

**July 6, 2009**

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

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting  
June 29, 2009, 9:00 a.m.  
Commissioners' Conference Room  
Benton County Courthouse, Prosser, WA

**Present:** Chairman Max E. Benitz, Jr. Chairman  
Commissioner Leo Bowman  
Commissioner James Beaver  
County Administrator David Sparks  
Clerk of the Board Cami McKenzie

**Benton County Employees Present During All or a Portion of the Meeting:** Adam Fyall, Community Development Coordinator; Personnel Manager Melina Wenner; DPA Ryan Brown; Eric Hsu, OPD; Steve Becken, Public Works; Deputy Auditor Brenda Chilton.

Approval of Minutes

The Minutes of June 22, 2009 were approved.

Review Agenda

Commissioner Bowman said he had questions about item "f", the contract term and whether or not the contract included new beds. He said he did not want to hold up the contract, but wanted to talk to Ms. Huie-Pascua.

Consent Agenda

**MOTION:** Commissioner Bowman moved to approve the consent agenda items "a" through "o". Commissioner Beaver seconded and upon vote, the Board approved the following:

Assessor

- a. Lease/Purchase Agreement w/IKON

Auditor

- b. Interlocal Agreement w/State of WA, Department of Printing

Board of Equalization

- c. Line Item Transfer, Fund No. 0000-101, Dept. 103

Commissioners

- d. Line Item Transfer, Fund No. 0305-101, Dept. 000

Human Services

- e. Program Agreement, #COCO5508-6 w/Department of Corrections
- f. Mental Health Agreement, #09/09-DIV-NECC w/Nueva Esperanza Counseling Center

Juvenile Justice

- g. Personal Service Contract w/Knowledge Counseling
- h. Initiative Grant Application w/Office of Juvenile Justice
- i. Program Agreement w/DSHS for Evidence Based Expansion
- j. Personal Service Contract w/Somerset Counseling Center

Parks

- k. Personal Service Agreement w/Reiss-Landreau Research for Archaeological Consulting

Roads/Engineer

- l. Contribution Agreement w/Columbia Energy & Environmental Services Inc for Piert Road
- m. Piert Road Realignment
- n. Contract w/Wondrack Distributing, Inc. for Fuel Services

Sheriff

- o. Line Item Transfer, Fund No. 0142-101, Dept. 000

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

**Public Hearing – Ordinance – OPD**

Eric Hsu presented the ordinance adopting standards for indigent defense services.

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

**MOTION:** Commissioner Bowman moved to approve the ordinance relating to indigent defense services, adding a new chapter to Title 5 of the Benton County Code. Commissioner Beaver seconded and upon vote, the motion carried.

The Board briefly recessed, reconvening at 9:25 a.m.

**Yakima River Water Enhancement Project**

Chairman Benitz presented a letter to the Washington State Department of Ecology and US Bureau of Reclamation regarding the County's position on the Yakima River Basin Integrated Water Resource Management Alternative Final EIS. He said they wanted to incorporate these items into a piece of legislation that addressed water users and hopefully guide the working group in putting together that legislation.

Commissioner Beaver said it was important to move forward and get a process in place. He said he believed there were enough studies and he wanted to get some results and was in favor of the letter.

Commissioner Bowman said he agreed with Commissioner Beaver and was in support of the legislation. He wanted to know if Doc Hasting would support this and who would write the legislation.

Chairman Benitz said that Doc Hasting was given a briefing, the Washington State Dept. of Ecology would like to look at legislation, and the working group would be putting this legislation together.

**MOTION:** Commissioner Bowman moved to approve the letter to Mr. Sandison and Mr. Kelso regarding the Yakima River Alternative Final EIS. Commissioner Beaver seconded and upon vote, the motion carried.

### **Executive Session – Potential Litigation**

The Board went into executive session at 9:36 a.m. with DPA Ryan Brown and Melina Wenner for 30 minutes or less to discuss potential litigation. Also present were David Sparks and Cami McKenzie.

The Board came out of executive session at 10:06 a.m. Mr. Brown announced the Board discussed potential litigation but that no action taken.

### **Other Business**

Chairman Benitz requested the Board schedule a workshop to discuss creating a policy for using county facilities.

#### **Letter to West Richland Chamber of Commerce**

Commissioner Beaver requested the Board send a congratulatory letter to the West Richland Chamber of Commerce on a successful “Hogs & Dogs” event. The Board agreed.

### **Claim for Damages**

CC 09-15: Received on June 23, 2009 from Gerald Youngblood

### **Vouchers**

Check Date: 06/26/2009  
Warrant #: 927807-928084  
Taxes #: 10106095-10106098  
Total all funds: \$2,173,012.34

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

### **Resolutions**

09-420 Lease/Purchase Agreement w/IKON  
09-421 Interlocal Agreement w/State of WA, Department of Printing  
09-422 Line Item Transfer, Fund No. 0000-101, Dept. 103  
09-423 Line Item Transfer, Fund No. 0305-101, Dept. 000

- 09-424 Program Agreement, #COCO5508-6 w/Department of Corrections
- 09-425 Mental Health Agreement, #09/09-DIV-NECC w/Nueva Esperanza Counseling Center
- 09-426 Personal Service Contract w/Knowledge Counseling
- 09-427 Initiative Grant Application w/Office of Juvenile Justice
- 09-428 Program Agreement w/DSHS for Evidence Based Expansion
- 09-429 Personal Service Contract w/Somerset Counseling Center
- 09-430 Personal Service Agreement w/Reiss-Landreau Research for Archaeological Consulting
- 09-431 Contribution Agreement w/Columbia Energy & Environmental Services Inc for Piert Road
- 09-432 Piert Road Realignment
- 09-433 Contract w/Wondrack Distributing, Inc. for Fuel Services
- 09-434 Line Item Transfer, Fund No. 0142-101, Dept. 000
- 09-435 Approval of Ordinance Relating to Indigent Defense Services

There being no further business before the Board, the meeting adjourned at approximately 10:10 a.m.

---

Clerk of the Board

---

Chairman

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

*COPY*

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

**BACKGROUND INFORMATION**

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

**SUMMARY**

Appoint Carlos Alvarez as a CDMHP. An updated CDMHP list is attached to the Resolution.

**RECOMMENDATION**

Sign the Joint Resolution to appoint Carlos Alvarez as a CDMHP.

**FISCAL IMPACT**

There is no fiscal impact.

**MOTION**

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

# JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

FRANKLIN COUNTY RESOLUTION NO. \_\_\_\_\_

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

**IN THE MATTER OF APPOINTING COUNTY-DESIGNATED MENTAL HEALTH  
PROFESSIONALS**

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

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

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

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

**BE IT RESOLVED**, that Carlos Alvarez be appointed as a County Designated Mental Health Professional; and

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

Dated this ..... day of . . . . ., 2009

Dated this ..... day of . . . . ., 2009.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chair Pro Tem

\_\_\_\_\_  
Chair Pro Tem

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

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

Attest:

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

Originals (3): Benton County, Franklin County, Human Services  
Copies (1): Edward Thornbrugh

---

**EXHIBIT A**

---

**COUNTY-DESIGNATED  
MENTAL HEALTH PROFESSIONALS**

Dated: June 19, 2009

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

b

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA <u>xx</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
MEETING DATE: B/C 07-06-09 F/C 07-01-09		
SUBJECT: Resolution Authorization of Agreement with Pasco School Probation Liaison Program at Chiawana High School	Executive Contract <u>xx</u>	
Prepared By: Donna A. Lee	Pass Resolution <u>xx</u>	
Reviewed By: Sharon Paradis	Pass Ordinance	
	Pass Motion	
	Other	

**BACKGROUND INFORMATION**

The Chiawana High School / Probation Liaison Project places a probation counselor at Chiawana High School to teach Aggression Replacement Training and to work with those youth at the school who are on probation has been in place since 2000. Research indicates this program is making substantial, positive changes in the lives of the youth it serves. In years past funding was received from the Department of Social Health Services, Office of Juvenile Justice to sustain this program. Beginning with the 2005 2006 school year to continue this community vital program, the Pasco School District agreed to compensate the Counties for contract.

**SUMMARY**

The Pasco School District would like to continue to program for the period beginning on July 1, 2009 and ending on June 30, 2010.

**RECOMMENDATION**

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the Contract with the Pasco School District to continue probation services and intervention services to youth located at Chiawana High School.

**FISCAL IMPACT**

Pasco School District has agreed to compensate the Counties for a total of \$37,670.04, which is one-half the cost to the Counties of employing a Probation Counselor to provide the Probation Liaison Project services as set forth in the contract's Statement of Work.

**MOTION**

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board Franklin County Commissioners be hereby authorized to sign the contract with the Pasco School District to provide a probation counselor in Chiawana High School.

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 BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE PASCO SCHOOL DISTRICT TO PROVIDE A PROBATION COUNSELOR IN CHIAWANA HIGH SCHOOL, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed Contract between the Juvenile Court and the Pasco School District be approved as presented for a term commencing July 1, 2009, and terminating on June 30, 2010, 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 hereby are authorized to sign, on behalf of their respective county, the Contract between the Juvenile Court and the Pasco School District shall be for a period commencing July 1, 2009, and terminating on June 30, 2010.

DATED this day 6<sup>th</sup> of July 2009

DATED this 1<sup>st</sup> day of July 2009

BENTON COUNTY BOARD OF COMMISSIONERS

FRANKLIN COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Benton County, Washington

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

**JUDGES**  
Hon. Dennis D. Yule  
Hon. Craig J. Matheson  
Hon. Vic L. VanderSchoor  
Hon. Robert G. Swisher  
Hon. Carrie Runge  
Hon. Cameron Mitchell

# BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator  
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388  
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE  
JOSEPH R. SCHNEIDER  
JERRI G. POTTS  
Court Commissioners

## SCHOOL/JUVENILE PROBATION LIAISON PROGRAM AGREEMENT BETWEEN BENTON AND FRANKLIN COUNTIES AND PASCO SCHOOL DISTRICT

This Agreement is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center ("BFJJC"), a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as the "Counties"), and Pasco School District, with its principal offices at 1215 West Lewis Street, Pasco, WA 99301 (hereinafter referred to as the "District").

### RECITALS

- A. The Counties and the District have implemented a School/Juvenile Probation Liaison Program and desire to continue such a program (the "Program") to serve the population identified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by reference; and
- B. The Counties and the District desire to continue the Program in accordance with the Goals and Objectives set forth in Exhibit A to this Agreement.

### AGREEMENT

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

#### 1. STATEMENT OF WORK

- 1.1 The parties agree that a description of the Statement of Work for this Agreement is set forth in Exhibit B to this Agreement, which is attached hereto and incorporated herein by reference.
- 1.2 The Counties agree to perform all work described in Exhibit B, Section 1 of this Agreement. The Counties further agree to furnish the necessary personnel,

services, facilities, and supplies and otherwise do all things necessary or incidental to the performance of work set forth in Exhibit B, Section 1 of this Agreement.

- 1.3 The District agrees to perform all work described in Exhibit B, Section 2 of this Agreement. The District further agrees to furnish the necessary personnel, services, facilities, and supplies and otherwise do all things necessary or incidental to the performance of work set forth in Exhibit B, Section 2 of this Agreement.
- 1.4 The Counties and the District shall maintain all records that reflect all direct and indirect costs expended by each party in the performance of this Agreement. The Counties and the District shall maintain written documentation of services provided to all youth under this Program. Such records shall be maintained in a locked, confidential file at Chiawana High School. These records shall be available at all reasonable times for inspection, review or audit by authorized personnel from the Counties, the Washington State Auditor, the District, the Benton County Auditor, and the Franklin County Auditor.
- 1.5 The work described herein shall be performed under the coordination of Sharon Paradis, BFJJC Administrator, or her administrative designee and Teri Kessie, Principal of Chiawana High School, or her administrative designee for the District, or their successors.

## **2. COMPENSATION**

- 2.1 The District agrees to pay the Counties Three Thousand One Hundred Thirty-Nine Dollars and Seventeen Cents (\$3,139.17) for each month of this Agreement, beginning July 2009, which amounts to a total of Thirty-Seven Thousand Six Hundred Seventy Dollars and Four Cents (\$37,670.04) for the term of this Agreement. The parties agree that this amount is one-half the cost to the Counties of employing the Probation Counselor described in Exhibit B, Section 1(a) of this Agreement.
- 2.2 The District agrees that it will process each monthly invoice from the Counties with its first payment cycle after receiving each invoice, and that it will remit payment to the Counties no later than thirty days from the date of receipt of each invoice.

## **3. TERM**

The term of this Agreement shall begin July 1, 2009 and will continue through June 30, 2010, unless terminated prior to that time by either party in accordance with Section 4 of this Agreement, below.

#### **4. TERMINATION**

- 4.1 The Counties may terminate this Agreement in whole or in part if the Counties determine, in their sole discretion, that such termination is in the best interest of the Counties. The Counties may terminate this Agreement under this paragraph by giving ten calendar days' written notice by certified mail to the District. The notice period shall begin upon mailing, unless otherwise specified in the notice. In this event, the District shall pay the Counties for all services performed by the Counties up to the effective date of the termination. Payment shall be made in accordance with the Compensation Section of this Agreement.
- 4.2 In the event that funding for this Program is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement, the Counties may summarily terminate this Agreement notwithstanding any other termination provision in this Agreement by giving written notice by certified mail to the District, specifying the termination date. Termination under this paragraph shall be effective on the date specified in the written notice of termination.
- 4.3 If the District breaches any of its obligations hereunder, and fails to cure the breach within ten days after receiving written notice from the Counties to do so, the Counties may immediately terminate this Agreement by giving written notice by certified mail to the District. The District shall bear all costs and expenses incurred by the Counties in completing the work and all damages sustained by the Counties by reason of the District's breach.

#### **5. COMPLIANCE WITH LAWS**

The parties agree that all activity pursuant to this Agreement will be in accordance with all applicable federal, state, and local laws, rules, and regulations. It is the policy of the Counties that no person will be subjected to discrimination by the Counties or by their subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, veteran status, the presence of any disability, or any other protected status under the law. The District agrees to comply with that anti-discrimination policy.

#### **6. INDEMNIFICATION**

- 6.1 The District shall hold harmless, indemnify, and defend the Counties, their 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 District's acts, errors, or omissions in the performance of this Agreement. PROVIDED, that the District's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the Counties, their officers, officials, employees, or agents.
- 6.2 In any and all claims against the Counties, their officers, officials, employees, and/or agents by any employee of the District, its subcontractors, 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 6 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 District 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 District expressly waives any immunity the District might have had under such laws. By executing this Agreement, the District acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section 6 shall be incorporated, as relevant, into any contract the District makes with any subcontractor or agent performing work hereunder.

- 6.3 The District'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 District, the District's employees, agents, or subcontractors.

## **7. GOVERNING LAW; FORUM**

The parties agree that this Agreement was made and delivered in the State of Washington and will be governed by the laws of the State of Washington without reference to its choice of law rules. The parties irrevocably consent to the exclusive jurisdiction and venue of the state courts located in Benton or Franklin County, Washington with respect to any dispute arising out of or in connection with this Agreement, and agree not to commence or prosecute any action or proceeding arising out of or in connection with this Agreement other than in the aforementioned courts.

## **8. ATTORNEYS' FEES AND COSTS**

If any dispute arises between the parties with respect to the matters covered by this Agreement, the predominantly prevailing party in such action shall be entitled, in addition to any other relief, to recover reasonable attorneys' fees and other costs and expenses incurred.

## **9. SEVERABILITY**

The validity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Counties and the District agree to replace any invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

## **10. NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Agreement, 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 Agreement at a later time.

**11. SUCCESSORS AND ASSIGNS**

Neither this Agreement nor any of the rights or obligations of either party arising under this Agreement may be assigned or delegated without the other party's prior written consent. Subject to the foregoing, this Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their successors and assigns.

**12. NOTICES**

Unless otherwise specifically provided in this Agreement, all notices and other communications under this Agreement must be in writing, and must be given by certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its principal place of business.

**13. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the Counties and the District. The parties expressly acknowledge and agree that, in entering into this Agreement, they have not relied upon any terms (whether written or oral) not included in this Agreement. This Agreement may be modified or amended only by written instrument executed by both parties.

<b>Pasco School District</b>	<b>Benton Franklin Counties Juvenile Justice Center</b>
<i>Saundra Hill</i> 6-24-09	<i>Sharon A. Paradis</i> 6/16/2009
<b>Saundra Hill</b> Superintendent      Date	<b>Sharon A. Paradis</b> Administrator      Date
<p><b><u>BENTON COUNTY APPROVAL</u></b> Approved as to Form:</p> <p style="text-align: center;"><i>Sarah Perry</i>      6/16/09</p> <p>Sarah Perry,      Date Deputy Prosecuting Attorney</p> <p>By: _____ Name: <u>Max E. Benitz</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: _____</p> <p>Clerk of the Board: _____</p>	<p><b><u>FRANKLIN COUNTY APPROVAL</u></b> Approved as to Form:</p> <p><u>Agreed Review Performed by Benton County</u> Ryan Verhulp      Date Civil Deputy Prosecuting Attorney</p> <p>By: _____ Name: <u>Rick Miller</u> Title: <u>Chairman, Board of Commissioners</u> Date: _____</p> <p>Attest: _____</p> <p>Clerk of the Board: _____</p>

## **Exhibit A**

### **Program Goals, Objectives, and Population Served**

#### **A. PROGRAM GOALS**

##### Broad Overall Goal

The School/Juvenile Probation Liaison Program (the "Program") is a delinquency prevention and intervention program designed to provide research-based programs in the schools, including Aggression Replacement Training (ART) and Juvenile Probation in Schools. Youth who are at risk of suspension or expulsion due to behavior and youth who are on probation will be the recipients of these special curricula and services. The Program will be provided at Chiawana High School.

##### Goal 1

The first goal of this Program is to incorporate strategies that are preventative and research-based into Chiawana High School's curriculum, discipline, and safety plans. Those students who are identified as being at-risk for violence and delinquency will be eligible to participate in the Program. These students will be taught a variety of skills and processes that increase the likelihood of prosocial responses with peers, staff, family, and community. A decrease in disciplinary referrals, suspensions, and expulsions for youth that complete the Program is anticipated.

##### Goal 2

The second goal of this Program is to strengthen the cooperative and proactive efforts between schools, community, and families in providing safe schools and reducing delinquency. To accomplish this goal, community supervision services of motivational/strength-based case management, rehabilitation, treatment, and monitoring of court-ordered sanctions will be provided to students at Chiawana High School and in the community in which these students reside, while reserving the Benton-Franklin Juvenile Justice Center ("BFJJC") for legal processing or prosecuting these students for delinquency.

#### **B. PROGRAM OBJECTIVES**

##### Objective 1

##### **Prevention/Rehabilitation/Research Based Programs**

A Probation Counselor employed by the Counties will teach, and a Certified Teacher employed by Chiawana High School will co-facilitate, a minimum of 180 hours of curriculum by June 30, 2010. The content of the curriculum will consist of programs supported by research-based meta-analyses and/or literature reviews and individual studies. The following programs will make up the course curriculum for the 2009-2010 school year: Aggression Replacement Training (ART), 60 hours; Violence Prevention Skills, 15 hours; and Peer Mediation, 15 hours. Each class will enroll, optimally, 12 students; a minimum of one class will be provided per

semester. A minimum of 24 students will participate in the program during the school year with an anticipated 70% completion rate. Time sheets will verify the Probation Counselor and teacher's hours. The curriculum will be outlined in a syllabus. Student participation will be documented in the students' transcripts.

## **Objective 2**

### **Student Selection/Target Audience**

By August 2009 and January 2010, youth from the Chiawana High School student body of freshman, sophomores, and juniors will be identified by authorized Pasco School District staff and the Probation Counselor as being at-risk for aggression and violence and appropriate for the Program. These students will be characterized as exhibiting aggressive or violent behaviors as documented in the Chiawana High School disciplinary referral records. The Chiawana High School Principal or his designee will work with the Probation Counselor to identify students for participation in the Program.

## **Objective 3**

### **Accountability for Curricula Outcomes**

A measure of student proficiency will be that students attain a passing grade. Grades are determined by the following: student participation through daily role modeling (teacher's weekly observation logs), utilization of skill through homework (student handbook logs), and attendance (attendance records). The Probation Counselor will maintain a file of test forms and scores for each student. Student grades are recorded in student transcripts.

## **Objective 4**

### **Intervention/ Supervision**

During the 2009-2010 school year, a Probation Counselor will be located at Chiawana High School a minimum of 30 hours a week, including at least one complete school day per week. The Probation Counselor will carry a caseload of students enrolled at Chiawana High School who have been placed on court ordered community supervision--estimated at 100 (aggregate over the year) students. The Probation Counselor will be trained in Aggression Replacement Training (ART) and the Washington Association of Juvenile Court Administrators Risk Assessment (WAJCARA) by the first day of school. In addition, the Probation Counselor will teach a minimum of one class per day of curriculum consisting of ART, Violence Prevention Skills, and Peer Mediation.

The Probation Counselor will act as a liaison between Chiawana High School and other BFJJC staff who work with Chiawana High School students in other intervention and supervision programs including but not limited to Diversion, Truancy, Family Support Program, Chemical Dependency Disposition Alternative, Family Violence Intervention Project, Selective Aggressive Probation and the Chemical Dependency Disposition Alternative Program.

## Objective 5

### **Administrative Resource for School Safety**

The Probation Counselor will work with Chiawana High School Administration to provide screening, assessment, and consultation regarding incoming students. The Probation Counselor will participate with Chiawana High School staff in the interview of incoming students who present with school safety risk factors as requested by Chiawana High School Administration.

#### **C. POPULATION SERVED**

In general, the Program is designed to serve two primary subgroups of youth: (1) students who are identified and referred by the school for delinquency prevention services; and (2) students who are currently on probation. These subgroups originate from a population of high school aged youth in the District.

The first project (classroom training) serves those youth who are characterized as at-risk for aggression and violence, and registered as 9<sup>th</sup>, 10<sup>th</sup>, or 11<sup>th</sup> graders for school year 2009-2010. Each semester a minimum of 12 youth from this subgroup will participate in a research-based curriculum. These students will learn prosocial skills, moral reasoning, anger management strategies, peer mediation, and violence prevention awareness. Program staff will be ready to begin providing the curriculum to identified youth within the first month that school is in session for the 2009-2010 school year. The Probation Counselor hired for this Program will receive training and support from BFJJC's Probation Department.

The second project (in-school community supervision/probation) serves those Chiawana High School youth that are under court ordered supervision by BFJJC. It is projected that a total of sixty youth will be served each year by this project. These youth will receive case management services and monitoring of court-ordered obligations within the confines of their school and community.

A Probation Counselor employed by the BFJJC will be assigned to the Program and will be responsible for serving both populations. The BFJJC Administrator and the Chiawana High School Principal will agree on the Probation Counselor who will be assigned to the Program. A part-time teacher will be hired by the District to assist the Probation Counselor to provide the delinquency prevention curriculum (Aggression Replacement Training, Gang Awareness and Refusal Skills, and Peer Mediation).

In the role of liaison between Chiawana High School and BFJJC staff and programs, the Probation Counselor will have involvement with other Chiawana High School students who are under the jurisdiction of the BFJJC and will be directly involved with the screening and interview of new students as determined necessary by Chiawana High School Administration.

In addition to providing course curriculum, the Probation Counselor will be on campus a minimum of 30 hours per week and readily available to youth on probation for counseling, case management, family meetings and as liaison with school personnel.

## EXHIBIT B Statement of Work

**BENTON COUNTY** and **FRANKLIN COUNTY**, by and for the Benton-Franklin Counties Juvenile Justice Center ("BFJJC", collectively the "Counties"), and **Pasco School District** (the "District") as part of their School/Juvenile Probation Liaison Program Agreement, agree to the following respective responsibilities under that Agreement:

### Section 1

BFJJC shall:

- a) Assign a full-time Probation Counselor dedicated 40 hours per week to the Program. This Probation Counselor will be an employee of the Counties;
- b) Provide training in Aggression Replacement Training for the Probation Counselor and Certified Teacher.
- c) Provide supervision of and clerical support to the Probation Counselor;
- d) Provide office, desk, telephone, and computer for the Probation Counselor;
- e) Provide ongoing review, support, and education to the Probation Counselor, Certified Teacher, and Case Manager for skill in Aggression Replacement Training;
- f) Train the Probation Counselor in the use of the Washington State Juvenile Court Case Management Assessment Process (CMAP), a validated risk assessment tool adopted by the Washington State Association of Juvenile Court Administrators;
- g) Maintain Program and financial data and records as required by the Program and the District and according to BFJJC policies and procedures; and
- h) Assign the Probation Counselor to the following:
  - Use the CMAP as a pre and post test with youth who are assigned to the Probation Counselor's community supervision caseload;
  - Participate in the District Personnel meetings and student staffings as requested by school administrators;
  - Assist with interviews of incoming high school students who present with school safety risk factors as requested by Chiawana High School Administration;
  - Work with Chiawana High Administration in the identification of youth for the Program curricula;

- Contact all youth identified for the Program curricula and hold informational meetings for the youth and the youth's parents regarding what will be taught, the benefits of the Program, how the youth was selected, and what the parents can expect;
- Be available to participate as requested in various school/student meetings such as IEP, MDT, Expulsion, Discipline, Counseling and other mutually agreed upon activities such as Link Crews;
- Solicit community support through donated youth incentives;
- Provide direct community supervision services to all county Program youth on court-ordered community supervision who attend Chiawana High School; and
- During school days, be on campus at identified District schools, except as necessary to participate in Program related activities or to attend required BFJJC meetings or court hearings.

## **Section 2**

The District shall:

- a) Assist in identifying students for the Program;
- b) Participate in development of curriculum for the Program;
- c) Hire a Certified Teacher for the Program who will be an employee of the District and whose responsibilities include the following:
  - A minimum of five hours per week daily classroom instruction of identified curricula, including Aggression Replacement Training, Peer Mediation and Violence Prevention and a ½ hour preparation time per day before classroom instruction begins;
  - Complete Certified Training programs in Aggression Replacement Training and Peer Mediation as scheduled by the District and BFJJC; and
  - Be available for the following: Staff student cases with the Probation Counselor and Chiawana High School staff on an as-needed basis; meet with students as needed to resolve Program-related issues; and contact parents of students.
- d) Provide direction to Probation Counselor and Certified Teacher regarding curriculum, use of guest speakers, and community resources;
- e) Provide input to BFJJC management regarding work performance of Program staff;
- f) Provide office space, classroom, and equipment for Program personnel; and
- g) Maintain Program and financial data and records as required by the Program and BFJJC and according to the District policies and procedures.

C.

<b>AGENDA ITEM:</b> Consent	<b>TYPE OF ACTION</b>	CONSENT AGENDA <u>xx</u> PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER
<b>MEETING DATE:</b> B/C 07-06-09 F/C 07-01-09	<b>NEEDED</b>	
<b>SUBJECT:</b> Resolution Authorization of Agreement with Pasco School Probation Liaison Program at Pasco High School	Executive Contract <u>xx</u>	
	Pass Resolution <u>xx</u>	
	Pass Ordinance	
<b>Prepared By:</b> Donna A. Lee	Pass Motion	
<b>Reviewed By:</b> Sharon Paradis	Other	

**BACKGROUND INFORMATION**

The Pasco High School / Probation Liaison Project places a probation counselor at Pasco High School to teach Aggression Replacement Training and to work with those youth at the school who are on probation has been in place since 2000. Research indicates this program is making substantial, positive changes in the lives of the youth it serves. In years past funding was received from the Department of Social Health Services, Office of Juvenile Justice to sustain this program. Beginning with the 2005 2006 school year to continue this community vital program, the Pasco School District agreed to compensate the Counties for contract.

**SUMMARY**

The Pasco School District would like to continue to program for the period beginning on July 1, 2009 and ending on June 30, 2010.

**RECOMMENDATION**

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the Contract with the Pasco School District to continue probation services and intervention services to youth located at Pasco High School.

**FISCAL IMPACT**

Pasco School District has agreed to compensate the Counties for a total of \$37,670.04, which is one-half the cost to the Counties of employing a Probation Counselor to provide the Probation Liaison Project services as set forth in the contract's Statement of Work.

**MOTION**

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board Franklin County Commissioners be hereby authorized to sign the contract with the Pasco School District to provide a probation counselor in Pasco High School.

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 BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE PASCO SCHOOL DISTRICT TO PROVIDE A PROBATION COUNSELOR IN PASCO HIGH SCHOOL, and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the proposed Contract between the Juvenile Court and the Pasco School District be approved as presented for a term commencing July 1, 2009, and terminating on June 30, 2010, 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 hereby are authorized to sign, on behalf of their respective county, the Contract between the Juvenile Court and the Pasco School District shall be for a period commencing July 1, 2009, and terminating on June 30, 2010.

DATED this day 6<sup>th</sup> of July 2009

DATED this 1<sup>st</sup> day of July 2009

BENTON COUNTY BOARD OF COMMISSIONERS

FRANKLIN COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Chairman Pro Tem

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Benton County, Washington

\_\_\_\_\_  
Member

Constituting the Board of  
County Commissioners,  
Franklin County, Washington

Attest:

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Clerk of the Board

**JUDGES**  
Hon. Dennis D. Yule  
Hon. Craig J. Matheson  
Hon. Vic L. VanderSchoor  
Hon. Robert G. Swisher  
Hon. Carrie Runge  
Hon. Cameron Mitchell

# BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



SHARON PARADIS, Administrator  
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388  
PHONE (509) 783-2151 • FAX (509) 736-2728

LONNA K. MALONE  
JOSEPH R. SCHNEIDER  
JERRI G. POTTS  
Court Commissioners

## SCHOOL/JUVENILE PROBATION LIAISON PROGRAM AGREEMENT BETWEEN BENTON AND FRANKLIN COUNTIES AND PASCO SCHOOL DISTRICT

This Agreement is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center ("BFJJC"), a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as the "Counties"), and Pasco School District, with its principal offices at 1215 West Lewis Street, Pasco, WA 99301 (hereinafter referred to as the "District").

### RECITALS

- A. The Counties and the District have implemented a School/Juvenile Probation Liaison Program and desire to continue such a program (the "Program") to serve the population identified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by reference; and
- B. The Counties and the District desire to continue the Program in accordance with the Goals and Objectives set forth in Exhibit A to this Agreement.

### AGREEMENT

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

#### 1. STATEMENT OF WORK

- 1.1 The parties agree that a description of the Statement of Work for this Agreement is set forth in Exhibit B to this Agreement, which is attached hereto and incorporated herein by reference.
- 1.2 The Counties agree to perform all work described in Exhibit B, Section 1 of this Agreement. The Counties further agree to furnish the necessary personnel,

services, facilities, and supplies and otherwise do all things necessary or incidental to the performance of work set forth in Exhibit B, Section 1 of this Agreement.

- 1.3 The District agrees to perform all work described in Exhibit B, Section 2 of this Agreement. The District further agrees to furnish the necessary personnel, services, facilities, and supplies and otherwise do all things necessary or incidental to the performance of work set forth in Exhibit B, Section 2 of this Agreement.
- 1.4 The Counties and the District shall maintain all records that reflect all direct and indirect costs expended by each party in the performance of this Agreement. The Counties and the District shall maintain written documentation of services provided to all youth under this Program. Such records shall be maintained in a locked, confidential file at Chiawana High School. These records shall be available at all reasonable times for inspection, review or audit by authorized personnel from the Counties, the Washington State Auditor, the District, the Benton County Auditor, and the Franklin County Auditor.
- 1.5 The work described herein shall be performed under the coordination of Sharon Paradis, BFJJC Administrator, or her administrative designee and Teri Kessie, Principal of Chiawana High School, or her administrative designee for the District, or their successors.

## **2. COMPENSATION**

- 2.1 The District agrees to pay the Counties Three Thousand One Hundred Thirty-Nine Dollars and Seventeen Cents (\$3,139.17) for each month of this Agreement, beginning July 2009, which amounts to a total of Thirty-Seven Thousand Six Hundred Seventy Dollars and Four Cents (\$37,670.04) for the term of this Agreement. The parties agree that this amount is one-half the cost to the Counties of employing the Probation Counselor described in Exhibit B, Section 1(a) of this Agreement.
- 2.2 The District agrees that it will process each monthly invoice from the Counties with its first payment cycle after receiving each invoice, and that it will remit payment to the Counties no later than thirty days from the date of receipt of each invoice.

## **3. TERM**

The term of this Agreement shall begin July 1, 2009 and will continue through June 30, 2010, unless terminated prior to that time by either party in accordance with Section 4 of this Agreement, below.

#### **4. TERMINATION**

- 4.1 The Counties may terminate this Agreement in whole or in part if the Counties determine, in their sole discretion, that such termination is in the best interest of the Counties. The Counties may terminate this Agreement under this paragraph by giving ten calendar days' written notice by certified mail to the District. The notice period shall begin upon mailing, unless otherwise specified in the notice. In this event, the District shall pay the Counties for all services performed by the Counties up to the effective date of the termination. Payment shall be made in accordance with the Compensation Section of this Agreement.
- 4.2 In the event that funding for this Program is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement, the Counties may summarily terminate this Agreement notwithstanding any other termination provision in this Agreement by giving written notice by certified mail to the District, specifying the termination date. Termination under this paragraph shall be effective on the date specified in the written notice of termination.
- 4.3 If the District breaches any of its obligations hereunder, and fails to cure the breach within ten days after receiving written notice from the Counties to do so, the Counties may immediately terminate this Agreement by giving written notice by certified mail to the District. The District shall bear all costs and expenses incurred by the Counties in completing the work and all damages sustained by the Counties by reason of the District's breach.

#### **5. COMPLIANCE WITH LAWS**

The parties agree that all activity pursuant to this Agreement will be in accordance with all applicable federal, state, and local laws, rules, and regulations. It is the policy of the Counties that no person will be subjected to discrimination by the Counties or by their subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, veteran status, the presence of any disability, or any other protected status under the law. The District agrees to comply with that anti-discrimination policy.

#### **6. INDEMNIFICATION**

- 6.1 The District shall hold harmless, indemnify, and defend the Counties, their 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 District's acts, errors, or omissions in the performance of this Agreement. PROVIDED, that the District's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the Counties, their officers, officials, employees, or agents.
- 6.2 In any and all claims against the Counties, their officers, officials, employees, and/or agents by any employee of the District, its subcontractors, 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 6 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 District 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 District expressly waives any immunity the District might have had under such laws. By executing this Agreement, the District acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section 6 shall be incorporated, as relevant, into any contract the District makes with any subcontractor or agent performing work hereunder.

- 6.3 The District'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 District, the District's employees, agents, or subcontractors.

## **7. GOVERNING LAW; FORUM**

The parties agree that this Agreement was made and delivered in the State of Washington and will be governed by the laws of the State of Washington without reference to its choice of law rules. The parties irrevocably consent to the exclusive jurisdiction and venue of the state courts located in Benton or Franklin County, Washington with respect to any dispute arising out of or in connection with this Agreement, and agree not to commence or prosecute any action or proceeding arising out of or in connection with this Agreement other than in the aforementioned courts.

## **8. ATTORNEYS' FEES AND COSTS**

If any dispute arises between the parties with respect to the matters covered by this Agreement, the predominantly prevailing party in such action shall be entitled, in addition to any other relief, to recover reasonable attorneys' fees and other costs and expenses incurred.

## **9. SEVERABILITY**

The validity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Counties and the District agree to replace any invalid provision with a valid provision that most closely approximates the intent of the invalid provision.

## **10. NON-WAIVER OF RIGHTS**

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Agreement, 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 Agreement at a later time.



## **Exhibit A**

### **Program Goals, Objectives, and Population Served**

#### **A. PROGRAM GOALS**

##### Broad Overall Goal

The School/Juvenile Probation Liaison Program (the "Program") is a delinquency prevention and intervention program designed to provide research-based programs in the schools, including Aggression Replacement Training (ART) and Juvenile Probation in Schools. Youth who are at risk of suspension or expulsion due to behavior and youth who are on probation will be the recipients of these special curricula and services. The Program will be provided at Chiawana High School.

##### Goal 1

The first goal of this Program is to incorporate strategies that are preventative and research-based into Chiawana High School's curriculum, discipline, and safety plans. Those students who are identified as being at-risk for violence and delinquency will be eligible to participate in the Program. These students will be taught a variety of skills and processes that increase the likelihood of prosocial responses with peers, staff, family, and community. A decrease in disciplinary referrals, suspensions, and expulsions for youth that complete the Program is anticipated.

##### Goal 2

The second goal of this Program is to strengthen the cooperative and proactive efforts between schools, community, and families in providing safe schools and reducing delinquency. To accomplish this goal, community supervision services of motivational/strength-based case management, rehabilitation, treatment, and monitoring of court-ordered sanctions will be provided to students at Chiawana High School and in the community in which these students reside, while reserving the Benton-Franklin Juvenile Justice Center ("BFJJC") for legal processing or prosecuting these students for delinquency.

#### **B. PROGRAM OBJECTIVES**

##### Objective 1

##### **Prevention/Rehabilitation/Research Based Programs**

A Probation Counselor employed by the Counties will teach, and a Certified Teacher employed by Chiawana High School will co-facilitate, a minimum of 180 hours of curriculum by June 30, 2010. The content of the curriculum will consist of programs supported by research-based meta-analyses and/or literature reviews and individual studies. The following programs will make up the course curriculum for the 2009-2010 school year: Aggression Replacement Training (ART), 60 hours; Violence Prevention Skills, 15 hours; and Peer Mediation, 15 hours. Each class will enroll, optimally, 12 students; a minimum of one class will be provided per

semester. A minimum of 24 students will participate in the program during the school year with an anticipated 70% completion rate. Time sheets will verify the Probation Counselor and teacher's hours. The curriculum will be outlined in a syllabus. Student participation will be documented in the students' transcripts.

## **Objective 2**

### **Student Selection/Target Audience**

By August 2009 and January 2010, youth from the Chiawana High School student body of freshman, sophomores, and juniors will be identified by authorized Pasco School District staff and the Probation Counselor as being at-risk for aggression and violence and appropriate for the Program. These students will be characterized as exhibiting aggressive or violent behaviors as documented in the Chiawana High School disciplinary referral records. The Chiawana High School Principal or his designee will work with the Probation Counselor to identify students for participation in the Program.

## **Objective 3**

### **Accountability for Curricula Outcomes**

A measure of student proficiency will be that students attain a passing grade. Grades are determined by the following: student participation through daily role modeling (teacher's weekly observation logs), utilization of skill through homework (student handbook logs), and attendance (attendance records). The Probation Counselor will maintain a file of test forms and scores for each student. Student grades are recorded in student transcripts.

## **Objective 4**

### **Intervention/ Supervision**

During the 2009-2010 school year, a Probation Counselor will be located at Chiawana High School a minimum of 30 hours a week, including at least one complete school day per week. The Probation Counselor will carry a caseload of students enrolled at Chiawana High School who have been placed on court ordered community supervision--estimated at 100 (aggregate over the year) students. The Probation Counselor will be trained in Aggression Replacement Training (ART) and the Washington Association of Juvenile Court Administrators Risk Assessment (WAJCARA) by the first day of school. In addition, the Probation Counselor will teach a minimum of one class per day of curriculum consisting of ART, Violence Prevention Skills, and Peer Mediation.

The Probation Counselor will act as a liaison between Chiawana High School and other BFJJC staff who work with Chiawana High School students in other intervention and supervision programs including but not limited to Diversion, Truancy, Family Support Program, Chemical Dependency Disposition Alternative, Family Violence Intervention Project, Selective Aggressive Probation and the Chemical Dependency Disposition Alternative Program.

## Objective 5

### **Administrative Resource for School Safety**

The Probation Counselor will work with Chiawana High School Administration to provide screening, assessment, and consultation regarding incoming students. The Probation Counselor will participate with Chiawana High School staff in the interview of incoming students who present with school safety risk factors as requested by Chiawana High School Administration.

#### **C. POPULATION SERVED**

In general, the Program is designed to serve two primary subgroups of youth: (1) students who are identified and referred by the school for delinquency prevention services; and (2) students who are currently on probation. These subgroups originate from a population of high school aged youth in the District.

The first project (classroom training) serves those youth who are characterized as at-risk for aggression and violence, and registered as 9<sup>th</sup>, 10<sup>th</sup>, or 11<sup>th</sup> graders for school year 2009-2010. Each semester a minimum of 12 youth from this subgroup will participate in a research-based curriculum. These students will learn prosocial skills, moral reasoning, anger management strategies, peer mediation, and violence prevention awareness. Program staff will be ready to begin providing the curriculum to identified youth within the first month that school is in session for the 2009-2010 school year. The Probation Counselor hired for this Program will receive training and support from BFJJC's Probation Department.

The second project (in-school community supervision/probation) serves those Chiawana High School youth that are under court ordered supervision by BFJJC. It is projected that a total of sixty youth will be served each year by this project. These youth will receive case management services and monitoring of court-ordered obligations within the confines of their school and community.

A Probation Counselor employed by the BFJJC will be assigned to the Program and will be responsible for serving both populations. The BFJJC Administrator and the Chiawana High School Principal will agree on the Probation Counselor who will be assigned to the Program. A part-time teacher will be hired by the District to assist the Probation Counselor to provide the delinquency prevention curriculum (Aggression Replacement Training, Gang Awareness and Refusal Skills, and Peer Mediation).

In the role of liaison between Chiawana High School and BFJJC staff and programs, the Probation Counselor will have involvement with other Chiawana High School students who are under the jurisdiction of the BFJJC and will be directly involved with the screening and interview of new students as determined necessary by Chiawana High School Administration.

In addition to providing course curriculum, the Probation Counselor will be on campus a minimum of 30 hours per week and readily available to youth on probation for counseling, case management, family meetings and as liaison with school personnel.

## EXHIBIT B Statement of Work

**BENTON COUNTY** and **FRANKLIN COUNTY**, by and for the Benton-Franklin Counties Juvenile Justice Center ("BFJJC", collectively the "Counties"), and **Pasco School District** (the "District") as part of their School/Juvenile Probation Liaison Program Agreement, agree to the following respective responsibilities under that Agreement:

### Section 1

BFJJC shall:

- a) Assign a full-time Probation Counselor dedicated 40 hours per week to the Program. This Probation Counselor will be an employee of the Counties;
- b) Provide training in Aggression Replacement Training for the Probation Counselor and Certified Teacher.
- c) Provide supervision of and clerical support to the Probation Counselor;
- d) Provide office, desk, telephone, and computer for the Probation Counselor;
- e) Provide ongoing review, support, and education to the Probation Counselor, Certified Teacher, and Case Manager for skill in Aggression Replacement Training;
- f) Train the Probation Counselor in the use of the Washington State Juvenile Court Case Management Assessment Process (CMAP), a validated risk assessment tool adopted by the Washington State Association of Juvenile Court Administrators;
- g) Maintain Program and financial data and records as required by the Program and the District and according to BFJJC policies and procedures; and
- h) Assign the Probation Counselor to the following:
  - Use the CMAP as a pre and post test with youth who are assigned to the Probation Counselor's community supervision caseload;
  - Participate in the District Personnel meetings and student staffings as requested by school administrators;
  - Assist with interviews of incoming high school students who present with school safety risk factors as requested by Chiawana High School Administration;
  - Work with Chiawana High Administration in the identification of youth for the Program curricula;

- Contact all youth identified for the Program curricula and hold informational meetings for the youth and the youth's parents regarding what will be taught, the benefits of the Program, how the youth was selected, and what the parents can expect;
- Be available to participate as requested in various school/student meetings such as IEP, MDT, Expulsion, Discipline, Counseling and other mutually agreed upon activities such as Link Crews;
- Solicit community support through donated youth incentives;
- Provide direct community supervision services to all county Program youth on court-ordered community supervision who attend Chiawana High School; and
- During school days, be on campus at identified District schools, except as necessary to participate in Program related activities or to attend required BFJJC meetings or court hearings.

## **Section 2**

The District shall:

- a) Assist in identifying students for the Program;
- b) Participate in development of curriculum for the Program;
- c) Hire a Certified Teacher for the Program who will be an employee of the District and whose responsibilities include the following:
  - A minimum of five hours per week daily classroom instruction of identified curricula, including Aggression Replacement Training, Peer Mediation and Violence Prevention and a ½ hour preparation time per day before classroom instruction begins;
  - Complete Certified Training programs in Aggression Replacement Training and Peer Mediation as scheduled by the District and BFJJC; and
  - Be available for the following: Staff student cases with the Probation Counselor and Chiawana High School staff on an as-needed basis; meet with students as needed to resolve Program-related issues; and contact parents of students.
- d) Provide direction to Probation Counselor and Certified Teacher regarding curriculum, use of guest speakers, and community resources;
- e) Provide input to BFJJC management regarding work performance of Program staff;
- f) Provide office space, classroom, and equipment for Program personnel; and
- g) Maintain Program and financial data and records as required by the Program and BFJJC and according to the District policies and procedures.

d.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUND WITHIN THE  
CURRENT EXPENSE FUND NUMBER 0000101, OFFICE OF PUBLIC DEFENSE  
DEPARTMENT 136

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

cc: Commissioners; Auditor; File, OPD

Gerry

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Office of Public Defense

Dept Nbr: 136

Fund Name: Current Expense

Fund Nbr: 0000-101

TRANSFER FROM: Dept 000

TRANSFER TO: Dept 000

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.814.	9305	Computer Hardware & Software	2,149.14	512.814.	4102	Contract Services	2,149.14
<b>TOTAL</b>			<b>\$2,149.14</b>	<b>TOTAL</b>			<b>\$2,149.14</b>

**Explanation:**

Correction to move appropriated funds from line item 512.814.9305 to 512.814.4102 for contract services with Justice Works, LLC for case management software.

Prepared by: Denise Gerry

Date: July 6, 2009

Approved

Denied

Date: \_\_\_\_\_

Chairman

Member

Member

e.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH BRIAN ANDERSON FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Brian Anderson, Contract #BCD0810BJA002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

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

Attest: .....  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810BJA002**

THIS AGREEMENT is entered into by and between Brian J. Anderson, attorney at law, Washington State Bar Association # 39061 ("Attorney") dba Ochoa Anderson PLLC; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 7103 W. Clearwater Ave., Ste. D, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509) 734-1345 and (509) 735-4612 respectively; and Attorney's current office/work e-mail address is [brian@ochoa-anderson.com](mailto:brian@ochoa-anderson.com).

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

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

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

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

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

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

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

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

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

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education (CLE) credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31<sup>st</sup> of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31<sup>st</sup> 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 15<sup>th</sup> day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

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

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

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

*Compliance unit* assignment: Upon written direction from the IDC, Attorney may be assigned to the *compliance unit* provided that the IDC, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. Attorneys assigned to the *compliance unit* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *compliance team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody

representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court compliance and failure to pay fine dockets except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

## 6. CONTINUED REPRESENTATION.

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empanelled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be as follows:

a) In the case of termination of this Agreement at the election of either party by providing 90 days notice of desire to do so (as provided by Article 17 below), provided that Attorney provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing such notice of termination (or, if notice is provided by County, within 5 business days of such notice) and 30 days prior to the effective date of such termination, Attorney shall be responsible for providing continued legal representation to clients with cases that remain unresolved as of the effective date of the termination, for no more than 30 days after the effective date of such termination.

b) In the case of expiration of this Agreement according to its terms, if Attorney provides at least 90 days notice of intent not to renew the Agreement and further provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing such notice of non renewal, and 30 days prior to the effective date of such termination,

then Attorney's responsibility for providing continued legal representation shall be the same as provided in paragraph "a)" of this Article.

c) In the case of expiration of this Agreement according to its terms, if Attorney provides less than 90 days notice of intent not to renew the Agreement, then the Attorney's responsibility to provide continuing legal representation to clients with cases that remain unresolved as of the effective date of the termination shall be for a period of time equivalent to 30 days plus the number of days corresponding to the difference between 90 days notice and the actual number of days notice. By way of illustration, if only 30 days notice was provided, then Attorney shall be responsible for providing continued legal representation for: 30 days + (90 days - 30 days = 60 days) for a total number of days of 90.

d) In the case of either expiration or termination of this agreement, if the report of caseload provided by Attorney pursuant to subsections "a)" or "b)" of this article omit any cases, then Attorney shall continue to be responsible for providing continuing legal representation on such cases until the earlier of: 1) resolution of the case; or 2) 30 days from the date when the existence of such omitted cases is brought to the attention of the IDC in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of **three hundred and eighty (380) total case equivalents per calendar year** (proratable for any partial calendar year) for calendar year 2008 with downward adjustments in 2009 and 2010 as indicated in paragraph 12 below. The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the *compliance unit*. Provided, however, that if Attorney is assigned, during any full calendar year, to the *compliance unit* for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with thirty-two (32) case equivalents for each month when Attorney is assigned to the *compliance unit*.

8. **CASE EQUIVALENTS.**

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

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*.

Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

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

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

violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15<sup>th</sup> day of the month, Attorney shall provide such records to the IDC in a format acceptable by the IDC, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month.

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. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

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

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

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

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

## 12. COMPENSATION.

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

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **\$4,830.00** per month (proratable for any partial month), payable on the last business day of the month for handling **360 total case equivalents** during the calendar year.

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

d. Payment of monthly compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Articles 8(d) and 3(f). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of monthly compensation until such failure is remedied.

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

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

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

living increase is allotted to Benton County employees at a time other than at the beginning of the calendar year, then the increase contemplated by this paragraph shall be effective as of the same time the cost of living increase is paid, and shall not be retroactive to the beginning of the year under any circumstances.

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.** Prior to commencement of services under this Contract, Attorney shall submit to Benton County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this Contract. Attorney shall maintain at Attorney's sole expense unless otherwise stipulated, the insurance coverages as listed below.

The Attorney shall not commence work under this Contract until the Attorney has obtained all insurance required under this paragraph and such insurance has been approved by the County.

a. **Professional Liability Insurance.** The Attorney shall secure and maintain at its own expense Professional Liability Insurance in the amount of not less than \$1,000,000 each claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims Made form coverage shall be maintained by the Attorney for a minimum of three (3) years following the termination of this Contract, and the Attorney shall annually provide the County with proof of renewal.

b. **Commercial General Liability Insurance.** The Attorney shall maintain, during the life of the Contract, Commercial General Liability Insurance Policy Form (CG0001) or equivalent to protect the Attorney from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the Attorney or by anyone directly employed by or contracting with the Attorney. The minimum Commercial General Liability Insurance limits are as follows:

\$2,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury and Advertising Injury  
\$1,000,000 Each Occurrence

The Commercial General Liability Insurance policy shall contain an endorsement naming the Benton County, its elected and appointed officials, employees and agents as Additional Insured and an endorsement that specifically states the Attorney's Commercial General Liability Insurance shall be primary, and not contributory, with any other insurance maintained by the County.

Commercial General Liability Insurance shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

Specific wording for Additional Insured shall read:

Benton County, its elected and appointed officials, employees and agents

c. **Stop Gap Employer's Liability Insurance.** Attorney shall provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident  
\$1,000,000 Policy Limit for Disease  
\$1,000,000 Each Employee for Disease

d. **Worker's Compensation Insurance.** Attorney shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Attorney shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work.

All Liability coverages, except Professional Liability, shall be written on an Occurrence form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this contract, and the policy shall state that coverage is Claims Made, and state the Retroactive Date. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of the contract.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington and have a Best's rating of at least A-VII. All insurance other than Professional Liability and Workers' Compensation to be maintained by the Attorney shall specifically include Benton County, its elected and appointed officials, employees and agents as "Additional Insured". All insurance shall not be reduced or canceled without thirty (30) days written prior notice to the County. The Attorney's insurance coverage shall be primary insurance to any insurance policies or policies of self-insurance maintained by Benton County.

**Sub-Attorneys.** Attorney shall include all Sub-Attorneys as Additional Insureds under its policies or shall furnish separate certificates and endorsements for each Sub-Attorney. All coverages for subcontracts shall be subject to all of the requirements stated herein.

Certificates of Liability Insurance are to be provided to the following:

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

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

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

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

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

## 17. TERMINATION.

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

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

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

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

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

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

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

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County 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). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

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

20. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed

appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County District Court.

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

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

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

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

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

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

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

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

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

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

**(SIGNATURES APPEAR ON FOLLOWING PAGE)**

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

DATE: \_\_\_\_\_

BENTON COUNTY

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Approved as to form and content:

\_\_\_\_\_  
Eric Hsu  
Indigent Defense Coordinator

DATE: 6/5/09

ATTORNEY

  
\_\_\_\_\_  
Brian J. Anderson

f.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH JASON CELSKI FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Jason Celski, Contract #BCDC0810JAC002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

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

Attest: .....  
Clerk of the Board

Commissioners: Content of contracts "f" - "o" is same as consent item "e". Full contract information is available upon request. Thank you..... Lisa Small

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810JAC002**

THIS AGREEMENT is entered into by and between Jason A. Celski , attorney at law, Washington State Bar Association # 37848 ("Attorney") dba Celski Law Firm PLLC; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 5219 W. Clearwater Ave., Ste. 16, Kennewick, WA 99336. Attorney's current local office telephone number is (509) 735-5683; and Attorney's current office/work e-mail address is jcelski@celskilaw.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)

**RESOLUTION**

**BENTON COUNTY RESOLUTION NO. \_\_\_\_\_**

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

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH DAWN HICKMAN INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating her then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by her;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Dawn Hickman, Contract #BCD0810DEH002, be executed at this time.

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

\_\_\_\_\_  
**Chairman of the Board**

\_\_\_\_\_  
**Chairman Pro-Tem**

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: . . . . .  
**Clerk of the Board**

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BDCD0810DEH002**

THIS AGREEMENT is entered into by and between Dawn E. Hickman , attorney at law, Washington State Bar Association # 32597 ("Attorney") dba Hickman & Poland PLLC; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 324 W. Kennewick Ave., 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)

h.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH RAY HUI  
INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

WHEREAS, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

WHEREAS, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

WHEREAS, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Ray Hui, Contract #BCD0810RGH002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810RGH002**

THIS AGREEMENT is entered into by and between Raymond G. Hui, attorney at law, Washington State Bar Association # 22821 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

2. ATTORNEY'S OFFICE LOCATION.

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 710 ½ The Parkway, Richland, WA 99352. Attorney's current local office telephone and fax numbers are (509) 943-0654 and (509) 943-8565 respectively; and Attorney's current office/work e-mail address is rhuilaw@owt.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)

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH DANIEL KATHREN INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Daniel Kathren, Contract #BCD0810DFK002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

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

Attest: . . . . .  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810DFK002**

THIS AGREEMENT is entered into by and between Daniel F. Kathren, attorney at law, Washington State Bar Association # 26133 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

2. ATTORNEY'S OFFICE LOCATION.

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 8797 W. Gage Boulevard, Ste. C-3, Kennewick, WA 99336. 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](mailto: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 censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

J

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH JOSH LILLY INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Josh Lilly, Contract #BCD0810JL002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

:

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: . . . . .  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810JL002**

THIS AGREEMENT is entered into by and between Joshua J. Lilly, attorney at law, Washington State Bar Association # 36033 ("Attorney") dba Walker Heye & Meehan PLLC; and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 1333 Columbia Park Trail, Ste. 220, Richland, WA 99352. Attorney's current local office telephone and fax numbers are (509) 735-4444 and (509) 735-7140 and Attorney's current office/work e-mail address is [jlilly@walkerhey.com](mailto:jlilly@walkerhey.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)

K.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

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

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH STACEY MCKINLEY INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating her then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by her;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Stacey McKinley, Contract #BCD0810AMM002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810AMM002**

**THIS AGREEMENT** is entered into by and between **Anastasia M. McKinley**, attorney at law, Washington State Bar Association # **20789** ("Attorney"); and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **P.O. Box 202, Richland, WA 99352**. Attorney's current local office telephone and fax numbers are **(509) 628-6800** and **(509) 392-8083** respectively; and Attorney's current office/work e-mail address is **mckinley.stacey@gmail.com**.

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

1.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH SCOTT NACCARATO INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Scott Naccarato, Contract #BCD0810SNN002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810SNN002**

THIS AGREEMENT is entered into by and between Scott N. Naccarato, attorney at law, Washington State Bar Association # 20633 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

2. ATTORNEY'S OFFICE LOCATION.

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 7502 W. Deschutes Place, Kennewick, WA 99336. Attorney's current local office telephone and fax numbers are (509) 783-5551 and (509) 736-1551 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)

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH MARY POLAND INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating her then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by her;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Mary Poland, Contract #BCD0810MSP002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810MSP002**

THIS AGREEMENT is entered into by and between Mary S. Poland, attorney at law, Washington State Bar Association # 33599 ("Attorney"); and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 324 W. Kennewick Ave., 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)

n.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH ELISA RILEY INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating her then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by her;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Elisa Riley, Contract #BCD0810EVR002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

;

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: . . . . .

Clerk of the Board

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

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

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

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

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

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

2. ATTORNEY'S OFFICE LOCATION.

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

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

0.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

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

**IN THE MATTER OF EXECUTING A NEW PERSONAL SERVICE AGREEMENT WITH PEYMAN YOUNESI INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT**

**WHEREAS**, pursuant to the recommendation of the Indigent Defense Coordinator, on April 27, 2009, the Board executed a letter to the above referenced attorney terminating his then existing personal service agreement for indigent defense services in Benton County;

**WHEREAS**, the reason for terminating the contract of said attorney was to replace such contract with a new contract incorporating necessary modified terms and conditions;

**WHEREAS**, the new contract, incorporating the necessary modified terms and conditions has been drafted, presented to the attorney and signed by him;

**NOW THEREFORE, BE IT RESOLVED THAT** the attached contract for indigent defense services with the Peyman Younesi, Contract #BCD0810PY002, be executed at this time.

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

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: . . . . .  
Clerk of the Board

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0810PY002**

**THIS AGREEMENT** is entered into by and between **Peyman Younesi**, attorney at law, Washington State Bar Association # **36226** ("Attorney"); and **BENTON COUNTY**, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

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

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

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1030 N. Center Parkway, Kennewick, WA 99336**. Attorney's current local office telephone and fax numbers are **(509) 366-8358** and **(800) 521-8755** respectively; and Attorney's current office/work e-mail address is **peyman@younesilaw.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)

P.

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY TRINITY OROSCO FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DANIEL KATHREN TO PROVIDE SUPERVISORY ATTORNEY OVERSIGHT OF ATTORNEY TRINITY OROSCO.**

**WHEREAS**, attorney Andrea Salinas has accepted the termination letter from Benton County previously tendered to her with an effective date of July 28, 2009 and has decided not to enter into a new agreement with County as offered;

**WHEREAS**, there now exists a need to fill the contract position held by attorney Andrea Salinas and, since pursuant to the terms of her soon to be terminated contract, attorney Andrea Salinas will not be receiving any new case assignments for the last 30 days prior to July 28, 2009 so a replacement attorney is needed by July 1, 2009;

**WHEREAS**, the existence of this unfilled vacancy has been publicized;

**WHEREAS**, attorney Trinity Orosco has expressed interest in filling this position but does not have the requisite level of experience necessary to undertake the provision of indigent defense services in District Court without close supervision;

**WHEREAS**, because of her immediate availability and general qualifications, it is in Benton County's best interests to work with attorney Trinity Orosco in making a mentorship opportunity available so that she can provide indigent defense services in Benton County District Court while being closely supervised by a senior attorney with extensive working knowledge of District Court operations;

**WHEREAS**, attorney Daniel Kathren, a senior attorney with extensive experience in District Court has agreed to provide attorney Trinity Orosco with mentoring and close supervision;

**WHEREAS**, the sums payable to Daniel Kathren for supervision services and to Trinity Orosco for indigent defense services will total the amount that would otherwise be paid to a single contract holder, therefore eliminating any additional cost of this arrangement;

**NOW THEREFORE,**

**BE IT RESOLVED**, that contract #BCDC0910DFK001S, with attorney Daniel Kathren, WSBA #26133, for supervisory attorney services in Benton County District Court, be hereby approved and executed;

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

\_\_\_\_\_  
**Chairman of the Board**

\_\_\_\_\_  
**Chairman Pro-Tem**

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
**Clerk of the Board**

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE ATTORNEY  
SUPERVISION SERVICES IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0910DFK001S**

THIS AGREEMENT is entered into by and between DANIEL F KATHREN, attorney at law, Washington State Bar Association #34086 ("Attorney"); and BENTON COUNTY, a state of Washington political subdivisions ("County"), for and on behalf of the Benton County District Court

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

- A. County has the legal responsibility to provide legal defense services to indigent persons charged with criminal offenses alleged to have been committed within County's respective jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law and has over two years of direct experience in representing indigent persons charged with gross misdemeanor, and misdemeanor criminal offenses in District Court.
- C. Attorney has previously contracted with, and is presently under a professional services agreement with, the County to provide legal services to indigent persons in District Court.
- D. County is contemporaneously entering into a professional services agreement with a recently-graduated and recently-licensed Washington attorney by the name of Trinity Orosco ("New Attorney") to provide legal services to indigent persons charged with criminal offenses in Benton County District Court.
- E. Because New Attorney presently has limited experience in litigating cases involving persons charged with criminal offenses, New Attorney and the County have recognized the need to create an opportunity and process for New Attorney to gain that experience without compromising the rights and interests of represented indigent clients via having Attorney directly and independently mentor and supervise New Attorney.
- F. Attorney is willing and duly-qualified to mentor and supervise New Attorney, and Attorney desires to contract with the County for that purpose.

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 the date of full execution of this agreement and shall continue thereafter

through and including the 30th day of April, 2010, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in District Court. Attorney further acknowledges that New Attorney must represent indigent persons she is appointed to represent in District Court with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of indigent defendants in the state of Washington and generally exercised by members of the Washington State Bar Association. Without limitation in that regard, Attorney acknowledges that New Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom New Attorney is appointed to represent in District Court.

a. This Agreement shall be subject to termination pursuant to paragraph 7 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. Attorney shall notify the County within one (1) business day if any event specified in this paragraph 2.a occurs or if any bar association complaint/grievance is filed against Attorney.

b. 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.

3. **ATTORNEY'S DUTIES.** Consistent with the provisions of paragraph E on page one (1) of this Agreement, the following special provisions and requirements shall be applicable to this Agreement:

a. During the period July through September 2009, Attorney shall mentor and supervise the New Attorney in the following manner:

(i) Attorney shall spend an average of 48 hours per month directly supervising and mentoring the New Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall attend, observe, and monitor New Attorney's performance under this Agreement during New Attorney's court dockets

for purposes of providing New Attorney with constructive critique, guidance, and recommendations regarding New Attorney's performance for at least the first full month. Thereafter, Attorney shall attend at least one of New Attorney's dockets each month.

b. During the period October through December 2009:

(i) Attorney shall spend an average of 20 hours per month directly supervising and mentoring the New Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall periodically attend the New Attorney's Court dockets to observe and monitor the New Attorney's performance for purposes of providing the New Attorney with constructive critique, guidance, and performance improving recommendations.

c. During the period January through March, 2010:

(i) Attorney shall continue to directly supervise and mentor the New Attorney on a level and frequency to be determined and directed by Attorney after recommendation to, and consultation with, the Benton-Franklin Indigent Defense Coordinator ("IDC").

(ii) Attorney shall continue to provide advice and guidance to the New Attorney on an as-needed and/or as-requested basis.

d. Without limiting Attorney's duty and obligation to promptly report any and all problems or concerns over the New Attorney's performance to the IDC, Attorney shall provide four (4) written reports to the IDC that comply with the following report timing and content requirements:

(i) The first written report shall be due and provided on July 31, 2009, and shall set forth and describe Attorney's assessment of the New Attorney's initial month of performance and set forth and describe any areas of deficiency or concern to be addressed during the next two months.

(ii) The second written report shall be due and provided on September 30, 2009, and shall set forth an accounting of the hours (documented and stated in one-tenth hour intervals) spent by Attorney providing direct supervision, mentoring, and guidance to the New Attorney; shall specifically identify any issues or concerns that Attorney has over the New Attorney's performance that require attention and correction; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant a reduction in supervision.

(iv) The third written report shall be due and provided on January 2, 2010, and shall set forth an accounting of the hours (documented and stated in one-tenth hour intervals) spent by Attorney providing direct supervision, mentoring, and guidance to the New Attorney; shall specifically identify any issues or concerns that Attorney has over the New Attorney's performance that require attention and correction; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant that the supervision and mentoring of the New Attorney over the balance of 2009 only occur on an as-needed and/or as-requested basis.

(v) The fourth written report shall be due and provided on March 15, 2010, and shall specifically identify any new or remaining unresolved issues or concerns that Attorney has over the New Attorney's performance; and shall set forth Attorney's assessment as to whether or not the New Attorney has made sufficient progress and gained sufficient direct experience to allow and warrant the supervision of the New Attorney to only occur on an as-needed and/or as-requested basis

4. MONTHLY COMPENSATION.

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of \$1,000 per month (proratable for any partial month), payable on the last business day of the month.

d. 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.

5. INDEMNIFICATION 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 acts, defaults, errors and/or omissions of whatsoever nature in the performance of services 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 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 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 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.

6. INSURANCE.

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount 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 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 6.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 County 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 County; and shall provide for waiver of subrogation rights as to County.

(ii) The insurance policies required by this paragraph 6.b shall require that the insurance company provide 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 6.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.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide County through its IDC with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 6, and Attorney shall annually provide the Risk Managers 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).

7. **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. This Agreement shall automatically terminate upon the termination of the New Attorney's professional services agreement to provide legal services to indigent persons charged with criminal offenses in District Court.

8. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of County 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, 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 judgment to determine the manner and means of providing the services required under this Agreement; and neither County, nor County's Indigent Defense Coordinator, shall have any authority or duty to directly control the actual performance of Attorney's services hereunder and no

direction from County or County's IDC should be interpreted as an attempt to exercise such authority.

9. **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.

10. **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.

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

12. **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.

13. **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.

14. **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.

15. **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. 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 in the Tri-Cities, Washington. 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. 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 Benton-Franklin 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.

16. NOTICES.

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

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 W Okanogan Pl, Bldg A  
Kennewick, WA 99336

Eric Hsu  
Bi-County Indigent Defense Coordinator  
Benton & Franklin Counties Office of Public Defense  
7122 W. Okanogan Place, Bldg. A  
Kennewick, WA 99336

b. Any notices required or permitted to be given by 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 Attorney's other existing professional services agreement with County to provide legal representation in District Court.

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 "County" with certain information or notice, such information or notice shall be provided to County's Board of Commissioners unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

17. **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, 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

Approved as to form and content:

\_\_\_\_\_  
Eric Hsu  
Indigent Defense Coordinator

DATE: 6.26.09

ATTORNEY

  
\_\_\_\_\_  
Daniel F. Kathren

# RESOLUTION

BENTON COUNTY RESOLUTION NO. \_\_\_\_\_

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

**IN THE MATTER OF EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY TRINITY OROSCO FOR INDIGENT DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DANIEL KATHREN TO PROVIDE SUPERVISORY ATTORNEY OVERSIGHT OF ATTORNEY TRINITY OROSCO.**

**WHEREAS**, attorney Andrea Salinas has accepted the termination letter from Benton County previously tendered to her with an effective date of July 28, 2009 and has decided not to enter into a new agreement with County as offered;

**WHEREAS**, there now exists a need to fill the contract position held by attorney Andrea Salinas and, since pursuant to the terms of her soon to be terminated contract, attorney Andrea Salinas will not be receiving any new case assignments for the last 30 days prior to July 28, 2009 so a replacement attorney is needed by July 1, 2009;

**WHEREAS**, the existence of this unfilled vacancy has been publicized;

**WHEREAS**, attorney Trinity Orosco has expressed interest in filling this position but does not have the requisite level of experience necessary to undertake the provision of indigent defense services in District Court without close supervision;

**WHEREAS**, because of her immediate availability and general qualifications, it is in Benton County's best interests to work with attorney Trinity Orosco in making a mentorship opportunity available so that she can provide indigent defense services in Benton County District Court while being closely supervised by a senior attorney with extensive working knowledge of District Court operations;

**WHEREAS**, attorney Daniel Kathren, a senior attorney with extensive experience in District Court has agreed to provide attorney Trinity Orosco with mentoring and close supervision;

**WHEREAS**, the sums payable to Daniel Kathren for supervision services and to Trinity Orosco for indigent defense services will total the amount that would otherwise be paid to a single contract holder, therefore eliminating any additional cost of this arrangement;

**NOW THEREFORE,**

**BE IT RESOLVED**, that contract #BCDC0910TJO001, with attorney Trinity Orosco, WSBA #41366 for indigent defense services in Benton County District Court, be hereby approved and executed;

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

\_\_\_\_\_  
**Chairman of the Board**

\_\_\_\_\_  
**Chairman Pro-Tem**

\_\_\_\_\_  
**Member**  
Constituting the Board of County Commissioners,  
Benton County, Washington

Attest: .....  
**Clerk of the Board**

**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL  
REPRESENTATION TO INDIGENT PERSONS IN  
BENTON COUNTY DISTRICT COURT  
CONTRACT # BCDC0910TJO001**

THIS AGREEMENT is entered into by and between Trinity J. Orosco, attorney at law, Washington State Bar Association # 41366("Attorney"); dba Law Office of Daniel Kathren, and BENTON COUNTY, a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with misdemeanor criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the Benton County District Court.
- C. Attorney needs some additional direct experience litigating cases involving persons charged with criminal offenses, and Attorney and the Counties recognize the need to create an opportunity and process for Attorney to gain that experience without compromising the rights and interests of represented indigent clients via limiting the number and types of cases appointed to Attorney for a period of time and via having an experienced attorney also under contract with the County to provide criminal defense services in District Court directly and independently mentor Attorney and supervise and report on Attorney's performance and progress under this Agreement.

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 the execution date stated below, and shall continue thereafter through and including the 31st day of December 2010, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at 8797 Gage Blvd, Suite C-3, Kennewick, WA 99336. 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 trinityorosco@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 not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the

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

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

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

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

d. During each calendar year of the term of this Agreement, 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 31<sup>st</sup> of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington State Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31<sup>st</sup> 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 15<sup>th</sup> day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

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

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

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

*Compliance unit* assignment: Upon written direction from the IDC, Attorney may be assigned to the *compliance unit* provided that the IDC, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. Attorneys assigned to the *compliance unit* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination

or other court proceedings, any conflict cases or any civil contempt cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *compliance team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.
- Providing representation to defendants during all regularly scheduled District Court compliance and failure to pay fine dockets except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

#### 6. CONTINUED REPRESENTATION.

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empanelled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be as follows:

- a) In the case of termination of this Agreement at the election of either party by providing 90 days notice of desire to do so (as provided by Article 17 below), provided that Attorney provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing such notice of termination (or, if notice is provided by County, within 5 business days of such notice) and 30 days prior to the effective date of such termination, Attorney shall be responsible for providing continued legal representation to clients with

cases that remain unresolved as of the effective date of the termination, for no more than 30 days after the effective date of such termination.

b) In the case of expiration of this Agreement according to its terms, if Attorney provides at least 90 days notice of intent not to renew the Agreement and further provides the IDC with accurate documentation of caseload including: case title, case type, case status and next appearance date both contemporaneously with providing such notice of non renewal, and 30 days prior to the effective date of such termination, then Attorney's responsibility for providing continued legal representation shall be the same as provided in paragraph "a)" of this Article.

c) In the case of expiration of this Agreement according to its terms, if Attorney provides less than 90 days notice of intent not to renew the Agreement, then the Attorney's responsibility to provide continuing legal representation to clients with cases that remain unresolved as of the effective date of the termination shall be for a period of time equivalent to 30 days plus the number of days corresponding to the difference between 90 days notice and the actual number of days notice. By way of illustration, if only 30 days notice was provided, then Attorney shall be responsible for providing continued legal representation for: 30 days + (90 days - 30 days = 60 days) for a total number of days of 90.

d) In the case of either expiration or termination of this agreement, if the report of caseload provided by Attorney pursuant to subsections "a)" or "b)" of this article omit any cases, then Attorney shall continue to be responsible for providing continuing legal representation on such cases until the earlier of: 1) resolution of the case; or 2) 30 days from the date when the existence of such omitted cases is brought to the attention of the IDC in writing.

7. NUMBER OF APPOINTMENTS. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County District Court up to a maximum of three hundred and sixty (360) total case equivalents per calendar year (proratable for any partial calendar year) for calendar year 2009 with downward adjustments in 2010 as indicated in paragraph 12 below. The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted. The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the *compliance unit*. Provided, however, that if Attorney is assigned, during any full calendar year, to the *compliance unit* for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with thirty-two (32) case equivalents for each month when Attorney is assigned to the *compliance unit*.

8. CASE EQUIVALENTS.

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

- A misdemeanor appointment shall be counted as one (1) case equivalent.
- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.
- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.
- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.
- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the IDC following consultation.
- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the IDC shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation.
- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- RALJ appeals shall not count as a case equivalent of any sort.

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

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

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15<sup>th</sup> day of the month, Attorney shall provide such records to the IDC in a format acceptable by the IDC, including an electronic format if required, for all cases assigned for the calendar year up to and including the preceding month.

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. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

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

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

- (i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of,

the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030.

## 12. COMPENSATION.

a. During calendar year 2009, Attorney's monthly compensation hereunder shall be \$3,830.00 per month (proratable for any partial month), payable on the last business day of the month for handling 360 total case equivalents during the calendar year.

b. During calendar year 2010, Attorney's monthly compensation hereunder shall be \$4,071.67 per month, (proratable for any partial month), payable on the last business day of the month for handling 340 total case equivalents during the calendar year.

c. Payment of monthly compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Articles 8(d) and 3(f). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of monthly compensation until such failure is remedied.

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

e. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2009, 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, 2009, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive

compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

f. RALJ appeals to Superior Court shall be compensated during calendar year 2009 at the rate of \$400 per case as a flat rate. Thereafter, compensation shall be increased for calendar year 2010 by the percentage increase that equals the cost of living increase percentage allotted to non-bargaining Benton County employees for that year. Provided that if a cost of living increase is allotted to Benton County employees at a time other than at the beginning of the calendar year, then the increase contemplated by this paragraph shall be effective as of the same time the cost of living increase is paid, and shall not be retroactive to the beginning of the year under any circumstances.

### 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.** Prior to commencement of services under this Contract, Attorney shall submit to Benton County certificates of insurance or certified copies of insurance policies and endorsements, if requested by the County, for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for the life of this Contract. Attorney shall maintain at Attorney's sole expense unless otherwise stipulated, the insurance coverages as listed below.

The Attorney shall not commence work under this Contract until the Attorney has obtained all insurance required under this paragraph and such insurance has been approved by the County.

a. **Professional Liability Insurance.** The Attorney shall secure and maintain at its own expense Professional Liability Insurance in the amount of not less than \$1,000,000 each claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims Made form coverage shall be maintained by the Attorney for a minimum of three (3) years following the termination of this Contract, and the Attorney shall annually provide the County with proof of renewal.

b. **Commercial General Liability Insurance.** The Attorney shall maintain, during the life of the Contract, Commercial General Liability Insurance Policy Form (CG0001) or equivalent to protect the Attorney from claims for damages for bodily injury, including wrongful death, as well as from claims of property damage which may arise from any operations under this contract whether such operations be by the Attorney or by anyone directly employed by or contracting with the Attorney. The minimum Commercial General Liability Insurance limits are as follows:

\$2,000,000 General Aggregate                   "  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury and Advertising Injury  
\$1,000,000 Each Occurrence

The Commercial General Liability Insurance policy shall contain an endorsement naming the Benton County, its elected and appointed officials, employees and agents as Additional Insured and an endorsement that specifically states the Attorney's Commercial General Liability Insurance shall be primary, and not contributory, with any other insurance maintained by the County.

Commercial General Liability Insurance shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

Specific wording for Additional Insured shall read:

Benton County, its elected and appointed officials, employees and agents

c. Stop Gap Employer's Liability Insurance. Attorney shall provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

\$1,000,000 Each Accident  
\$1,000,000 Policy Limit for Disease  
\$1,000,000 Each Employee for Disease

d. Worker's Compensation Insurance. Attorney shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Attorney shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work.

All Liability coverages, except Professional Liability, shall be written on an Occurrence form. If coverage is Claims Made form, the Retroactive Date shall be prior to or coincident with the date of this contract, and the policy shall state that coverage is Claims Made, and state the Retroactive Date. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of the contract.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington and have a Best's rating of at least A-VII. All insurance other than Professional Liability and Workers' Compensation to be maintained by the Attorney shall specifically include Benton County, its elected and appointed officials, employees and agents as "Additional Insured". All insurance shall not be reduced or canceled without thirty (30) days written prior notice to the County. The Attorney's insurance coverage shall be primary insurance to any insurance policies or policies of self-insurance maintained by Benton County.

Sub-Attorneys. Attorney shall include all Sub-Attorneys as Additional Insureds under its policies or shall furnish separate certificates and endorsements for each Sub-Attorney. All coverages for subcontracts shall be subject to all of the requirements stated herein.

Certificates of Liability Insurance are to be provided to the following:

Eric Hsu  
Indigent Defense Coordinator  
Benton-Franklin Office of Public Defense

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

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

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

17. TERMINATION.

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

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

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

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

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve

Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

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

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County 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). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the IDC with written notice of such event within five (5) business days of Attorney being called up so that the IDC and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under

this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

24. CAPTIONS; TIME COMPUTATION.

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

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

selected and designated and the hearing shall be held within thirty (30) business days thereafter. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. NOTICES.

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

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

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

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

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

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

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

thereof are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

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

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

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

33. SUPERVISING ATTORNEY REQUIREMENT. Consistent with, and to implement and effectuate, the provisions of paragraph D on page one (1) of this Agreement, the following special provisions and requirements shall be applicable to this Agreement:

a. During the term of this Agreement and for purposes of this Agreement, Attorney shall be mentored and supervised by an experienced attorney (the "Supervising Attorney") designated by the IDC in his absolute discretion. Attorney understands and agrees that such mentoring and supervision shall be provided only by and through the Supervising Attorney, and Attorney shall not seek or obtain advice or guidance from any other attorney or person regarding how to perform the legal representation services required from Attorney under this Agreement except as may be otherwise previously approved by the Supervising Attorney in writing. Attorney understands and acknowledges that the restrictions imposed by the foregoing sentence are necessary and

intended to preclude the potential of Attorney consulting with other attorneys who may not possess sufficient knowledge and/or direct experience in District Court matters. Notwithstanding any time-lines and parameters established below, Supervising Attorney shall sit "second chair," and be available for consultation, during the entirety of Attorney's first two jury trials as well as Attorney's first bench trial if it occurs before any jury trials.

b. During the period July through September 2009:

(i) Attorney shall spend an average of 48 hours per month being directly supervised and mentored by the Supervising Attorney to include, without limitation, case process reviews, case staffing, and consultation.

(ii) At the IDC's written direction, Attorney shall observe dockets and trials conducted by other District Court defense attorneys that may include, without limitation, pre-trial dockets, sentencing dockets, arraignment dockets, and compliance dockets. Provided that if Attorney has questions about issues observed at such dockets, such questions shall be directed to Supervising Attorney and not such other attorneys as Attorney may observe.

(iii) Supervising Attorney shall attend, observe, and monitor Attorney's performance under this Agreement during Attorney's court dockets for purposes of providing Attorney with constructive critique, guidance, and recommendations regarding Attorney's performance for at least the first full month. Thereafter, Supervising Attorney shall attend at least one of Attorney's dockets each month.

c. During the period October through December, 2009:

(i) Attorney shall spend an average of 20 hours per month being directly supervised and mentored by the Supervising Attorney to include, without limitation, case process review, case staffing, and consultation.

(ii) Attorney shall periodically attend and observe the Supervising Attorney's court docket, and the Supervising Attorney shall periodically attend, observe, and monitor Attorney's performance under this Agreement during Attorney's court dockets for purposes of providing Attorney with constructive critique, guidance, and recommendations regarding Attorney's performance.

d. During the period January through March, 2010:

(i) Attorney shall continue to participate in being directly supervised and mentored by the Supervising Attorney on a level and

frequency to be determined and directed by the Supervising Attorney after recommendation to, and consultation with, the IDC.

(ii) Attorney shall continue to seek and obtain the Supervising Attorney's advice and guidance on an as-needed and/or as-requested basis.

e. During the term of this Agreement, the Supervising Attorney shall provide periodic written reports to the IDC which reports shall, without limitation, set forth the Supervising Attorney's assessment of Attorney's performance under this Agreement, the number of hours spent by the Supervising Attorney supervising and mentoring Attorney, and the method and manner in which the supervision and mentoring of Attorney occurred. Attorney fully recognizes, understands, and agrees that the Counties will be reviewing, considering, and relying on said periodic reports for purposes of the Counties assessing whether or not Attorney's performance has reached a sufficient and sustained level to warrant the continuation of this Agreement for its entire term.

f. During the supervision period, in other words through March, 2010, Attorney shall attend any mandatory meetings called by the IDC for purposes of conferring with Attorney and Supervising Attorney about Attorney's progress.

**(SIGNATURES APPEAR ON FOLLOWING PAGE)**

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

DATE: \_\_\_\_\_

BENTON COUNTY

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Approved as to form and content:

\_\_\_\_\_  
Eric Hsu  
Indigent Defense Coordinator

DATE: 6/26/09

ATTORNEY

Trinity J Orosco  
Trinity J Orosco

9.

**RESOLUTION**

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

IN THE MATTER OF COUNTY ROADS, RE: PLAT ROADS FOR RIVERS EDGE  
ESTATES, CE 1894 CRP,

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

BE IT RESOLVED that the road plans be and hereby are approved and that the Chairman is  
authorized to sign Sheet One of Fourteen for Rivers Edge Estates, CE 1894 CRP.

Dated this 6<sup>th</sup> day of July 2009.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Attest: \_\_\_\_\_  
Clerk of the Board

Constituting the Board of County  
Commissioners of Benton County,  
Washington

SWB:lss

r.

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 FUNDS RE: TRANSFER OF FUNDS WITHIN THE COUNTY ROAD FUND 0101-101

BE IT RESOLVED by the Board of Benton County Commissioners that funds be transferred between line items as defined in Exhibit A attached hereto.

Dated this 6th day of July 2009.

\_\_\_\_\_  
Chairman of the Board.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.

Attest: \_\_\_\_\_  
Clerk of the Board

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

SWB:LJM:dlh

Exhibit A  
Page 2 of 2  
July 6, 2009

To transfer \$1,800,000 from the Reimbursable Function 519-760-5200 (Intergovernmental Payments) to the Construction Function (Miscellaneous Contracts) as follows: \$500,000 to the 595-310-4900; \$800,000 to 595-330-4900; \$100,000 to 595-640-4900; \$100,000 to 595-710-4900; and \$300,000 to 595-730-4900.

There is no adverse affect on the Reimbursable Function of the Road Fund.

**BENTON COUNTY**  
2009 BUDGET

DEPARTMENT: ROAD  
FUND NAME: ROAD

DEPARTMENT NO.: 500  
FUND NO.: 0101-101

**TRANSFER FROM:**

**TRANSFER TO:**

ITEM NO	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
1	519-760	5200	Intergovernmental Payments	\$500,000.00	595-310	4900	Miscellaneous/Contract	\$500,000.00
2	519-760	5200	Intergovernmental Payments	\$800,000.00	595-330	4900	Miscellaneous/Contract	\$800,000.00
3	519-760	5200	Intergovernmental Payments	\$100,000.00	595-640	4900	Miscellaneous/Contract	\$100,000.00
4	519-760	5200	Intergovernmental Payments	\$100,000.00	595-710	4900	Miscellaneous/Contract	\$100,000.00
5	519-760	5200	Intergovernmental Payments	\$300,000.00	595-730	4900	Miscellaneous/Contract	\$300,000.00

\$1,800,000.00

\$1,800,000.00

Explanation: Items 1 - 5: Transfer funds from Intergovernmental Payments in the Reimbursable Function of the Road Fund Budget to the Construction Function under Miscellaneous/Contracts for the CE 1620 - Webber Canyon Road Project (Dennis Road to Kiona).

Prepared by:   
Larry J. Moser, Financial Administrator

Date: July 1, 2009

Approved:   
Denied:

Date: July 6, 2009

Chairman of the Board

Chairman Pro-Tem

Member

5

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>July 6, 2009</u> Subject: <u>Authorization to Rent</u> <u>Vactor Unit for Drywell Cleanout</u> Prepared by: <u>ljm</u> Reviewed by: <u>Steve</u>	Execute Agreement _____ Pass Resolution <u>XX</u> _____ Pass Ordinance _____ Pass Motion _____ Other _____	Consent Agenda _____ Public Hearing _____ 1st Discussion _____ 2nd Discussion _____ Exec Session _____

**BACKGROUND INFORMATION**

There are more than 200 drywells and catch basins in Benton County. The majority of them have not been cleaned of silt and other debris since they were constructed, thereby, causing their original capacity to be greatly diminished. In order to address this concern, the Public Works Department would like to rent a Vactor Unit to begin cleaning drywells and catch basins located in the East County area during the Month of July or August 2009.

Benton County has signed an Intergovernmental Cooperative Purchasing Agreement with the State of Washington, Department of General Administration, Office of State Procurement that allows the County to purchase and/or rent equipment listed on the Washington State Contracts available to Cooperative Members. A Vactor Unit that will meet our needs is listed on State Contract No. 01508 and the monthly rental is \$9,890.00 plus Washington State Sales Tax.

**SUMMARY**

The Public Works Department is requesting authorization from the Board of County Commissioners to rent a Vactor Unit listed on Washington State Contract No. 01508 for one month to clean out County owed drywells and catch basins.

**RECOMMENDATION**

That the Board of County Commissioners authorize the Public Works Department to rent a Vactor Unit listed on Washington State Contract No. 01508 for one month at a cost of \$9,890.00 plus Washington State Sales Tax.

**FISCAL IMPACT**

Funds for the rental of this unit are available in the 2009 Road Maintenance Budget.

**MOTION**

Authorize the Public Works Manager to rent a Vactor Unit for one month.

**RESOLUTION**

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

IN THE MATTER OF COUNTY ROADS, RE: RENTAL OF VACTOR UNIT

WHEREAS, the Public Works Department has requested authorization to rent one Vactor Unit to begin cleaning drywells and catch basins located in the East County area during the Month of July or August 2009 depending upon the availability of the equipment; and

WHEREAS, the monthly rental of said unit is \$9,890.00 plus State Sales Tax through Owen Equipment Company as listed on Washington State Contract No. 01508; and

WHEREAS, the Public Works Manager recommends the use of a Vactor Unit to clean drywells and catch basins; NOW, THEREFORE,

BE IT RESOLVED, that Board of Benton County Commissioners does hereby authorize the Public Works Department to proceed with the rental of a Vactor Unit through Owen Equipment Company as listed on Washington State Contract No. 01508 for the Month of July or August 2009; and

BE IT FURTHER RESOLVED, that the Public Works Manager is hereby authorized to proceed with the rental of said unit.

Dated this 6<sup>th</sup> day of July, 2009

\_\_\_\_\_  
Chairman of the Board.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.

Attest: \_\_\_\_\_  
Clerk of the Board

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

SWB:ljm

**RESOLUTION**

+

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY,  
WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: LOCAL AGENCY CONSULTANT  
AGREEMENT - ROZA AREA ROAD AND INTERSECTION SAFETY  
IMPROVEMENTS STUDY

WHEREAS, a Local Agency Consultant Agreement with HDR Engineering, Inc., Pasco,  
Washington for Roza Area Road and Intersection Safety Improvements Study, has been  
prepared, and

WHEREAS, said agreement has been reviewed by Prosecuting Attorney staff; and

WHEREAS, the Public Works Manager recommends approval of the Consultant  
Agreement for Roza Area Road and Intersection Safety Improvements Study; NOW,  
THEREFORE,

BE IT RESOLVED that the Consultant Agreement for Roza Area Road and Intersection  
Safety Improvements Study is hereby approved, and the Chairman of the Board of County  
Commissioners is authorized to sign the Agreement.

Dated this 6th day of July, 2009.

\_\_\_\_\_  
Chairman.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.

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

Attest: \_\_\_\_\_  
Clerk of the Board

SWB:NWC:slc

<b>Local Agency Standard Consultant Agreement</b>		Consultant/Address/Telephone HDR Engineering, Inc. 2805 St. Andrews Loop, Suite A Pasco, WA 99301	
<input checked="" type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement Agreement Number		509 546-2040	
N/A		Project Title And Work Description	
Federal Aid Number		Roza Area Road and Intersection Safety Improvements Study- Assemble data and study causes of accidents in the Roza Area, and develop recommendations and/or strategies to reduce the frequency and/or severity.	
N/A			
Agreement Type (Choose one)		DBE Participation	
<input type="checkbox"/> <b>Lump Sum</b> Lump Sum Amount \$ _____ <input checked="" type="checkbox"/> <b>Cost Plus Fixed Fee</b> Overhead Progress Payment Rate _____ % Overhead Cost Method <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input checked="" type="checkbox"/> Fixed Overhead Rate <u>158.15</u> % Fixed Fee \$ <u>8,466.00</u>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No _____ %	
<input type="checkbox"/> <b>Specific Rates Of Pay</b> <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate <input type="checkbox"/> <b>Cost Per Unit of Work</b>		Federal ID Number or Social Security Number 47-0680568	
		Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Completion Date November 1, 2009	
		Total Amount Authorized \$ <u>86,660.00</u>	
		Management Reserve Fund \$ <u>4,340.00</u>	
		Maximum Amount Payable \$ <u>91,000.00</u>	

**Index of Exhibits (Check all that apply):**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Exhibit A-1 Scope of Work         | <input type="checkbox"/> Exhibit G-2 Fee-Sub Specific Rates                         |
| <input type="checkbox"/> Exhibit A-2 Task Order Agreement             | <input type="checkbox"/> Exhibit G-3 Sub Overhead Cost                              |
| <input type="checkbox"/> Exhibit B-1 DBE Utilization Certification    | <input checked="" type="checkbox"/> Exhibit H Title VI Assurances                   |
| <input type="checkbox"/> Exhibit C Electronic Exchange of Data        | <input checked="" type="checkbox"/> Exhibit I Payment Upon Termination of Agreement |
| <input type="checkbox"/> Exhibit D-1 Payment - Lump Sum               | <input type="checkbox"/> Exhibit J Alleged Consultant Design Error Procedures       |
| <input checked="" type="checkbox"/> Exhibit D-2 Payment - Cost Plus   | <input type="checkbox"/> Exhibit K Consultant Claim Procedures                      |
| <input type="checkbox"/> Exhibit D-3 Payment - Hourly Rate            | <input type="checkbox"/> Exhibit L Liability Insurance Increase                     |
| <input type="checkbox"/> Exhibit D-4 Payment - Provisional            | <input checked="" type="checkbox"/> Exhibit M-1a Consultant Certification           |
| <input checked="" type="checkbox"/> Exhibit E-1 Fee - Lump/Fixed/Unit | <input checked="" type="checkbox"/> Exhibit M-1b Agency Official Certification      |
| <input type="checkbox"/> Exhibit E-2 Fee - Specific Rates             | <input checked="" type="checkbox"/> Exhibit M-2 Certification - Primary             |
| <input checked="" type="checkbox"/> Exhibit F Overhead Cost           | <input checked="" type="checkbox"/> Exhibit M-3 Lobbying Certification              |
| <input type="checkbox"/> Exhibit G Subcontracted Work                 | <input checked="" type="checkbox"/> Exhibit M-4 Pricing Data Certification          |
| <input type="checkbox"/> Exhibit G-1 Subconsultant Fee                | <input type="checkbox"/> App. 31.910 Supplemental Signature Page                    |

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
 between the Local Agency of Benton County, Washington, hereinafter called the "AGENCY",  
 and the above organization hereinafter called the "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

**WHEREAS**, the AGENCY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

**WHEREAS**, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting services to the AGENCY,

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

### **I General Description of Work**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

### **II Scope of Work**

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

### **III General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress and presentation meetings with the AGENCY and/or such Federal, State, Community, City or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the AGENCY is required to extend the established completion time.

#### **V Payment Provisions**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

#### **VI Sub-Contracting**

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

#### **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a

third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

### **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

### **IX Termination of Agreement**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT as shown in Exhibit "T" for the type of AGREEMENT used.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

### **X Changes of Work**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

### **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

### **XII Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in the county in which the AGENCY is located.

### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the AGENCY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the PROJECT. Subject to the processing of a new sole source, or an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

#### Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the AGENCY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT'S professional liability to the AGENCY shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The AGENCY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the AGENCY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment", hereafter referred to as "CLAIM", under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

#### **XVI Federal and State Review**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

#### **XVII Certification of the Consultant and the Agency**

Attached hereto as Exhibit "M-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

#### **XVIII Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### **XIX Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

By  By \_\_\_\_\_

Consultant Roy Cross- HDR Engineering, Inc. Agency Benton County

# EXHIBIT A-1 SCOPE OF WORK

## ROZA AREA ROAD AND INTERSECTION SAFETY IMPROVEMENTS STUDY

### PROJECT DESCRIPTION

The Benton County roads lying within the Study area, hereinafter referred to as Roza Area which is bounded on the west by the County Line Road, on the east by the District Line Road, on the south I-82 or the Yakima River and on the north by Snipes Road, continue to experience what is perceived by residents of this area to be a disproportionate number of traffic accidents, some with fatal results. The purpose of this project is to study causes of the accidents within the Roza Area by collecting and assembling information from the County, Public and others; reviewing selected intersections or road sections for possible safety improvements; evaluating the information; and developing both technical and non-technical traffic safety recommendations or strategies based upon the findings directed toward the goal of reducing the frequency and/or severity of traffic accidents within this area. The following Scope of Work describes the tasks the Consultant will provide in working to meet this traffic safety improvement goal.

### ASSUMPTIONS

Since all aspects of the project are not known, the Scope of Work and associated fee for the engineering services to be provided is based upon a number of assumptions. These assumptions are as follows:

- Benton County will provide upon request by the Consultant road inventory and traffic accident data for the Roza Area. A majority of this data is available in the County's data base program *Mobility* for the Roza Area but may be supplemented with other County provided information. The Consultant will confirm the data for selected intersections or road sections only.
- Benton County will provide HDR access to or an electronic copy of the County's most recent aerial images for the study area.
- Traffic data currently available from the County will be utilized. The Scope of Work does not include the making traffic counts or performing topographic surveys.
- The project work is study and conceptual only. No designs for recommended improvements will be provided by the Consultant without a negotiated amendment.
- The Roza Area is too large to perform an in-depth study and evaluation for all road sections or intersections. For scoping purposes on-site field evaluations is limited to no more than twenty (20) intersections and ten (10) total miles of county road in sections no less than ½ mile in length, and the evaluation of

historical accident/collision reports shall not exceed one-hundred (100) and be limited to those reported within the last ten (10) years.

- Public Meeting notices will be prepared by HDR but will be distributed by the County.
- Study information will be provided for posting by the County on the County's website.

## **DUTIES AND RESPONSIBILITIES OF CONSULTANT**

CONSULTANT shall assemble available data and provide Public Involvement, Study, and Evaluation services to prepare recommendations and strategies with the goal to improve traffic safety in the Roza Area, the findings to be presented in a final written Report.

The Report shall utilize the following documents or publications for comparison or evaluation purposes:

- Benton County Design Standards For the Construction of Roads and Bridges
- Washington State Department of Transportation (WSDOT) Local Agency Guidelines and the local agency standards contained therein.
- American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets
- WSDOT Design Manual
- Manual of Uniform Traffic Control Devices (MUTCD)
- AASHTO Roadside Design Guide

The tasks included in this Scope of Work are:

- Task No. 1- Assemble Data
- Task No. 2- Public Involvement and Stakeholder Meetings
- Task No. 3- Study & Evaluation
- Task No. 4- Prepare Report of Findings
- Task No. 5- Public Buy-In
- (Optional) Task No. 6- Grant Assistance

### **Task No. 1- Assemble Data**

The first task will be conduct a kick-off meeting with County staff to determine extent and location of data, and to assemble available inventory data for the Roza Area. *Mobility*, an inventory system developed by the County Road Administration Board for counties, will be utilized to obtain basic inventory information such as road and shoulder widths, road lengths, functional classification, average daily traffic (ADT), the type of traffic, and traffic accident/collision information. This data will be supplemented with additional information available from the County which may not be available in *Mobility* to include right of ways widths, additional accident/collision reports and previously calculated accident frequency rates. The assembly of data will also include obtaining copies of previous County traffic safety related studies or information within the area. For public meeting informational purposes an aerial base map which shows road classifications, ADT's, the general location and type of recorded accidents, accident frequency rates at suspected higher

accident locations, and the type and location of intersection control will be created. The base map will also show the general location of traffic generators (base of operation for farming and trucking companies, wineries and etc.) provided by the County.

## **Task No. 2- Public Involvement and Stakeholder Meetings**

### **2.1 Gather Project Insight**

To gain additional insight and to determine additional areas or issues of focus (Hot Spots) HDR will conduct one (1) public meeting. This public meeting will be in an open house type format attended by the HDR Team. Copies of the aerial base map will be available for viewing by the public during this meeting however, the primary purpose of the meeting being for the Team to listen to those most familiar- the area road users- on the traffic safety issues, locations of concern, and suggested solutions. In addition to the public meetings the HDR Team will conduct a group interview with each of the following groups: County Roza Area road maintenance personnel, Roza Area school bus drivers, and law enforcement representatives assigned to patrol the Roza Area. These public employees are on the frontline, may have firsthand knowledge of near misses, may have opinions on what should be done, and therefore represent an untapped resource. HDR will also contact by telephone and interview up to twenty (20) significant area road users identified by the County.

The input gained from the meetings, telephone interviews and the assembled data will be used to determine Hot Spots for further study.

### **2.2- Citizen Advisory Committee**

HDR will work with a County appointed Citizen Advisory Committee (CAC). Four (4) scheduled meetings are planned with the CAC, one near the beginning of the study process to explain the study and evaluation process HDR plans to follow and to discuss issues of concern, one to obtain input on suggested non-technical solutions, one to review initial findings, and the final planned meeting near the completion with the purpose being to achieve CAC acceptance. Each scheduled CAC meeting will be preceded by a meeting with County Staff.

The CAC will serve as a sounding board and discussion group during the study and evaluation phase. Also, the CAC in conjunction with the County staff will be utilized to confirm the Hot Spots, and suggest area sensitive criteria for use by HDR in the evaluation process. The CAC will review the results of the evaluation process and HDR's recommendations before formal submission of the findings to the County and the Public. HDR will work to establish trust and a mutual understanding of the issues, costs, and possible negative outcomes if some CAC and Public solutions are implemented.

### **Task No. 3- Study & Evaluation**

The study and evaluation is an evolving process as insight of the issues and Hot Spots is gained by the Team. The technical evaluation will include a field review of the identified study area Hot Spots and will include the collection or confirmation the following for these spots or road sections:

- o Assembled inventory data will be field verified
- o Horizontal and vertical alignments reviewed
- o Approximate road cross and side slopes determined.
- o Possible sight obstructions noted
- o Potential roadside obstacles identified
- o Condition of road and signs or absence thereof noted
- o Visual review of traffic accident report(s) if description is available
- o Photo documentation of areas of concern noted by team members.

Verified and newly collected data will be entered into an excel spreadsheet database. The evaluation will compare the existing road features and geometrics to current recognized design and safety standards for the functional class of the roadway. The evaluation will also include the opinion of the reviewers of potential factors that may have contributed to each traffic accident and not necessarily reported. County provided GIS data and aerial photography will be used to prepare visual exhibits for suggested improvements and, combined with the inventory database, to arrive at rough order of magnitude costs for these improvements for each Hot Spot studied.

Non- technical solutions will also be determined following the completion of Task 2.1 and the beginning of Task 2.2 above. Non-technical solutions will be presented by HDR to the CAC for initial evaluation and a determination on what solutions are felt worth pursuing further. The suggestions will include non-technical solutions considered by other agencies. Non-technical solutions can include focused public education, public outreach and presentations programs, development of mailers and/or brochures, informational signing, exhibits at public events, establishment of on-going County Traffic Safety Committee, increased enforcement, and other suggested solutions. The cost for most non-technical solutions are on-going but HDR will provide a summary of the estimated annual cost to implement the solutions felt worthy by the CAC.

### **Task No. 4- Prepare Report of Findings**

The study and evaluation process will provide a list of possible improvement projects with technical solutions. The lists of projects will be summarized in three (3) categories based upon estimated cost (low, medium, and high) and include an opinion on the ability or ease of implementation. HDR prepare a Draft Report of the initial findings of the study & evaluation process for approval by both the CAC and the County. The Draft Report will include a brief description of each project studied with photo, the list of potential projects, the estimated cost to implement each project on the list, and will identify potential funding sources. The Draft Report will also include a discussion of the non-technical solutions considered by HDR, the County, and the CAC with recommendations, examples for publications, and the estimated cost for implementation.

The Draft Report will be presented to the Board of County Commissioners by HDR before Task No. 5, Public Buy-In. Modifications of significance requested by the Board will be made and presented to the CAC before presentation of the findings and Final Report to the Public. The presentation of the Draft Report is tentatively scheduled to occur on Monday, October 5<sup>th</sup>, 2009.

**Task No. 5- Public Buy-In**

During the entire study process HDR will strive to achieve an understanding and buy-in of the findings by the Public, the CAC and the County. The findings, supported by both the CAC and the County, will be presented to the Public in an open public forum. HDR will ask a representative of the CAC to lead the discussions and presentation. The goal of the study or findings contained in the Final Report is to provide a compilation of available information of record and from those most affected, the road users, as evaluated by traffic safety professionals, the County, and concerned citizens but, more importantly, to provide a guide or framework for the County to follow to improve traffic safety within the Roza Area.

**(Optional) Task No. 6- Grant Assistance**

Using available resources and the knowledge of the HDR Team, HDR will explore various sources or programs for funding traffic safety improvement projects, identify those the County may be successful in applying for, and assist the County in the completion of the application(s).

**DELIVERABLES**

The following will be prepared during the study process and provided to the County at the conclusion:

- Aerial Exhibit of Study Area prepared for the Public Meetings
- Public Meeting notices
- Public information for posting on County's website
- Minutes of CAC Meetings
- Excel spreadsheet of inventory and accident data assembled, and confirmed for Hot Spots
- Six (6) copies of the Draft and Final Report. (Final Report to be submitted by Oct 30<sup>th</sup>.)

## Exhibit D-2 Payment (Cost Plus a Fixed Fee)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A. **Actual Costs:** Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct non-salary costs, and fixed fee.

1. **Direct Salary Costs:** The Direct Salary Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.

2. **Overhead Costs:** Overhead Costs are those costs other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:

- a. **Fixed Rate:** If this method is indicated in the heading of the AGREEMENT the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
- b. **Actual Cost:** If this method is indicated in the heading of the AGREEMENT the AGENCY agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANTS cost estimate and the overhead computation is shown in Exhibit "E" attached hereto and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

Failure to supply this information by either the prime CONSULTANT or any of their sub-consultants shall cause the AGENCY to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The AGENCY, STATE and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and sub-consultant costs.
  - a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Cost
  - b. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
  - c. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
  - d. All above charges must be necessary for the services provided under this AGREEMENT.
4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional Fixed Fee, which could be authorized from the Management Reserve Fund. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
5. Management Reserve Fund: The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed

the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the calculated overhead and fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct Salary, Direct Non-Salary, and allowable Overhead Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed salary costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit E-2**  
**Consultant Fee Determination - Summary Sheet**  
**HDR Engineering, Inc.**

Project: Roza Area Road and Intersection Safety Improvements Study

**Direct Salary Cost (DSC)**

<u>Classification</u>	<u>Manhours</u>		<u>Rate</u>	<u>Cost</u>
Project Manager/Sr. Trans. Engr.	76	X	\$ 56.65	\$ 4,305.40
Traffic Safety Advisor	74	X	\$ 59.25	\$ 4,384.50
Traffic Study Lead	68	X	\$ 65.00	\$ 4,420.00
Traffic Engineer	226	X	\$ 38.80	\$ 8,768.80
Graphic Designer	60	X	\$ 26.45	\$ 1,587.00
CAD Tech	52	X	\$ 22.50	\$ 1,170.00
Public Involvement Lead	21	X	\$ 63.02	\$ 1,323.42
Public Involvement Support	30	X	\$ 24.50	\$ 735.00
Clerical	15	X	\$ 15.30	\$ 229.50
Controller	15	X	\$ 25.69	\$ 385.35
	637			

**Total DSC**

\$ 27,308.97

**Overhead (OH Cost –Including Salary Additives):**

OH Rate x DSC of 158.15% X \$ 27,308.97 \$ 43,189.14

**Fixed Fee (FF):**

FF Rate x DSC of 31% X \$ 27,308.97 \$ 8,465.78

**Reimbursables**

Mileage, per mile 7040 X \$ 0.550 \$ 3,872.00

Travel- Air Fare, per trip 4 X \$ ,85.00 \$ 340.00

Meals & Lodging, per trip 64 X \$ 12.00 \$ 768.00

Telephone, Lump Sum 637 X \$ 3.70 \$ 2,356.90

Copies (Lump Sum) \$ 360.00

Mail/Courier (Lump Sum)

**Total Reimbursables**

\$ 7,696.90

**TOTAL**

\$ 86,660.79

Prepared By: Michael Murray

Date: 6/22/2009

**Exhibit F**  
Breakdown of Overhead Cost  
HDR Engineering  
Year Ending December 27, 2008

Account Title	\$ Beginning Total	% of Direct Labor
<b>Direct Labor</b>	\$ 242,719,838	100%
<b>Overhead Expenses</b>		
<b>Fringe Benefits:</b>		
Payroll Taxes	\$ 31,475,278	12.97%
Group Insurance	\$ 27,406,219	11.29%
Holiday/Vacation/Sick Leave	\$ 45,364,656	18.69%
Retirement Benefits	\$ 14,909,056	6.14%
<b>Total Fringe Benefits</b>	\$ 119,155,209	<b>49.09%</b>
<b>General Overhead</b>		
Indirect Labor	\$ 141,477,109	58.29%
Travel	\$ 7,757,740	3.20%
Employees' expenses	\$ 9,341,402	3.85%
Supplies	\$ 95,407	0.04%
Building Rental & Expenses	\$ 41,292,550	17.01%
Autos	\$ 964,245	0.40%
Taxes- General	\$ 2,591,572	1.07%
Depreciation & Amortization	\$ 4,969,737	2.05%
Postage	\$ 927,801	0.38%
Telephone	\$ 4,051,531	1.67%
Subscriptions	\$ 248,408	0.10%
Insurance & Self Insurance	\$ 7,880,614	3.25%
Office Expense	\$ 3,526,053	1.45%
Professional Services	\$ 1,056,187	0.44%
Printing	\$ 1,107,918	0.46%
Temporary Help	\$ 652,926	0.27%
Marketing	\$ 3,957,009	1.63%
Allocated Expense	\$ 10,681,919	4.40%
Computer Expense	\$ 14,889,426	6.13%
Administrative Costs	\$ 7,712,544	3.18%
Other	\$ (1,430,796)	-0.59%
State Income Tax	\$ 953,092	0.39%
<b>Total General Overhead</b>	\$ 264,704,394	<b>109.06%</b>
<b>Overhead Rate (General + Fringe)</b>	\$ 383,859,603	<b>158.15%</b>

Source of Information:  
Independent Auditor's Report  
Deloitte Touche LLP  
Dated 5/01/09

## Exhibit H Title VI Assurances

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

**Exhibit I**  
**Payment Upon Termination of Agreement**  
**By the Agency Other Than for**  
**Fault of the Consultant**

**(Refer to Agreement, Section IX)**

**Lump Sum Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Cost Plus Fixed Fee Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

**Cost Per Unit of Work Contracts**

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.

**Exhibit M-1(a)**  
**Certification Of Consultant**

Project No. \_\_\_\_\_  
Local Agency Benton Co.

I hereby certify that I am Roy Cross and duly authorized representative of the firm of HDR Engineering, Inc. whose address is 2805 St. Andrews Loop, Suite \_\_\_\_\_ and that neither I nor the above firm I here represent has:

- (a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- (b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- (c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

6/22/09  
Date

  
Signature

**Exhibit M-1(b)**  
**Certification Of Agency Official**

I hereby certify that I am the AGENCY Official of the Local Agency of Benton County, Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- (a) Employ or retain, or agree to employ to retain, any firm or person; or
- (b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be available to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Exhibit M-2**  
**Certification Regarding Debarment, Suspension, and Other Responsibility**  
**Matters-Primary Covered Transactions**

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I) (B). of this certification; and
  - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm): HDR Engineering, Inc.

6/22/09  
(Date)

  
(Signature) President or Authorized Official of Consultant

**Exhibit M-3**  
**Certification Regarding The Restrictions**  
**of The use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

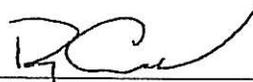
1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

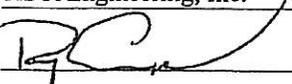
Consultant (Firm): HDR Engineering, Inc.

6/22/09  
(Date)

  
(Signature) President or Authorized Official of Consultant

**Exhibit M-4**  
**Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of Roza Area Road and Intersection Safety Study \* are accurate, complete, and current as of June 22, 2009 \*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm HDR Engineering, Inc.  
Name  Roy Cross  
Title Vice President & Managing Principal  
Date of Execution\*\*\* June 22, 2009

- \* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).
- \*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.
- \*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

u.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF A VANCELL FROM BOB BARKER COMPANY INC. FOR THE BENTON COUNTY JAIL FACILITY, CURRENT EXPENSE FUND NO. 0000-101, SHERIFF CUSTODY DEPARTMENT 120

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

WHEREAS, the Sheriff's Office reuses old work crew vans as transport vehicles when a new work crew van is purchased; and

WHEREAS, certain modifications must be made to the work crew van before it can be used as a transport vehicle; and

WHEREAS, one of the modifications is installing a Vancell; and

WHEREAS, the Benton County Sheriff's Office consulted the vendors list and found Bob Barker Company Inc. as the only company on the vendor list that offers a removable/reusable Vancell; and

WHEREAS, Bob Barker Company Inc. provided a quote in the amount of \$9,496.44 including WSST and shipping, for one Vancell; and

WHEREAS, the Jail Captain has reviewed the quote for completeness and recommends purchasing the Vancell from Bob Barker Company Inc.; **NOW THEREFORE,**

**BE IT RESOLVED,** by the Board of Benton County Commissioners, Benton County Washington, the Board concurs with the Jail Captain's recommendation and hereby authorizes the purchase of the Vancell from Bob Barker Company Inc. in the amount of \$9,496.44 including WSST with the total amount payable not to exceed \$9,700.00 including WSST.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

Orig: Sheriff's Office  
cc: Auditor, Al Thompson,

Prepared by: K Mercer

AGENDA ITEM =====	TYPE OF ACTION NEEDED =====	
Meeting Date: July 6, 2009 Subject: Purchase 1 Vancell Prepared By: Keith Mercer Reviewed By: Linda and Al	Execute Contract Pass Resolution   xxx Pass Ordinance Pass Motion Other	Consent Agenda   __X Public Hearing 1st Discussion 2nd Discussion Other

**SUMMARY & BACKGROUND INFORMATION**

The Sheriff's Office reuses old work crew vans as transport vehicles when a new work crew vehicle is purchased. The work crew van must be fitted with an interior cage before it can be used to transport prisoners. In the past, the Sheriff's Office would purchase a custom built-in cage from DOC. However, costs have increased tremendously for these custom cages, which can only be used once (ranging between \$5,000 - \$6000). After researching different options, a removable/reusable Vancell cage was determined to be a better option than purchasing custom built-in cages. This Vancell fits all of our current work crew vans and will fit any Ford, Chevy, Dodge, or GMC van.

**FISCAL IMPACT**

\$9,496.44 to be paid out of 120

**MOTION**

V.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN  
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF CUSTODY,  
DEPARTMENT NUMBER 120.

BE IT RESOLVED, by the Board of Benton County Commissioners, that 2009  
funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Sheriff Custody Dept Nbr: 120  
 Fund Name: Current Expense Fund Nbr: 0000-101

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.200	4103	Professional Services	\$1,720	594.230	6401	Capital Outlay	\$1,720
TOTAL			\$1,720	TOTAL			\$1,720

Explanation:

Transferring money from Professional Services to Capital Outlay to pay for the radio installation and decals for the new work crew van.

Prepared by: Keith Mercer Date: 26-Jun-2009

Approved  Denied  Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

W.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF CUSTODY, DEPARTMENT NUMBER 120.

BE IT RESOLVED, by the Board of Benton County Commissioners, that 2009 funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_  
Clerk of the Board

**BENTON COUNTY LINE ITEM TRANSFER**

Dept Name: Sheriff Custody Dept Nbr: 120  
 Fund Name: Current Expense Fund Nbr: 0000-101

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
523.200	2105	Uniforms & Accessories	\$9,500	594.230	6401	Capital Outlay - Hardware	\$9,500
TOTAL			\$9,500	TOTAL			\$9,500

Explanation:

Transferring money from Uniforms & Accessories to Capital Outlay in order to purchase one Vancell insert. The Vancell is reusable and can be put into any work crew van.

Prepared by: Keith Mercer Date: 30-Jun-2009

Approved  Denied  Date: \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member



# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENNEWICK, WA; RICHLAND, WA, AND COUNTY OF BENTON, WA FOR THE 2009 BYRNE JUSTICE ASSISTANCE GRANT (JAG) APPLICATION PACKET, CURRENT EXPENSE FUND NO. 0000-101, SHERIFF PATROL DEPARTMENT 121.

WHEREAS, the City of Kennewick is applying for the 2009 Byrne Justice Assistance Grant (JAG); and

WHEREAS, the 2009 JAG program award is \$58,881 to be shared between Benton County, the City of Kennewick, and the City of Richland based on the formula provided by the Bureau of Justice Assistance; and

WHEREAS, Benton County's portion of the award is \$8,832, which is to be used to procure a laptop computer and five (5) tasers; and

WHEREAS, an Interlocal Agreement between the City of Kennewick, City of Richland, and Benton County is part of the 2009 JAG application packet; and

WHEREAS, the Benton County Sheriff's Office wishes to enter into an Interlocal Agreement with the City of Kennewick, and the City of Richland for the 2009 Byrne Justice Assistance Grant (JAG) Program Award; **NOW, THEREFORE,**

**BE IT RESOLVED** by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby authorizes the Chairman to sign the attached Interlocal Agreement for the 2009 Byrne Justice Assistance Grant (JAG) application packet; and

**BE IF FURTHER RESOLVED** Benton County's portion of the 2009 JAG award is \$8,832; and

**BE IF FURTHER RESOLVED** that the term of the attached agreement commences June 22, 2009 and expires on December 31, 2012.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

Orig: Sheriff's Office  
cc: Auditor, City of Kennewick

Prepared by: K Mercer

**THE STATE OF WASHINGTON  
COUNTY OF BENTON**

**KNOW ALL BY THESE PRESENT**

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF KENNEWICK, WA; RICHLAND, WA AND COUNTY  
OF BENTON, WA**

**2009 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD**

This agreement is made and entered into this 22<sup>nd</sup> of June 2009, by and between The County of Benton, a political subdivision of the State of Washington, acting by and through its governing body, the Benton County Commissioners (hereinafter referred to as COUNTY) and the City of Kennewick, a municipal corporation, acting by and through its governing body, the Kennewick City Council (hereinafter referred to as KENNEWICK), and the City of Richland, a municipal corporation, acting by and through its governing body, the Richland City Council (hereinafter referred to as RICHLAND), all three of Benton County, State of Washington, witnesseth:

**WHEREAS**, this agreement is made under the authority of RCW 39.34 and,

**WHEREAS**, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and,

**WHEREAS**, each governing body find that the performance of this agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and,

**WHEREAS**, the total award to KENNEWICK, RICHLAND and COUNTY is \$58,881, which will be shared between KENNEWICK, RICHLAND and COUNTY based on the formula provided by BJA (Bureau of Justice Assistance) which is

based on the Uniform Crime Reports for each agency, as they are certified as disparate, therefore requiring one application and award to be shared between all three jurisdictions; and,

**WHEREAS**, KENNEWICK, RICHLAND and COUNTY believe it to be in their best interests to reallocate the JAG funds.

**NOW THEREFORE**, the KENNEWICK, RICHLAND and COUNTY agree as follows:

**Section 1.**

KENNEWICK is the fiscal agent for this grant since only one jurisdiction can make application for the funds.

KENNEWICK agrees to pay COUNTY a total of \$8,832 of JAG funds.

KENNEWICK agrees to pay RICHLAND a total of \$14,720 of JAG funds.

**Section 2.**

COUNTY agrees to use \$8,832 for a laptop computer and 5 tasers.

**Section 3.**

KENNEWICK agrees to use \$35,329 for crime mapping software, digital cameras and digital recorders.

**Section 4.**

RICHLAND agrees to use \$14,720 for pistol and rifle magazines, digital cameras, body wire transmitters, telephoto lens and evidence trunk vault.

**Section 5.**

COUNTY and RICHLAND agree to submit timely quarterly reports to KENNEWICK, the grantee/fiscal agency by the fifth calendar day at the end of each quarter (January 5, April 5, July 5 and October 5), consistent with, and for the purpose of compliance with the reporting requirements for the JAG program.

**Section 6.**

Nothing in the performance of this agreement shall impose any liability for claims against COUNTY or RICHLAND.

**Section 7.**

Nothing in the performance of this agreement shall impose any liability against KENNEWICK.

**Section 8.**

Each party to this agreement shall be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

**Section 9.**

The parties to this agreement do not intend for any third party to obtain any right by virtue of this agreement.

**Section 10.**

By entering into this agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this agreement shall not create any rights in any party not a signatory hereto.

**Section 11.**

The term of this Agreement shall be through December 31, 2012.

**Section 12.**

By signing below, the signor certified that he or she has the authority to sign this Agreement on behalf of the party, and the party agrees to the terms of this Agreement.

**Section 13.**

Each party 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:

Benton County: Sheriff Larry Taylor or his successor  
City of Kennewick: Chief Ken Hohenberg  
City of Richland: Chief Tony Corsi

**Section 14.**

The parties agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understanding not incorporated in this Agreement are specifically excluded.

**City of Kennewick, Washington**

**County of Benton, Washington**

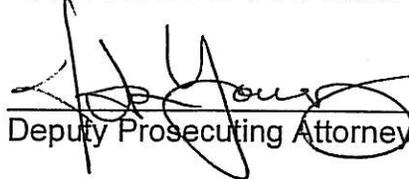
\_\_\_\_\_  
THOMAS C. MOAK, Mayor

\_\_\_\_\_  
Chairman of Benton County  
Commission

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
VALERIE J. LOFFLER, City Clerk

  
\_\_\_\_\_  
Deputy Prosecuting Attorney

APPROVED AS TO FORM:  
Contract Authorization

\_\_\_\_\_  
LISA BEATON, City Attorney

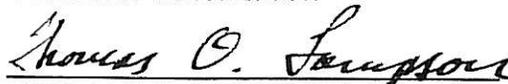
**City of Richland, Washington**

  
\_\_\_\_\_  
CYNTHIA D. JOHNSON, City Manager

ATTEST:

  
\_\_\_\_\_  
DEBRA C. BARHAM, Chief Deputy City Clerk

APPROVED AS TO FORM:  
Contract Authorization

  
\_\_\_\_\_  
THOMAS O. LAMPSON, City Attorney

\*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney(s).

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 06 Jul 2009 Subject: Ecology Contract Memo Date: 01 Jul 2009 Prepared By: AJF Reviewed By:	Execute Contract X Pass Resolution X Pass Ordinance Pass Motion Other	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other

### SUMMARY & BACKGROUND

This is the periodic update of the County's contract with Washington Department of Ecology related to redevelopment of the Hanford Site, development of nuclear-related industries in the Tri-City area, and public awareness activities related to Hanford Site issues and developments. Each year the contract is amended because the dollars received by the County can vary.

Generally, this has been a semi-annual exercise, but Ecology wants to move to a biennial amendment cycle. So, instead of doing this twice each year we will do it once every two years, at least for now. This amendment will run July 2009 through June 2011.

The amendment has been approved to form by the Prosecutor.

The attached letter from Ecology gives a little more detail.

### FISCAL IMPACT

The County will *receive* \$136,720 over the biennium from Ecology under this contract amendment.

# # #

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF WASHINGTON DEPARTMENT OF ECOLOGY  
CONTRACT #C9300237 - AMENDMENT #22

WHEREAS, Benton County continues to pursue industrial redevelopment and diversification of the Hanford Site, and the development of nuclear-related industries in the region; and,

WHEREAS, the Washington Department of Ecology provides funding for such activities to Benton County through Contract #C9300237; and,

WHEREAS, Washington Department of Ecology has provided Amendment #22 to the Contract to Benton County for approval; **NOW THEREFORE,**

**BE IT RESOLVED,** that the Board of Benton County Commissioners hereby accepts and terms of Amendment #22 and authorizes signature of said document.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

Constituting the Board of Commissioners  
of Benton County, Washington.

Attest.....  
Clerk of the Board

orig: BOCC file  
cc: AJF, LSK, Treasurer, Auditor, Prosecutor (Ozuna)

Prepared by: A.J. Fyall

AMENDMENT NO. 22 TO ECOLOGY CONTRACT NO. C9300237

PURPOSE: To amend that contract between the Department of Ecology, hereinafter referred to as "Department" and The Benton County Board of Commissioners, hereinafter referred to as "Contractor".

IT IS MUTUALLY AGREED that the contract is amended as follows:

The completion date of this contract shall be changed from June 30, 2009 to June 30, 2011.

The total amount of this agreement shall be increased by \$136,720 for the period of July 1, 2009 through June 30, 2011. Total compensation under the original agreement and all subsequent amendments, thereto, shall not exceed \$1,078,450.

These monies will be distributed in three payments to the Benton County Treasurer.

- The first payment is \$34,180 and covers the period of 7/1/2009 through 12/31/2009. The county may submit an invoice for payment of this amount after 7/1/2009.
- The second payment is \$68,360 and covers the period of 1/1/2010 through 12/31/2010. The county may submit an invoice for payment of this amount after 1/1/2010.
- The third payment is \$34,180 and covers the period of 1/1/2011 through 6/30/2011. The county may submit an invoice for payment of this amount after 1/1/2011.

The amendment shall be effective July 1, 2009.

All other terms and conditions of the original contract and any subsequent amendments, thereto, remain in full force and effect.

IN WITNESS WHEREOF: the parties have executed this amendment.

BENTON COUNTY BOARD OF COMMISSIONERS

DEPARTMENT OF ECOLOGY

CHAIRPERSON

DEPUTY DIRECTOR

MEMBER

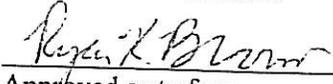
MEMBER

APPROVED AS TO FORM ONLY  
ASSISTANT ATTORNEY GENERAL

DATE

916001296

Federal Tax ID Number



Approved as to form,  
Benton County Prosecuting Attorney



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
TTY 711 or 800-833-6388 (For the Speech or Hearing Impaired)

June 26, 2009

Mr. Adam J. Fyall  
Community Development Coordinator  
Benton County  
7122 West Okanogan Place  
Kennewick, WA 99336

RE: Contract No. C9300237, Amendment No. 22

Dear Mr. Fyall:

Enclosed are two originals of Amendment No. 22 to the referenced contract. This amendment is different than previous amendments as it covers the entire biennium, July 1, 2009 through June 30, 2011. Previously, three amendments have been required for each biennium. The purpose of this amendment is to increase the contract by \$136,720 for the new biennium.

Please have both originals signed and then return both to me. As soon as the appropriate Ecology representative has signed the documents I will forward an original to you for your records. Once you receive the signed original you may submit an invoice for Benton County's first payment during the new biennium. This payment covers the period of July 1, 2009 through December 31, 2009.

As a result of the change incorporated into this amendment a new amendment will not be required until June 2011. You should receive this during the last half of June 2011.

I also want to remind you that the final report of project activities that were accomplished during 2009 and 2010 as well as recommendations for further public awareness and/or development of nuclear related industry in the Tri-City area are due on January 31, 2010 and January 31, 2011 respectively.

If you have any questions, please call me at (360) 407-7102.

Sincerely,

Mike Garner  
Environmental Specialist  
Nuclear Waste Program

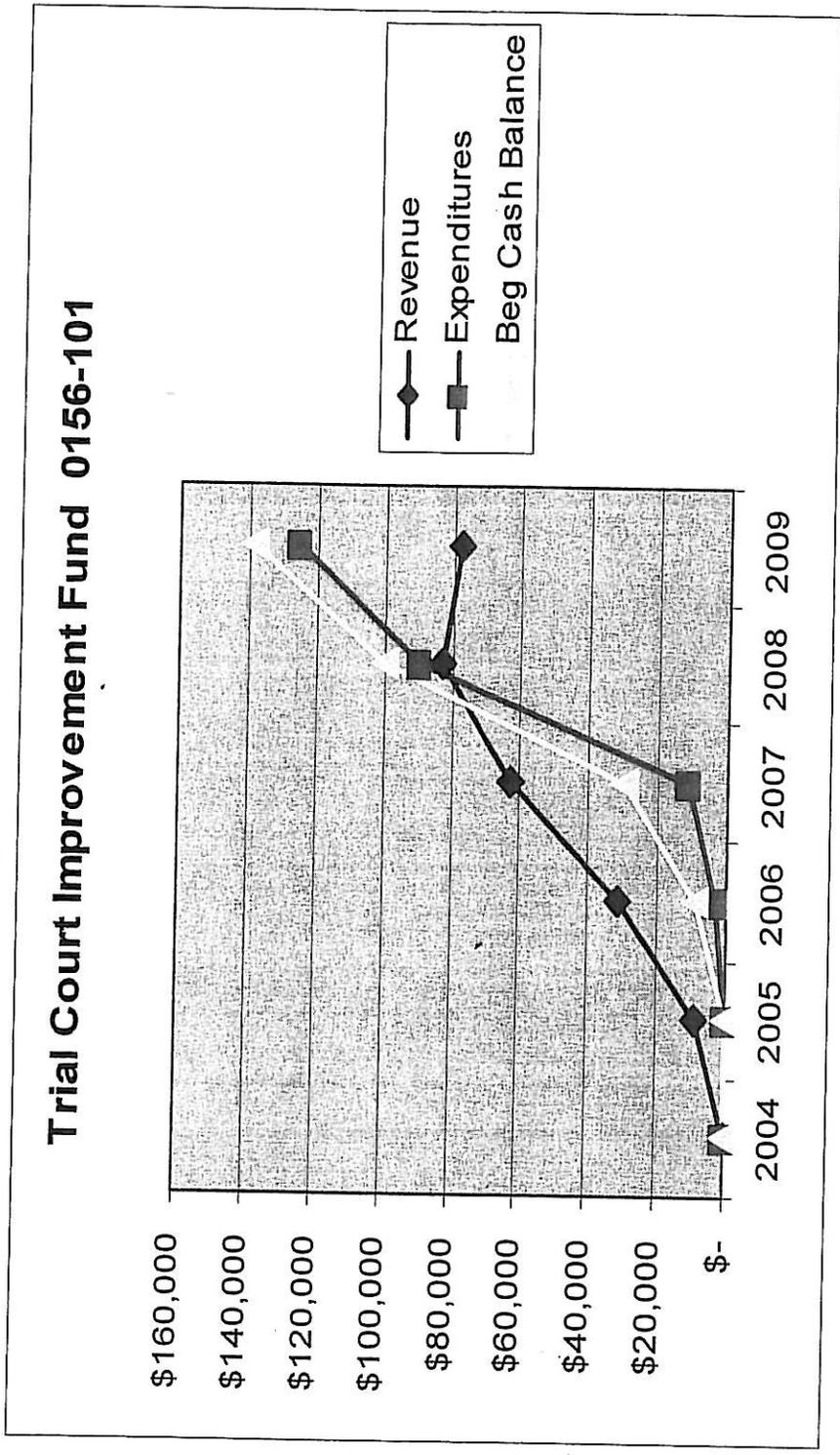
Enclosures



9:05

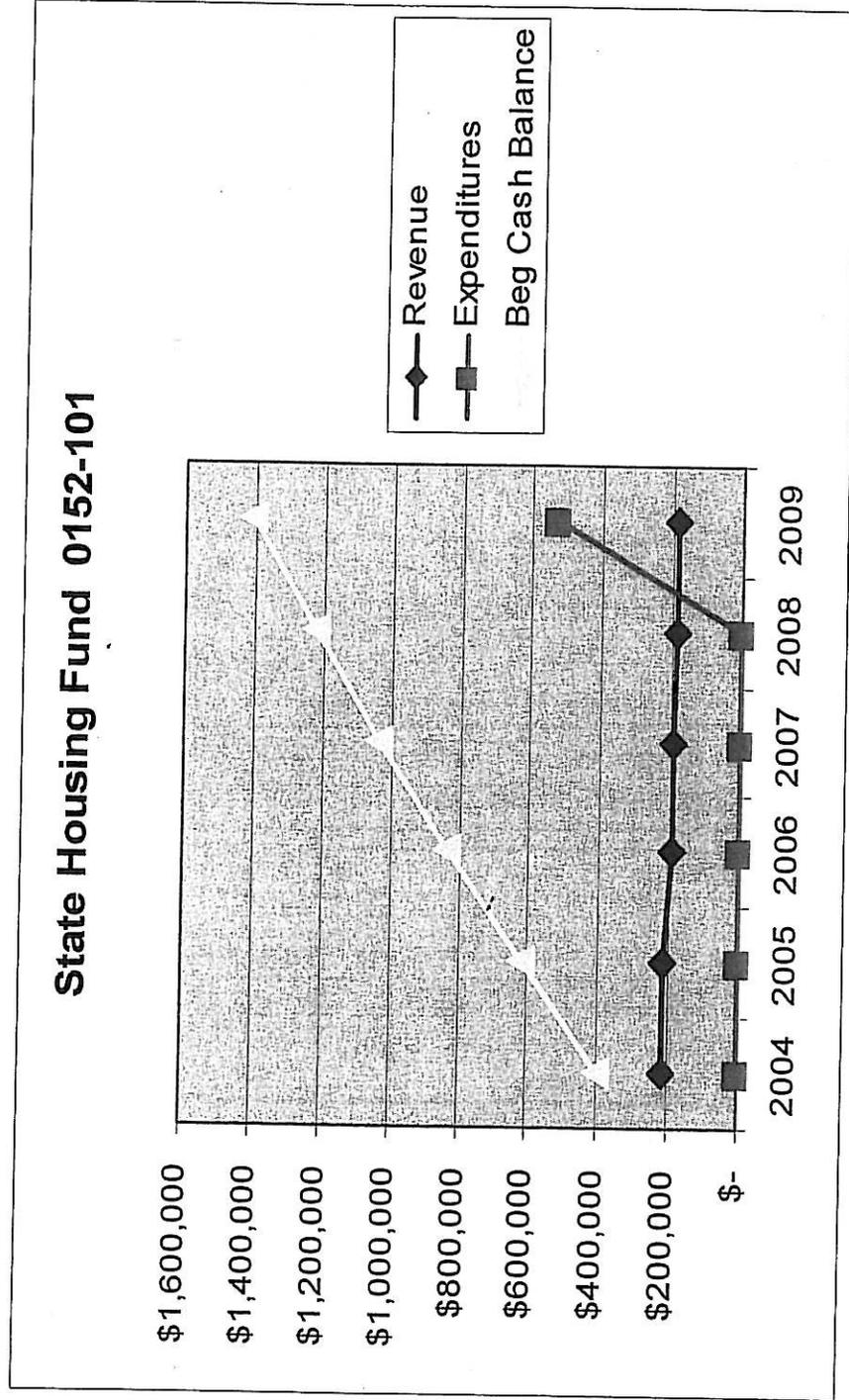
### Trial Court Improvement 0156-101

A fund established per State of Washington Legislature ESSB 5454 for improvements to superior and district court staffing, programs, facilities and services. An amount equal to 100% of the State's contribution received by the County for district court judge's salaries is retained for the fund.



## State Housing Fund 0152-101

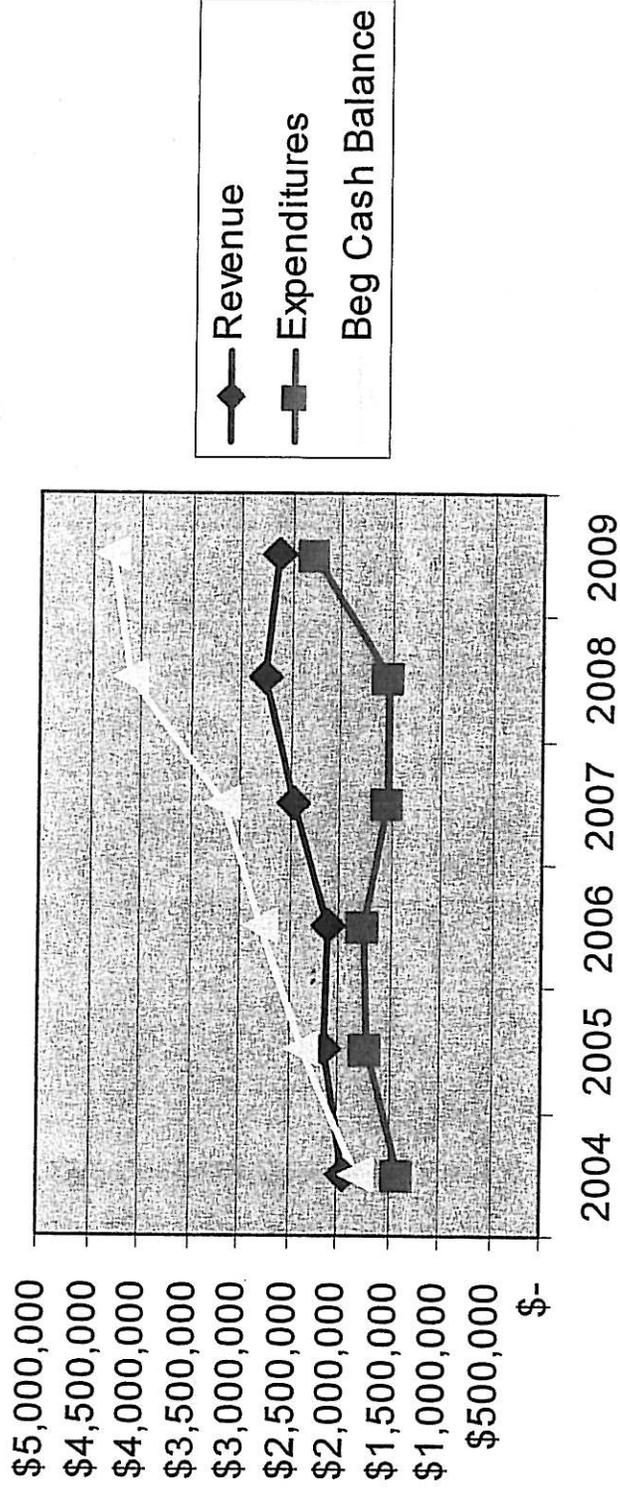
To account for 60% of a surcharge on recording fees to fund housing projects for very low-income persons. Established by amendment to RCW 36.22 effective 6/13/2002.



## Rural County Capital Fund 0144-101

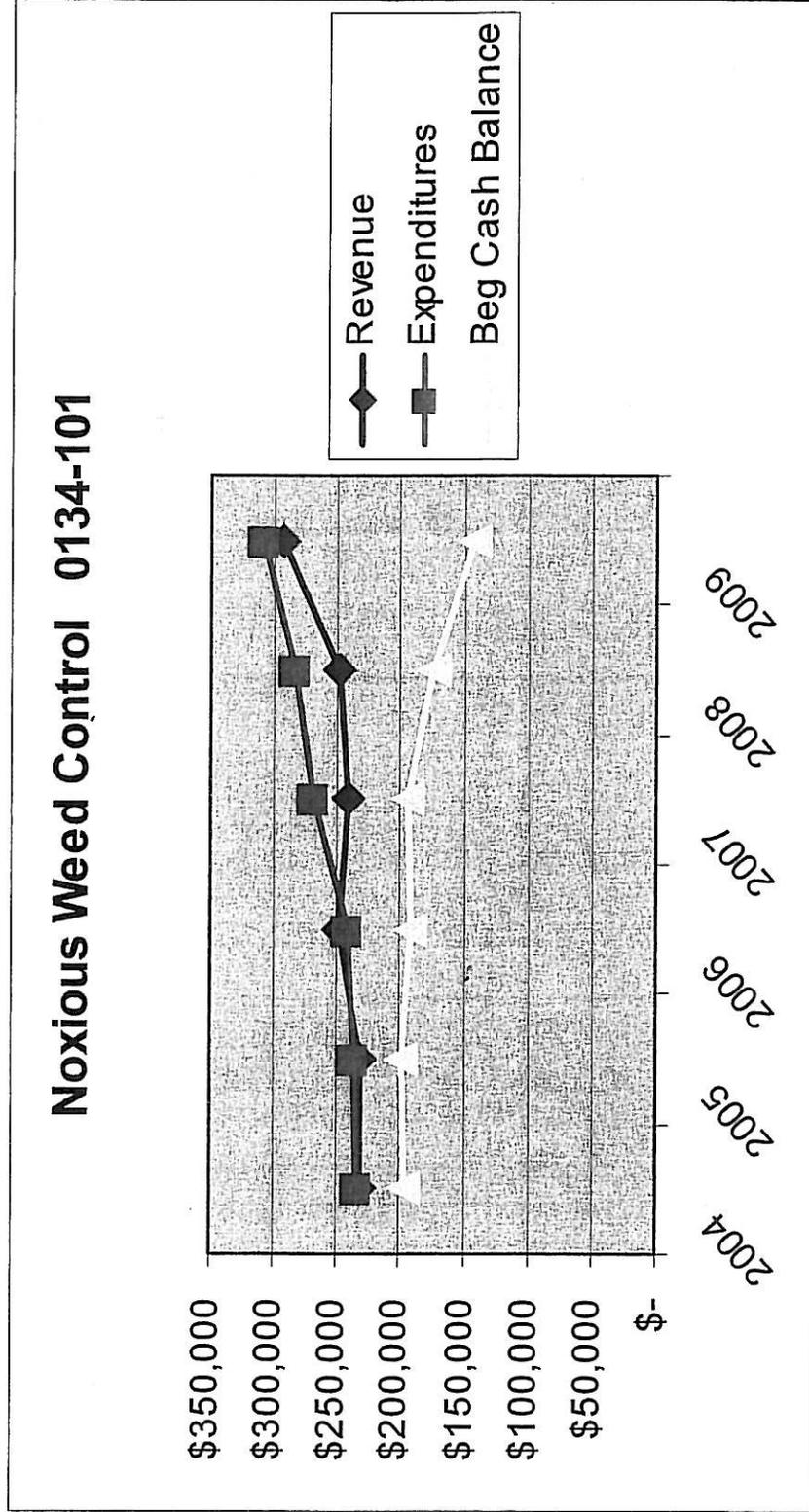
A fund established for the purpose of financing public facilities.

### Rural County Capital Fund 0144-101



### Noxious Weed Control Fund 0134-101

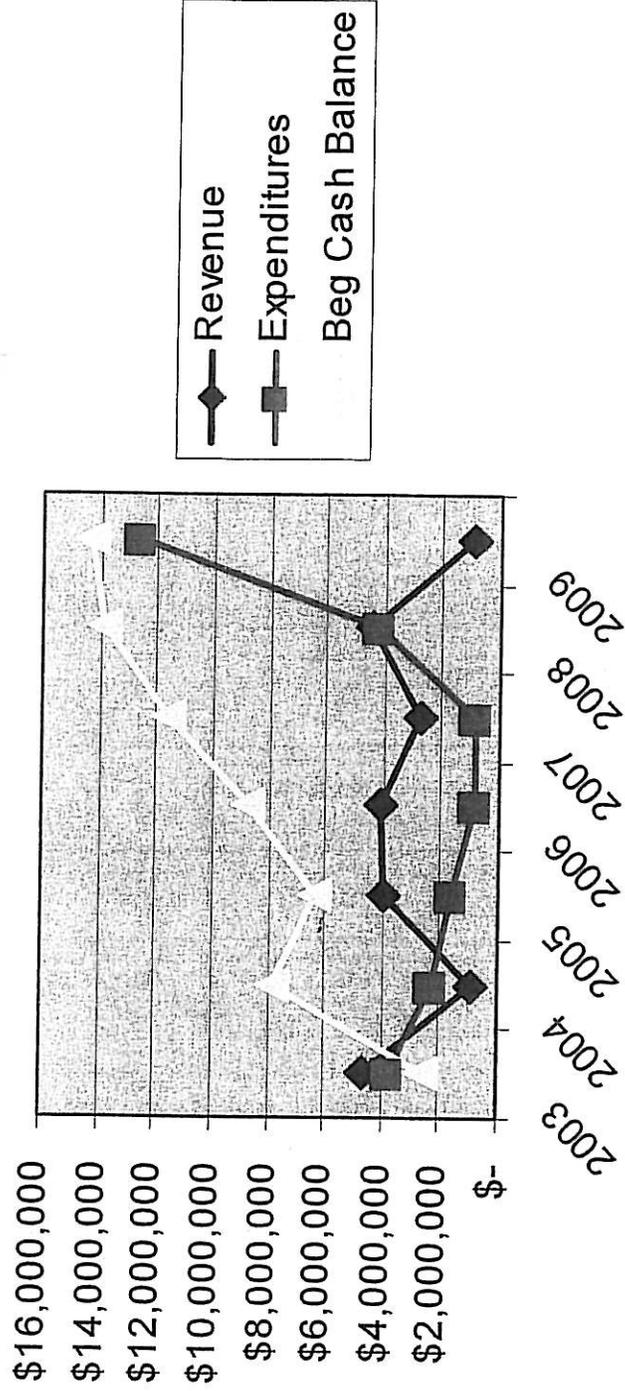
A fund established to control noxious weeds within the County.



### Capital Projects Fund 0305-101

A fund established to account for programs involving the acquisition or construction of major capital projects.

### Capital Projects Fund 0305-101



9:20

<u>AGENDA ITEM</u>	<u>ACTION NEEDED</u>	<u>DISCUSSION TYPE</u>
Meeting Date: 06 Jul 2009 Subject: Animal Control Memo Date: 01 Jul 2009 Prepared By: AJF Reviewed By: LSK	Execute Contract Pass Resolution Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion 2nd Discussion Other

Today's animal control discussion is an outgrowth of the May 27 presentation to the Board where BWA presented one-line drawings and basic cost estimates for two possible kennel options ("Option A" and "Option B") that would be sited on land currently owned by the City of West Richland. Commissioners wanted staff to try to compare the County's share of costs of such a facility that was operated by the City with the costs of such a facility that was owned and operated by the County alone. The table and notes below try to add information to the ongoing discussion.

As a side note, the City has recently indicated that they are nearing a point where they need to make some decisions about their future operations. They are wondering where the County is on this issue.

### COMPARISON OF TWO ANIMAL CONTROL OPTIONS

This table assumes use of either County-owned properties in Kennewick (often called the "Quinault Properties"), or use of City-owned property off of Ruppert Road.

	<u>County's Costs, Facility Operated by County</u>	<u>County's Costs Facility Operated by City</u>
Number of Dog Kennels	52 <sup>9</sup>	29
Employees	2	1.5 <sup>1</sup>
Estimated Operating Budget	\$ 225,000 <sup>2</sup>	\$86,000 <sup>1</sup>
Site Costs	\$ 0 <sup>3</sup>	\$ 0 <sup>4</sup>
Infrastructure Costs	unknown <sup>5</sup>	\$ 0 <sup>6</sup>
Construction Costs	\$ 1,085,000 <sup>7</sup>	\$ 720,000 <sup>8</sup>
Facility Square Footage	4,000 <sup>7</sup>	2,250 <sup>8</sup>

Footnotes

- 1 City operates with .5 FTE, and the 2009 budget is \$82,300. City has said that contract with the County would require another 1.0 FTE, plus an outfitted truck, the cost of which would be an additional \$82,000. County estimate for this table is 1.0 FTE + 1/2 of other operating costs + 1/2 of truck cost.
- 2 Staff has arrived at this number based on research of like operations elsewhere.
- 3 County's "Quinault Properties" are owned fee-simple, appropriately zoned, and about 1-acre each.
- 4 "Option B" would fit on existing City-owned parcel.
- 5 Utilities are close at hand; properties have paved road frontage.
- 6 Utility situation not clear; property is about 200 feet from paved road. City's responsibility.

- 7 "Option A" and "Option B" averaged. Staff believes A may be overkill, but B may be too small.
- 8 "Option B" as presented in the BWA report. This option will fit on the existing Ruppert Road property.
- 9 52 kennels based on square footage used for "Option B" – more kennel space, less administrative space.

### Discussion

The assumptions for a City-owned facility have been that the City would provide the land and infrastructure, and the County would assume most or all of the construction costs. The City would then operate the facility, contracting its services to the County. An initial operational costs split would be agreed-to, then re-adjusted over time to reflect the capacity used by each entity.

The assumptions for a County-owned facility are that the County would build, own, and operate the facility, assuming all costs. The County could then choose to contract with West Richland and/or TCACA.

Operating costs are assumed to go up each year.

One option that has been floated is going to a vote of the people on the issue (unincorporated population). Staff's initial estimates are 9¢ per \$1000 of value assessment to pay for the operating budget; and a 14¢ per \$1000 value to pay for the operating budget plus capital costs recovered over 10 years.

###

9:40

<b>AGENDA ITEM:</b> <b>MTG. DATE:</b> July 6, 2009 <b>MEMO. DATE:</b> June 26, 2009 <b>SUBJECT:</b> Short Plat Vacation - SPV 09-02, Alyson Chacon <b>Prepared By:</b> R.J. Lott <b>Reviewed By:</b> Michael Shuttleworth	<b><u>TYPE OF ACTION NEEDED</u></b> Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other	Consent Agenda Public Hearing X 1st Discussion 2nd Discussion Other
---	--	---

**BACKGROUND INFORMATION**

On September 25, 2008, Short Plat 3146 was recorded, which created 4 lots. The recorded short plat included a forty-foot (40) private road easement within lots 3 and 4 and a fifty-foot (50) radius turnaround in lot 3 of the Short Plat. Alyson Chacon, owner of all four lots of Short Plat 3146, have submitted an application requesting that the private road easement and turnaround be vacated off the face of the short plat. Short Plat 3146 was created out of Lot 4 of Short Plat 2616. The private road easement and turnaround was created through Short Plat 3146.

The applicant proposes that lots 1, 2 and 3 of short plat 3146, use an existing private road easement located within short plat 1312 that would provide access to Webber Canyon Rd. The Planning Department could not find any evidence that the lots within short plat 3146 have a legal right to use any of the private road easements located within short plat 1312.

The applicant also proposes that the fifty-foot (50) radius turnaround be vacated as well. If the turnaround is vacated, private road 110 PR NE will be without a Fire Marshal approved turnaround. Private road easements longer than 200 feet in length are required to have turnarounds as approved by the Benton County Fire Marshal.

The twenty-foot (20) road easement, AF 706764, was created by record survey 176. Record surveys are not designed to create easements. Record survey 176 does not have notarized signatures of the property owners. Therefore, the 20-foot road easement shown on the short plat does not exist and could not be used for access to lots 1 and 2. The waterline easement, AF 96-6338, is for waterlines and utilities only and cannot be used for a private road easement.

Property owners of the lots within the short plats and owners of property within 300' of the outer perimeter of said short plats have been notified. All concerned agencies such as Benton County Fire District 1, Kennewick Irrigation District, Health District, Benton County Engineer, Benton County Fire Marshall and effected utility companies have been notified of this proposal. Attached are the comments submitted related to this application. The Benton County Fire Marshal objected to the proposed vacation due to a lack of an approved turnaround.

The Benton County Code requires the Board of County Commissioners to conduct a public hearing on the proposed vacation and allow for public comments regarding the

vacation request. The public hearing notice for application SPV 09-02 was published on June 26, 2009 and the public hearing is scheduled for July 6, 2009 at 9:40 a.m.

**SUMMARY**

Benton County has received an application requesting the vacation of the private road easement and turnaround located on lots 3 and 4 of Short Plat 3146 on June 1, 2009. The Board of County Commissioners is scheduled to conduct a public hearing on July 6, 2009 at 9:40 a.m.

**RECOMMENDATION**

It is the recommendation of the Planning Department that the Board of County Commissioners conducts a public hearing, and based on the testimony received, either approve or deny the request. Based on the information received thus far, the Planning Department does not recommend the proposed vacation of the private road easement and turnaround on lots 3 and 4 of Short Plat 3164. The vacation of the private road easement and turnaround would leave lots 1, 2 and 3 without access to a public street and would leave private road 110 PR NE without an approved turnaround.

**MOTION**

The Benton County Planning Department recommends the following motion: The Benton County Boards of Commissioners deny the vacation of the forty (40) foot private road easement and fifty (50) foot radius turnaround on lots 3 and 4 of Short Plat 3146.

RECEIVED

BENTON COUNTY PLANNING DEPARTMENT  
SHORT PLAT VACATION APPLICATION  
FILE NO. SPV 09-02

JUN 1 2009

Benton County  
Planning Department

RECEIVED

MAY 28 2009

Benton County  
Planning Department

CID 4444

- Name and address of applicant: Alyson Chacon  
10701 E 2nd St, Benton City, WA 99320  
Telephone number: Home: 509-420-3535 Work: 509-371-2274
- Legal owners name and address: Alyson Chacon  
10701 E 2nd St., Benton City, WA 99320  
Telephone number: Home 509-420-3535 Work 509-371-2274
- Parcel Number or Legal description of the short plat to be vacated: Short Plat # 3146 I.D. 1-2097-301-2616-004 Portion SW 1/4, Section 20, T. 9N., R. 27 E., W.M. Benton Co. WA. now short Plat 3146
- Explain the reason for the requested vacation. ① vacate  
Easement + turn around not needed  
access available from Webber Cyn. ② Move turn around onto  
10701 E. 2nd st as a "L" instead of circle. ③ Use Access from Webber Cyn to  
Utility Easement
- Describe the existing land uses on the properties to be vacated: Pasture
- COMMENTS OR PERTINENT INFORMATION: Utility Easement that joins to the  
Webber Cyn Easement has a T for a ~~the~~ Turn around.

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

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

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

Alyson Chacon  
Applicant's Signature  
Parcel # \_\_\_\_\_

Alyson Chacon  
Print Name

5-21-09  
Date

Alyson Chacon  
Signature of Legal Owner  
Parcel # 1

Alyson Chacon  
Print Name

5-21-09  
Date

Alyson Chacon  
Signature of Legal Owner I  
Parcel # 2

Alyson Chacon  
Print Name

5-30-09  
Date

Alyson Chacon  
Signature of Legal Owner  
Parcel # 3

Alyson Chacon  
Print Name

5-30-09  
Date

Alyson Chacon  
Signature of Legal Owner  
Parcel # 4

Alyson Chacon  
Print Name

5-30-09  
Date

\_\_\_\_\_  
Signature of Legal Owner  
Parcel # \_\_\_\_\_

\_\_\_\_\_  
Print Name

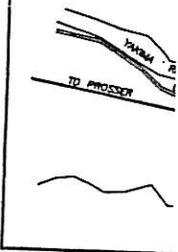
\_\_\_\_\_  
Date

**Any information submitted to the Benton County Planning 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.)**

**NOTE: THE SHORT PLAT VACATION APPLICATION FEE OF \$100.00 MUST BE SUBMITTED WITH THE APPLICATION. THIS FEE IS NON-REFUNDABLE. PLEASE MAKE THE CHECK PAYABLE TO THE BENTON COUNTY TREASURER. THERE ARE NO GUARANTEES THAT YOUR APPLICATION WILL BE APPROVED. THE RECORDING FEE IS TO BE PAID AT THE TIME OF RECORDING.**

VIC



E 2ND ST.

50' PRIVATE RD. ESM'T  
A.F. 95-28148

40' PRIVATE RD. ESM'T  
A.F. 97-32114

CENTERLINE W.C.R.R. (B.N.R.R.)  
R.O.W.

1-2097-300-0003-000

1233.88'

LOT 1 SHORT  
PLAT 2616

40' PRIVATE RD. ESM'T  
A.F. 97-32114

40' PRIVATE RD. ESM'T  
A.F. 2002-002779

LOT 3 SHORT  
PLAT 2616

LOT 2 SHORT  
PLAT 2616

FND 1/2" PIPE  
0.6' N, 0.1' W

10' IRR ESM'T  
A.F. 97-32114

1-1997-400-0005-000

76.84'

N 88°51'01"E 382.20'

LOT 1 SHORT PLAT 1312

N 00°09'44"E 2066.82'

20' WATERLINE &  
UTILITY ESM'T  
A.F. NO. 966338

LOT 1  
1.29 ACRES  
[22810]

N 89°50'46"W 237.80'

LOT 2  
1.16 ACRES  
[22416]

S 89°50'36"E 237.80'

LOT 2 SHORT PLAT 1312

211.73'

20' ROAD &  
UTILITY ESM'T  
A.F. NO. 706764

LOT 3  
10.03 ACRES  
[22813]

373.39'

20' WATERLINE &  
UTILITY ESM'T  
A.F. NO. 966338

10' IRR ESM'T  
A.F. 2002-002779

LOT 3 SHORT PLAT 1312

479.00'

1-2097-300-0003-000



SW COR. SEC. 20, T9N, R27E  
FND W.S.R.S. BRASS CAP

1-2097-300-0004-000

FND 1/2"  
IRON PIN  
0.3' NORTH

S 89°58'04"E 214.41'

FND 1/  
IRON P.  
0.25' SCL  
0.1'EAS

1-2097-300-0005-000

Curve
C1

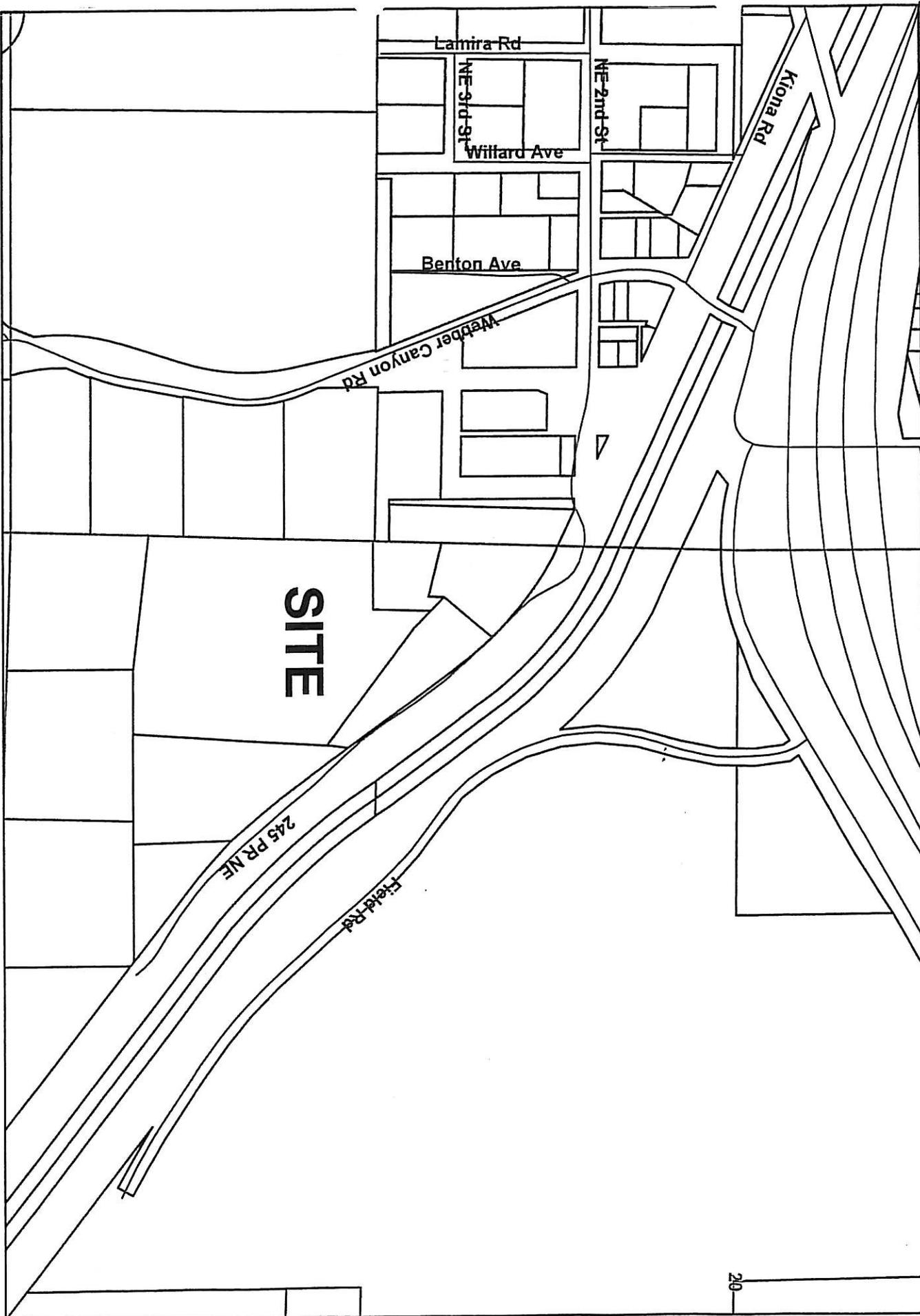
Benton County, Benton County Auditor's Office



BENTON COUNTY  
PLANNING  
DEPARTMENT

SPV 09-02

Benton County does not warrant, guarantee, or accept any liability for accuracy, precision or completeness of any information shown hereon. Any use made of this information is solely at the risk of the user. Benton County makes no warranty, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof in the past or future shall not constitute a warranty. The information shown herein is a preliminary product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.





June 15, 2009

Benton County Planning Department  
Attn: R.J. Lott, Associate Planner  
PO Box 910  
1002 Dudley Ave.  
Prosser, WA 99350

Subject: SPV 09-02 Short Plat Vacation – Alyson Chacon

Dear R.J. Lott,

This letter provides KID review comments on Short Plat Vacation SPV 09-02, submitted to the Benton County Planning Department by Alyson Chacon for the vacation of 40 foot private road easement located on Lot 3 and the 50 foot radius turnaround private road easement located on Lot 4 of Short Plat 3146.

1. The KID has no comments, or objections, to the above proposal.

If there are further questions, please contact me at your earliest convenience. I can be reached at 509-586-9111, or email [csittman@kid.org](mailto:csittman@kid.org).

Sincerely,

 6.15.2009

Chris Sittman  
KID Associate Engineer  
509-586-9111 ext. 119  
[csittman@kid.org](mailto:csittman@kid.org)

c: LB/File: 20-9-27  
Beth Smith, Acting Engineering Manager

**RECEIVED**

**JUN 17 2009**

**Benton County  
Planning Department**

**Planning Department - spv09-02**

---

**From:** "Goodwin, Gregory L (GREG)" <greg.goodwin@verizon.com>  
**To:** <planning.department@co.benton.wa.us>  
**Date:** 6/22/2009 2:59 PM  
**Subject:** spv09-02

---

Verizon has no objections to the vacation of the 40' private road easement located on lot 3 and the 50' radius turnaround private road easement located on lot 4 of short plat 3146.

Greg Goodwin  
Engineer-Network Engineering  
509/736-3720  
509/736-6689 (fax)  
[greg.goodwin@verizon.com](mailto:greg.goodwin@verizon.com)

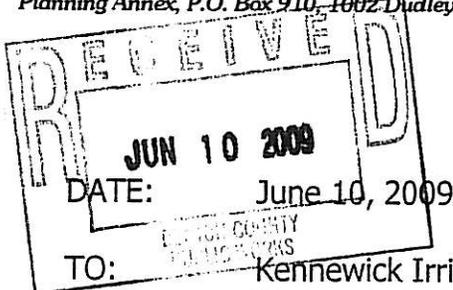
**RECEIVED**

JUN 22 2009

**Benton County  
Planning Department**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629



DATE: June 10, 2009

TO: Kennewick Irrigation District  
Verizon Telephone Company  
Benton County Public Works  
Benton County Building Office  
Benton County Fire Marshal  
Benton County Fire District No. 2  
Benton County PUD

**FILE COPY**

FROM: R.J. LOTT, Associate Planner

RE: SHORT PLAT VACATION - SPV 09-02

Attached is a copy of a short plat vacation for the vacation of 40 foot private road easement located on Lot 3 and the 50 foot radius turnaround private road easement located on Lot 4 of Short Plat 3146. Please review this short plat vacation and return your comments to our office within seven (7) days. This item will go to a public hearing before the Board of County Commissioners. If you have any questions, please do not hesitate to contact me. **You may send your comments to our office via email to [planning.department@co.benton.wa.us](mailto:planning.department@co.benton.wa.us). Please reference the File No. SPV 09-02 in your comments**

PLEASE COMMENT BELOW AND RETURN:

They have shown 2 turn arounds, neither of which is on their property. One is located on Lot 1 of Short Plat 2616 and the other is on Lot 3 of Short Plat 1312. The last time I looked the owners of these parcels would have to agree (in writing) to allowing a new encumbrance on their property.

There is a handwritten note on the fourth page suggesting they use the utility easements for access to Lots 1 & 2. Once again, the Grantees on those record easements would have to consent to changing the color and character of these easements.

*Mike*

*See attached notes. Sue Schuch*

**RECEIVED**

JUN 30 2009

Benton County  
Planning Department

The 20 foot road easement shown on Short Plat 3146 under Auditor's Fee Number 706764 was created by Record Survey 176. Because a record survey is supposed to show only what exists, it cannot create an easement. Therefore the 20 foot road easement shown on the short plat does not exist and can not be used for access for Lots 1 and 2..

The waterline and utility easement is strictly for waterlines and utilities and cannot be used or construed to be used as an access easement. If she wants to change it to that she should file an amended short plat.

Also, the landowners in Short Plat 1312 would probably need to sign documents granting access to Short Plat 3146.

*Sub*

**RECEIVED**

JUN 30 2009

Benton County  
Planning Department

Benton County Fire Marshal's  
Review of Proposed Planning Applications

**RECEIVED**

JUN 16 2009

TO: R. J. Lott

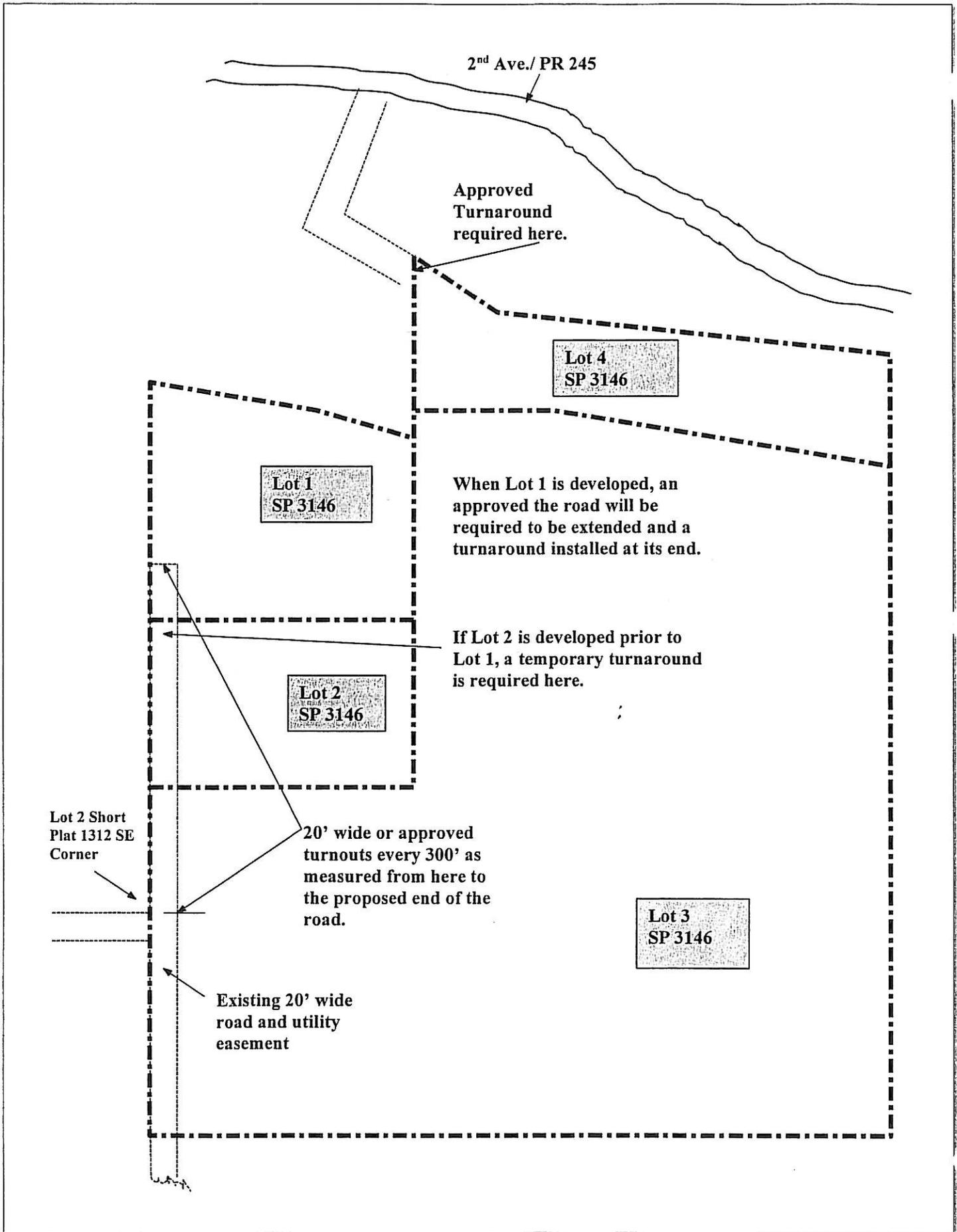
Benton County  
Planning DepartmentShort Plat Vacation: 09-02Date Received 6-11-09 Date Returned 6-15-09

**Applicant's Comments:** 1) Alyson Chacon, 10701 e. 2<sup>nd</sup> St, Benton City, 99320, 420-3535, proposes to vacate an existing easement & turnaround and it is not needed. Access available from Webber Canyon Road. 2) Move turnaround onto 10701 E. 2<sup>nd</sup> St as an "L" instead of a circle. 3) Use access from Webber Canyon to utility easement.

**Fire Marshal's Comments:** Not approved as proposed.

**Required:**

- **Lot 4:** The existing access easement and turnaround serves four lots, and the proposed vacation would leave Lot 4 without an approved turnaround. The applicant proposes to end the existing access road at Lot 4, and use the L-shaped portion of the existing access road as the turnaround. Although L-shaped turnarounds are permitted, the proposed design does not allow a fire truck the ability to turnaround with one back up motion. An approved turnaround is required at the end of a private road exceeding 200 feet long. Attached is this office's policy on access roads, and it contains several different types of approved turnarounds.
- **Lots 1, 2, & 3:** The existing access easement off of Weber Canyon Road may be used if the easement is improved to conform to Benton County Code 3.18.045. The following improvements to the existing road are needed.
  - Improved the existing private road width to 20 feet from the SE corner of Lot 2 on Short Plat 1312 to its termination into Lot 1 of Short Plat 3116, or install approved turnouts every 300' (measured from the SE corner of Lot 2 on short Plat 1312).
  - Install an approved turnaround at Lot 1. Should Lot 2 be developed first, the road will need to be improved to the north property line of Lot 2 and an approved temporary turnaround installed.



### 3.18.045 MINIMUM ROAD REQUIREMENTS (PRIVATE ROADS INCLUDES DRIVEWAYS).

- (a) Except as otherwise provided in this chapter, the minimum acceptable improved surface for a private road shall be twenty feet in width that is graded and with two inches of compacted recycled concrete asphalt or two inches of base course crushed surfacing in accordance with the specifications set forth in Standard Specifications for Road, Bridges and Municipal Construction published by the Washington State Department of Transportation, as now in effect or hereafter amended.
- (b) The minimum improved surface of a private road may be twelve feet in width surfaced with the materials set forth in subsection (a) above, but only if the private road serves six or fewer dwelling units (a duplex constitutes two dwelling units) and turnouts ten feet wide and thirty feet in length, surfaced in the same manner as the remainder of the private road, are placed every three hundred feet from a public road.
- (c) If a private road has any curves or turns, the required improved width of any such private road shall be as determined and set forth in writing by the Fire Marshal to a width deemed necessary to allow the appropriate fire fighting equipment to safely navigate such curves or turns. If no such written determination is requested of and made by the Fire Marshal, then a private road with curves or turns must be improved to a width of twenty feet in accordance with the standards set forth in subsection (a) above.
- (d) All private roads must terminate in a turnaround that shall not require more than one backing up motion for a fire truck of at least thirty-seven feet in length from bumper to bumper to completely turn around.
- (e) All private roads shall be constructed to applicable standards set forth above and all conditions of approval of an encroachment permit shall be satisfied prior to any certificate of occupancy being issued for that parcel.
- (f) Bridges and Culverts. All private roads over any drainage, river, creek, etc. shall be traversed by a private bridge or culvert capable of supporting at least sixty thousand (60,000) pounds or such higher weight as deemed necessary and designated in writing by the Fire Marshal. Private bridges over twenty (20) feet long are not allowed. Private bridges and culverts shall be designed to handle a 25-year storm event; provided, if located in an area designated as a 100-year flood plain, then the design must meet the 100-year flood event. A letter stating that the private bridge or culvert design meets the requirements of this section must be submitted by a licensed Washington State Civil Engineer prior to construction and, for private bridges, every two (2) years thereafter.
- (g) Access - Gradients.
- (1) For all developments accessed by private road, access shall be by at least one private road with a maximum gradient of twelve (12) percent or less; provided, such maximum gradient may be exceeded under either of the following circumstances:
    - (i) A maximum gradient of no more than fifteen (15) percent shall be permissible if the private road is surfaced with two (2) inches or more of asphalt or concrete; or
    - (ii) Subject to the written approval of the Fire Marshal, a maximum gradient of fifteen (15) percent may be allowed for less than two hundred (200) feet if such gradient is followed by a gradient of zero (0) percent for a period of six hundred (600) feet and adequately satisfies the vertical curve alignment necessary for the appropriate fire fighting equipment. This design may be repeated as needed.
  - (2) Notwithstanding subsection (1) above, the maximum gradient of a private road providing access to a dwelling unit shall not exceed twelve (12) percent at any point within two hundred (200) feet of an intersection of such private road with another private road or with a public road.
  - (3) If requested, as-built drawings of each completed private road shall be submitted. The as-built drawing shall bear the stamp of a Washington State Registered Civil Engineer.

### 3.04.046 SPECIAL FIRE PROTECTION.

I. The use of cedar shakes or shingles or materials with similar flame spread characteristics for roof construction is prohibited. Class C rated shakes or shingles may be used for existing roof repairs that do not exceed 50% of the existing roof within a twelve month period, and additions to structures with existing wood shingle or shake roofs.

II. Non-combustible siding and soffit material is required on the downhill side of structures within thirty feet of a 15% or greater grade.

III. All structures within thirty 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 five contiguous acres:

EXCEPTION: Interior lots of platted parcels and development phases whose streets are accessible and the water system is operational.

#### 3.18.045 DECKS AND PORCHES.

Single family residences, multi-family residences, decks and porches three feet or less above grade, shall have non-combustible skirting if within thirty (30) feet of adjacent undeveloped areas. Skirting shall be sufficiently constructed so as not to allow the accumulation of combustible material under the deck.

#### 3.04.048 GRADES FIFTEEN (15) PERCENT OR STEEPER.

When determined by the Fire Marshal, non-combustible siding/soffit/skirting shall be required on the downhill side(s) of the structure if within thirty (30) feet of fifteen (15) percent or greater grade. The grade will be determined by the predominant slope on the downhill side within a maximum of three hundred (300) feet.

## Benton County

Steve Brown  
Manager

Building Department  
5600 W. Canal Dr. Ste. C, Box A-105  
Kennewick, WA. 99336  
Fax 736-2732

Area Code 509  
From Tri-Cities 735-3500  
From Prosser 786-5622

### Benton County Fire Marshal

Policy: Private Roads, Turnarounds, and Turnouts

Date: June 6, 2008

Purpose: Provide for a uniform method for meeting the requirements of Benton County Code 3.18.045 Minimum Road Requirements.

Scope: This policy is applicable only to private roads as defined in Benton County Code 3.18.015. Private Road" means a road, driveway or any form of access easement in excess of two hundred (200) feet in length that is not dedicated to and maintained by Benton County."

Procedure: Upon the Benton County Fire Marshal's office receiving a submittal from the Benton County Planning Department or the Benton County Building Department, a review will be conducted to determine if the proposed private road meets the requirements of 3.18.045.

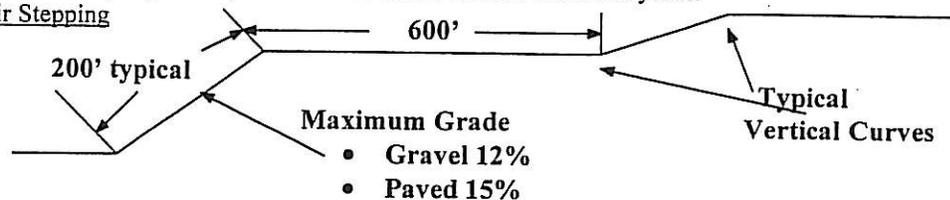
#### 12-foot Wide Private Roads

1. Road approval is required by the occupancy approval for a manufactured home, or by the final inspection for a site built building.
2. Shall be permitted when serving six or less dwellings. A duplex counts as two dwellings.
3. An approved turnaround is required when the private road length exceeds 200 feet.
4. Turnouts shall be every 300 feet, and the surface shall be the same as the private road.
5. Maximum grade for nonpaved surfaces is 12%. For paved surfaces, it is 15%.
6. Radius for turns, curves, or switchbacks must be approved prior to construction.
7. Stair stepping with approved vertical curves is permitted and may be repeated to the top.
8. Bridges and culverts must meet Benton County Code 3.18.045 (f). See Policy-Bridges/Culverts
9. Paved surfaces and compacted gravel surfaces shall be at least two inches thick.
  - Gravel surfaces shall meet the Base Course Standard
  - Professionals recommend gravel to be three inches thick.
  - At three inches, a cubic yard will cover 108 sq.ft. (12' x 9')
  - At two inches, a cubic yard will cover 162 sq.ft. (12' x 13.5')

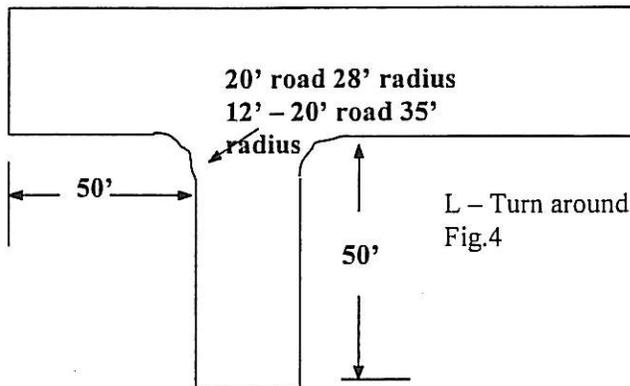
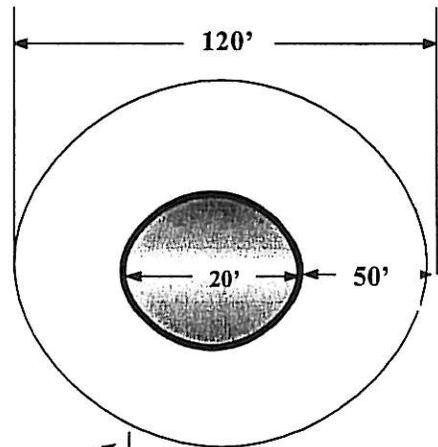
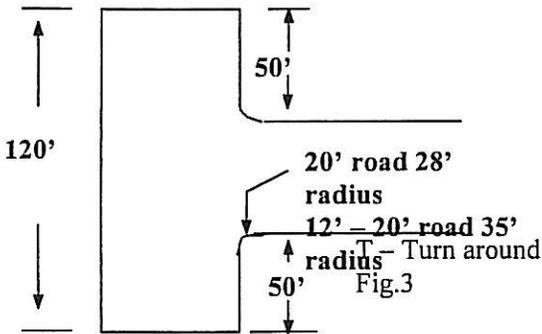
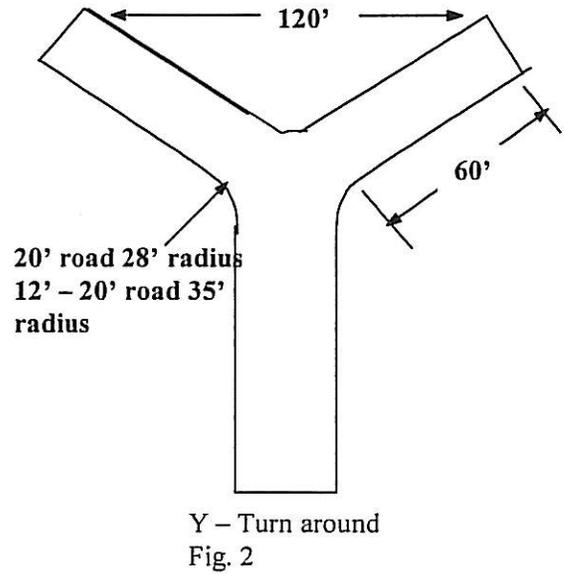
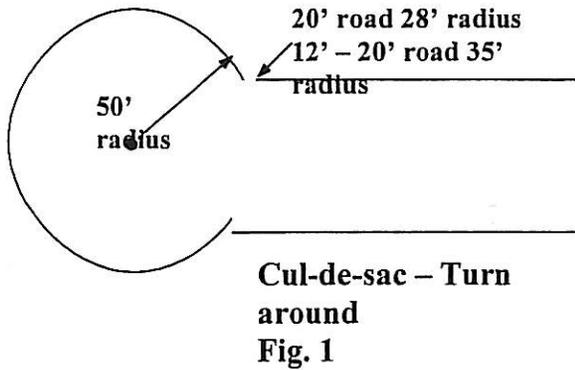
#### 20-foot Wide Private Roads

1. Road approval is required by the occupancy approval for a manufactured home, or by the final inspection for a site built building.
2. An approved turnaround is required when the private road length exceeds 200 feet.
3. Maximum grade for nonpaved surfaces is 12%. For paved surfaces, it is 15%.
4. Radius for turns, curves, or switchbacks must be approved prior to construction
5. Stair stepping with approved vertical curves is permitted and may be permitted to the top.
6. Bridges and culverts must meet Benton County Code 3.18.045 (f). See Policy-Bridges/Culverts
7. Paved surfaces and compacted gravel surfaces shall be at least two inches thick.
  - Gravel surfaces shall meet the Base Course Standard
  - Professionals recommend gravel to be three inches thick.
  - At three inches, a cubic yard will cover 108 sq.ft. (20' x 5.4')
  - At two inches, a cubic yard will cover 162 sq.ft. (20' x 8')

#### Stair Stepping

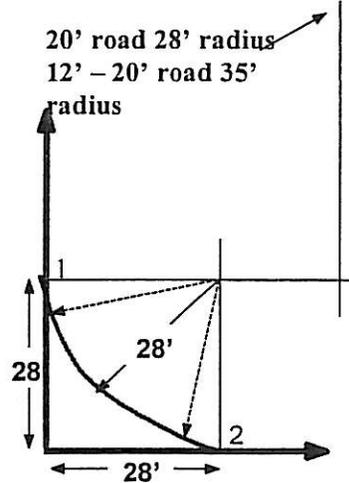


## 12' - 20' or 20' Wide Road - Approved Turnarounds



One of the problems that confront most of us, is how to construct a radius. Perhaps the following may be of assistance. From the corner, measure 28' in both directions. From points 1 and 2, measure 28'. Drive a large nail into the ground (point 3) and hook a string. Holding the string/rope walk to point 1 and then, as you walk to point 2, draw a line in the sand. You have now established the curb return (turning radius) for a 28' radius.

Please contact this office 735-3500, for any other type of road width or road design.



# Benton County

## Building Department

5600 W. Canal Dr. Ste. C, Box A-105  
 Kennewick, WA. 99336  
 Fax 736-2732  
 Benton County Fire Marshal

Area Code 509  
 From Tri-Cities 735-3500  
 From Prosser 786-5622

Steve Brown  
 Manager

### Policy: Turnouts

Date: June 6, 2008

**Purpose:**

Provide for a uniform method for meeting the requirements of Benton County Code 3.18.045 (b).

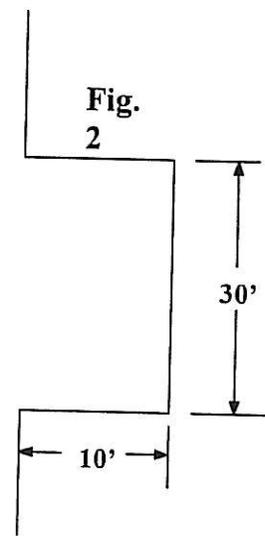
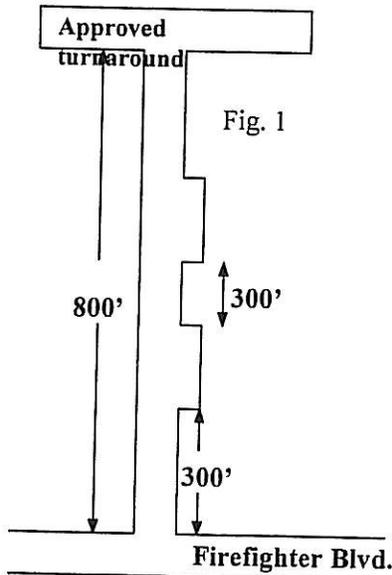
**Scope:**

This policy is applicable only to private roads as defined in Benton County Code 3.18.015 that are between 12 feet and 20 feet wide and whose length exceeds 300'. Private Road" means a road, driveway or any form of access easement in excess of two hundred (200) feet in length that is not dedicated to and maintained by Benton County."

**Procedure:**

Upon the Benton County Fire Marshal's office receiving a submittal from the Benton County Planning Department or the Benton County Building Department, a review will be conducted to determine if the proposed private road meets the requirements of 3.18.045 (b).

- The private road must comply with all sections of Benton County Code 3.18.045.
- The turnouts shall be required every 300 feet. Fig. 1
- Turnout surface shall be the same as the private road.
- Turnouts at a minimum shall be 10' x 30'. Fig. 2



Steven W. Becken  
Public Works Manager  
Tim Fife, P.E.  
Interim County Engineer

9:50  
Area Code 509  
Prosser 786-5611  
Tri-Cities 736-3084  
Ext. 5664  
Fax 786-5627

# Benton County

## Department of Public Works

Post Office Box 1001 - Courthouse  
Prosser, Washington 99350-0954

Benton County Commissioners  
P.O. Box 190  
Prosser, WA 99350

RE: The Crest Subdivision

Commissioners:

In 2008, the City of Richland approved the preliminary plat of The Crest. This office reviewed the preliminary plat and the traffic study that was submitted for the plat and offer limited comments.

It was only after the City approved the preliminary plat that we learned that the developer would not be allowed to utilize city streets for access until certain criteria are met. It was our understanding in the review process that the primary access for the plat would from Morency Drive, a City street. After approval we were informed the developer would not be allowed to use Morency Drive unless he constructed both a connection to Rachel Road, a County road, and third connection to another city street. As an option he did not have to construct the second connection until his subdivision reached a total of 50 lots but he would be required to access the property only via Rachel Road until the third connection was constructed.

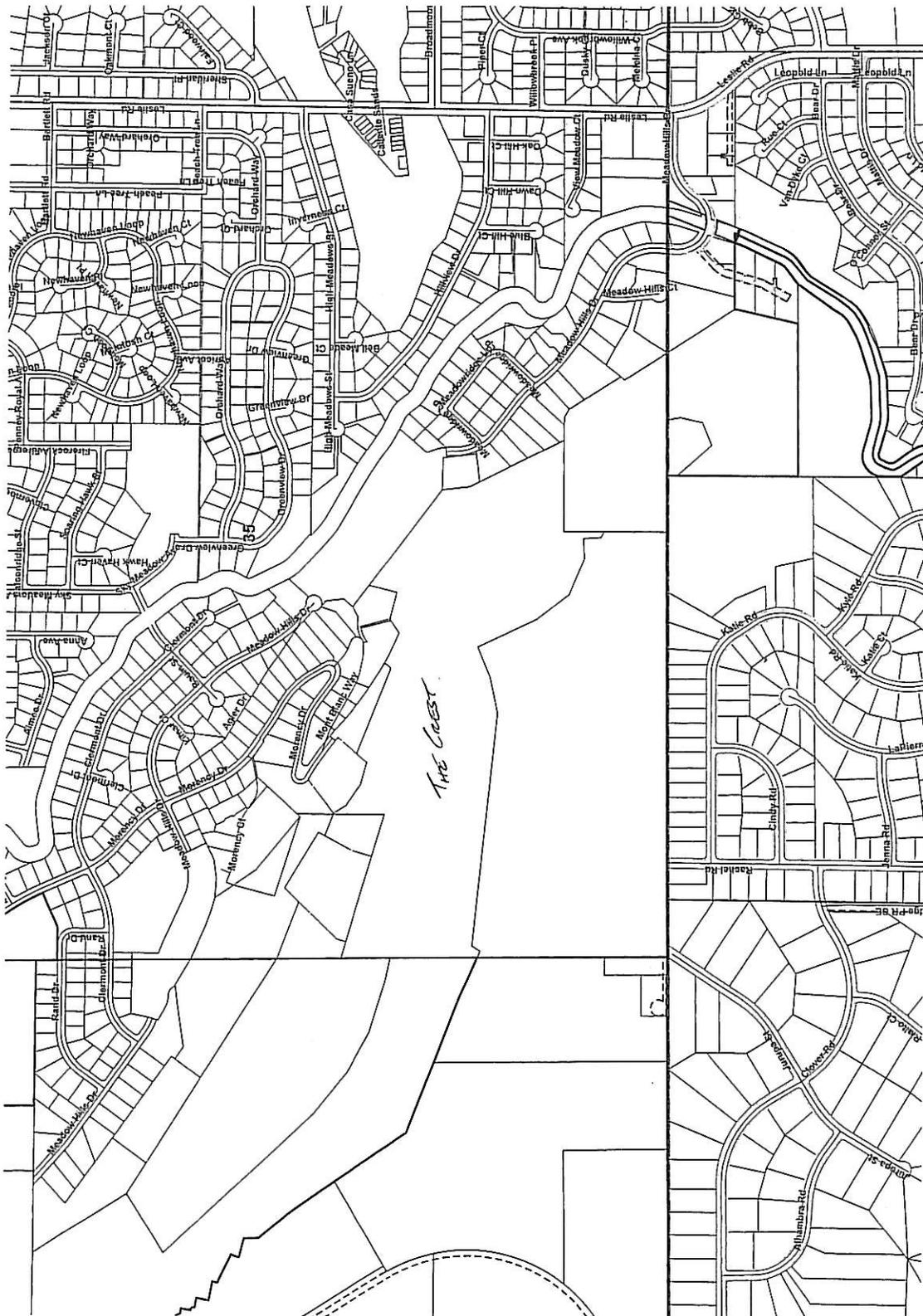
The landowners adjoining Rachel Road filed a lawsuit against the City over the subdivision. The Court ruled against the landowners. We protested to the City that our review did not consider Rachel Road as the only access to the plat and that we would have asked for improvements had we known this was the plan and asked that they reconsider the decision to not allow the developer to use Morency Drive. The City rejected our request.

The City has designated Rachel Road as an arterial collector. We have it designated as local access. The road was constructed to meet our designation, not the City's. Had we known the City's plan, we would have required that our portion of the road be upgraded to meet the City's designation. We would have required the traffic study address Rachel Road being the only access for the first 50 lots and the impacts to our road, intersections and approaches.

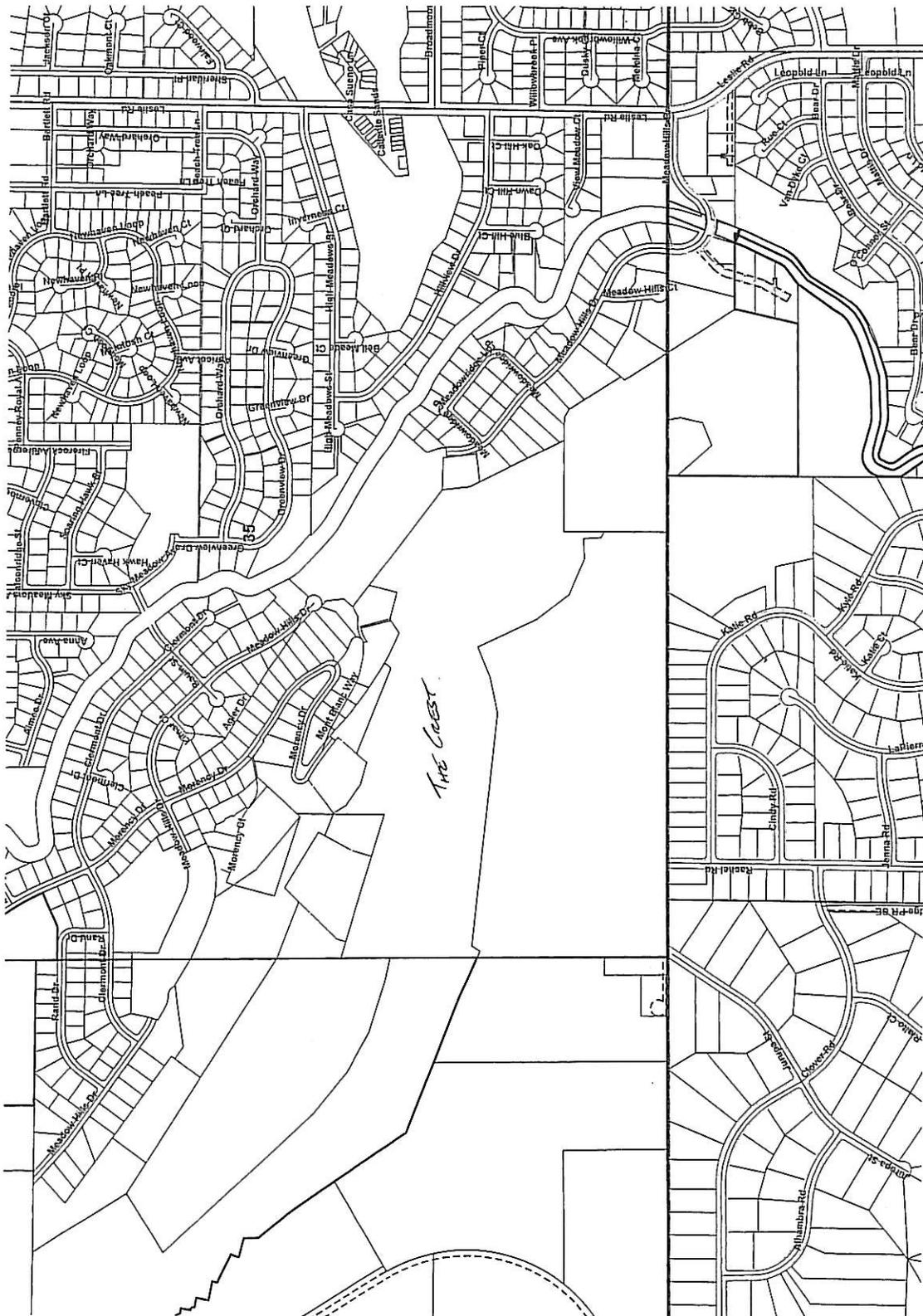
It is our recommendation that the County inform the City that use of Rachel Road as the sole access from The Crest subdivision will not be permitted, that the City either allow the developer to use Morency Road at this time or require the third connection and use of Morency Drive now rather than waiting until 50 lots have been developed.



Steven W. Becken  
Public Works Manager



THE CREST



10:00

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: July 6, 2009 Subject: Use of County Property Prepared by: <u>M. Wenner</u>	Execute Contract Pass Resolution <u>  X  </u> Pass Ordinance Pass Motion Other	Consent Agenda Public Hearing 1st Discussion <u>  X  </u> 2nd Discussion Other

**BACKGROUND INFORMATION**

On June 29, 2009, the Benton County Board of Commissioners directed staff to draft a resolution which set forth policies regarding the use of county buildings. The Board of Commissioners requested that the draft resolution be brought back before the board on July 6, 2009 for discussion.

**SUMMARY**

Please see the attached draft resolution.

**RECOMMENDATION**

Discuss the draft resolution.

# RESOLUTION

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

**IN THE MATTER LIMITING THE USE OF COUNTY PROPERTY TO PRESERVE SUCH PROPERTY FOR THE PURPOSE FOR WHICH IT IS OWNED OR LEASED BY BENTON COUNTY**

**WHEREAS**, under RCW 36.32.120 the Board of County Commissioners are mandated to care for and manage the property under the control of Benton County; and

**WHEREAS**, both the United States and the Washington State Constitutions guarantee people freedom of speech through the First Amendment and Article I, Section 5, respectively; and

**WHEREAS**, despite such constitutional provisions, not all publicly owned property becomes a public forum for speech simply because the public is permitted to come and go at a particular site; and

**WHEREAS**, like private property owners, local governments also have the authority to preserve the property under its control for the use to which such property is lawfully dedicated; and

**WHEREAS**, the entrances and access points to the buildings owned or leased by Benton County and being used by employees of Benton County, as well as the interior of all such buildings, must be preserved for the purposes for which such buildings are owned or leased by Benton County in order to serve the public; and

**WHEREAS**, the policies set forth herein regarding the use of such buildings are necessary for a number of reasons, including:

- a) minimizing the disruption of access to the buildings by those in the general public that have business to conduct within such buildings as well as minimizing the restriction of movement of the public and County employees within such buildings; and
- b) ensuring the peace of mind and safety of those in the general public that need to conduct business within such buildings, particularly given that many persons are required by law to visit such buildings; and
- c) ensuring the safety of persons within the buildings by keeping access points, lobbies and other public areas clear in case of emergencies; and
- d) ensuring that county employees are able to focus on their required work and are not distracted from timely completing their work by persons using the County buildings for non-County purposes; and

- e) avoiding the appearance of political favoritism by Benton County and/or its elected or appointed officials by not allowing the use of County buildings to facilitate political agendas outside of the conducting of County business; and

**WHEREAS**, the interior portions of buildings owned or leased by Benton County have been and shall continue to be used for the business of the County and are not maintained for public assembly and debate, except for those rooms so dedicated for public hearings or meetings at specific times for the business of the County; and

**NOW THEREFORE BE IT RESOLVED**, the policy reflected in this Resolution shall apply to all property under the control of Benton County, whether owned by or leased to the County, but shall not apply to property during such time said property is owned by the County but leased to another person or entity such that the County does not actively manage the use of said property; and

**BE IT FURTHER RESOLVED**, that the following policies are hereby adopted by the Board of Benton County Commissioners to further the goals and objectives stated herein:

1. Unless otherwise further restricted by law, First Amendment activities are permitted, subject to the terms of this policy, on the exterior of buildings used for official County business; provided, for fire and safety reasons and to insure appropriate access by the public, a person engaged in First Amendment activities shall not obstruct, or cause an obstruction of, any walkway, driveway, or passageway to an entrance of such buildings or within a parking lot for such buildings and shall not engage in such activities closer than 25 feet from any entrances to such buildings or any fire hydrant or emergency water supply pipe. For purposes of this section, a walkway, driveway or passageway is "obstructed" if there is less than 15 feet in passable width remaining when First Amendment users and their personal property are located on a walkway, driveway, passageway or a parking lot.
2. Section 1 above does not reflect an intent by the County to create and is not creating a designated public forum.
3. The interior portions of the buildings subject to this policy and used for official business of the County are not public forums.
4. Disorderly conduct, or conduct which creates loud and unusual noise, which impedes ingress to or egress from buildings subject to this policy, which otherwise obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, which otherwise impedes or threatens County employees in the performance of their duties, or which otherwise impedes or threatens members of the general public in transacting business or obtaining services provided on County property, is prohibited.
5. Campaigning for election to any public office, displaying or distributing commercial advertising, collecting signatures on petitions, polls, or surveys, leafleting, distributing literature, picketing and demonstrating by members of the public are prohibited in lobbies and other interior areas of buildings subject to this policy that are open to the public. The use of County

facilities is further limited by the terms of RCW 29A.84.510, RCW 42.17.130 and any other general laws that may apply. Public assembly and public address, except when conducted or sponsored by the County, are also prohibited in lobbies and other interior areas open to the public in buildings subject to this policy.

6. Soliciting alms and contributions are prohibited in buildings subject to this policy, except when conducted or sponsored by the County.

7. Depositing or posting handbills, flyers, pamphlets, signs, posters, placards, or other literature, except official County and other governmental notices and announcements, on the floors, walls, stairs, racks, counters, desks, writing tables, window ledges, or furnishings in interior public areas of buildings subject to this policy is prohibited.

**BE IT FURTHER RESOLVED**, this Resolution shall be effective immediately upon execution, and the County Administrator is directed to provide copies to all elected officials and department directors.

Dated this ..... day of ....., 2009.

\_\_\_\_\_  
Chairman of the Board

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

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

Attest: .....  
Clerk of the Board