

FCO 2011- III

AN ORDINANCE ESTABLISHING THE CONTRACT FOR THE COUNTY ATTORNEY

WHEREAS, the Board of Commissioners of the County of Floyd, is in need of professional attorney services in areas dealing with the Board's legal work, County legal work, the County Sheriff's legal work, and oversight and handling of litigation files, plus other legal services as may subsequently be identified from time-to-time, and the said Board has agreed to the same stipulations as outlined in the 2010 Contract For Attorney Services herein attached as Exhibit A and;

WHEREAS, the Board did on the 4th day of January, 2011 re-appoint Richard R. Fox (the Attorney), of the firm of the Law Offices of Richard R. Fox, LLC, with an address of 409 Bank Street, New Albany, IN 47150 and:

WHEREAS, it is necessary to the public interest that the Board has the experience, and expertise for the matters described above, and to that end the Board hereby authorizes the 2010 Attorney Contract with same terms and conditions set forth herein and ending on December 31, 2011.

NOW THEREFORE:

BE IT ORDAINED, that this Ordinance shall be in full force and effect upon passage.

DULY ADOPTED THIS 18th day of January 2011.

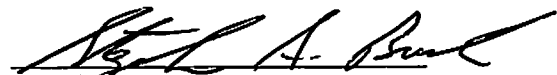
BOARD OF COMMISSIONER
OF THE COUNTY OF FLOYD



President



Member



Member

ATTEST:



Floyd County Auditor

CONTRACT FOR ATTORNEY SERVICES

This Contract for Attorney Services (hereinafter this "Contract"), is made and executed this 19th day of January, 2010, with an effective date of January 1, 2010, by and between the following:

The Board of County Commissions of Floyd County, Indiana (the "Board"), with an address of City County Building, Second Floor, New Albany, IN 47150, and

Richard R. Fox (the "Attorney"), of the firm of the Law Offices of Richard R. Fox, LLC, with an address of 409 Bank Street, New Albany, IN 47150.

RECITALS:

WHEREAS, the Board is in need of professional attorney services in areas dealing the Board's legal work, County legal work, the County Sheriff's legal work, and oversight and handling of County litigation files, plus other legal services as may subsequently be identified from time-to-time, and the said Board has agreed to this form of contract for the time periods discussed below, ending on December 31, 2010, and

WHEREAS, the Attorney has significant professional experience in dealing with governmental legal matters, and further has knowledge of local County agencies and of the Board's responsibilities in relation to the County; and

WHEREAS, it is necessary to the public interest that the Board experience, and expertise for the matters described above, and to that end the Board hereby authorizes this Contract on terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE BOARD AND THE ATTORNEY AGREE AS FOLLOWS:

1. The Attorney shall perform legal services as the "Floyd County Attorney" within the context and scope of this Contract as assigned by and/or through the Board for purposes of the matters described above and hereinafter. All recitals above are made a term of this Contract. The Attorney shall perform such work as is assigned by the Board within the context of the projects described above, the scope of which is defined by the Board.
2. The Board and Attorney shall jointly approve and endorse this Contract.

3. The parties agree that the term of this Contract shall run from the effective date of January 1, 2010, through and including December 31, 2010, unless earlier terminated as set forth herein.
4. It is acknowledged that the compensation to be paid by the Board to the Attorney for his professional services under this Contract have been determined and agreed after consideration of the following factors:
 - (a) The time and labor required for the project work, the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;
 - (b) The experience and specialized knowledge of the Attorney;
 - (c) The regular billing rate of the Attorney in his professional practice as a fee he customarily charges in this locale;
 - (d) The likelihood that acceptance of this particular retention could preclude the Attorney from devoting certain of his professional time to his ongoing legal practice as an Attorney;
 - (e) The experience, reputation, and ability of the Attorney as a lawyer performing these types of services.
5. In consideration of the above factors, and all other relevant factors, the Board and the Attorney have agreed to a monthly retainer payment for the Attorney's attendance at regular, special, or executive Board meetings, and the Attorney's rendering of legal advice or guidance on consultation with the Board, individual Board members, or County office holders (the "Basic Services") in the amount of Two Thousand Six Hundred Thirty Nine Dollars and Seventy Five Cents (\$2639.75). This payment responsibility is effective January 1, 2010. The parties may separately negotiate other services outside the scope of this Contract by lump sum payment or otherwise, including without limitation, any long-term debt financing projects of the County or any political subdivision thereof that may arise or occur during the term of this Contract, and it is contemplated that Attorney will be paid an hourly rate of \$125.00 per hour for such work;
6. The parties further agree that the Attorney shall be separately compensated in excess of the retainer for Basic Services for all litigation work related to representation of the County, the Board, or any County office holder, board, commission, political subdivision, or employee ("Litigation Work") at an hourly rate of One Hundred Twenty Five and no/100 Dollars (\$125.00) per hour. Such work shall be billed on separate claim forms and shall be separate and apart from the Basic Services component of the Attorney's Contract set for in Paragraph 5 above. The Board accepts Attorney's offer to utilize Attorney's private office space and resources as necessary from time-to-time for purposes of carrying out the objective of this Contract. Litigation work shall be defined as any work done in response to anticipated litigation or

litigation in administrative proceedings, arbitration, mediation or state or federal court.

7. To the extent the Attorney's services will likely include attendance at several meetings with local, state and/or federal officials from time-to-time, the Board agrees to reimburse the Attorney for mileage at the approved state rate, travel and other out-of-pocket expenses, long distance telephone expense, copy charges, and postage incurred by the Attorney in the performance of his duties under this Contract.
8. The Attorney agrees further, in consideration of the foregoing, and the Board so acknowledges, that a portion of the fee payments made to the Attorney will necessarily be allocated to the Attorney's overhead expenses in connection with providing the above services. The parties agree that from the above payments the Attorney shall be responsible for the following expenses incurred in the provision of services at no additional cost to the Board:
 - (a) Provision of the Attorney's office space and rent;
 - (b) Provision of the Attorney's secretary and support staff;
 - (c) Provision of paper (letter and legal), except Board or County stationery and enveloped;
 - (d) Provision and payment for typewriter, word processor, and printing supplies and other equipment, except for large printing projects which may be delegated to commercial printers;
 - (e) Provision of copy machines, supplies, or expense; and,
 - (f) Provision of telephone and facsimile ("fax") capability.
9. The parties agree that this Contract shall not prevent Attorney from operating an independent law practice in New Albany, Indiana, or at any other location as the Attorney may choose. The parties further agree that the terms of this Contract apply to, and describe a part-time legal consulting independent contractor position agreed by the Board and the Attorney. The Board acknowledges that the Attorney's private practice includes representation of banking and business clients that of necessity must transact business with the County.
10. The Board acknowledges that the Attorney's private practice includes representation of other governmental agencies including, but not limited to the Town of Greenville, the New Albany Township Fire Protection District and the New Albany Floyd County Parks Department and that of necessity must transact business with the County. The Board further acknowledges, agrees and consents that the representation of such clients by the Attorney or his firm shall not constitute a disqualifying "conflict of interest" such as to preclude Attorney's representation of the Board or the County pursuant to this Contract, or such as to prevent Attorney from accepting cases of this type in his private practice in the future, provided Attorney minimally performs as follows:

- (a) Attorney shall disclose to the Board any representation that Attorney or his firm has provided to any person or entity transacting business with, seeking relief from, or otherwise appearing before the Board.
- (b) Following such disclosure and consultation, the Attorney and the Board shall determine on a case-by-base basis whether the Board and/or the County should retain counsel other than the Attorney in any particular matter on account of any prior or current representation disclosed by the Attorney as required by the Indiana Rules of Professional Conduct.

11. The Board and Attorney expressly agree that, should Attorney be named as a defendant or respondent in any litigation or administrative matter pertaining to his services under this Contract, the Board shall provide the legal defense, at the trial and appellate level, and pay all attorney fees, costs, judgments and orders, if any, that may become due as a result of Attorney being so named in any litigation or administrative matter for any reason, valid or not, as a result of his being a party to this Contract. The Board further agrees to indemnify and hold Attorney harmless from any claim, expense, cost, attorney fee expense, liability judgment, or order of payment arising from his service under this Contract. This obligation of the Board shall continue beyond the term of this Contract and shall be binding upon the Board and their successors and assigns.

12. The Board recognizes that Attorney's primary occupation is as a practicing Indiana attorney. By signature hereon, the Board expressly waives any right to claim a disqualifying "conflict of interest" against Attorney should Attorney, at some future time after his contractual relationship with Board ends, appear before the Board representing any client whose interest may be adverse to either entity, respectively, at the time. This waiver of such claim for future attorney work shall exist comprehensively and completely, except as to those matters that are legitimately confidences and secrets shared with an/or obtained by Attorney during his representation of the Board under this Contract, as the same may be extended.

13. The parties acknowledge that the Board consists of three (3) members, and that the Attorney may only be directed to take official action on behalf of the Board or the County on authorization by the majority of the entire membership of the Board. Each member of the Board shall be entitled to individually consult with the Attorney at the member's sole discretion, but no single member or officer of the Board shall direct the Attorney to take any official action on behalf of the Board as a whole or the County until such action is authorized by the majority of the Board's members. Accordingly, the parties agree that the Attorney shall perform the Basic Services as set forth herein without further authorization by any Board member, but otherwise only as

directed by the affirmative majority vote of the entire membership of the Board. It is also agreed that Attorney shall, in between meetings, follow routine administrative and legal directives from the President of the Board, or from any two (2) members affirmatively directing Attorney to perform a task. The Attorney is not required to act on any matter of significant policy or substance, or issue correspondence to external persons or entities in between meetings except upon the affirmative direction of two (2) members of the Board giving such direction. All parties agree that Attorney should arrange his schedule to be present at all regular, special, and executive Board meetings to the fullest extent reasonably practicable as a part of his Basic Services under this Contract.

14. This Contract may be terminated in whole or in part by either party, with or without cause, upon thirty (30) days written notice to the other party at the address stated above, or at such other address as either party may subsequently direct in writing to the other party.


WHEREFORE, THIS CONTRACT IS MADE AND EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE BY EACH OF THE UNDERSIGNED AS THE DULY AUTHORIZED REPRESENTATIVE OF THE PARTIES HERETO.

For the "Board":

**BOARD OF COMMISSIONERS
OF FLOYD COUNTY, INDIANA**

By: 
Stephen Bush, Commissioner

By: 
Mark Seabrook, Commissioner

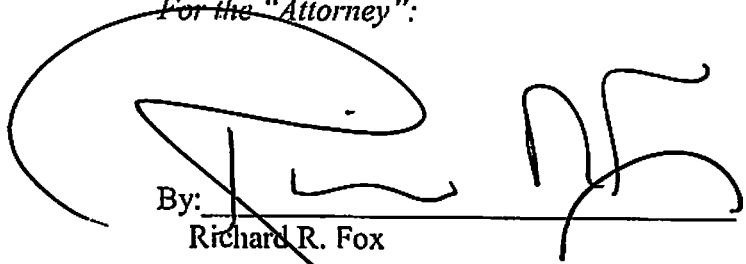
By: 
Charles Freiberger, Commissioner

Attested by:

Teresa Plaiss

Teresa Plaiss,
Auditor of Floyd County, Indiana

For the "Attorney":

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

By: _____
Richard R. Fox