



Return Name and Address:
Benton County
Office of Public Defense
7122 W Okanogan Place, Bldg A
Kennewick, WA 99336

PLEASE PRINT OR TYPE INFORMATION:

<p>Document Title:</p> <p>Interlocal Agreement for the use of Office of Public Defense Services</p>
<p>Grantor(s)(Last name first, first name, middle initials):</p> <p>1. 2. Benton County 3. 4.</p> <p>Additional names on page _____ of document.</p>
<p>Grantee(s)(Last name first, first name, middle initials):</p> <p>1. City of Richland ^{West} 2. 3. 4.</p> <p>Additional names on page _____ of document.</p>
<p>Legal description (abbreviated: i.e., lot, block, plat or section, township, range, qtr./qtr.)</p> <p>N/A</p> <p>Additional legal is on page _____ of document.</p>
<p>Reference Number(s) of documents assigned or released:</p> <p>Additional numbers on page _____ of document.</p>
<p>Assessor's Property Tax Parcel/Account Number: (MUST HAVE 15 DIGITS)</p> <p>N/A Property Tax Parcel ID is not yet assigned. Additional parcel numbers on page _____ of document.</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.</p>

RESOLUTION

2012 326

BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN INTERLOCAL AGREEMENT WITH THE CITY OF WEST RICHLAND FOR PUBLIC DEFENSE SERVICES

WHEREAS, Benton County, through its Office of Public Defense, provides public defense services to the cities within Benton County including the City of West Richland; and

WHEREAS, the terms of these public defense services were formalized in 2009 by interlocal agreements executed with each city; and

WHEREAS, when the signed interlocal agreement was received from the City of West Richland, it was forwarded to outside counsel for review, at which time it was apparently mistaken for an additional copy of the Richland interlocal and filed away without further action and without notice to Benton County; and

WHEREAS, a recent routine review of files noted that the interlocal agreement with West Richland still had not been executed; and

WHEREAS, the City of West Richland has re-executed the interlocal agreement, ratifying all of its original terms including the execution date of July 1, 2009, to match the original agreement and the expiration cycle of the agreements with the other cities, and this re-executed interlocal agreement has been approved as to form by outside counsel;

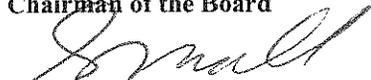
WHEREAS, both parties (the City of West Richland and the County of Benton) have been conducting business, for purposes of the matters contemplated by the interlocal, exactly as specified in the interlocal agreement, since the date of July 1, 2009;

NOW THEREFORE, BE IT RESOLVED THAT the interlocal agreement with the City of West Richland for public defense services be approved as presented.

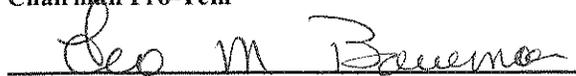
Dated this ... 19 ... day of ... June ... 20 12



Chairman of the Board



Chairman Pro-Tem



Member

Constituting the Board of County
Commissioners, Benton County
Washington

Attest: 
Clerk of the Board

INTERLOCAL AGREEMENT FOR USE OF OFFICE OF PUBLIC DEFENSE SERVICES

THIS AGREEMENT is made and entered into by and between BENTON COUNTY, a political subdivision of the State of Washington (hereinafter "County") and the City of WEST RICHLAND, WASHINGTON, a municipal corporation (hereinafter "City").

For and in consideration of the conditions, covenants and agreements contained herein the parties agree as follows:

1. PURPOSE. The City prosecutes misdemeanor and gross misdemeanor violations of its Municipal Code in Benton County District Court ("District Court"). Pursuant to the Sixth Amendment of the United States Constitution, Section 22 of the Washington State Constitution, and Courts of Limited Jurisdiction Criminal Rule 3.1, the City has a legal obligation to provide defense counsel to all indigent criminal defendants it prosecutes. The City wishes to utilize the administrative services of County's existing Office of Public Defense (hereinafter "BCOPD") to provide indigent defense counsel in criminal misdemeanor cases the City prosecutes, so as to fulfill its legal obligations in that regard.

2. DEFINITIONS.

- (a) "BCOPD District Court Expenditures" shall mean the gross payments to all contracted public defenders plus the salary and benefits paid to county-employed public defenders.
- (b) "City Defendant" shall mean a person who stands accused, in a criminal proceeding in District Court, of a crime that constitutes the violation of a provision of City's Municipal Code.
- (c) "Criminal case filing" shall mean a criminal case filed in District Court under a case number separate and unique from any other case in District Court and shall include traffic criminal cases, non-traffic criminal cases, and DUI criminal cases. Criminal case filing shall not, for purposes of this Agreement, include felony cases that are filed in Benton County Superior Court or felony cases filed in the Benton County District Court, or any civil or other non-criminal case filing (including, without limitation to, infractions).

3. SERVICES PROVIDED.

- (a) County shall, through and utilizing a combination of independent contractors and/or County employees as it deems appropriate, provide public indigent defense services to indigent defendants facing criminal charges prosecuted by City in District Court ("Defense Services"). The number of contractors

and/or employees utilized to provide the Defense Services shall be sufficient to handle caseload volumes in a manner generally consistent with applicable public indigent defense standards. PROVIDED, that in the event County intends to hire new County employees to provide indigent defense services in City's docket(s), County shall seek and receive the concurrence of City before such action.

- (b) The Defense Services provided by County shall include and be limited to the administrative oversight and management of the following matters:
- i. Individual defense attorney caseloads;
 - ii. Contract management for all contractor defense attorneys including monitoring contract compliance with: a) insurance coverage requirements, background investigation, continuing legal education ("CLE") requirements, and caseload reporting (including private cases) requirements;
 - iii. Financial costs of providing public indigent defense in District Court including the compensation of defense attorneys, receiving, verifying and auditing claims for additional compensation (such as for handling appeals, additional cases, trial per-diems, and investigator and expert expenses), maintenance and management of necessary files and records, compliance with State reporting requirements and responding to State audits;
 - iv. Receiving, investigating, and resolving complaints against indigent defense attorneys filed by represented City Defendants;
 - v. District Court docket assignments; and
 - vi. Assignment of cases to defense attorneys as needed and delegated by the District Court bench.

4. COMPENSATION FROM CITY. City shall pay County as compensation for its provision of District Court Defense Services as follows:

- (a) City shall compensate County by applying the following formula to determine the total annual compensation owing for any given calendar year: (BCOPD Benton County District Court Expenditures for legal services) x (City's percentage of criminal case filings in District Court for the prior Districting Plan Year.
- (b) In addition to the compensation determined in section 4(a) herein, City shall also pay an administrative fee, which shall compensate County for the services it provides pursuant to this Agreement as described in Section 3

herein. The fee shall, on an annual basis, equal 5% of the total compensation calculated in Section 4(a).

5. PAYMENT. County shall bill City for the compensation amounts determined and owing under Section 4 above by submitting a detailed monthly invoice to City along with supporting documentation, equal to the amount determined in section 4 above based on the actual monthly amounts, on or before the 15th day of each month, and City shall pay County within 30 days from invoice receipt City agrees to pay any attorneys' fees or costs incurred by County to collect delinquent unpaid invoices. For purposes of this paragraph, "detailed monthly invoice" shall mean an invoice that contains the following information: a) the total BCOPD District Court Expenditures to be allocated for the month; b) applicable allocation percentages to each City; and c) a statement indicating whether or not any Benton County employed indigent defense attorney provided any services on any Superior Court matter or any felony matter filed in District Court and if so, what percentage of their time was utilized for such matter(s). For purposes of this paragraph, "supporting documentation" shall consist of a listing of checks, including payroll checks, processed for the month encompassed by the billing, together with month to date totals for each vendor or employee.

6. METHOD AND MANNER OF SERVICES. County will consider any reasonable request or suggestion from City regarding the method and manner of providing Defense Services in District Court. Furthermore, County agrees to reasonably consult with City prior to instituting any substantial change(s) in the method and manner of providing public indigent defense services that have a potential financial impact on the total cost of providing indigent defense services in District Court. However, City agrees that County has ultimate and final discretion and control over the method and manner of providing public indigent defense services in general and specifically over the method and manner of providing Defense Services under this Agreement including, but not limited to, ultimate and final discretion and control over the following matters:

- (a) The number of attorneys used to provide indigent defense services;
- (b) The selection, retention, discipline and termination of attorneys to provide indigent defense services;
- (c) The decision on whether to provide the Defense Services contemplated by this Agreement through County employees or independent contractors; and
- (d) The assignment or re-assignment of individual defense attorneys to different court dockets.

7. COST OF ATTORNEY MISCONDUCT OR DISQUALIFICATION. In the event that an attorney contracted with to provide indigent defense services contemplated by this Agreement and assigned to provide services on City's docket is found to have engaged in

criminal misconduct, and is, as a result, disqualified to continue rendering legal services by the State Bar Association, District Court, Benton County policies on indigent defense, or by the terms and conditions of the professional services agreement pursuant to which such attorney provided indigent defense services, any additional professional services, or legal costs incurred as a result thereof shall be added to, and considered a part of, that particular calendar year's BCOPD Benton County District Court Expenditures for legal services, for purposes of calculating compensation as set forth in Section 4 of this Agreement.

8. INDIGENT DEFENSE BUDGET. For each year this Agreement is in force, County shall meet and consult with City during the period of time allocated for determining County's District Court indigent defense budget for the subsequent year.

9. NON-DISCRIMINATION POLICY. It is the County's policy that no person shall be subjected to discrimination in the County or by its contractors because of race, color, national origin or ancestry, sex, gender identity, age, religion, creed, marital status, familial status, sexual orientation, political affiliation, veteran status, or the presence of any physical, mental, or sensory handicap.

The City's execution of this Agreement constitutes the City's written assurance that it will fully comply with the County's Non-Discrimination Policy.

10. AUTHORITY. This Agreement is executed in accordance with the authority of RCW 70.48.090 and Chapter 39.34 RCW, the Interlocal Cooperation Act. The following information is provided pursuant to the provisions of RCW 39.34.030:

- (a) The duration and term of this Agreement shall be five years commencing and effective on July 1, 2009;
- (b) The BCOPD shall be responsible for the administration of this Agreement as provided by Section 11 hereof;
- (c) The purpose of this Agreement is to permit City to utilize the services of the BCOPD in providing indigent defense services to indigent defendants charged with crimes by City in District Court;
- (d) Termination of this Agreement shall be as provided in Section 14 hereof;
- (e) This Agreement shall be administered as provided in Section 11 hereof; and
- (f) Unless otherwise specifically agreed by the parties in writing, all property, personal and real, utilized by the parties hereto in the execution of this Agreement shall remain the property of that party initially owning it.

11. ADMINISTRATION. The BCOPD shall administer this Agreement.
12. REMEDIES. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any occasion shall not constitute consent to or waiver of any continuation of nonperformance or any later nonperformance; nor does payment of a billing or continued performance after notice of a deficiency in performance constitute acquiescence thereto.
13. DURATION. This Agreement shall be effective from the date of execution and shall be in force for a period of five years unless earlier terminated pursuant to Section 14 below. This Agreement shall automatically renew for periods of one year unless one party provides 6 months advance notice prior to the end of the term of intent not to renew.
14. TERMINATION. This Agreement may be terminated prior to the end of its term by either County or City with or without cause upon not less than one hundred and eighty (180) days advance written notice.
15. ENTIRE AGREEMENT. This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties relating to the subject matter hereof. 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.
16. 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.
17. 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 the City 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 the City 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 County 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 Benton County Superior Court, including judgment by default. The 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 Benton County Superior Court, and the 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.

18. REPRESENTATIVES. Each party to this Agreement shall designate and maintain a party-representative for purposes of contact and communications between the parties relating to the subject matter of this Agreement. Either party may change its representative at any time upon written notice to the other party stating the name, title, and both street and mailing address of the party's new designated representative.

The parties' representatives are as follows:

For the County: Eric Hsu
Indigent Defense Coordinator
7122 W. Okanogan Pl, Bldg A
Kennewick, WA 99336
(509) 737-3521

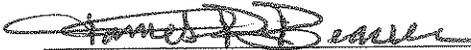
For the City: Julie Richardson
City Clerk
City of West Richland
3801 W Van Giesen
West Richland, Washington 99353
(509)967-3431 ext 7102

Notices by either party shall be in writing and shall be served upon the other party's representative. Notices shall be deemed to have been duly-served and received 3 business days after mailing, or immediately upon personal service.

Signatures on Following Page

Dated: 6-19-2012

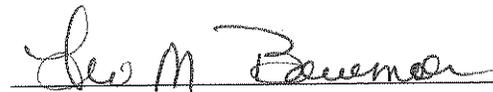
BENTON COUNTY, WASHINGTON



Chairman.



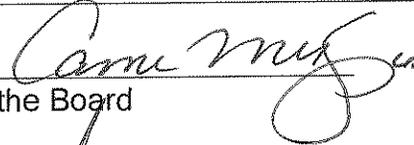
Member.



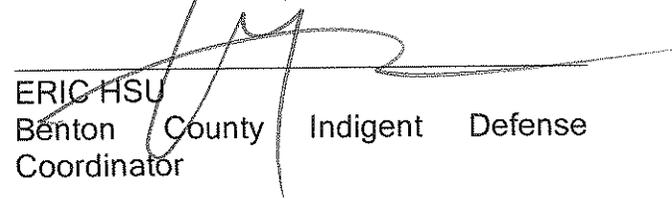
Member.

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

DATED: 6-19-2012

Attest: 
Clerk of the Board

Approved as to Content:


ERIC HSU
Benton County Indigent Defense
Coordinator

Approved as to Form:

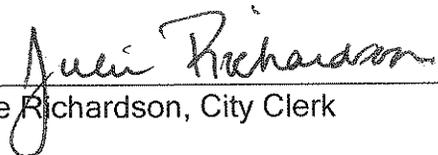

TIMOTHY G. KLASHKE
Attorney at Law

Dated: 4-3-12

CITY OF WEST RICHLAND,
WASHINGTON

By: 
Title: Donna Noski, Mayor

Attest:


Julie Richardson, City Clerk

Approved as to Form:


Bronson Brown, City Attorney