

**MINUTES  
OF THE BOARD OF COMMISSIONERS OF WEBER COUNTY**

Tuesday, January 26, 2016 - 10:00 a.m.

Commission Chambers, 2380 Washington Blvd., Ogden, Utah

*In accordance with the requirements of Utah Code Annotated Section 52-4-7(1)(d), the County Clerk records in the minutes the names of all citizens who appear and speak at a County Commission meeting and the substance "in brief" of their comments. Such statements may include opinion or purported facts. The County does not verify the accuracy or truth of any statement but includes it as part of the record pursuant to State law.*

**COMMISSIONERS:** Kerry W. Gibson, Matthew G Bell and James Ebert.

**OTHERS PRESENT:** Ricky D. Hatch, County Clerk/Auditor; David C. Wilson, Deputy County Attorney; and Fátima Fernelius, of the Clerk/Auditor's Office, who took minutes.

**A. WELCOME** – Chair Gibson

**B. INVOCATION** – Commissioner Bell

**C. PLEDGE OF ALLEGIANCE** – Brooke Stewart

**D. THOUGHT OF THE DAY** – Commissioner Ebert

**E. CONSENT ITEMS:**

1. Purchase orders for \$131,875.81
2. Warrants #400565-#400771 for \$1,587,744.68
3. Minutes for the meeting held on January 19, 2016
4. Request from Weber County Parks Department for approval of an application for eligibility of a Federal Surplus Property Program

Commissioner Ebert moved to approve the consent items; Commissioner Bell seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

**F. ACTION ITEMS:**

**1. RESOLUTION APPOINTING MEMBER TO WEBER HOUSING AUTHORITY – RESOLUTION 2-2016**

Andi Beadles, of the Weber Housing Authority, noted that there was a vacancy and the Board had forwarded the names of three individuals.

Commissioner Ebert moved to adopt Resolution 2-2016 appointing Maresha Bosgeiter to the Weber Housing Authority representing the non-profit community; Commissioner Bell seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

**2. AMEND CHANGE ORDER NO. 3 (2015-396) FOR GRANITE CONSTRUCTION ON PHASE 1 OF 3500 WEST FROM \$194,139.39 TO \$27,764.14**

Jared Andersen, County Engineer, County Engineer, noted that there was a reduction in costs.

Commissioner Ebert moved to approve the amended change order No. 3 (2015-396) for Granite Construction on Phase 1 of 3500 W. from \$194,139.39 to \$27,764.14; Commissioner Bell seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

**3. RIGHT-OF-WAY CONTRACT WITH THE FOLLOWING FOR THE 3500 W. PROJECT:  
FRANCIS & NOLA HESSELGESSER, PARCEL 109**

Jared Andersen, County Engineer, briefly presented this contract.

Commissioner Bell moved to approve the right-of-way contract with Francis/Nola Hesselgesser, Parcel 109, for the 3500 W. project; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

4. **TWO RIGHT-OF-WAY CONTRACTS WITH THE FOLLOWING FOR THE 12<sup>TH</sup> STREET PROJECT:  
CODY & TERESA OSTLER, PARCEL 151; SCOTT & DEBRA CONLEY, PARCEL 171**

Jared Andersen, County Engineer, briefly presented these contracts.

Commissioner Ebert moved to approve the right-of-way contracts with Cody/Teresa Ostler, Parcel 151, and Scott/Debra Conley, Parcel 171, for the 12<sup>th</sup> Street project; Commissioner Bell seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

5. **INTERLOCAL COOPERATION AGREEMENT WITH WEBER BASIN WATER CONSERVANCY DISTRICT FOR THEIR PORTION OF THE COST TO RELOCATE THEIR WATERLINE IN 12<sup>TH</sup> STREET, AS PART OF THE ROAD WIDENING PROJECT**

Jared Anderson, County Engineer, noted that the District is choosing to relocate its existing waterline in 12<sup>th</sup> Street (in conjunction with the county’s current 12<sup>th</sup> Street widening project) and is paying for its portion of that cost.

Commissioner Bell moved to approve the Interlocal Cooperation Agreement with Weber Basin Water Conservancy District for their portion of the cost to relocate their waterline in 12<sup>th</sup> Street, as part of the road widening project; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

6. **RESOLUTION APPROVING A COOPERATION AGREEMENT WITH WEBER BASIN WATER CONSERVANCY DISTRICT – RESOLUTION 3-2016**

This resolution pertains to the above item.

Commissioner Bell moved to adopt Resolution 3-2016 approving the cooperation agreement with Weber Basin Water Conservancy District; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

7. **CONTRACT WITH JAMES RETALICK TO REPRESENT INDIGENT DEFENDANTS IN THE DISTRICT COURT**

David Wilson, Deputy County Attorney, stated that this is the last remaining contract for indigent defense; the other contracts were presented on 1/5/2016.

Commissioner Bell moved to approve the contract with James Retalick to represent indigent defendants in the District Court; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

8. **CONTRACT WITH GREAT BASIN ANTIQUE MACHINERY TO HAVE ANTIQUE MACHINERY ON DISPLAY, HOLD TRACTOR PULLS & A TRACTOR PARADE AT THE 2016 WEBER COUNTY FAIR**

Jan Wilson, with the Weber County Fair, briefly presented this contract.

Commissioner Bell moved to approve the contract with Great Basin Antique Machinery to display antique machinery, hold tractor pulls and a tractor parade at the 2016 Weber County Fair; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

9. **CONTRACT WITH CAPITOL INTERNATIONAL PRODUCTIONS, INC. TO HAVE CJ’S ANIMAL ADVENTURES/AUSSIE KINGDOME AT THE 2016 WEBER COUNTY FAIR**

Jan Wilson, with the Weber County Fair, briefly presented this contract.

Commissioner Bell moved to approve the contract with Capitol International Productions, Inc. to have CJ’s Animal Adventures/Aussie Kingdome at the 2016 Weber County Fair; Commissioner Ebert seconded.

Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

**G. PUBLIC HEARING:**

1. Commissioner Bell moved to adjourn the public meeting and convene the public hearing; Commissioner Ebert seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

2. **PUBLIC HEARING TO TAKE ACTION ON A PROPOSAL FOR CREATION OF AN AGRICULTURAL PROTECTION AREA (APA) – MARRIOTT #1**

Fátima Fernelius, of the County Clerk/Auditor’s Office, stated that an application for creation of an APA was received from Randy/Kami Marriott. The boundaries are along 700 N from approximately 5900 W to about 8700 W. The statutory requirements were followed for publishing, mailing and posting the notice for the proposal and for this public hearing. No written public comments were received. The Western Weber Planning Commission and the Advisory Committee recommended approval. Kami Marriott was present and had no comments. Chair Gibson invited public comments and none were offered.

3. Commissioner Ebert moved to adjourn the public meeting and reconvene the public hearing; Commissioner Bell seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

4. **ACTION ON PUBLIC HEARING:**

**G.2. - CREATION OF AN AGRICULTURAL PROTECTION AREA**

Commissioner Bell moved to approve the creation of the Marriott #1 Agricultural Protection Area; Commissioner Ebert seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

**H. PUBLIC COMMENTS:**

Gary Nielsen, Board member of Warren Irrigation, said that he is in favor of agriculture protection areas. The Warren Irrigation board’s next meeting is on February 16<sup>th</sup>. He said that if the Commission would like to submit a statement he can read it at that meeting informing the people about what is occurring with the 12<sup>th</sup> Street reconstruction/widening project because a lot of the residents in that area are being impacted and there has been a lot of miscommunication. Chair Gibson said that the Commission appreciates the help in getting the word out about the project.

**I. ASSIGN PLEDGE OF ALLEGIANCE FOR MEETING ON TUESDAY, FEBRUARY 2, 2016, 10 A.M.**

**J. ADJOURN**

Commissioner Bell moved to adjourn at 10:27 a.m.; Commissioner Ebert seconded.  
Commissioner Ebert – aye; Commissioner Bell – aye; Chair Gibson – aye

Attest:

\_\_\_\_\_  
Kerry W. Gibson, Chair  
Weber County Commission

\_\_\_\_\_  
Ricky D. Hatch, CPA  
Weber County Clerk/Auditor

5160040  
1-26-16

**AGREEMENT FOR INDIGENT DEFENSE ATTORNEY**

THIS AGREEMENT is made effective the 1<sup>st</sup> day of January, 2016, by and between WEBER COUNTY, a body politic of the State of Utah, hereinafter referred to as "County," and James Retallick, hereinafter referred to as "Attorney."

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended, Weber County has the responsibility to provide legal counsel to every indigent person who faces the substantial probability of deprivation of his or her liberty; and

**WHEREAS**, Attorney is a member of the Utah State Bar Association in good standing and admitted to practice law before the courts of the State of Utah; and

**WHEREAS**, Attorney is willing to represent indigent persons in the Second District Court when appointed by the Court;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained hereafter, the parties hereto agree as follows:

1. Attorney agrees to provide competent legal counsel to any person charged with a felony or a misdemeanor who is deemed by the court to be indigent and who appears at the arraignment calendar sessions in the court Attorney is assigned to, as well as those indigent persons assigned to Attorney at video arraignments. Attorney will represent indigent defendants in all matters before the court including scheduling conferences, all hearings and trials, and all other matters required to ensure adequate representation including, but not limited to probation violations hearings and restitution hearings.

Attorney agrees to promptly notify the court of any changes with regard to the indigent status of client, which changes would affect the qualifying of the client for court-appointed counsel.

2. Attorney agrees to appear at video arraignments at the Weber County Correctional Facility (or any other location should the current procedure change) at half of each and every scheduled arraignment (normally Monday through Friday, with some exceptions for holidays, judicial conferences, etc.). Attorney's schedule is to be coordinated with the Coordinating Attorney. Attorney will interview those inmates who are requesting a public defender, fill out an intake sheet and make a determination, using the Standards of Indigency accepted by the Second District Court, as to whether the inmate qualifies to have a public defender appointed to him/her.

Attorney will represent jail inmates before the video judge, facilitate the assignment of a public defender for those inmates who qualify, address bail status issues when relevant and necessary, and generally handle any other legal matter relevant to indigent inmates before the video court.

Attorney will fill out an intake sheet completely for each indigent inmate, including noting the date, time and judge of the next court hearing, as well as the name of the attorney appointed to represent the indigent inmate, and submit a copy of each intake sheet, as well as of the video arraignment calendar, to the Coordinating Attorney as soon as practicable after each arraignment session.

3. If Attorney is not Rule 8 qualified, Attorney shall make reasonable efforts to become Rule 8 qualified. Attorney agrees that if he is qualified for the defense in a capital defense case where the County Attorney's Office seeks the death penalty, Attorney shall accept such assignment. County agrees that it shall pay additional compensation as negotiated by the Coordinating Attorney. The Coordinating Attorney shall consult with the Civil Division of the County Attorney's Office in determining whether Attorney is assigned as defense counsel in a death penalty case.
4. Attorney will represent various indigent defendants that would typically be assigned to other contract attorneys when the court deems there is a conflict of interest preventing the other contract attorneys from representing the indigent defendant. Any such representation shall be at no additional cost to Weber County, with such assignments being made by the Coordinating Attorney. When necessary, Attorney will be required to provide conflict representation in the Juvenile Court as well.
5. Attorney will cooperate in providing the Coordinating Attorney caseload information to enable the proper assembly of case statistics.
6. Attorney will seek to identify potential conflicts or complaints that persons may have against Attorney and work diligently to avoid any complaints being lodged against Attorney, and will immediately communicate to the Coordinating Attorney any complaints that may be lodged by anyone against Attorney, and work diligently to resolve any such complaint.
7. Attorney will assist in the development of a list of court approved investigators and expert witnesses and make diligent efforts to utilize only those investigators and expert witnesses found on such list. If Attorney feels it necessary to utilize an expert witness or investigator who is not on the approved list, Attorney agrees to first consult with the Coordinating Attorney before making any such request of the Court.
8. Attorney shall submit to the Coordinating Attorney an electronic copy of each and every motion, memoranda and appellate brief Attorney files. Attorney is not required to submit said copies prior to the respective due dates, but shall submit copies to the Coordinating Attorney as soon thereafter as is practicable.
9. Attorney shall submit to the Coordinating Attorney a copy of each request for transcripts, request for appointment of expert witness, or any other motion or request that will require payment by the County, and shall submit such copies

simultaneously with the filing of the original documents with the Court. Attorney shall also work to ensure that such requests are necessary for case preparation.

10. If at any time Attorney's case load becomes sufficiently burdensome to create an ineffective assistance of counsel issue or could cause the attorney to be in violation of the Rules of Professional Conduct, Attorney shall immediately notify the Coordinating Attorney and determine a proper course of action to remedy the situation.
11. County agrees that if a particular case is deemed to be extraordinary in complexity or requires extraordinary resources for a reasonable defense, Attorney may apply to Weber County for additional funding upon the recommendation of Coordinating Attorney.
12. Attorney is expected to provide coverage for other contract attorneys when necessary and when Attorney is available to provide coverage. When possible, the attorneys should attempt to trade coverage at the time coverage is procured. When a simultaneous trade is not possible, the attorney whose calendar was covered should make reasonable efforts to reciprocate coverage for the attorney who covered for him/her upon request.

If the Coordinating Attorney determines that the attorney who provided coverage made reasonable efforts to procure coverage from the attorney for whom he/she provided coverage and the other attorney is unwilling or unable to provide coverage within six months of the original coverage having been provided, the covering attorney shall be compensated by the attorney who was covered the sum of \$250 for having provided coverage. This amount shall be deducted from the paycheck of the attorney whose calendar was covered and added to the paycheck of the covering attorney.

13. When Attorney will miss his regular court assignment due to trial, seminar, vacation, etc., he shall arrange with another contract attorney to cover Attorney's court. If Attorney fails to procure coverage and does not appear at his court assignment, the sum of \$600 shall be deducted from his pay and paid to the attorney[s] who provided coverage for Attorney (if, indeed, any is provided). The arrangement for court coverage shall be coordinated with the Coordinating Attorney.
14. The term of this Agreement shall be from January 1, 2016 through December 31, 2016.
15. Weber County agrees to pay Attorney the sum of \$77,000 for service provided between January 1, 2016 and December 31, 2016, plus an additional \$300 annually to cover expenses associated with discovery. Payment shall be made to the Attorney in equal monthly installments of \$6,441.67 per month. The first installment is due before the end of January 2016 and a like sum on the last day of each month thereafter through December 31, 2016.

16. Attorney shall maintain professional malpractice insurance with limits of — \$100,000 per person and an aggregate of \$300,000 and provide to Weber County evidence of the insurance each year this Agreement is in effect. In addition, Attorney agrees to defend, indemnify and hold Weber County harmless from all damage, loss or injury it may suffer as a result of the conduct of Attorney.
17. Attorney agrees to abide by the rules of Professional Conduct of the American Bar Association, the Utah State Bar Association and the laws of the State of Utah, including but not necessarily limited to the provisions of Chapter 32 of Title 77, *Utah Code Ann.* (1953) as amended. Attorney agrees to keep abreast of all current legal trends and to that end shall maintain sufficient continuing professional education credits during the period of this agreement.
19. Throughout the term of this Agreement, Attorney agrees to maintain a bona fide office in Weber County, made available to the clients which he/she serves under the terms of this Agreement. Attorney agrees to be available and accessible to clients reasonably in advance of any hearing or trial, to make reasonable efforts to visit clients who are incarcerated, to return telephone calls as soon as reasonably possible, and to otherwise be reasonably accessible to all clients.
19. Attorney agrees to use his best efforts to avoid any conflicts of interest which would divide loyalty of defense counsel to the client. The parties, however, recognize that certain cases may arise where conflicts are of sufficient magnitude that the Attorney cannot represent the person charged. Conflicts of interest shall only be deemed to exist after a determination of the appointing Court.
20. Nothing in this agreement shall prohibit Attorney from representing private clients so long as the representation of private clients does not interfere with or create a conflict of interest in the representation of clients appointed under this agreement.
21. Attorney agrees to assist Weber County in the continued implementation of a fee recovery program whereby Defendants receiving assistance of appointed counsel shall repay to Weber County a portion of the expense thereof as a matter of restitution, based upon a schedule approved by the Weber County Commission.
22. This Agreement may not be assigned by Attorney. Attorney is an independent contractor and shall not act as an agent for Weber County.
23. Weber County has established a separate indigent expense fund and will continue to fund the expense fund for the term of this Agreement. The expense fund may be used by all attorneys representing indigent defendants in Weber County. Appropriate expenses shall include, but shall not be limited to, laboratory costs, transcripts, defense witness fees, and extraordinary investigator fees. Attorney will bear all other expenses in providing the services contemplated herein, including but not limited to, transportation, office, telephone, postage, copying and secretarial costs. While ensuring that

Attorney's client receives an adequate and reasonable defense, Attorney hereby agrees to use his best efforts to minimize the cost and expenses to be deducted from the fund.

Before any funds are expended, Attorney shall first consult with the Coordinating Attorney, and then shall make application for approval of expenses in the form of a written motion to the trial judge and shall specify the reasons for the expense. Payment for any expense incurred by the Attorney and not previously approved by the Court, or in excess of that approved by the Court, shall be the sole responsibility of the Attorney. In the event the total court approved expenses exhaust the expense fund for the year, the Attorney shall apply in writing to the Weber County Clerk/Auditor for approval of additional funds.

24. Attorney or County may terminate this Agreement without cause upon sixty (60) days written notice to the other party. This Agreement may also be terminated at any time for cause. Cause shall include but not be limited to a suspension or revocation of Attorney's license to practice law in the State of Utah, a breach of this Agreement or behavior which brings disrepute to other contract attorneys or to County. In the case of a breach or violation of a term of this Agreement, Attorney shall be given seven (7) calendar days to cure the breach or violation. Failure of the Attorney to cure the breach or violation within the specified period shall result in termination of this Agreement and the parties hereto agree that Weber County may retain other legal counsel to represent indigent defendants within Weber County and deduct the costs from the compensation identified in Paragraph 16 of this Agreement.
25. Any notice required by this agreement shall be given in writing addressed to the following unless otherwise designated in writing.

FOR THE COUNTY:

Weber County  
Administrative Services Division  
2380 Washington Blvd., Suite 340  
Ogden, UT 84401

WITH A COPY TO:

Weber County Attorney's Office  
Civil Division  
2380 Washington Blvd., Suite 230  
Ogden, UT 84401

FOR THE ATTORNEY:

2568 Washington Blvd, Ste 205  
Ogden, UT 84401

26. In the event this agreement is terminated or is not renewed, Attorney agrees to cooperate with her successor including the filing of all necessary pleadings for



withdrawal and to deliver all applicable files, information and materials to the successor.

27. In the event that Attorney files a Notice of Appeal to the Utah Court of Appeals and/or the Utah Supreme Court, Attorney shall immediately, but not later than ten (10) days thereafter, contact Appellant Counsel designated by County to transition and turn over all relevant records within Attorney's possession or control as necessary in the interests of justice and as requested by Appellate Counsel.
28. This Agreement can be changed, modified or amended only by written agreement of the parties hereto.
29. Attorney is an independent contractor and is responsible to pay any and all taxes and fees which may result from the compensation paid to Attorney pursuant to this Agreement.
30. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
31. This Agreement shall be governed by the laws of the State of Utah.

**IN WITNESS WHEREOF** the undersigned have affixed their respective signatures hereto the dates indicated below.


BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

Date 1-26-2016

By   
Kerry W. Gibson, Chair

Commissioner Bell voted ✓  
Commissioner Ebert voted ✓  
Commissioner Gibson voted ✓

ATTEST:

  
Ricky Hatch, CPA  
Weber County

ATTORNEY

By James Retallick  
James Retallick

Date 1/14/16

INDIGENT DEFENSE COORDINATOR

By Michael D. Bouwhuis  
Michael D. Bouwhuis

Date 2/10/16