft
( ) Threaded ____ Diam from ____ ft to ____ ft

Perforations ( ) Yes (X) No
Type of perforator used ____
SIZE of perfs ____ in by ____ in and no of perfs ____ from ____ ft to ____ ft

Screens ( ) Yes (X) No ( ) K Pac Location ____
Manufacturer's Name ____
Type ____ Model No ____
Diam ____ Slot Size ____ from ____ ft to ____ ft
Diam ____ Slot Size ____ from ____ ft to ____ ft

Gravel/Filter packed ( ) Yes (X) No ( ) Size of gravel/sand ____
Materials placed from ____ ft to ____ ft

Surface Seal (X) Yes ( ) No To what depth? 22 ft
Materials used in seal BENTONITE
Did any strata contain unusable water? ( ) Yes (X) No
Type of water? ____ Depth of strata ____
Method of sealing strata off ____

PUMP Manufacturer's Name ____
Type ____ H P ____

WATER LEVELS Land surface elevation above mean sea level ____ ft
Static level 74 ft below top of well Date 5/11/04
Artesian pressure ____ lbs per square inch Date ____
Artesian water is controlled by ____ (cap valve etc)

WELL TESTS Drawdown is amount water level is lowered below static level
Was a pump test made? ( ) Yes (X) No If yes by whom? ____
Yield ____ gal /min with ____ ft drawdown after ____ hrs
Yield ____ gal /min with ____ ft drawdown after ____ hrs
Yield ____ gal /min with ____ ft drawdown after ____ hrs
Recovery data (time taken as zero when pump turned off)(water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test ____
Bailer test ____ gal /min with ____ ft drawdown after ____ hrs
Airtest 30 gal /min with stem set at 105 ft for 1 hrs
Artesian flow ____ g p m Date ____
Temperature of water ____ Was a chemical analysis made? ( ) Yes ( ) No

CONSTRUCTION OR DECOMMISSION PROCEDURE
Formation Describe by color character size of material and structure and the kind and nature of the material in each stratum penetrated with at least one entry for each change of information Indicate all water encountered (USE ADDITIONAL SHEETS IF NECESSARY)

MATERIAL	FROM	TO
TAN SILT	0	22
TAN SILT W/ GRAVEL	22	106
SILT, SAND & GRAVEL	106	77
BROKEN BASALT & GRAVEL	77	82
H2O 10 GPM	82	
SILT & GRAVEL	82	95
SAND GRAVEL & BROKEN BASALT H2O	95	124
DRILLED WITH TUBEX		

DEPT OF ECOLOGY Received AUG 04 2004 CENTRAL REGION OFFICE

Start Date 5/11/04 Completed Date 5/11/04

WELL CONSTRUCTION CERTIFICATION I constructed and/or accept responsibility for construction of this well and its compliance with all Washington well construction standards Materials used and the information reported above are true to my best knowledge and belief

(X) Driller ( ) Engineer ( ) Trainee Name (Print) JEREMY L RUPE

Driller/Engineer/Trainee Signature [signature]

Driller or Trainee License No 2691

Drilling Company Nelson Well Drilling Inc

Address 2505 A Court

City State Zip Pasco WA 99301

Contractor's Registration No NELSOWD 168CA Date 5-12-04

If trainee, licensed driller's Signature and License no ____

Ecology is an Equal Opportunity Employer ECY 050 1 20 (Rev 4/01)

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

le Original and First Copy with
epartment of Ecology
econd Copy—Owner's Copy
ird Copy—Driller's Copy

WATER WELL REPORT

STATE OF WASHINGTON

Start Card No. 24104

UNIQUE WELL I.D. # AHC 026

Water Right Permit No.

(1) OWNER: Name ED HUG Address

(2) LOCATION OF WELL: County Benton NE¼ NE¼ Sec 20 T. 8 N., R. 28 W.M.

(3) STREET ADDDRESS OF WELL (or nearest address)

(4) PROPOSED USE: ☒ Domestic ☐ Industrial ☐ Municipal ☐ ☐ Irrigation ☐ Test Well ☐ Other ☐ ☐ DeWater

(5) TYPE OF WORK: Owner's number of well (if more than one)

Abandoned ☐ New well ☒ Method: Dug ☐ Bored ☐ Deepened ☐ Cable ☐ Driven ☐ Reconditioned ☐ Rotary ☒ Jetted ☐

(6) DIMENSIONS: Diameter of well 6 inches. Drilled 120 feet. Depth of completed well 120 ft.

(7) CONSTRUCTION DETAILS:

Casing installed: 6 " Diam. from +1 ft. to 120 ft.
Welded ☒ Liner installed ☐ Threaded ☐
" Diam. from ft. to ft.
" Diam. from ft. to ft.

Perforations: Yes ☐ No ☒
Type of perforator used
SIZE of perforations in. by in.
perforations from ft. to ft.
perforations from ft. to ft.
perforations from ft. to ft.

Screens: Yes ☐ No ☒
Manufacturer's Name
Type Model No.
Diam. Slot size from ft. to ft.
Diam. Slot size from ft. to ft.

Gravel packed: Yes ☐ No ☒ Size of gravel
Gravel placed from ft. to ft.

Surface seal: Yes ☒ No ☐ To what depth? 20 ft.
Material used in seal Bentonite
Did any strata contain unusable water? Yes ☐ No ☐
Type of water? Depth of strata
Method of sealing strata off

PUMP: Manufacturer's Name
Type: H.P.

WATER LEVELS: Land-surface elevation above mean sea level ft.
Static level 72 ft. below top of well Date
Artesian pressure lbs. per square inch Date
Artesian water is controlled by (Cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level
Was a pump test made? Yes ☐ No ☐ If yes, by whom?
Yield: gal./min. with ft. drawdown after hrs.
" " " "
" " " "

Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test

Bailer test gal./min. with ft. drawdown after hrs.
Airlest 40 gal./min. with stem set at 100 ft. for 2 hrs.
Artesian flow g.p.m. Date
Temperature of water Was a chemical analysis made? Yes ☐ No ☐

(10) WELL LOG or ABANDONMENT PROCEDURE DESCRIPTION

Formation: Describe by color, character, size of material and structure, and show thickness of aquifers and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information.

MATERIAL	FROM	TO
Ash	0	19
Ash Basalt Gravel	19	81
Ash Basalt Gravel Bearing water	81	120

RECEIVED
AUG 18 1993
DEPARTMENT OF ECOLOGY
CENTRAL REGION OFFICE

Work started 7/14/93, 19. Completed , 19

WELL CONSTRUCTOR CERTIFICATION:

I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

NAME St. George Drilling (PERSON, FIRM, OR CORPORATION) (TYPE OR PRINT)

Address 701 So 45 AVE W Richland

(Signed) (WELL DRILLER) License No. 0487

Contractor's Registration No. 601-044-715 Date 8-16-93, 19

(USE ADDITIONAL SHEETS IF NECESSARY)

050-1-20 (10/87) -1329-

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

The Department of Ecology does NOT Warranty the Data and/or the Information on this Well Report.

WATER WELL REPORT

Original & 1st copy – Ecology, 2nd copy – owner, 3rd copy – driller

RECEIVED JUL 27 2005 Water Resources Program Dept. of Ecology

DEPT OF ECOLOGY Received AUG 01 2005 CENTRAL REGION OFFICE

Construction/Decommission ("x" in circle)

- [x] Construction
- [ ] Decommission *ORIGINAL INSTALLATION Notice of Intent Number* 176660

CURRENT

Notice of Intent No. W 160934

Unique Ecology Well ID Tag No. AKH938

Water Right Permit No.

Property Owner Name Yen Chiu & rolchi Chiu

Well Street Address 28303 PR SE 816

City Kennewick County Benton

Location SE 1/4-1/4 NE 1/4 Sec 20 Twn 8 R 28 EWM [x] or WWM [ ] circle one

Lat/Long (s, t, r Still **REQUIRED**) Lat Deg _____ Lat Min/Sec _____ Long Deg _____ Long Min/Sec _____

Tax Parcel No. 1-2088-101-2505-001

PROPOSED USE: [x] Domestic [ ] Industrial [ ] Municipal [ ] DeWater [ ] Irrigation [ ] Test Well [ ] Other _____

TYPE OF WORK: Owner's number of well (if more than one) _____

[x] New well [ ] Reconditioned [ ] Deepened Method: [ ] Dug [ ] Bored [ ] Driven [ ] Cable [x] Rotary [ ] Jetted

DIMENSIONS: Diameter of well 6" inches, drilled 100 ft. Depth of completed well 100 ft.

CONSTRUCTION DETAILS

Casing Installed: [x] Welded 6" Diam. from +1 ft to 100 ft. [ ] Liner installed _____" Diam. from _____ ft to _____ ft [ ] Threaded _____" Diam. from _____ ft to _____ ft

Perforations: [ ] Yes [x] No

Type of perforator used _____

SIZE of perfs _____ in. by _____ in. and no. of perfs _____ from _____ ft to _____ ft.

Screens: [ ] Yes [x] No [ ] K-Pac Location _____

Manufacturer's Name _____

Type _____ Model No. _____

Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Gravel/Filter packed: [ ] Yes [x] No [ ] Size of gravel/sand _____

Materials placed from _____ ft to _____ ft

Surface Seal: [x] Yes [ ] No To what depth? 20 ft

Material used in seal bentonite

Did any strata contain unusable water? [ ] Yes [x] No

Type of water? _____ Depth of strata _____

Method of sealing strata off _____

PUMP: Manufacturer's Name _____

Type: _____ H.P. _____

WATER LEVELS: Land-surface elevation above mean sea level _____ ft.

Static level 50 ft. below top of well Date 7-22-05

Artesian pressure _____ lbs. per square inch Date _____

Artesian water is controlled by _____ (cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level

Was a pump test made? [ ] Yes [x] No If yes, by whom? _____

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test _____

Bailer test _____ gal./min. with _____ ft. drawdown after _____ hrs.

Airtest 100 gal./min. with stem set at 90 ft. for 3 hrs.

Artesian flow _____ g.p.m. Date _____

Temperature of water _____ Was a chemical analysis made? [x] Yes [ ] No

CONSTRUCTION OR DECOMMISSION PROCEDURE

Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
topsoil	0	18
basaltic gravel + boulders	18	50
basaltic gravel + medium sized rocks	50	80
course basaltic gravel	80	100 gpm
5 ppm nitrates on site test		

DEPT. OF ECOLOGY FISCAL G. BUDGET '05 JUL 25 AM 8:47

Start Date 7-20-05 Completed Date 7-21-05

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

[ ] Driller [ ] Engineer [ ] Trainee Name (Print) Thomas St. George

Driller/Engineer/Trainee Signature _____

Driller or trainee License No. 2781

Drilling Company St. George Well Drilling Co.

Address 701 S 45th Ave.

City, State, Zip West Richland, Wa, 99353

Contractor's Registration No. stgeogw95-lk4 Date 7-22-05

If TRAINEE, Driller's Licensed No. _____ Driller's Signature _____

Ecology is an Equal Opportunity Employer.

ECY 050-1-20 (Rev 3/05) The Department of Ecology does NOT warranty the Data and/or Information on this Well Report.

Geotechnical Engineering Stu
Meadow Heights Resident
Developme
Benton County, Washingt

November 20

RECEIVED
NOV 30 2007
BENTON COUNTY
PLANNING DEPARTMENT

File No. SUB07-02
Date 1-10-08
Exhibit No. 10
Received by djh

SHANNON & WILSON, INC.

GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

At Shannon & Wilson, our mission is to be a progressive, well-managed professional consulting firm in the fields of engineering and applied earth sciences. Our goal is to perform our services with the highest degree of professionalism with due consideration to the best interests of the public, our clients, and our employees.

Submitted Tc

Attn: Mr. Chris Haueter
28511 Country Meadows Driv
Kennewick, Washington 9933

By
Shannon & Wilson, Inc
303 Wellsian Wa
Richland, Washington 9935

22-1-02542-00

SHANNON & WILSON, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

SEATTLE
RICHLAND
PORTLAND
FAIRBANKS
ANCHORAGE
DENVER
SAINT LOUIS

November 27, 2007

Mr. Chris Haueter
28511 Country Meadows Drive
Kennewick, Washington 99336

RE: GEOTECHNICAL ENGINEERING STUDY; COUNTRY MEADOW HEIGHTS RESIDENTIAL DEVELOPMENT; BENTON COUNTY, WASHINGTON

Shannon & Wilson, Inc. is pleased to present the geotechnical engineering study performed at the proposed Country Meadow Heights Residential Development in Benton County, Washington. We conducted our work in general accordance with our proposal dated October 16, 2007.

This report provides recommendations for site grading and earthwork, slope setbacks, IBC design criteria and general foundation design.

We appreciate the opportunity to work with you on this project. Should you have comments or questions regarding this report, please contact us.

Sincerely,

SHANNON & WILSON, INC.

Dee J. Burrie, P.E.
Branch Manager

LJR:DJB/djb

11-27-2007/22-1-02542-001 Country Meadow Heights/cvm

303 WELLSIAN WAY • P.O. BOX 967
RICHLAND, WASHINGTON 99352
509-946-6309 FAX 509-946-6580
TDD: 1-800-833-6388
www.shannonwilson.com

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GEOTECHNICAL ENGINEERING STUDY
COUNTRY MEADOW HEIGHTS RESIDENTIAL DEVELOPMENT
BENTON COUNTY, WASHINGTON

1.0 INTRODUCTION

This report presents the results of a geotechnical engineering study at the proposed Country Meadow Heights residential development in the Badger Canyon area of Benton County, Washington. Our scope of work included excavating 12 test pits and preparing this report. This report addresses the issues raised in Item 2 of the August 30, 2007 letter from the Benton County Planning Department. Recommendations for site grading and earthwork, slope setbacks, International Building Code (IBC) design criteria and general foundation design are included in this report.

2.0 SITE DESCRIPTION AND PROPOSED CONSTRUCTION

The proposed 133-acre residential development is located on a vacant tract of land, immediately south of the Country Meadows residential development in Benton County, Washington (Figure 1). The Kennewick Irrigation District (KID) main canal forms the northern border of the irregularly-shaped tract. Private, undeveloped property lies to the west, south, and east of the site.

The tract topography ranges from a flat plateau on the west side, the side canyon (labeled Badger Canyon on the topographic maps) mouth in the center, and the hillside base on the east side. Elevations range from 710 feet (MSL) near the KID canal to 900 feet (MSL) near the southern end of the east side. We estimate the steepest, upward slope is approximately 4 Horizontal to 1 Vertical (4H:1V) or 25 percent, inclination is located on the east side of the parcel in the area of Lots 15 and 16. The tract is vegetated with scattered grasses and sagebrush.

Preliminary plans indicate the development will consist of 26 lots. Lot sizes will range from 2-acres at the west end to 28-acres at the east end. The lots will be accessed via an extension of Country Meadows Lane across the KID canal. We understand that Spink Engineering is providing engineering for a bridge over the canal and Hall Engineering is working on the subdivision infrastructure. We understand that shallow, spread footings are anticipated for the bridge foundation.

3.0 FIELD INVESTIGATION

The field exploration consisted of site reconnaissance and excavating 12 test pits. Our geotechnical engineer performed the site reconnaissance and observed test pit excavation on October 19, 2007. As part of the reconnaissance, slope conditions were observed for indications of instability or potential erosion. The reconnaissance did not reveal any areas of major concern, although past mass wasting has occurred in the western section of the site. The Badger Canyon drainage that crosses the site has the potential for erosion and flooding during unusual precipitation events. The civil design must accommodate these potential conditions.

D and D Excavation, under subcontract to Mr. Haueter, excavated the test pits using a Cat 416C 4WD rubber-tired backhoe. The approximate test pits locations are shown on the site and exploration plan (Figure 2).

Our engineer observed each test pit, obtained representative soil samples, and logged the excavations. Soil samples were sealed in plastic bags and transported to our office at the completion of the field work. During the excavation process, we measured the relative soil density using a dynamic, mini-cone penetrometer. The mini-cone uses a slide hammer to drive a conical tip into the soil. The number of hammer blows required to drive the cone 1¾-inch increments is roughly equivalent to a Standard Penetration Test (SPT) blow count. The blows per increment provide an indication of the relative soil density. The blow counts are recorded on the logs.

The subsurface conditions are known only at the test pit locations on the date explored and should be considered approximate. Actual subsurface conditions may vary between test pit locations. The test pit logs are presented in Appendix A.

4.0 SUBSURFACE CONDITIONS

4.1 Geologic Maps

The Geologic Map of the Richland 1:100,000 Quadrangle (DGER OF 94-8) maps three deposits at the site. The flatter, western end of the site is mapped as mass wasting (landslide) deposits (Qls), the center area at the canyon mouth is mapped as alluvial deposits (Qa), and the eastern end of the site as silt and sand outburst flood deposits (Qfs_3). Columbia River Basalt is mapped south of the site.

The map describes the mass wasting deposits as landslide deposits associated with steep flanks of anticlinal ridges and high bluffs. Alluvial deposits consist of clay, silt, and gravel of varied thickness and sorting. The outburst silt and sand is described as lacustrine silt and fine sand, and fluvial coarse to fine sand.

4.2 Explorations

The encountered soil conditions vary across the three areas of the site. Test pits TP-1 through TP-3, located on the eastern end, encountered approximately 5½ to 11 feet of loose to medium-dense sandy silt soils overlying gravel. We characterized this gravel as weathered basalt.

Test pit TP-4, located near the center of the site encountered medium-dense to dense gravel and cobble material to the maximum exploration depth, 11 feet. The remaining test pits on the western end of the site encountered loose to medium-dense sandy silt soils.

We did not observe groundwater in the excavations. We anticipate that groundwater is greater than 50 feet below the ground surface.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 General

The primary geotechnical concern for the Country Meadow Heights development is the stability of the slopes. Based on our site observations and slope inclinations, it is our opinion that the slopes are relatively stable. Whenever constructing on or near slopes, the owners must accept a risk that slope movement can occur. Proper construction, building setbacks, and proper drainage will reduce these risks. Placing fill or a load on a slope, cutting away the slope toe, or introducing water onto a slope are the primary causes of slope movement or landslides. The building setbacks, earthwork, and drainage recommendations presented in the following sections are intended to reduce the potential risks at this site.

5.2 Setback Considerations

We did not observe indications of slope instability during our field investigation. In our opinion, placing the structures on the lots in accordance with Benton County standard setback requirements and our recommendations will not adversely impact the stability of the slopes.

We recommend placing permanent structures a minimum of 20 feet away from a downward slope that is greater than 2H:1V. Currently, the existing slope inclinations are flatter than 2H:1V. However, depending on the planned grading slope inclinations may be altered. We recommend retaining Shannon & Wilson to review the proposed grading plan and structure locations on Lots 15 through 20 prior to applying for building permits. Additional geotechnical engineering studies not covered in this report may be necessary for these six lots depending upon the proposed structure location and grading. These additional studies are not included in the current work scope.

5.3 Grading Considerations

We understand that some site filling may be required in the vicinity of Lots 15 through 20. The purpose of the fill is to create relatively level building lots. The slope inclination in the area of these lots is approximately 4H:1V or flatter. Fill should not be placed on Lots 15 and 16 slopes unless it is a structural fill or retained by an engineered structure.

Where fill is required, we recommend stripping the surface vegetation and all topsoil beneath areas to receive fill. The topsoil may be stockpiled and used in future landscape areas, if desired, but should not be used for general or structural fill.

Slopes steeper than 5H:1V should be terraced or benched prior to placing fill. Bench the slopes per IBC Section J. Each terrace should be less than five feet high and penetrate a minimum five feet into the slope.

The test pits for this study were loosely backfilled with the excavated material. Test pits located beneath pavement or building areas should be over excavated and backfilled with compacted structural fill that meets the compaction criteria listed below.

Once the surface is stripped, the top 12 inches of the exposed subgrade beneath general or structural fill areas must be compacted. The subgrade should be compacted to a minimum 92 percent in-place dry density determined by the American Society for Testing and Materials (ASTM) Designation: D 1557, *Laboratory Compaction Characteristics of Soil Using Modified Effort*. General and structural fill and all backfill should be placed in maximum 8-inch loose lift thickness and compacted to 95 percent of the ASTM D 1557 maximum laboratory dry density. Structural fill or backfill should consist of the on-site soils or a well-graded, 2-inch-minus, pit run sand and gravel with less than 5 percent fines. On-site soils are suitable for use as general fill.

Utility trenching should be accomplished in accordance with Washington State Department of Transportation (WSDOT)/American Public Works Association (APWA) Standard Specifications.

Based on our explorations, we anticipate that conventional excavation equipment can accomplish the proposed excavations. Utility trenches should be backfilled using structural fill compacted as specified below. Sufficient backfill should be placed over the utility before compacting with heavy compactors to prevent damage.

5.4 Excavations/Slopes

In our opinion, OSHA Soil Type C best describes the soil conditions at the site. Type C soils may have maximum temporary slopes of 1.5H:1V.

Permanent cut and fill slopes should be constructed with inclinations no steeper than 2H:1V, and must be protected from both wind and water erosion. Erosion protection may consist of a vegetative cover or a minimum 3-inch layer of coarse concrete aggregate conforming to the requirements of WSDOT Specification 9-03.1(4) c, "Concrete Aggregate AASHTO Grading No. 57."

The finished site should be graded to drain in accordance with IBC 2006 Appendix J Section 109, and compacted to a dense, unyielding condition. Dust control measures must be implemented as soon as practical following grading completion. Fill and excavation slopes must comply with IBC Appendix J Section 108 regarding property line setbacks. Fill placed on slopes shall be benched in accordance with IBC Appendix J Section 107.3.

5.5 Drainage

Site development plans should minimize introducing water onto the site slopes, including stormwater and irrigation. All surface runoff should be directed away from the foundation areas and the site slopes by grading. Water should not be allowed to flow uncontrolled onto the slopes. Roof downspouts should be tightlined to a storm drain or to the slope base.

We recommend the use of low volume irrigation systems adjacent to building foundations. Lawn areas should be irrigated for only short time periods to reduce the potential for excessive water infiltration into the subsurface soils. Residents should be encouraged to consult with an irrigation professional to establish an appropriate watering schedule for the applicable landscaping.

5.6 Conventional Foundations

5.6.1 Residential Foundations

In our opinion, lightly-loaded residential structures may be supported on conventional foundations bearing on the native sandy silt soils, native gravel, or compacted structural fill. We recommend minimum 15-inch wide continuous and 24-inch wide isolated column footings. The minimum footing depth is 24 inches below adjacent grades for frost protection and bearing capacity considerations. Footings constructed in accordance with the above recommendations may be designed for an allowable 1,500 pounds per square foot (psf) bearing pressure. The allowable bearing pressures presented above may be increased by 1/3 for short-term, transient loading conditions.

5.6.2 Bridge Foundations

In our opinion, the proposed bridge/canal crossing may be supported on continuous footings bearing on the native, sandy silt soils. We recommend a minimum 24-inch wide continuous footing. The minimum footing depth is 24-inches below adjacent grades for frost protection and bearing capacity considerations. Footings constructed in accordance with the above commendations may be design for an allowable 2,200 psf bearing pressure.

We estimate that foundations designed and constructed in accordance with the above recommendations will experience total settlements less than ½-inch. This settlement estimate assumes maximum 8 kips per linear foot loads. The settlements should occur rapidly as the loads are applied. We anticipate differential settlements will be less than half the total settlements between adjacent columns and along approximately 20 feet of continuous footings.

5.7 Lateral Load Resistance

Lateral loads acting on the footings may be resisted by passive earth pressures acting against the sides of the footings/grade beams and friction forces on the bottom of the footings. For lateral displacement design, the ultimate passive resistance of compacted, level backfill may be assumed equal to a 350-pcf equivalent fluid pressure. We recommend using a 0.30 friction coefficient to calculate sliding resistance between the footing bottom and the native sandy silt.

5.8 IBC Seismic Design Criteria

Based on the site geology and the soil conditions encountered in the explorations, we recommend the following International Building Code (IBC) seismic design criteria.

Site Class	D (Stiff soil profile)
Ss	0.48
S_1	0.15
Fa	1.42
Fv	2.22

5.9 Floor Slabs

Concrete slabs-on-grade may be constructed directly on the native soil or compacted structural fill. Prior to placing any slabs, we recommend compacting the top 12 inches of the exposed subgrade to a minimum in-place dry density of 95 percent of the maximum laboratory dry density determined by ASTM D 1557. A 4-inch thick leveling course of 5/8-inch base course may be placed on the compacted subgrade to provide a working surface for the slabs, if desired.

5.10 Construction Observation

Variations in soil conditions are possible at the site and may be encountered during construction. The geotechnical engineer should be retained to provide construction observation services during the earthwork, excavation, and foundation phases of the project. Construction observation allows the geotechnical engineer to observe the actual soil conditions exposed in the excavations and determine if the proposed design is compatible with the design recommendations, and if the conditions encountered at the site are consistent with those observed during the geotechnical study. Construction observation is conducted to reduce the potential for problems arising during and after construction. However, in all cases, the contractor is responsible for the quality and completeness of their work and for adhering to the plans, specifications, and recommendations on which their work is based.

We recommend retaining Shannon & Wilson, Inc to review the construction plans for the proposed structures, and to provide construction observations services during site grading and foundation installation. We recommend that Shannon & Wilson be retained to review the location of the proposed structure and any significant grading that will occur on Lots 15 through 20. We recommend Shannon & Wilson review the footing subgrade soils prior to placement of the concrete formwork on all lots to confirm suitable bearing capacity has been achieved. We can provide construction observation services on a time and expense basis.

6.0 LIMITATIONS

The analyses, conclusions, and recommendations contained in this report are based upon site conditions as they presently exist. We further assume that the explorations are representative of the subsurface conditions under all portions of the site; i.e., the subsurface conditions are not significantly different from those disclosed by the field explorations and observations.

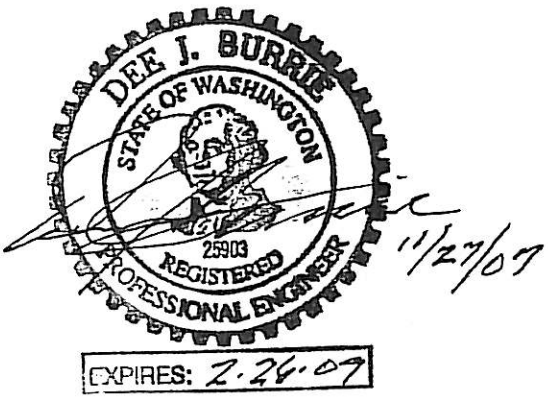
If subsurface conditions different from those encountered in the field explorations are observed or appear to be present beneath the excavations during construction, we should be advised at once so that we can review these conditions and reconsider our recommendations, where necessary. If there is a substantial lapse of time between the submission of this report and the start of construction at the site, if conditions have changed because of natural forces or construction at the site, or if the design or loading configurations change, we recommend that we review this report to determine the applicability of the conclusions and recommendations concerning the time lapse or changed conditions contained in this report.

The geotechnical engineering scope of services did not include any environmental assessment or evaluation regarding the presence or absence of wetlands or hazardous or toxic materials in the soil, surface water, groundwater, or air, on or below the site, or for the evaluation or disposal of contaminated soils or groundwater, should any be encountered.

Our report was prepared for the exclusive use of Mr. Chris Haueter and his design team, in the design and construction of the proposed Country Meadow Heights Residential Development in Benton County, Washington. This report should be made available to prospective contractors for information on factual data only, and not as a warranty of subsurface conditions such as those interpreted from the test pit logs and discussions of subsurface conditions included in this report.

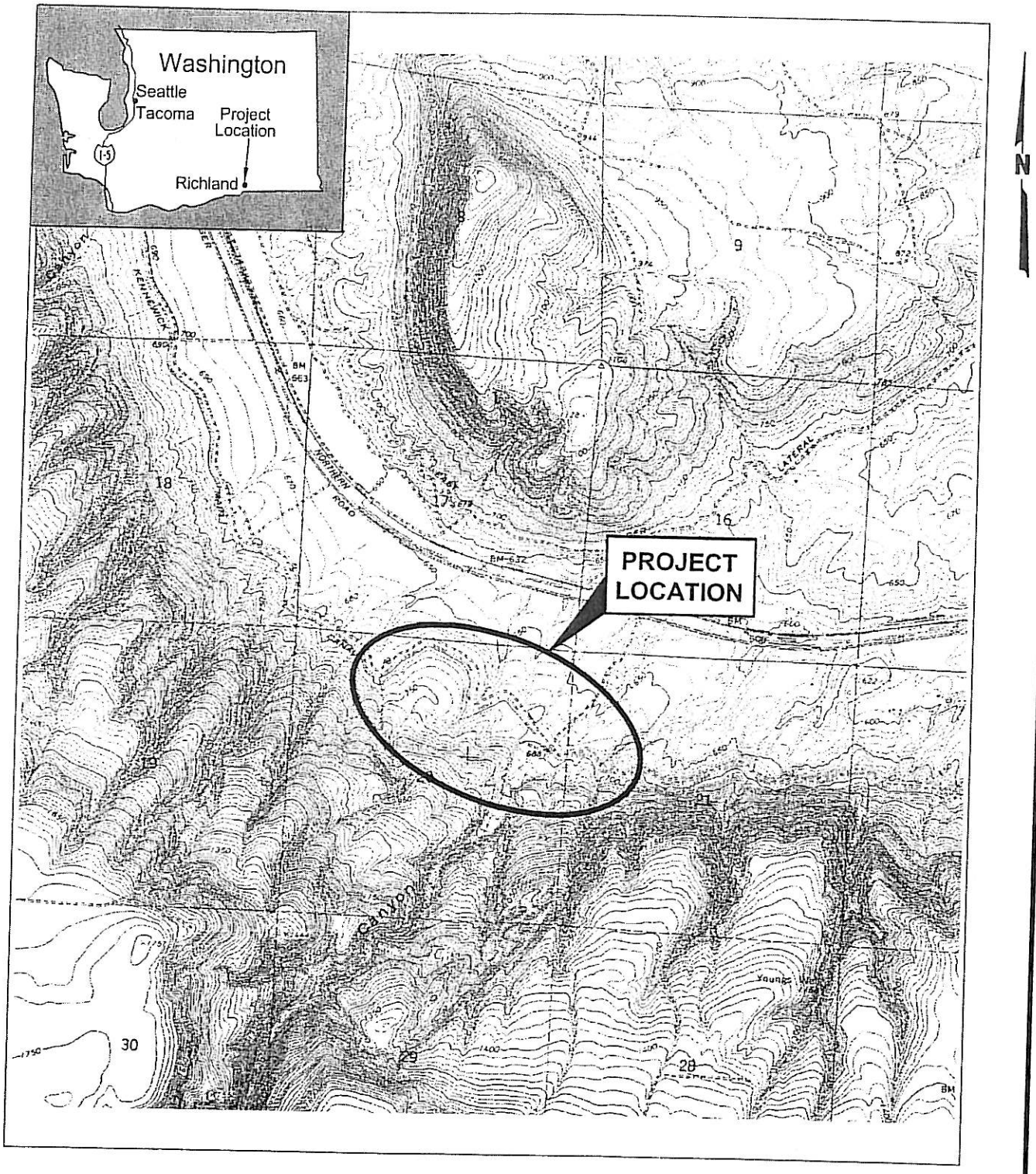
As an integral part of this report, we have prepared the attachment "Important Information About Your Geotechnical Engineering Report," (Appendix B) to help you more clearly understand its use and limitations.

SHANNON & WILSON, INC.



Dee J. Burrie, P.E.
Vice President

LJR:DJB/djb



0 1/2 1

Scale in Miles

NOTE

Map adapted from 1:24,000 USGS topographic map of Badger Canyon, WA quadrangle, dated 1965, photorevised 1978.

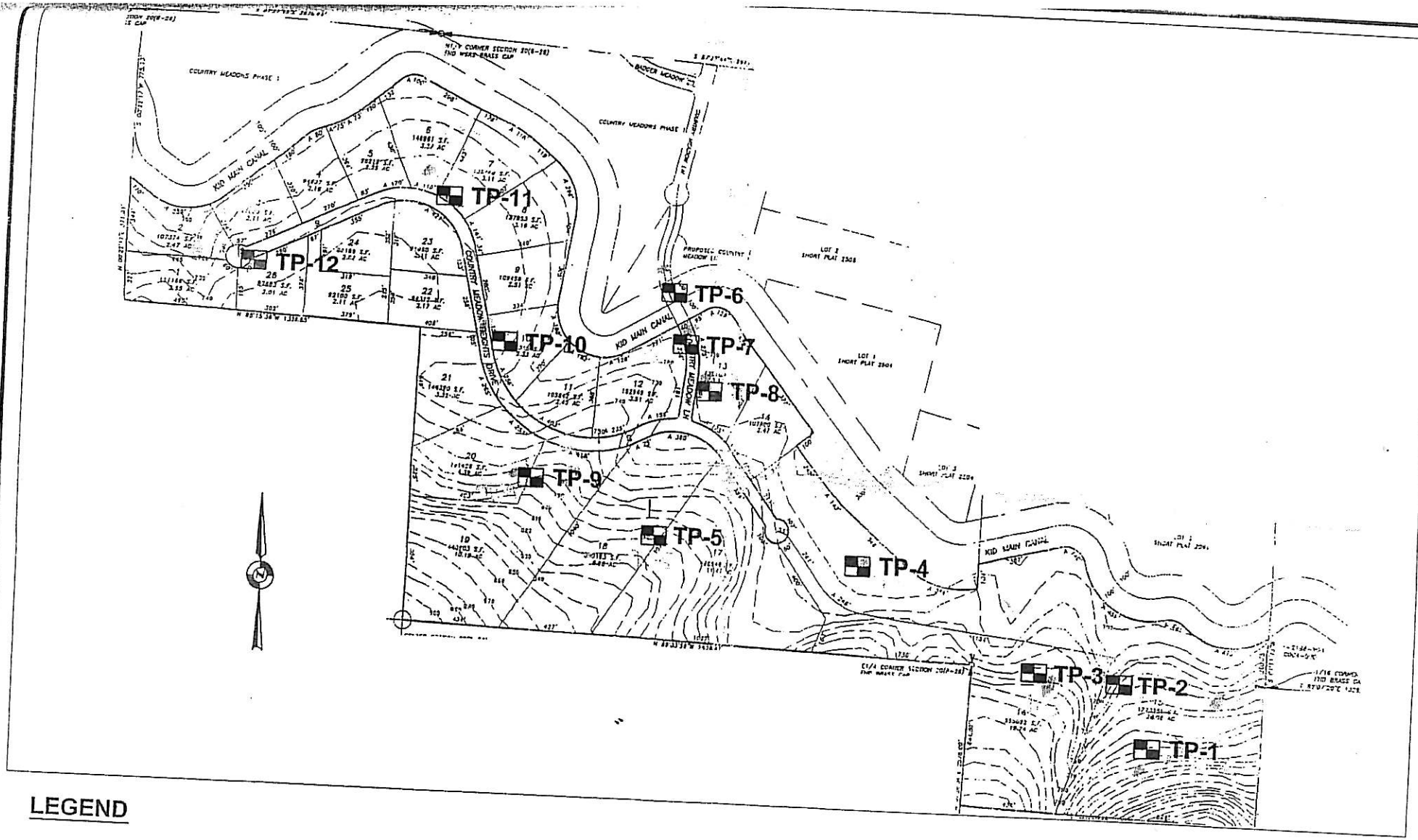
Country Meadow Heights Development
Benton County, Washington

VICINITY MAP

November 2007 21-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. 1



LEGEND

Approximate Test Pit Location

NOT TO SCALE

Country Meadow Heights Development
Benton County, Washington

SITE AND EXPLORATION PLAN

November 2007 22-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. 2

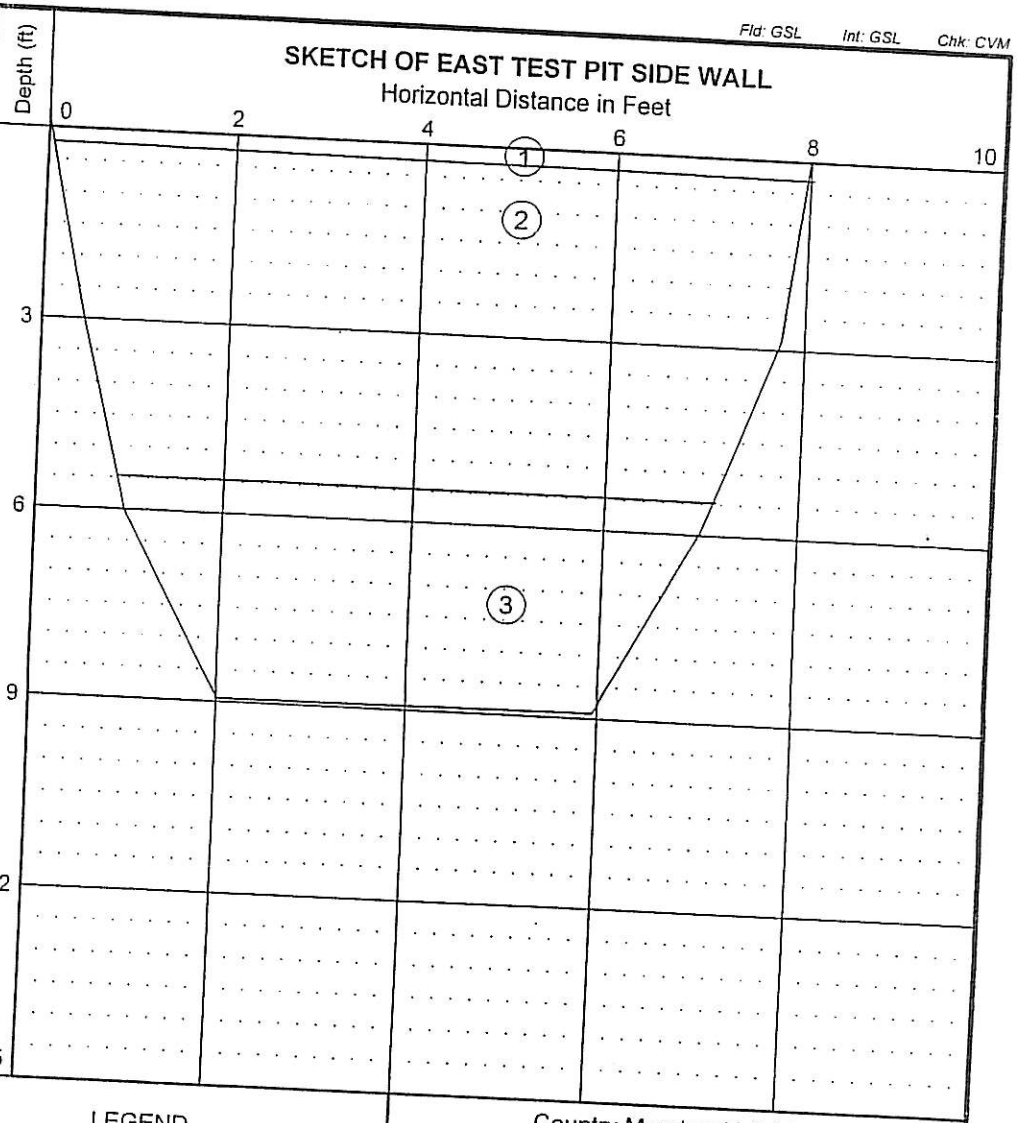
APPENDIX A

LOGS OF EXPLORATORY TEST PITS

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0					3-4-6
	4.0				Not Encountered	5-7-9
3: Tan, silty, sandy, GRAVEL/COBBLE (GW), dense to very dense, dry, angular to subangular gravel/cobbles, non-plastic fines, fine to coarse grained sand.	5.5					
Refusal at 9 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	9.0					



NOTES

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2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-1

October 2007

22-1-02542-001

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Geotechnical and Environmental Consultants

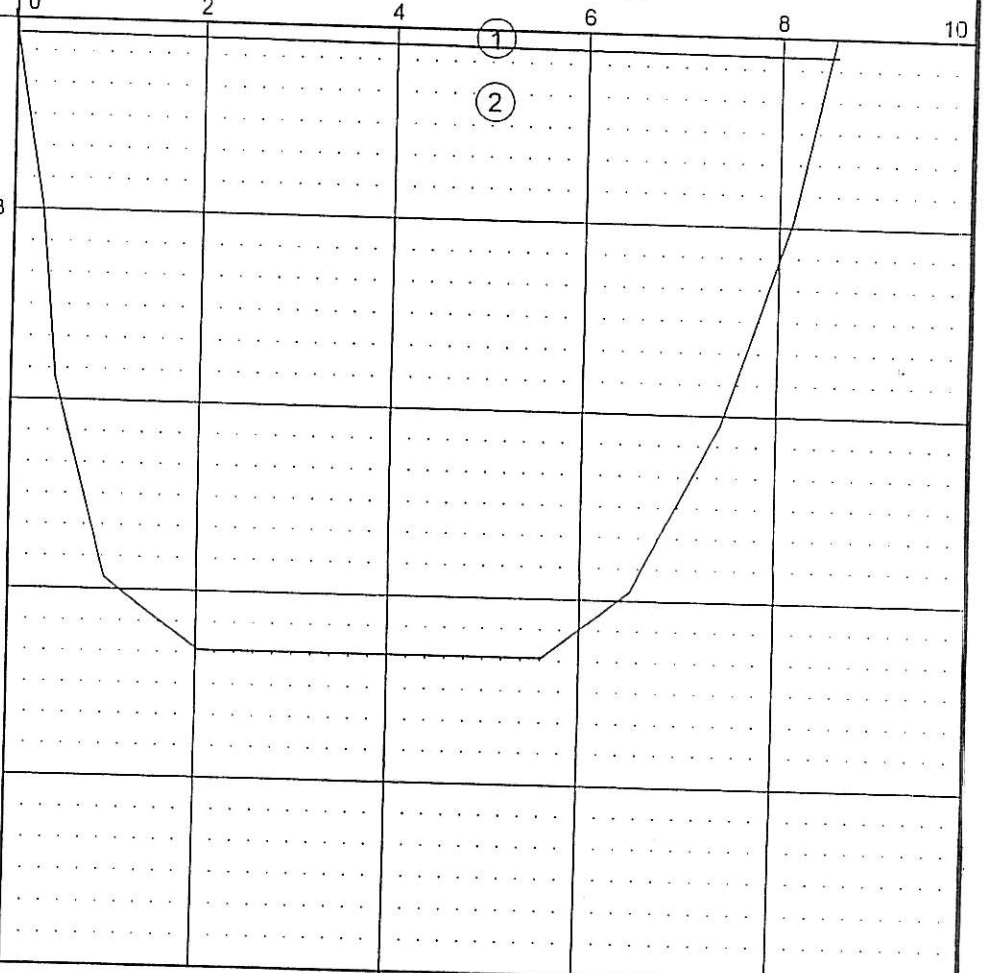
FIG. A-1

FIG. A-1

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0		S-1			3-5-5
	4.0				Not Encountered	6-8-9
	7.0					9-12-14
Bottom of Test Pit 10 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	10.0					



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LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-2

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-2

FIG. A-2

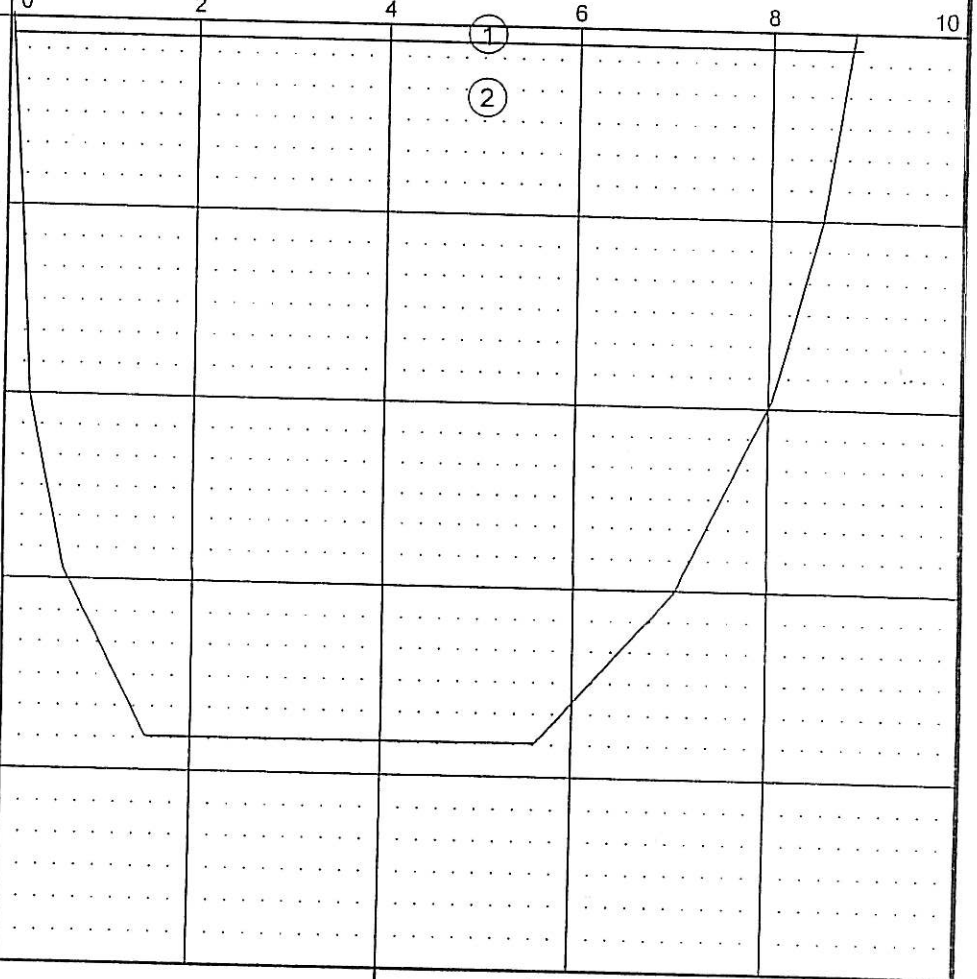
TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399	Depth (ft)
1: Weeds, roots, organic-laden TOPSOIL.	0.3						
2: Tan, silty, gravelly SAND (SW), loose to medium dense, dry, fine to coarse grained sand, non-plastic fines, subangular to subrounded gravel.	2.0		S-1			3-5-6	
	4.0				Not Encountered	5-7-9	
	8.0					12-15-17	
Increasing gravel content at 11 ft.	11.0						
Bottom of Test Pit 11.5 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	11.5						

SKETCH OF NORTH TEST PIT SIDE WALL

Horizontal Distance in Feet



NOTES

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2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

Roots

Seepage

Cobble or Boulder

Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-3

October 2007 22-1-02542-001

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FIG. A-3

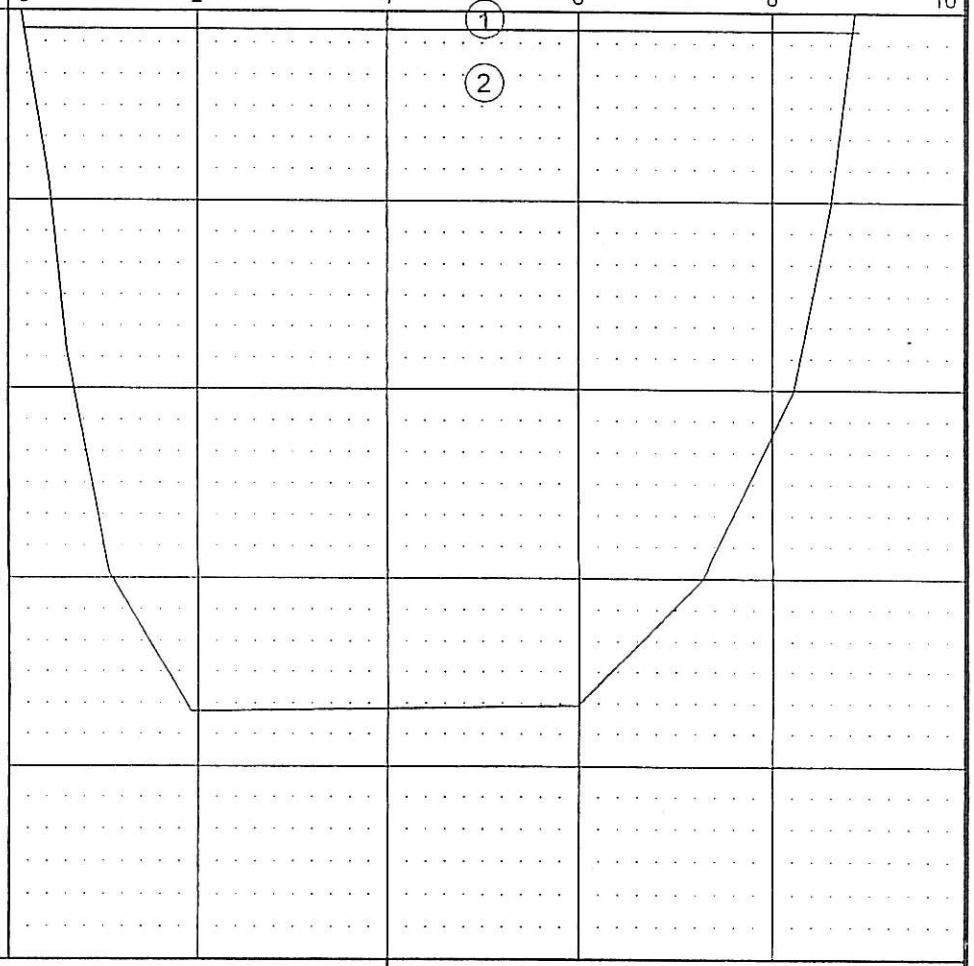
FIG. A-3

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy, silty GRAVEL/COBBLE (GW), loose to dense, dry, rounded to subangular gravel/cobble, fine to coarse grained sand, non-plastic fines.	2.0					8-12-14
	5.0				Not Encountered	14-17-11
	8.5					23-34-37
Bottom of Test Pit 11 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	11.0					

SKETCH OF NORTH TEST PIT SIDE WALL



NOTES

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2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-4

October 2007 22-1-02542-001

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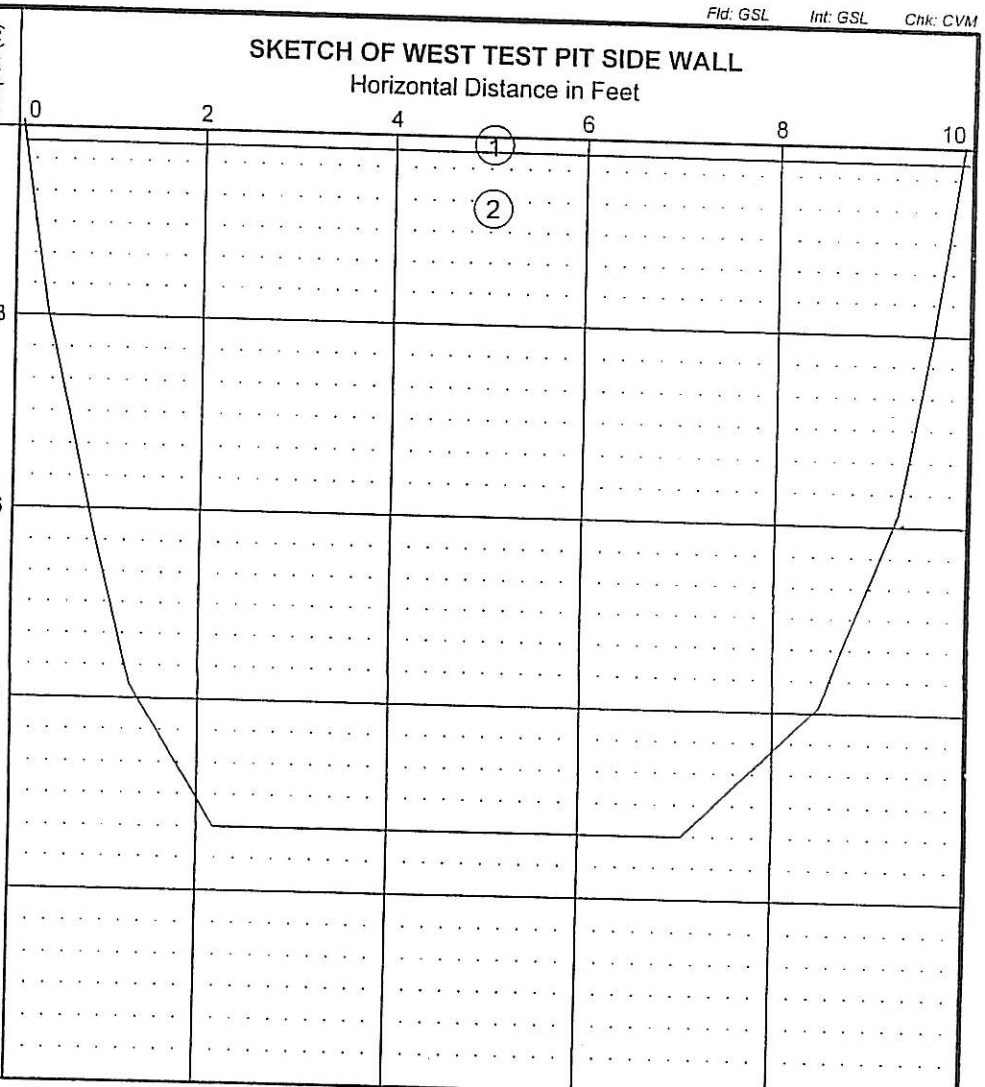
FIG. A-4

FIG. A-4

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0					4-6-7
	4.0				Not Encountered	7-9-12
	8.0					13-17-23
Bottom of Test Pit 11 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	11.0					



NOTES

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2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-5

October 2007 22-1-02542-001

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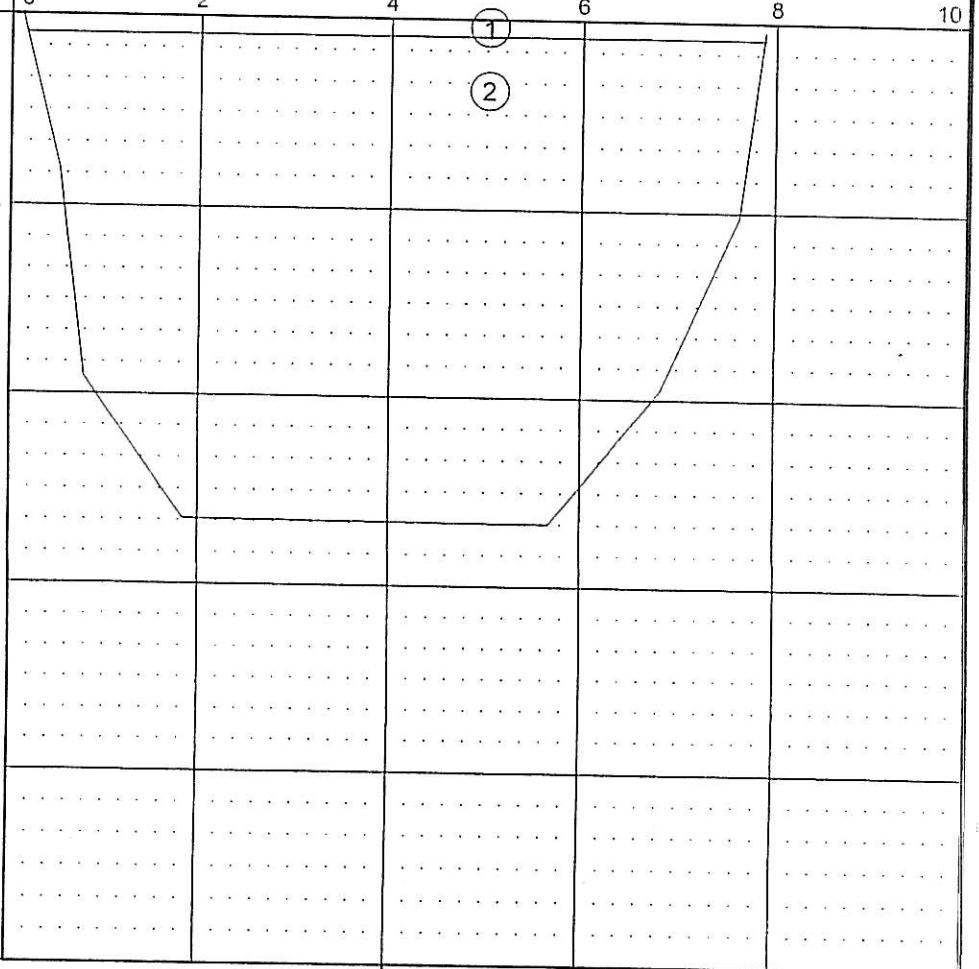
FIG. A-5

FIG. A-5

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, damp, non-plastic fines, very fine grained sand.	2.0					5-7-8
	4.0				Not Encountered	8-11-14
	7.0					12-14-17
Bottom of Test Pit 8 ft. No groundwater encountered. Test pit loosely backfilled upon completion of work on 10/19/2007.	8.0					



NOTES

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3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-6

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
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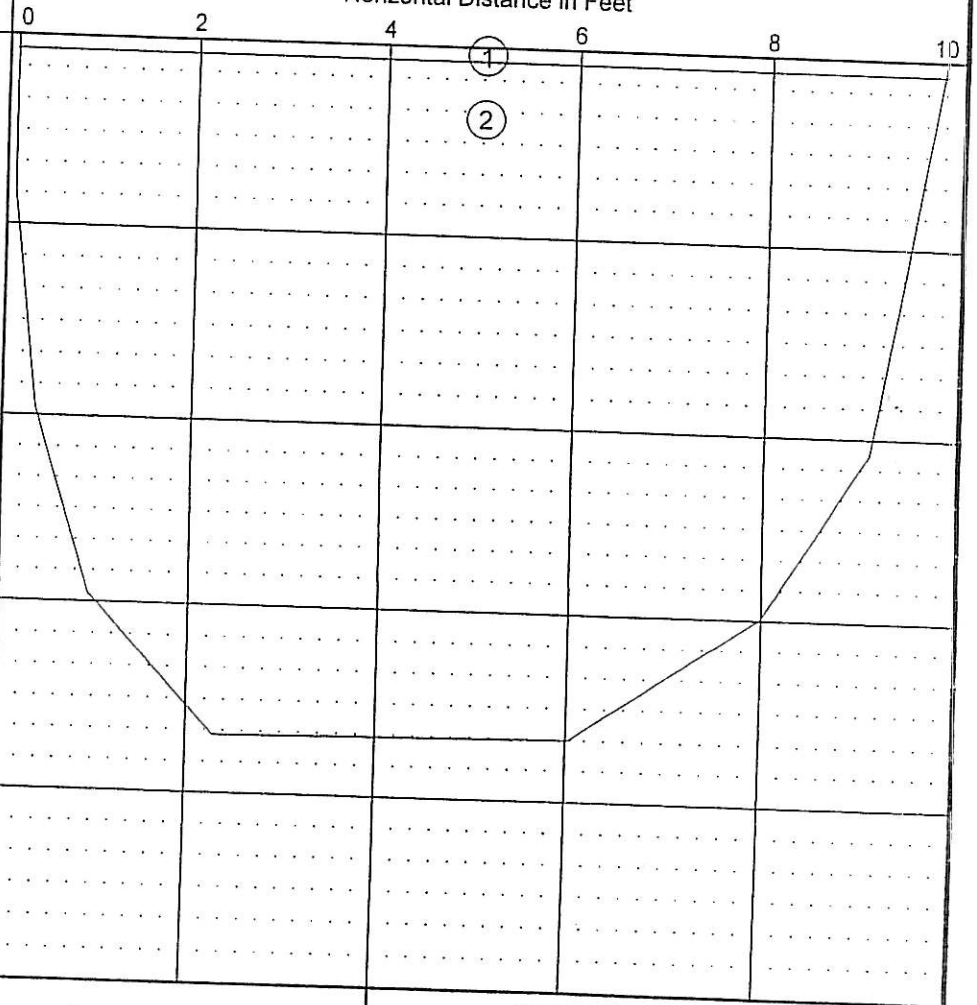
FIG. A-6

FIG. A-6

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399	Depth (ft)
1: Weeds, roots, organic-laden TOPSOIL.	0.3						
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0					3-4-6	
	4.0				Not Encountered	5-7-9	
	6.0					9-13-16	
	8.0					14-19-23	
Bottom of Test Pit 11 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	11.0						



NOTES

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3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-7

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
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FIG. A-7

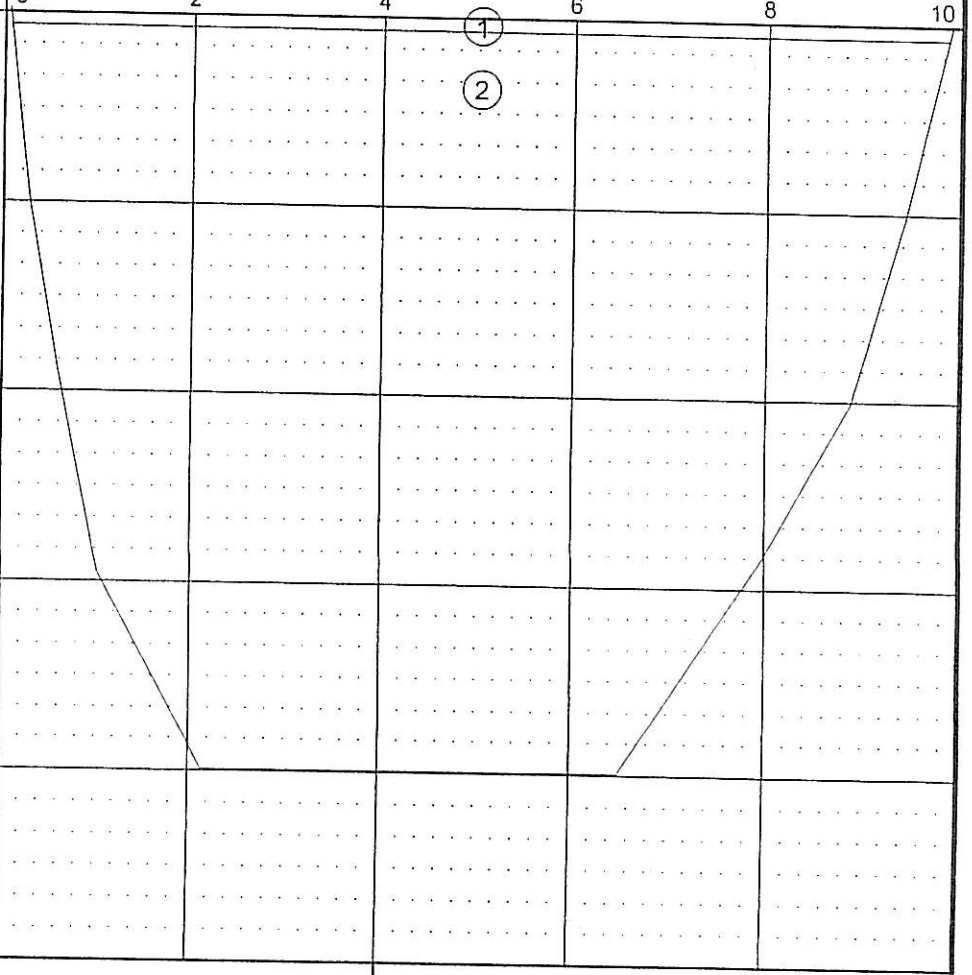
FIG. A-7

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399	Depth (ft)
1: Weeds, roots, organic-laden TOPSOIL.	0.3						
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0				Not Encountered	3-5-6	3
	4.0					5-7-9	6
	8.0					14-19-21	9
Bottom of Test Pit 12 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	12.0						12
							15

SKETCH OF EAST TEST PIT SIDE WALL

Horizontal Distance in Feet



NOTES

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2. Refer to Soil Classification and Log Key for explanation of "Symbols" and Definitions.
3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-8

October 2007 22-1-02542-001

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FIG. A-8

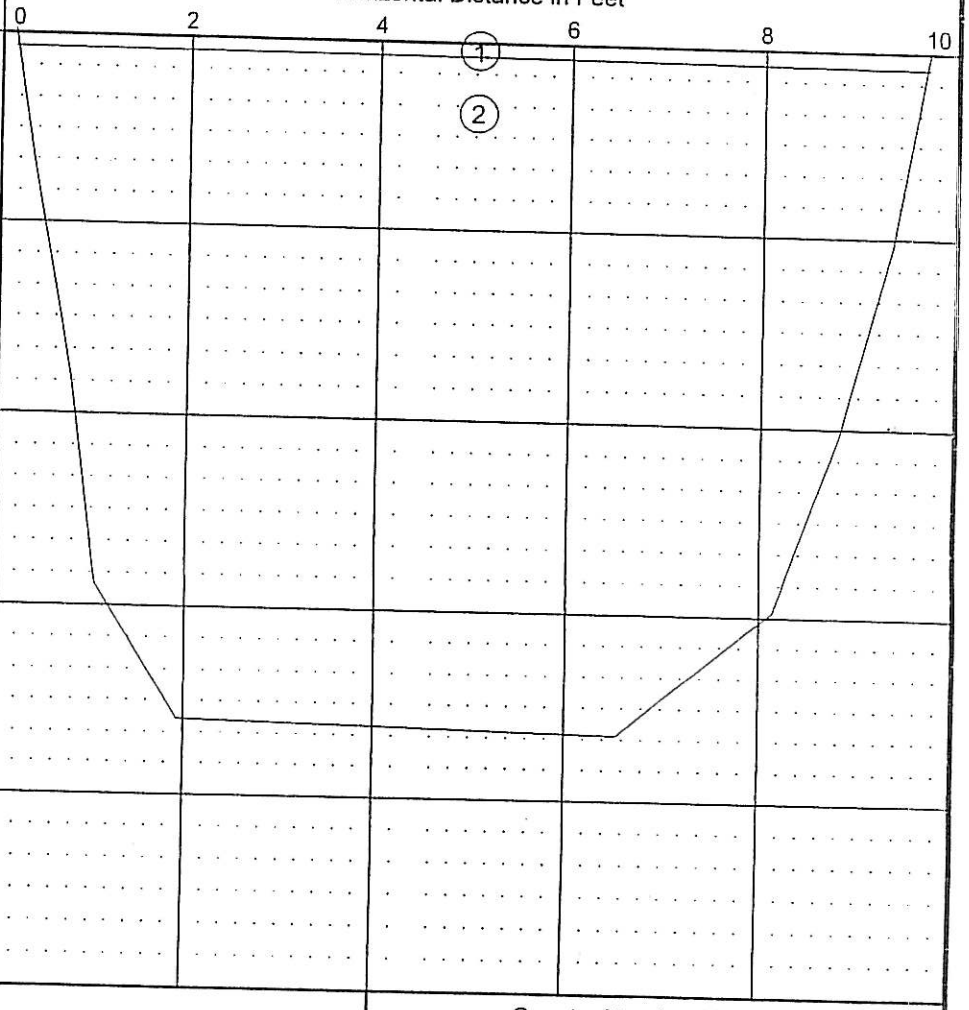
FIG. A-8

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399	Depth (ft)
1: Weeds, roots, organic-laden TOPSOIL.	0.3						
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0		S-1		Not Encountered	5-5-6	3
	4.0					7-11-14	6
	6.0					13-17-20	9
Bottom of Test Pit 11 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	11.0						12
							15

SKETCH OF NORTH TEST PIT SIDE WALL

Horizontal Distance in Feet



NOTES

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3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-9

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

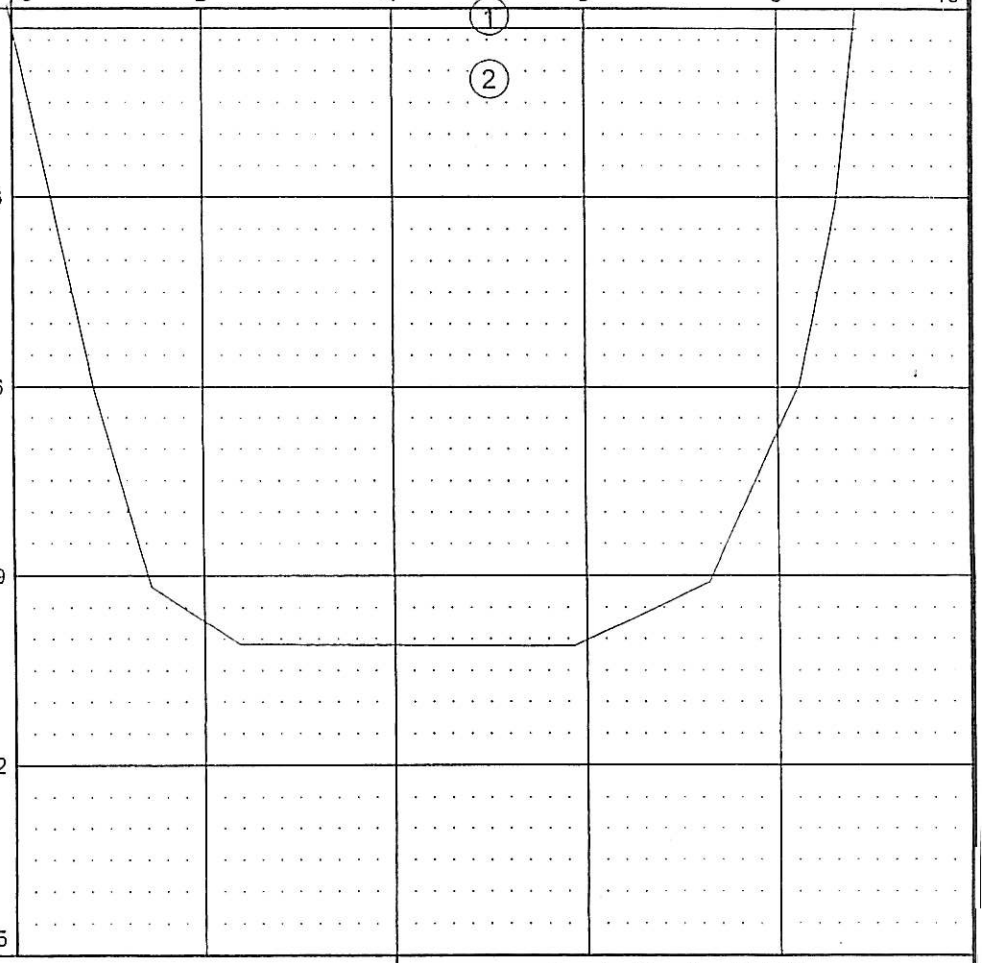
FIG. A-9

FIG. A-9

TEST_PIT_LOG 22-1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%)	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0					5-6-6
	5.0				Not Encountered	10-14-18
Bottom of Test Pit 10 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	10.0					



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4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-10

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
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FIG. A-10

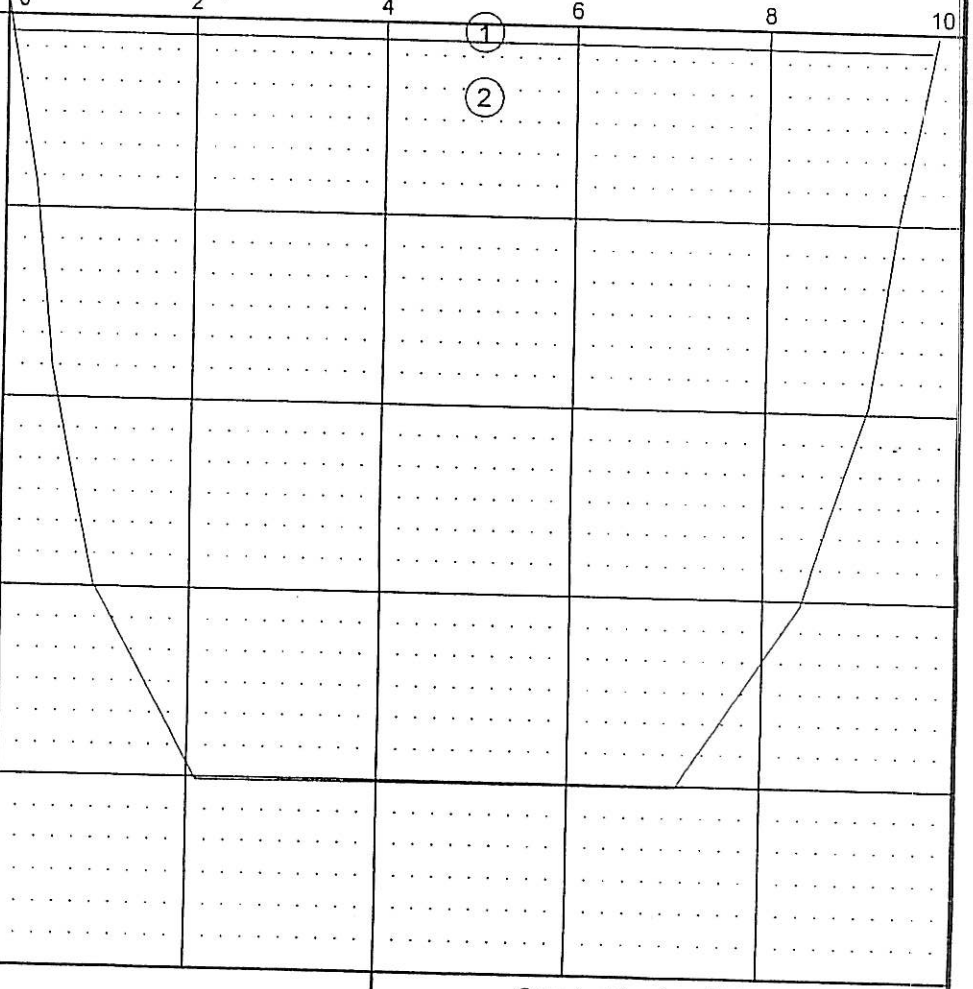
FIG. A-10

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399	Depth (ft)
1: Weeds, roots, organic-laden TOPSOIL.	0.3						
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fine, very fine grained sand.	2.0		S-1		Not Encountered	4-6-7	3
	4.0					7-9-11	6
	7.0					14-19-23	9
Bottom of Test Pit 12 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	12.0						12
							15

SKETCH OF WEST TEST PIT SIDE WALL

Horizontal Distance in Feet



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LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-11

October 2007 22-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-11

FIG. A-11

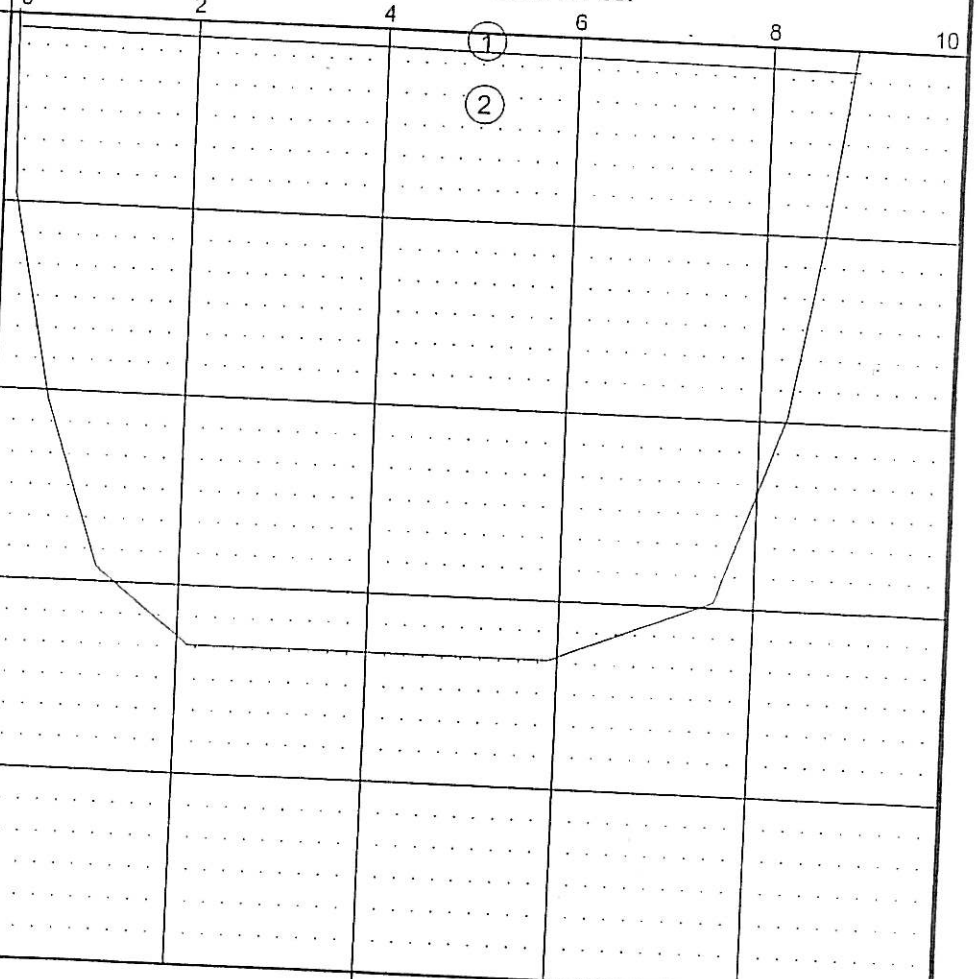
TEST_PIT_LC 1-02542-001 TEST PITS.GPJ SHAN_WIL.GDT 11/9/07

Fld: GSL Int: GSL Chk: CVM

SOIL PROFILE DESCRIPTION	Average Depth (ft)	Symbol	Samples	Water Content (%	Ground Water	Blow Counts ASTM SPT 399
1: Weeds, roots, organic-laden TOPSOIL.	0.3					
2: Tan, sandy SILT (ML), loose to medium dense, dry, non-plastic fines, very fine grained sand.	2.0		S-1		Not Encountered	5-7-7
	5.0					9-12-15
Bottom of Test Pit 10 ft. No groundwater encountered. Test Pit loosely backfilled upon completion of work on 10/19/2007.	10.0					

SKETCH OF EAST TEST PIT SIDE WALL

Horizontal Distance in Feet



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3. USCS designation is based on visual-manual classification.
4. Where possible, a 1/2-inch-diameter, steel T-bar probe was used to estimate the density of soil.

LEGEND

- Roots
- Seepage
- Cobble or Boulder
- Log

Country Meadow Heights
Benton County, Washington

LOG OF TEST PIT TP-12

October 2007

22-1-02542-001

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

FIG. A-12

FIG. A-12

Shannon & Wilson, Inc. (S&W), uses a soil classification system modified from the Unified Soil Classification System (USCS). Elements of the USCS and other definitions are provided on this and the following page. Soil descriptions are based on visual-manual procedures (ASTM D 2488-93) unless otherwise noted.

S&W CLASSIFICATION OF SOIL CONSTITUENTS

- MAJOR constituents compose more than 50 percent, by weight, of the soil. Major constituents are capitalized (SAND).
- Minor constituents compose 12 to 50 percent of the soil and precede the major constituents (silty SAND). Minor constituents preceded by "slightly" compose 5 to 12 percent of the soil (slightly silty SAND).
- Trace constituents compose 0 to 5 percent of the soil (slightly silty SAND, trace of gravel).

MOISTURE CONTENT DEFINITIONS

Dry	Absence of moisture, dusty, dry to the touch
Moist	Damp but no visible water
Wet	Visible free water, from below water table

ABBREVIATIONS

ATD	At Time of Drilling
Elev.	Elevation
ft	feet
HSA	Hollow Stem Auger
ID	Inside Diameter
in	inches
lbs	pounds
Mon.	Monument cover
N	Blows for last two 6-inch increments
NA	Not Applicable or Not Available
OD	Outside Diameter
OVA	Organic Vapor Analyzer
PID	Photoionization Detector
ppm	parts per million
PVC	Polyvinyl Chloride
SS	Split Spoon sampler
SPT	Standard Penetration Test
USC	Unified Soil Classification
WLI	Water Level Indicator

GRAIN SIZE DEFINITIONS

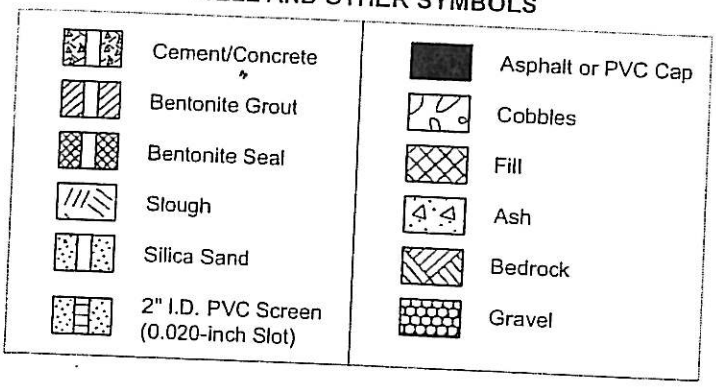
DESCRIPTION	SIEVE SIZE
FINES	< #200 (0.8 mm)
SAND*	
• Fine	#200 - #40 (0.4 mm)
• Medium	#40 - #10 (2 mm)
• Coarse	#10 - #4 (5 mm)
GRAVEL*	
• Fine	#4 - $\frac{3}{4}$ inch
• Coarse	$\frac{3}{4}$ - 3 inches
COBBLES	3 - 12 inches
BOULDERS	> 12 inches

* Unless otherwise noted, sand and gravel, when present, range from fine to coarse in grain size.

RELATIVE DENSITY / CONSISTENCY

COARSE-GRAINED SOILS		FINE-GRAINED/COHESIVE SOILS	
N, SPT, BLOWS/FT.	RELATIVE DENSITY	N, SPT, BLOWS/FT.	RELATIVE CONSISTENCY
0 - 4	Very loose	<2	Very soft
4 - 10	Loose	2 - 4	Soft
10 - 30	Medium dense	4 - 8	Medium stiff
30 - 50	Dense	8 - 15	Stiff
Over 50	Very dense	15 - 30	Very stiff
		Over 30	Hard

WELL AND OTHER SYMBOLS



Country Meadow Heights
Benton County, Washington

SOIL CLASSIFICATION AND LOG KEY

November 2007 22-1-02542-001

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Geotechnical and Environmental Consultants

FIG. A-13
Sheet 1 of 2

UNIFIED SOIL CLASSIFICATION SYSTEM (From ASTM D 2488-93 & 2487-93)

MAJOR DIVISIONS			GROUP/GRAPHIC SYMBOL ②		TYPICAL DESCRIPTION
Coarse-Grained Soils *(more than 50% retained on No. 200 sieve)* *[use Dual Symbols for 5 - 12% Fines (i.e. GP-GM)]* ①	Gravels *(more than 50% of coarse fraction retained on No. 4 sieve)*	Clean Gravels ① *(less than 5% fines)*	GW		Well-Graded Gravels, Gravel-Sand Mixtures, Little or No Fines
			GP		Poorly Graded Gravels, Gravel-Sand Mixtures, Little or No Fines
		Gravels with ① Fines *(more than 12% fines)*	GM		Silty Gravels, Gravel-Sand-Silt Mixtures
			GC		Clayey Gravels, Gravel-Sand-Clay Mixtures
	Sands *(50% or more of coarse fraction passes the No. 4 sieve)*	Clean sands ① *(less than 5% fines)*	SW		Well-Graded Sands, Gravelly Sands, Little or No Fines
			SP		Poorly Graded Sand, Gravelly Sands, Little or No Fines
		Sands with ① Fines *(more than 12% fines)*	SM		Silty Sands, Sand-Silt Mixtures
			SC		Clayey Sands, Sand-Silt Mixtures
Fine-Grained Soils *(50% or more passes the No. 200 sieve)*	Silts and Clays *(liquid limit less than 50)*	Inorganic	ML		Inorganic Silts of Low to Medium Plasticity, Rock Flour, or Clayey Silts With Slight Plasticity
			CL		Inorganic Clays of Low to Medium Plasticity, Gravelly Clays, Sandy Clays, Silty Clays, Lean Clays
		Organic	OL		Organic Silts and Organic Silty Clays of Low Plasticity
	Silts and Clays *(liquid limit 50 or more)*	Inorganic	CH		Inorganic Clays of Medium to High Plasticity, Sandy Fat Clay, Gravelly Fat Clay
			MH		Inorganic Silts, Micaceous or Diatomaceous Fine Sands or Silty Soils, Elastic Silt
		Organic	OH		Organic Clays of Medium to High Plasticity, Organic Silts
Highly Organic Soils	Primarily organic matter, dark in color, and organic odor		PT		Peat, Humus, Swamp Soils with High Organic Content (See D 4427-92)

NOTES

1. Dual Symbols (symbols separated by a hyphen, i.e., SP-SM, slightly silty fine SAND) are used for soils with between 5% and 12% fines or when the liquid limit and plasticity index values plot in the CL-ML area of the plasticity chart.

2. Borderline symbols (symbols separated by a slash, i.e., CL/ML, silty CLAY/clayey SILT; GW/SW, sandy GRAVEL/gravelly SAND) indicate that the soil may fall into one of two possible basic groups.

Country Meadow Heights
Benton County, Washington

SOIL CLASSIFICATION AND LOG KEY

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FIG. A-13
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