February 23, 2009

THE BOARD OF BENTON COUNTY COMMISSIONERS AGENDA PACKET

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
February 9, 2009, 9:00 am.
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: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Linda Ivey; Personnel Manager Melina Wenner; Facilities Manager Roy Rogers; Central Services Manager Randy Reid; Public Works Director Ross Dunfee; DPA Ryan Brown, Coroner Rick Corson; DPA Jonathan Young; and Treasurer Duane Davidson.

Approval of Minutes

The Minutes of January 29, 2009 and February 2, 2009 were approved.

Consent Agenda

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

Commissioners
- b. Adoption of Budget Policies and Procedures
- c. Recruitment and Selection Process for Non Partisan Elective Office Vacancies

Coroner
- d. Line Item Transfer, Fund No. 0000-101, Dept. 109

Facilities
- e. Contract Amendment w/Yoder, Inc. for As Needed Kitchen Equipment Repair Services
- f. Contract w/Fowler General Construction for Concrete Work
- g. Contract w/Hart's Backflow Testing, LLC

Fairgrounds
- h. Lease Agreement w/Columbia Basin Dog Training Club

Human Services
- i. Agreement w/Spokane Co. Community Srvcs., Housing & Community Development Department

Road/Engineer

j. Authorization to Schedule and Advertise a Bid Date for Bituminous Surface Treatment 2009
k. Contract w/Tapani Underground, Inc. for Webber Canyon Road
l. County Road Improvement District #16 Property Consolidation
m. Authorization to Purchase Poly Storage Tank

Sheriff

n. Salary Request Statement

Treasurer

o. Deadline Extension for Commencing Assessment Foreclosure Proceedings

Consent Agenda Item "a"(Amendment of Bylaws and Rules of Procedure for Commissioners)

Commissioner Bowman requested section 7.5 of the Bylaws be changed to reflect the RCW regarding "tie votes".

MOTION: Commissioner Bowman moved to approve consent agenda item "a", clarifying the procedure on a tie vote. Commissioner Beaver seconded and upon vote, the motion carried.

Cancellation of Meeting

The meeting of February 17, 2009 was cancelled.

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

Proposal for Plymouth Water District

Adam Fyall said that Benton County had been asked to act as the grant receiving "pass-through" agency on behalf of the Plymouth Water District for work on their water system plan.

Mr. Fyall asked for concurrence to endorse the project and work on the grant, and the Plymouth Water District would complete an income survey that would ultimately determine if they were eligible for a grant.

MOTION: Commissioner Bowman move to approve staff work with Plymouth and RCAC to complete research for the Plymouth Water system. Commissioner Beaver seconded and upon vote, the motion carried.

Other Business

WSAC - LSC Meeting – Report

Commissioner Bowman provided a report on the LSC meeting and discussed his time spent on the Hill in Olympia.

Commissioner Beaver also reported on the trip and said he had made connections and felt that Benton County was well represented.

Blackberries

Commissioner Bowman discussed his concern and frustration with the current process and his inability to communicate through his computer when he was traveling. He said he had requested staff to research the cost of Blackberries.

Loretta Smith Kelty and Randy Reid provided a report outlining the function, costs, and issues of Blackberries.

Chairman Benitz said it was one of the priority items for workshop and requested it be discussed at that time.

Commissioner Bowman stated he had several trips scheduled and hoped to get it moving as quickly as possible.

Commissioner Beaver requested a policy to review during the workshop and said he was in favor of moving forward.

The Board discussed whether it was necessary to have a workshop on the issue and instructed staff to move forward with a policy for the Board to approve.

Introduction of DPA

DPA Ryan Brown introduced Jonathan Young to the Board as the new DPA in the civil division.

Vouchers

Check Date: 02/05/2009
Taxes # 10109021-10109023
Warrant #: 917243-917281
Total all funds: $1,927,180.37

Check Date: 02/05/2009
Warrant #: 222065-222243
Direct Deposit #: 42606-43164
Total all funds: $1,989,035.03

Check Date: 02/06/2009
Warrant #: 917037-917242
Total all funds: $6,574,767.51

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

Resolutions

09-101	Agreement w/Spokane Co. Community Srvcs., Housing & Community Development Department
09-102	Adoption of Budget Policies and Procedures
09-103	Recruitment and Selection Process for Non Partisan Elective Office Vacancies
09-104	Line Item Transfer, Fund No. 0000-101, Dept. 109
09-105	Contract Amendment w/Yoder, Inc. for As Needed Kitchen Equipment Repair Services
09-106	Contract w/Fowler General Construction for Concrete Work
09-107	Contract w/Hart's Backflow Testing, LLC
09-108	Lease Agreement w/Columbia Basin Dog Training Club
09-109	Authorization to Schedule and Advertise a Bid Date for Bituminous Surface Treatment 2009
09-110	Contract w/Tapani Underground, Inc. for Webber Canyon Road
09-111	County Road Improvement District #16 Property Consolidation
09-112	Authorization to Purchase Poly Storage Tank
09-113	Deadline Extension for Commencing Assessment Foreclosure Proceedings
09-114	Amendment of Bylaws and Rules of Procedure for Commissioners

There being no further business before the Board, the meeting adjourned at approximately 9:22 a.m.

Clerk of the Board

Chairman

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Special Board Meeting
Tuesday, February 10, 2009, 9:30 am.
Commissioners' Conference Room
Benton County Justice Center
Kennewick, 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; Public Works Director Ross Dunfee; Deputy Administrator Loretta Smith Kelty; DPA Ryan Brown; Personnel Manager Melina Wenner; Finance Manager Linda Ivey; and Facilities Manager Roy Rogers. Present via/videoconference: Bryan Thorp, Larry Moser, Norm Children, and Steve Becken, Public Works, and Treasurer Duane Davidson.

Six-Year Road Program

Mr. Dunfee discussed the Six-Year Road Program 2009-2014 and reviewed the following:

- Potential New Roads
- Rural Arterial Program
- County Arterial Preservation Program
- Paved Road Improvement Projects
- Gravel Road Paving Projects
- Railroad Crossing Improvement Projects
- Bridge Inventory
- Bridge Inspection Report
- Road Inventory and Funding Sources

Hanks Road

The Board discussed the landowners' concerns for safety on the road and the entire "Roza" and how the road improvement would impact their land. Chairman Benitz said the County had moved forward with hiring a firm to look at right of ways, purchase of property, and negotiate prices and the landowners were very concerned about what might happen. Commissioner Bowman said he just wanted to know what their concerns were and was not interested in escalating the situation.

Mr. Dunfee said the County had hired a consultant, completed the design phase and prepared right of way plans as well. Additionally, they would hire an appraiser and as soon as the documents were complete, the contractor would be responsible for negotiation of right of way acquisition.

Piert Road

Commissioner Beaver said he had been working the issue and was now asking for informational signs to direct the traffic. Commissioner Bowman said he concurred with doing everything possible to get the trucks on the right roads prior to the ordinance restricting use of compression brakes in those areas. Chairman Benitz said the problem was not going to go away with directional signs. Both Commissioner Beaver and Bowman agreed to have a plan for directional signs brought back for the Board to approve. Additionally, they agreed the ordinance should still continue to move forward.

There was also a discussion regarding adopting a resolution to support transfer of ownership for CR397 back to the State.

One-Year Road Program

Mr. Dunfee discussed the One-Year Road Program and reviewed the following:

- Diverted Road Taxes
- Bituminous Surface Treatment
- Revenues/Expenditures, Road Budget Shortfalls
- Reports on Diverted Road Funds

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

Hanford Roads

Mr. Dunfee discussed the issue of Hanford roads being turned over to Benton County. Mr. Dunfee asked the Board if it wanted to be proactive or reactive if they decided to try and give the roads to Benton County.

Commissioner Bowman suggested that Commissioner Beaver could research the issue with other entities when he was in D.C. and see how they approached the issue and he concurred with being proactive. Commissioner Beaver said he had a copy of the Attorney General opinion stating they were not county roads and he recommended the Board send a copy of the letter and be proactive.

The Board agreed to send a letter stating that under the current conditions and the AG opinion, the County could not take over the roads. Additionally, they would need to put a plan together addressing the roads and infrastructure before the County would negotiate. Mr. Fyall was instructed to provide a "first draft" of the letter.

Gravel Road Issue in Finley

Commissioner Beaver said he was still trying to solve the issue for the landowners in Finley to get some gravel on their road.

The Board agreed to have Mr. Dunfee provide a copy of the contract to the Ryan Brown and provide a plan to fix the problem once he had reviewed it.

Summary

Chairman Benitz briefly discussed the following concerns and issues: re-prioritize the Six-Year Road Program; removal of the CRID's from the road program; CRAB funding; funding in place before listing projects on the One and Six-Year road programs; Roza issue; his opposition to use capital facilities funds for roads; setting policies and procedures for the Road Department; the Public Works Director reporting to the County Administrator; and a resolution for ownership of the Intertie so it was clear what the Board was proposing.

Commissioner Bowman requested a copy of Chairman Benitz' concerns so he could have time to further review his concerns. He commented that Commissioner Benitz offered a list of problems, but did not offer any discussion or solutions, except to move the Public Works Director under the County Administrator. Commissioner Bowman stated he did not know how making that move might solve any budget problems within Public Works.

Commissioner Beaver also requested a copy of the list to review. He said there appeared to be a disconnect between Public Works and administration and the Board needed to have a better level of communication between the two departments.

The Board agreed to have its next workshop meeting on February 26, 2009 at 9:30 a.m. to discuss Planning and Fairgrounds issues.

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

Clerk of the Board

Chairman

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 2-26-2009 Subject: _____ Prepared by: Linda Ivey Reviewed by: Loretta Smith-Kelty	Execute Contract Pass Resolution x Pass Ordinance Pass Motion Board Direction	Consent Agenda x Public Hearing 1st Discussion 2nd Discussion Workshop

a.

SUMMARY BACKGROUND INFORMATION

Resolution 09-080 passed the Alternate Dates for Budget Hearings on February 2, 2009.

Resolution 09-080 incorrectly references the 2009 budgets and 2009 budget preparation.

This corrected Resolution references the 2010 Benton County budgets and the 2010 budget preparation.

Request the Board of Commissioners rescind Resolution 09-080, and pass the attached Resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ALTERNATE DATES FOR BUDGET HEARINGS, 2010 BENTON COUNTY BUDGETS; RESCINDING RESOLUTION 09-080

WHEREAS, RCW 36.40.071 allows the county commissioners to set alternate dates for budget hearings; and

WHEREAS, the budget year has been corrected; **NOW THEREFORE,**

BE IT RESOLVED that the following dates are hereby adopted for the 2010 budget preparation:

August 7	Auditor's Office budget call letter to departments for estimates of revenues and expenditures, goals, objectives, milestones, and performance activity measures;
August 28	Departments return final estimates of revenues and expenditures, goals, objectives, milestones, and performance activity measures to the Auditor's Office;
October 2	Auditor's Office submits the preliminary budget to Board of Commissioners;
October 13	Budget workshop;
October 20-23	Budget workshops;
November 15	First publication of notice of county budget hearings for final budgets;
November 22	Second publication of notice of county budget hearings for final budgets;
November 30	Public hearing and adoption of final budgets.

BE IT FURTHER RESOLVED that Resolution 09-080 is hereby rescinded.

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

cc: All Depts.

Ivey

b.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPOINTMENT TO THE COLUMBIA IRRIGATION DISTRICT

WHEREAS there is an open position for Director in Divisions #1 due to a resignation; and

WHEREAS, the Board of Benton County Commissioners has received a recommendation from the Columbia Irrigation District Board of Directors for George Janicek to fill the open position; **NOW, THEREFORE,**

BE IT RESOLVED that George Janicek is hereby appointed to fill the unexpired term for the position of Director of Division #1, said term expiring on December 31, 2009; and

BE IT FURTHER RESOLVED that George Janicek is hereby appointed to fill the unexpired term for the position of Director of Division #1, said term expiring on December 31, 2009.

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

Chairman of the Board

Chairman Pro Tem

Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

cc: Columbia Irrigation District
G Janicek
Appointment List

Flores

COLUMBIA IRRIGATION DISTRICT

10 EAST KENNEWICK AVENUE • KENNEWICK, WASHINGTON 99336
OFFICE: (509) 586-6118 • FAX: (509) 586-0485
WWW.COLUMBIAIRRIGATION.COM

RECEIVED
FEB 06 2009
BENTON COUNTY COMMISSIONERS

Max	✓
Leo	✓
Jim	✓
David	✓
Loretta	✓
Other	M. Flores

file

February 4, 2009

Mr. Max Benitz Jr, Chairman
Mr. Leo Bowman
Mr. James Beaver
Benton County Commissioners
PO Box 190
Prosser, WA 99350

Re: Recommendation for Open Director Position

Dear Sirs:

The Columbia Irrigation District Director for Division #1 resigned his position on January 1, 2009. The District solicited letters of interest from patrons in Division #1. The Board of Directors reviewed those letters at their regular meeting on February 3, 2009.

After careful consideration, the Board of Directors is recommending Mr. George Janicek be appointed to the vacant position for the remainder of the term. This position is up for election this fall. Mr. Janicek currently owns 10 acres in the District and resides at 1920 Artemis Ridge. He is a retired mechanical engineer and has served on other Boards in elected and appointed positions. The Board of Directors believes he will serve the District well.

The Board of Directors asks that you ratify their recommendation for appointment to the Board at your next regularly scheduled meeting. Thank you for your consideration of this matter and we look forward to hearing from you.

Sincerely,

Larry Fox

Larry Fox
Manager

cc David Sparks, County Administrator

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

C.

February 23, 2009

Senator Patty Murray
173 Russell Senate Office Bldg.
Washington, D.C. 20510

Re: Ben Franklin Transit

Dear Senator Murray:

It is our understanding that Ben Franklin Transit is in the process of requesting funding assistance from our congressional delegation for two very important projects.

The first project is for the completion of the expansion and modernization of their base facility. Several phases of that project, including vehicle storage, fuel system retrofit, and a new vehicle washing facility have been completed. However, the most important parts still need to be completed. These are the expansion of a maintenance building, the construction of a new administration building, and the remodeling of an operations building.

The second project is for the replacement of 25 transit coaches that are 21 years old. These vehicles exceed their federal guideline lifespan by 75% and they do not meet the Americans with Disabilities Act requirements for transit coaches. Ben Franklin Transit hopes to acquire new coaches that are heavy duty, lightweight, low floor, ADA accessible, with hybrid renewable fueled engines.

The Board of Benton County Commissioners expresses it support for these projects and acknowledges the tremendous community benefit these projects will have on the citizens of Tri-Cities and the Mid-Columbia.

Sincerely,

Max Benitz, Jr. Chairman	Leo Bowman Chairman Pro Tem	Jim Beaver Member

P.O. Box 190, Prosser, WA 99350-0190; Phone (509) 786-5600 or (509) 736-3080, Fax (509) 786-5625
commissioners@co.benton.wa.us

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

February 23, 2009

Senator Maria Cantwell
717 Hart Senate Office Bldg.
Washington, D.C. 20510

Re: Ben Franklin Transit

Dear Senator Cantwell:

It is our understanding that Ben Franklin Transit is in the process of requesting funding assistance from our congressional delegation for two very important projects.

The first project is for the completion of the expansion and modernization of their base facility. Several phases of that project, including vehicle storage, fuel system retrofit, and a new vehicle washing facility have been completed. However, the most important parts still need to be completed. These are the expansion of a maintenance building, the construction of a new administration building, and the remodeling of an operations building.

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The Board of Benton County Commissioners expresses it support for these projects and acknowledges the tremendous community benefit these projects will have on the citizens of Tri-Cities and the Mid-Columbia.

Sincerely,

Max Benitz, Jr. Chairman	Leo Bowman Chairman Pro Tem	Jim Beaver Member

P.O. Box 190, Prosser, WA 99350-0190; Phone (509) 786-5600 or (509) 736-3080, Fax (509) 786-5625
commissioners@co.benton.wa.us

Leo Bowman
District 1
Max Benitz, Jr.
District 2
James Beaver
District 3

Board of County Commissioners
BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

February 23, 2009

Congressman Doc Hastings
1214 Longworth House Office Bldg.
Washington, D.C. 20515

Re: Ben Franklin Transit

Dear Congressman Hastings:

It is our understanding that Ben Franklin Transit is in the process of requesting funding assistance from our congressional delegation for two very important projects.

The first project is for the completion of the expansion and modernization of their base facility. Several phases of that project, including vehicle storage, fuel system retrofit, and a new vehicle washing facility have been completed. However, the most important parts still need to be completed. These are the expansion of a maintenance building, the construction of a new administration building, and the remodeling of an operations building.

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The Board of Benton County Commissioners expresses it support for these projects and acknowledges the tremendous community benefit these projects will have on the citizens of Tri-Cities and the Mid-Columbia.

Sincerely,

Max Benitz, Jr. Chairman	Leo Bowman Chairman Pro Tem	Jim Beaver Member

P.O. Box 190, Prosser, WA 99350-0190; Phone (509) 786-5600 or (509) 736-3080, Fax (509) 786-5625
commissioners@co.benton.wa.us

f.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PERSONAL SERVICE CONTRACT AMENDMENT BETWEEN BENTON COUNTY AND DANIEL SELOVE, MD FOR FORENSIC PATHOLOGIST SERVICES; AMENDING RESOLUTION 08-004

WHEREAS, per resolution 08-004 dated January 7, 2008, the Board of Benton County Commissioners entered into a service agreement with Dr. Daniel Selove for forensic pathology services for the Benton County Coroner's office with a contract term to expire December 31, 2009, and

WHEREAS, as per the current personal service contract, Dr. Selove will perform forensic pathology services for a fee of $1,300 per autopsy, plus transportation and lodging expense at actual cost; with prices rates subject to change for 2009; and

WHEREAS, the Benton County Coroner received the new price rates per autopsy services for the year of 2009, increasing the rate from $1,350 to $1,500 per autopsy; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concur with the 2009 rates by amending the current contract and increasing the rate from $1,350 to $1,500 per autopsy as per the attached service contract amendment; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign the attached personal service contract amendment between Benton County and Daniel Selove. MD attached hereto.

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

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: Rick Corson
cc: Auditor; R. Ozuna; D. Selove

Small

PERSONAL SERVICE CONTRCT
AMENDMENT

WHEREAS this previously executed CONTRACT allows for price adjustment on an annual basis and COUNTY wishes to accept the price increase noted herein for calendar year 2009,

THEREFORE:

THIS CONTRACT, previously made and entered into by and between **BENTON COUNTY**, a political subdivision, with it principal offices at 620 Market Street, Prosser, WA 99350 thereinafter "COUNTY" AND **DANIEL SELOVE, MD,** with its principal offices at 3031 Kromer Avenue, Everett, WA 98201(hereinafter "CONTRACTOR").

Is hereby amended as follows:

5. COMPENSATION

b. The words "per autopsy" are inserted between the words "amount payable" and " by the county" and the amount of "$1,350" is change to "$1500."

All other terms of this AGREEMENT shall remain the same.

The parties to this Contract have executed this AMENDMENT to take effect as of January 1, 2009

BENTON COUNTY

_____
Chairman
Date _____

Daniel Selove MD
DANIEL SELOVE. MD
Date January 22, 2009

Approved as to substance

Rick W Corson
RICK CORSON, CORONER
DATE: 1-22-2009

Approved as to form:

Kathleen B Galioto
Kathleen, Galioto Senior Deputy
Prosecuting Attorney

Original filed:
Cc: Auditor; R Ozuna; Coroner; D Selove MD

DANIEL SELOVE, MD
3031 Kromer Avenue
Everett, WA 98201

Phone: 425-508-4462 Fax: 425-317-9808

RECEIVED
DEC 22 2008
BENTON COUNTY
COMMISSIONERS

December 17, 2008

Lisa Small
Benton County Commissioners
PO Box 190
Prosser, WA

RE: Autopsy fee

Dear Lisa:

My autopsy fee will increase from $ 1350 for work performed during year 2008 to $ 1500 for work performed during year 2009. Please amend my contract accordingly.

Sincerely,

Daniel Selove MD

Daniel Selove, MD

cc: Rick Corson, Benton County Coroner

9.

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	2/16/2009	Execute Contract		Consent Agenda	x
Subject:		Pass Resolution		Public Hearing	
Prepared by:	L. Small	Pass Ordinance		1st Discussion	
Reviewed by:		Pass Motion		2nd Discussion	
				Other Business	

BACKGROUND INFORMATION

Benton County Facilities solicits Sound Solution Northwest for numerous jobs throughout the year for general repairs and installation services for audio, video, electronic systems and any other services they are qualified to perform

Facilities Manager recommends entering into a blanket contract for "as needed" services with Sound Solution for a 12 month period with said contract expiring December 31, 2009.

RECOMMENDATION

Approve the attached resolution awarding Sound Solutions Northwest Inc. a blanket contract in an amount not to exceed $10,000 and authorize the Chairman of the Board to sign said contract.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A BLANKET SERVICE AGREEMENT FOR "AS NEEDED" AUDIO, VIDEO, ELECTRONIC SYSTEMS WITH SOUND SOLUTIONS NORTHWEST, INC. FOR ALL BENTON COUNTY FACILITIES

WHEREAS, per resolution 08-131, any public works services or materials involving less than $10,000, advertisement and competitive bidding may be dispensed, and such contracts may be entered into after direct negotiation and authorization from the Board of Benton County Commissioners; and

WHEREAS, the Facilities Manager recommends a blanket service agreement with Sound Solutions Northwest, Inc., Kennewick, WA – Contractors No. SOUNDS*090k9 to be put in place for "as needed" services for general repairs and installation services for audio, video, electronic systems and any other services they are qualified to perform throughout all Benton County locations for small projects costing less than $10,000; and

WHEREAS, this blanket contract would allow the Facilities Manager to move forward with services without requiring a contract for each service needed; and

WHEREAS, the prices for said services is in accordance to the agreement and Sound Solutions Northwest, Inc. price rates attached hereto for an accumulative contract amount not to exceed $10,000 including WSST; **NOW THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the recommendation and hereby awards Sound Solutions Northwest, Inc. the blanket service agreement for "as needed" services for all Benton County locations; and

BE IT FURTHER RESOLVED the Board hereby authorizes the Chairman to sign the service agreement attached hereto; and

BE IT FURTHER RESOLVED the term of the attached contract commenced January 1, 2009 and terminates December 31, 2009.

Dated this _____ day of _____, 2009

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Original: File – Lisa Small
cc: Facilities; Auditor; R. Ozuna; D. Waggoner; Sound Solutions

Small

PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision of the State of Washington, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **SOUND SOLUTIONS NORTHWEST, INC** a Washington Corporation with its principal offices at 3030 W Clearwater Ave., Suite 205, Kennewick, WA 99336, (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents

a. Exhibit A - Contractor's 2009 Rate Sheet
b. Exhibit B - Washington State Prevailing Wage Rates for Public Works Contracts

2. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2009 and shall expire on December 31, 2009. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. The CONTRACTOR agrees to provide "as needed" general repairs and installation services for audio, video, electronic systems and any other services they are qualified to perform for all Benton County locations.

In the event that requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with such other contractor. In the event that requested work requires, under State or local law, the issuance of a building permit, CONTRACTOR shall be responsible for procuring such building permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and

any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur. Individual jobs or work orders for general maintenance repair services shall be initiated by the COUNTY representative or his designee by way of a telephone call. Prior to commencing work, CONTRACTOR shall provide COUNTY with a written estimate describing the hours of labor involved, the category of labor required, and the parts needed including prices thereof. Thereafter, upon completion of services, Contractor shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY representative or his designee. Unless otherwise previously authorized by COUNTY, CONTRACTOR shall not deviate from the estimate provided prior to commencing work.

b. The COUNTY does not guarantee utilization of this contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

c. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

a. For CONTRACTOR:
Brad Nelson
3030 W. Clearwater Ave., Suite 205
Kennewick, WA 99336
Phone 783-8272

b. For COUNTY:
Dan Waggoner
7122 W. Okanogan Pl.
Kennewick, WA 99336
Phone 509-222-3704
Fax 509-736-2708

5. COMPENSATION

The CONTRACTOR shall be paid for general maintenance repair services in accordance with the price rates provided in Exhibit A attached hereto. The total amount payable by the COUNTY to the CONTRACTOR under this agreement is not to exceed ten thousand dollars and zero cents ($10,000.00) including W.S.S.T. CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the total approved payable amount, and that total billings will not exceed the total approved payable amount. CONTRACTOR shall inform COUNTY promptly in writing when the cumulative accounts receivables attributable to COUNTY pursuant to the general maintenance repair services portion of this contract reaches 80% of the total approved payable amount so that approval and budgeting for additional payable amounts may be obtained if appropriate. Any dollar amount above the maximum payable amount will only be approved with an amendment to this contract. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative. At the completion of all work contemplated by this agreement or at the end of the contract term, whichever comes first, the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment will be made until such affidavit is provided.

6. INVOICING

The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month for each project. Such invoices shall detail the work done, the personnel involved, the date of service and shall also reference the work order provided to COUNTY as required in article 3 "Services Provided" above. At such time as the first invoice is submitted, or any time thereto, CONTRACTOR, as well as all sub-contractors and sub-sub-contractors which are employed by the CONTRACTOR for the work contemplated by this agreement, shall submit a Statement of Intent to Pay Prevailing Wages in the form and manner required by RCW 39.12.040 to COUNTY'S representative. The CONTRACTOR shall not be paid for services rendered under this Contract until a Statement of Intent to Pay Prevailing Wages has been executed and

submitted as required above by all required parties and the services have been performed to the COUNTY's satisfaction. COUNTY shall only be liable to pay for invoiced amounts, which are detailed and supported as described in this article. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY; and will remit payment, less any retainage or other legally withheld funds, for the accepted work within thirty (30) days after receiving the invoice. PROVIDED that for each invoiced and approved progress payment, COUNTY shall withhold from the earned portion of that payment (ie excluding sales or other tax) 5% as retainage pursuant to RCW 60.28.010, subject to all further provisions of the remainder of RCW chapter 60.28. Within ten (10) days following the execution of this agreement, CONTRACTOR shall submit written notice stating its election of the method of holding of the moneys retained, pursuant to RCW 60.28.010(2). If such written election is not received, then the COUNTY may choose any of the allowed manners of holding the moneys allowed by RCW 60.28.010(2)(a)-(c)."

7. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

8. HOLD HARMLESS AND INDEMNIFICATION

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

CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.

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

b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws including but not limited to Title 51 of the Revised Code of Washington. By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTORS obligations under this Section 8 shall survive termination and expiration of this Contract.

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

9. INSURANCE

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

a. Workers Compensation: CONTRACTOR shall comply with all

Washington State Workers Compensation laws. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial liability or commercial umbrella liability insurance. CONTRACTOR also shall procure and maintain employer's liability insurance with limits of not less than one million dollars ($1,000,000) each incident for bodily injury by accident and/or one million dollars ($1,000,000) each employee for bodily injury by disease.

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

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

d. Other Insurance Provisions:

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

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

automobile liability policy.

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

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

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

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

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

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

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

policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

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

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

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

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

Risk Manager
Benton County Risk Management Dept.
7122 W. Okanogan Place
Kennewick, WA 99336

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

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

condition and the self-insured funding mechanism.

10. PERFORMANCE BOND

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

11. TERMINATION

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

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

12. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

13. NONDISCRIMINATION

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

14. DISPUTES

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

15. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

16. ENTIRE AGREEMENT

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

17. NOTICES

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

18. SEVERABILITY

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

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

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

The parties specifically certify that the provisions contained within paragraph 8(b) are mutually negotiated.

BENTON COUNTY

_____

Benton County Board of Commissioners

Dated: _____

SOUND SOLUTION NORTHWEST, INC.

_____

Brad Nelson

Dated: 1-30-2009

Approved as to Form:

_____

Deputy Prosecuting Attorney

Exhibit A

SYSTEM SOLUTIONS

Benton County Discounted Service Rates – 2009

$90.00 per man-hour – Regular Technician Time
(8:00 AM to 5:00 PM – Monday to Friday)

$100.00 per man-hour – Regular Principal/Consulting Time
(8:00 AM to 5:00 PM – Monday to Friday)

$135.00 per man-hour – After-hours Technician Time
(5:00 PM to 8:00 AM – Monday to Friday)
(All day – Weekends)

$150.00 per man-hour – After-hours Principal/Consulting Time
(5:00 PM to 8:00 AM – Monday to Friday)
(All day – Weekends)

SSNW will utilize and bill the regular rates, unless after-hours work is specifically requested by Benton County.

3030 West Clearwater Avenue, Suite 205 Kennewick, Washington 99336
509-783-8272 1-800-962-2720 FAX 509-783-8350

h.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE FIRST AMENDMENT TO THE SERVICE AGREEMENT BETWEEN BENTON COUNTY AND SCHINDLER ELEVATOR CORPORATION

WHEREAS, per resolution 08-785 dated September 22, 2008 the Board of Benton County Commissioners entered into a service agreement with Schindler Elevator Corporation, Spokane, WA for the complete elevator maintenance services for eleven (11) elevators located at the Benton County Justice Center, Kennewick, WA and one (1) elevator located at the Prosser Courthouse, Prosser, WA for a contract amount of $1,296.00 per month; and

WHEREAS, a contract amendment to said service agreement is recommended by the Facilities Manager in order to add the two elevators located at the Benton County Health District Building, Kennewick, WA to the current maintenance service agreement with Schindler Elevator Corporation for an additional $216.00 a month increasing the current contract to $1,512.00 including WSST, each month from February through December 2009; and

WHEREAS, the Facilities Manager also recommends the Board of Commissioner to approve the hourly rates as per Exhibit C for acceptable overages, incidentals and other unanticipated costs outside the general maintenance for a total contract amount not to exceed $35,000; **NOW, THEREFORE**

BE IT RESOLVED the Board of Benton County Commissioners hereby agrees with the recommendations and hereby approves the first service agreement amendment between Benton County and Schindler Elevator Corporation, 409 North Thierman Road, Suite D, Spokane Valley, WA 99212-1129 for a total contract amount not to exceed $35,000 including WSST; and

BE IT FURTHER RESOLVED the Board of Benton County Commissioners hereby authorizes the Chairman of the Board to sign the amendment attached hereto.

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

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: File – Lisa Small
cc: Auditor; R. Ozuna; Facilities; Schindler

Small

FIRST SERVICE AGREEMENT AMENDMENT

THIS AGREEMENT, made and entered into this _____ day of February 2009 by and between **BENTON COUNTY, WASHINGTON** hereinafter called "COUNTY" and **SCHINDLER ELEVATOR CORPORATION**, 409 North Thierman Road, Suite D, Spokane, WA 99212-1129 a firm licensed to do business in the State of Washington, hereinafter called "CONTRACTOR".

The parties entered into a Service Agreement dated September 22, 2008 (the "AGREEMENT") to systematically examine, maintain, adjust and lubricate the elevator equipment of eleven (11) elevators located at the Benton County Justice Center, Kennewick, WA, and one (1) elevator located at the Benton County Courthouse, Prosser, WA as more fully defined in the original contract and Exhibit A attached thereto.

The parties agree that all provisions of their amended agreement remain in effect except for the following amendments:

1. CONTRACT DOCUMENTS the existing paragraph shall be amended by adding the following Exhibit:

   Exhibit "C" – Contractor's Proposal dated 1/26/09 for elevator maintenance services on two (2) additional elevators located at the Benton County Health District Building, Kennewick, WA, and a base rate per hour for unexpected elevator service needs as further detailed in Exhibit C attached hereto.

2. COMPENSATION the existing paragraph shall be amended and replaced in its entirety with the following:

   The CONTRACTOR shall be paid one thousand five hundred twelve dollars ($1,512.00) each month from February 2009 – December 2009 while this agreement is in place. Total amount payable, including acceptable overages, incidentals and other unanticipated costs outside the general maintenance shall be charged in accordance with the hourly rates outlined in Exhibit C attached hereto. The total contract shall not exceed thirty-five thousand dollars and zero cents, ($35,000.00) including W.S.S.T. Schindler Elevator Corporation reserves the right to adjust the contract price annually on January 1 of each year this agreement is in place. Any dollar amount above the maximum payable amount will only be approved with an amendment to this contract. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages in a form approved and certified by the Washington State Department of Labor and Industries directly to COUNTY's contract representative. At the completion of all work contemplated by this agreement or at the end of the contract term, whichever comes first, the work contemplated herein, CONTRACTOR shall submit an affidavit of wages paid in compliance with prevailing wage requirements, pre-certified by the Department of Labor and Industries, directly to COUNTY's contract representative. Such affidavit shall be in a form approved by the Washington State Department of Labor and Industries. No final payment will be made until such affidavit is provided.

Orig.: File – Lisa Small
cc: Auditors; R. Ozuna; Facilities, Schindler Elevator Corp.

Small

IN WITNESS WHEREOF the Chairman of the Board of the Benton County Commissioners has executed this Contract Amendment on behalf of the County, and the Contractor has executed this Contract, on the day and year first above written.

BENTON COUNTY

Max E. Benitz, Chairman

Date: _____

Approved as to Form:

Deputy Prosecuting Attorney

SCHINDLER ELEVATOR CORPORATION

Joe Stumph, District Manager

Date: 2/10/09

Date: _____

Orig.: File – Lisa Small
cc: Auditors; R. Ozuna; Facilities, Schindler Elevator Corp.

Small

Exhibit C

Supplemental Proposal / Schindler Elevator Corporation

Date: January 28, 2009

Bldg: BENTON COUNTY HEALTH DIST.
Address: 7102 W. Okanogan Place
City: Kennewick, WA 99336

We propose to supplement or modify the agreement between us dated: September, 2008. ("Agreement") as follows:

Elevators #1and #2 at the above mentioned building are to be added to the current preventative maintenance program. Schindler will add these units for the additional cost of $108.00 each per month including WSST. You agree to pay us the sum of $1,512.00 per month payable monthly beginning February 1, 2009 for the maintenance services on fourteen (14) elevators total; this rate does include Washington States Sales Tax.

Special billing rates apply to work done outside scope:

Straight time: $170.00
Overtime: $289.00
Double time to include Sundays and I.U.E.C. Holidays: $340.00

The terms and conditions of the Agreement remain in full force and effect, except as specifically modified herein. Upon approval by an authorized official of Schindler Elevator Corporation this Supplemental Proposal shall be incorporated into and become a part of the agreement.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE SECOND SERVICE AGREEMENT AMENDMENT BETWEEN BENTON COUNTY AND VARSITY CONTRACTORS, INC.; AMENDING RESOLUTION 08-205

WHEREAS, per resolution 08-205 dated February 11, 2008 the Board of Benton County Commissioners entered into a service agreement with Varsity Contractors, Inc, Boise, ID in the amount $161,568.00 excluding WSST for the janitorial services located at the Benton County Justice Center, Kennewick, WA with said agreement expiring February 28, 2009; and

WHEREAS, per resolution 08-886, dated November 3, 2008 the Board of Commissioners approved the first amendment to said agreement and added the new District Courtrooms and Assessor's office located at the Benton County Justice Center to the current contract for an additional $1,417.30 per month increasing the original contract amount to $167,237.20 excluding WSST and the base rate of $20.00 per hour for unexpected services; and

WHEREAS, the Facilities Manger recommends the Board to extend said service agreement an additional one (1) twelve-month period commencing March 1, 2009 and concluding February 28, 2010; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby approves the second amendment to the service agreement with Varsity Contractors, Inc. by extending the service agreement one (1) twelve-month period commencing March 1, 2009 and concluding February 28, 2010 all in accordance with the second service agreement amendment attached hereto; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign said amendment attached hereto.

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

Chairman of the Board

Chairman Pro-Tem

Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: File – Lisa Small
cc: Auditor; R. Ozuna, Facilities, Varsity Contractors, Inc.

SECOND SERVICE AGREEMENT AMENDMENT

THIS AGREEMENT, made and entered into this _____ day of February 2009 by and between **BENTON COUNTY, WASHINGTON** hereinafter called "COUNTY" and **VARSITY CONTRACTORS, INC**, 2100 S. Cole Road, Boise, ID 83709 a firm licensed to do business in the State of Washington, hereinafter called "CONTRACTOR".

The parties entered into a Service Agreement dated February 11, 2008 (the "AGREEMENT") to provide janitorial services as more fully defined in Exhibit A for designated portions of the Benton County Justice Center; Benton County Coroners Office; and Benton County Health District Building in Kennewick, WA.

The parties executed the First Amendment on November 10, 2008 amending the original AGREEMENT by adding additional cleaning services and increasing the contract amount.

The parties agree that all provisions of their amended AGREEMENT remain in effect except for the following amendments:

2. **DURATION OF CONTRACT** the existing paragraph in this section is replaced in its entirety with the following:

   The parties herein extend the AGREEMENT for an additional one (1) twelve-month period commencing March 1, 2009 and concluding February 28, 2010. Upon mutual agreement of both parties, the original terms and conditions of said service agreement may be extended for one (1) additional twelve-month period, and will only be approved with an amendment to this contract.

IN WITNESS WHEREOF the Chairman of the Board of the Benton County Commissioners has executed this Contract Amendment on behalf of the County, and the Contractor has executed this Contract, on the day and year first above written.

BENTON COUNTY

_____

Max E. Benitz, Jr., Chairman

Date: _____

Approved as to Form:

_____

Deputy Prosecuting Attorney

VARSITY CONTRACTORS, INC.

_____

~~Mark Advington,~~ District Manager
Don Sorensen

Date: 2-9-2009

Date: _____

Orig.: File – Lisa Small
cc: Auditors; R. Ozuna; Facilities, Varsity Contractors, Inc.

Small

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 2/23/09 Subject: Benton-Franklin Mounted Sheriff's Posse - Weekly Riding Prepared by: dgg Reviewed by: lsk	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Benton-Franklin Mounted Sheriff's Posse to hold their weekly riding meetings in the 4-H Arena at the Fairgrounds from March 30 – June 22, 2009.

Capital improvements by the Benton-Franklin Mounted Sheriff's Posse on the Fairgrounds may be credited, in whole or in part, towards the lease agreement fee.

The Deputy County Administrator recommends approval of the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse.

RECOMMENDATION

Move the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse be approved.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE BENTON COUNTY FAIRGROUNDS AND THE BENTON-FRANKLIN MOUNTED SHERIFF'S POSSE

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse will provide the Benton County Fairgrounds $1,925.00 to hold weekly riding meetings in the 4-H Arena at the Fairgrounds from March 30 – June 22, 2009; and

WHEREAS, the value of capital improvements made by the Benton-Franklin Mounted Sheriff's Posse to the Fairgrounds may be credited, in whole or in part, towards the $1,925.00 payment; and

WHEREAS, the Benton County Deputy Administrator recommends the Benton-Franklin Mounted Sheriff's Posse Lease Agreement be approved; **NOW THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse.

Dated this _____ day of _____ 2009.

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Originals: Fairgrounds; Benton-Franklin Mounted Sheriff's Posse
cc: Auditor, R. Ozuna, File

BENTON COUNTY FAIRGROUNDS

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

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2008**

LEASE AGREEMENT NUMBER: **005.09**

EVENT DATE(S): **March 30, April 2, 6, 9, 13, 16, 20, 23, 27, 30; May 4, 7, 11, 14, 18, 21, 25, 28; June 1, 4, 8, 11, 15, 18, 22, 2009**

NUMBER OF DAYS: **32**

BUILDING(S) / AREA: **4-H Arena**

LESSEE: **Benton-Franklin Mounted Sheriff's Posse, a Washington Non-Profit Corporation**

MAILING ADDRESS: **PO Box 6406, Kennewick, WA 99336**

CONTACT: **Timothy Clouse, Captain**

CELLULAR PHONE: **366-5572**

TIME OF THE EVENT: **4:00 pm – 9:00 pm**

TYPE OF EVENT: **Horse Riding Meets**

ESTIMATED ATTENDANCE: **50**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between **Benton-Franklin Mounted Sheriff's Posse, a Washington Non-Profit Corporation** (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**
   a. HORSE RIDING MEETS IN MARCH, APRIL, MAY, AND JUNE OF 2009 (SEE PAGE 1 FOR DATES) IN THE 4-H ARENA FROM 4:00 PM UNTIL 9:00 PM WITH AN ESTIMATED ATTENDANCE OF 50 PEOPLE, hereafter referred to as the EVENT. EACH EVENT MAY INCLUDE THE FOLLOWING ACTIVITIES, EACH OF WHICH ARE HEREBY AUTHORIZED: BARREL RACING, DRILL TEAM, POLE BENDING, JIM CANA GAMES. ALL OTHER HORSE RIDING ACTIVITIES IS PROHIBITED ABSENT ADVANCE WRITTEN AUTHORIZATION AND AN AMENDMENT OF THIS CONTRACT.

2. **FACILITIES LEASED FOR THE EVENT**
   a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENTS on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on **n/a**. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**
   a. In consideration for the license to hold the EVENTS, LESSEE agrees to pay LESSOR the FEE of $**1,925.00** (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than **March 16, 2009**. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

   b. Until December 31, 2008, LESSEE may earn one or more credits of up to **1,925.00** towards the annual rental amount otherwise payable for the 2008 rental year, in return for capital improvements made at LESSEE's expense to the Leased Facilities by the LESSEE after the effective date of this agreement. Such credit(s) shall be equal to the estimated cost of such improvement(s) to LESSOR if the improvement(s) had been done by LESSOR or its agents. No credit will be given for any improvement by LESSOR unless a Fairgrounds Leasehold Improvement Agreement, in a form similar to that attached hereto as Exhibit B, is executed by LESSOR and LESSEE prior to the commencement of the particular improvement at issue. It is solely within LESSOR's discretion as to whether any particular proposal for an improvement by LESSEE is in LESSOR's best interest and consequently whether LESSOR will enter into a corresponding Fairgrounds Leaseholder Improvement Agreement. At the completion of each approved improvement project, LESSEE must promptly submit documentation of the materials used, the type and

amount of labor utilized and any other expenses necessary to complete the improvement. LESSOR shall within fifteen (15) days of receipt of all necessary and requested documentation, notify LESSEE in writing whether it accepts the improvement as complete and the determination by the Benton County Deputy Administrator as to the estimated cost of the improvement if made by LESSOR or its agents. Such estimate will be the amount of credit earned by LESSEE. For any improvement not completed by December 31, 2008, or by a prior date of any termination of this Lease, LESSEE will receive credit only for the estimated cost to LESSOR of such improvement in the condition the improvement exists as of the earlier of the date of termination of this Lease or December 31, 2008.

4. **CAMPING OVERNIGHT**

a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.

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

5. **CANCELLATION OF EVENT**

a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:

1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.

b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. **CONCESSIONAIRES**

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

7. **NOVELTIES/SOUVENIRS**

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

8. **DAMAGE / CLEANING DEPOSIT**

a. LESSEE must pay a damage/cleaning deposit of **0** at the time LESSEE executes this Agreement. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED. Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

a. LESSEE agrees to purchase, and maintain in force throughout the duration of this Agreement, **general liability insurance with a minimum coverage of one million dollars ($1,000,000) per person with a general aggregate limit of two million dollars ($2,000,000).** Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. The policy required by this paragraph shall be a "horse club and association liability policy" or horse owner's policy which specifically covers the hazards associated with horse riding activities. If horse racing, barrel racing or other type of hazardous activity other than ordinary horse riding is to be undertaken at the event, then the policy shall be specifically written to cover such hazardous activity. In any case, the policy may not exclude any activities reasonably expected to be undertaken, or actually undertaken, at the EVENT.

b. LESSEE agrees to ensure that all participating riders are covered by a horse owner's liability or similar insurance policy either as a primary or additional insured. **Such horse owner's liability policy shall be for no less than one million dollars ($1,000,000) per person, with a general aggregate limit of two million dollars ($2,000,000)**, and shall name Benton County Fairgrounds, Benton County, its

officers, directors, its elected officials, agents and employees as additional insured, and shall include a provision prohibiting the cancellation of said policy except after thirty (30) days prior written notice to LESSOR. *No uninsured riders shall be permitted to ride in any event covered by this Agreement.*

c. All insurance required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.

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

e. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;

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

10. PERMITS/LAWS

a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.

b. LESSEE shall comply with all Federal, State and local laws, ordinances, rules and regulations. LESSEE acknowledges that all buildings, premises or structures located in or upon the leased premises are considered "public buildings" for purposes of RCW Chapter 70.160 that prohibits smoking in and around public places. LESSEE shall ensure that the security personnel, if any, retained pursuant to section 11 of this agreement are specifically instructed to enforce the provisions of RCW Chapter 70.160.

11. SECURITY

a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.

b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the

EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID. Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

12. SERVING ALCOHOL

a. No alcoholic beverages will be served at this EVENT.

b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.

c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. HORSE STALLS

a. LESSEE shall pay $8.00 per stall per day for every horse stall used during the EVENT. The LESSEE is responsible for collecting all stall fees, which must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE"S damage/cleaning deposit will be forfeited. If the refundable portion of the damage/cleaning deposit is less than the amount of stall fees accrued, LESSEE remains liable for the additional stall fees accrued.

14. TERMINATION OR AMENDMENT

a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. These indemnification obligations shall specifically include indemnification for any fines, fees, penalties or costs incurred by LESSEE during the course of the event for violations of any law, ordinance or regulation including, but not limited to, Washington's law on Smoking in Public Places, RCW Chapter 70.160. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

b. In any and all claims against the LESSOR, its officers, officials, employees and agents by any employee of the LESSEE, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE or subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the LESSEE makes with any subcontractor or agent performing work hereunder.

16. FAIRGROUNDS CONTACT

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

Jeff, Farrin, Jim and/or Denise 543-0060

b. This person(s) may be contacted for the following reasons:
   1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
   2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:
   1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
   2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
   3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
   4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, **Timothy Clouse, Captain** (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind **Benton-Franklin Mounted Sheriff's Posse** to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

BY: _____
Chairman of the Board

Date: _____

LESSEE: Benton-Franklin Mounted Sheriff's Posse

BY: Timothy Clouse

Date: 2-Feb 2009

Name: Tim Clouse

Title: Captain BFMSP

Approved as to form:

BY: _____
Civil Deputy Prosecutor

EXHIBIT A
FEES APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES

DAMAGE/CLEANING DEPOSIT
Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: **$ 0**

BUILDING(S) AND/OR AREA(S) FEES

4-H Arena $ 77.00 X 25 Days = $ 1,925.00

Note: Arena will not be groomed.

BUILDING(S)/AREA TOTAL: **$ 1,925.00**

EQUIPMENT RENTAL FEES
No equipment needed.

EQUIPMENT RENTAL TOTAL: **$ 0**

LESSOR FURNISHED INSURANCE FEES
Lessee will provide.

INSURANCE TOTAL: **$ 0**

SECURITY FEES
Lessee will provide.

SECURITY TOTAL: **$ 0**

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	1	Included	0

REFUSE TOTAL: **$ 0**

NAME: Benton-Franklin Mounted Sheriff's Posse

EVENT DATE: March 30, April 2, 6, 9, 13, 16, 20, 23, 27, 30;
May 4, 7, 11, 14, 18, 21, 25, 28; June 1, 4, 8, 11, 15, 18, 22, 2009

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	$ 0
Building(s)/Area Fees	$ 1,925.00
Equipment Fees	$ 0
Insurance Fees	$ 0
Security Fees	$ 0
Refuse Disposal Fees	$ 0
Other Fees	$ 0

TOTAL FEE: $ 1,925.00

EXHIBIT B

LEASEHOLD IMPROVEMENT AGREEMENT
BENTON COUNTY FAIRGROUNDS

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse, a non-profit corporation organized under the laws of the State of Washington, hereinafter "LESSEE," currently contracts to lease a portion of the Benton County Fairgrounds, owned and operated by Benton County, a political subdivision of the State of Washington (hereinafter "LESSOR") for portions of the year for purposes of holding horse riding events therein;

WHEREAS LESSEE has made a request of LESSOR to make an improvement to certain real property located within the Benton County Fairgrounds, hereinafter "FAIRGROUNDS"; and,

WHEREAS, it is in the mutual interest of both parties to pursue improvements to the FAIRGROUNDS that will improve the operation and the quality of horse riding; **NOW THEREFORE,**

IT IS HEREBY MUTUALLY RESOLVED, that the LESSOR and LESSEE agree to the following conditions regarding the proposed improvement.

1. Improvement

(Detailed Description)

2. Timeline

The IMPROVEMENT shall be completed by (DATE) Work shall commence no sooner than (DATE) and during the period of time between commencement of work and (DATE) LESSEE shall have reasonable access to the building in which the work is to be done, but shall have no license to utilize other portions of, or facilities belonging to, LESSOR, unless otherwise authorized by way of a lease or other written document. LESSEE shall utilize all reasonable caution in completing the IMPROVEMENT and shall assume responsibility for all damage done to property belonging to LESSOR in the process of completing the IMPROVEMENT. In completing the IMPROVEMENT, LESSEE hereby agrees to accept the condition of the (NAME OF PROJECT) including any surrounding areas which LESSEE, its employees, volunteers, agents and representatives will need to occupy in order to complete the IMPROVEMENT, in "AS-IS" condition. LESSEE or its representatives shall have the responsibility to inspect the (NAME OF PROJECT) prior to commencing any work and shall notify LESSOR within 3 working days of the commencement date, in writing, of any perceived safety hazard which LESSEE believes will cause danger to anyone working on completing the IMPROVEMENT. If LESSEE does so notify, then LESSOR shall have the option of canceling this agreement upon written notice to LESSEE, with no recourse against either party. LESSEE, its employees, volunteers, representatives and agents, also hereby assume all reasonable risks associated with the completion of the IMPROVEMENT and waive any right to assert claims or a lawsuit against LESSOR for any injury, property damage, death or illness sustained as a result of working on the

IMPROVEMENT. This waiver also applies to any right of subrogation any insurance carrier, or the State of Washington might have as a result of compensating LESSEE, its employees, volunteers, representatives and agents for any injury, property damage, death or illness sustained.

3. Permitting

LESSEE shall obtain and pay for all required permits, engineering, plans drafting, and inspection necessary to comply with any and all building codes. LESSEE shall provide copies of all required permits to LESSOR prior to project commencement. Work may not commence until all required permits are provided to, and acknowledged by, LESSOR.

4. Funding

LESSEE shall be responsible for all labor and materials necessary to complete the IMPROVEMENT. The LESSOR shall not be responsible for any expenses incurred or necessary to complete the proposed leasehold improvement.

5. Labor

LESSEE shall provide all labor and equipment required for the IMPROVEMENT.

6. Credit Towards Lease Payments

The LESSEE shall be granted credit towards its lease payments upon completion of the (DESCRIPTION) as stated in the LESSEE'S Lease Agreement, Paragraph 3 b. The amount of credit will be determined by the County Administrator or his designee, when the IMPROVEMENT is finished, certified for occupancy and approved by LESSOR.

7. Ownership

LESSEE agrees that the (DESCRIPTION) IMPROVEMENT and the structure in which it is located, is solely the property of the LESSOR at all times prior to, during and after completion of the IMPROVEMENT. Nothing in this agreement is intended to, and nothing shall be interpreted as, granting lessee any ownership rights or right of usage outside of any right of usage conferred upon LESSEE via any lease agreement. LESSEE waives any right to file or enforce any mechanic's lien and expressly agrees not to file any such lien, upon the IMPROVEMENT, the structure within which it is housed, or any real property appurtenant to such.

8. Hold Harmless and Indemnification

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

In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the LESSEE, anyone directly or indirectly employed by, or volunteering for, any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties.

The LESSEE'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 LESSEE, the LESSEE'S employees, agents or volunteers.

9. Insurance

LESSEE shall ensure that each volunteer or employee who performs any work on the installation, construction, or erection, of the IMPROVEMENT is covered under a workman's compensation policy through the Department of Labor and Industries during all periods of time covered by this agreement. No volunteer or employee of LESSEE who is not so covered shall perform any work related in any way to the installation, construction or erection of the IMPROVEMENT.

Lessee shall obtain, and maintain in force throughout the period of work contemplated by this agreement, commercial general liability insurance in the amount of no less than $1,000,000 per accident or incident with a general aggregate limit of $2,000,000.

a. Additional insurance terms:

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

2). The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.

3). The LESSEE'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the LESSOR as an additional insured. Specifically, the policies shall not exclude contractual liability pursuant to the indemnification and hold harmless provisions contained in section 7 of this agreement.

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

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

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

7). The LESSEE shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the LESSEE'S liability coverage is written as a claims made policy, then the LESSEE must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

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

1). The LESSEE shall furnish the LESSOR with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance no less than ten (10) days prior to the commencement of the work contemplated in this agreement. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the LESSOR. Any certificate or endorsement limiting or negating the insurer's obligation to notify the LESSOR of cancellation or changes shall be altered so as not to negate the intent of this provision.

2). The LESSEE shall furnish the LESSOR with evidence that the additional insured provision required above has been met. This proof must be in the form of an insurance certificate as well as the endorsement pages of the policy showing the LESSOR as an additional insured.

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

4). All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the LESSOR at the following address:

Denise Gerry
Benton County Fairgrounds
1500 S Oak Street Building #20
Kennewick, WA 99337

5). The LESSEE or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the LESSOR.

10. Independent Contractor

a. The LESSEE'S services shall be furnished by the LESSEE as an independent contractor and not as an agent, employee or servant of the LESSOR. The LESSEE specifically has the right to direct and control LESSEE'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The LESSEE shall have and maintain complete responsibility and control over all of its volunteers, employees, agents, and representatives. No volunteer, employee, agent, or representative of the LESSEE shall be or deem to be or act or purport to act as an employee, agent, or representative of the LESSOR or of Benton County, and no volunteer, employee, agent or representative of the LESSEE shall claim or otherwise assert rights to any benefits, including, but not limited to, accident insurance, worker's compensation benefits, pay, medical insurance, or fringe benefits, which are actually, or customarily, given to employees, or agents of the LESSOR or Benton County.

11. Enforcement

In the event that LESSEE fails to or refuses to complete the IMPROVEMENT in a timely manner, fails to or refuses to present the IMPROVEMENT to LESSOR in a fashion suitable for occupancy (including procuring an occupancy permit), fails to or refuses to complete the IMPROVEMENT in a workmanlike manner, as determined by LESSOR, or breaches this agreement, then, upon proper written notice to LESSEE, if LESSEE does not correct the problem or take substantial steps toward same within ten (10) days, then LESSOR shall have the right to procure the services of a licensed contractor, or utilize LESSOR'S employees, to remedy the problem, including completion of the IMPROVEMENT, if applicable, at LESSEE'S expense.

BENTON COUNTY

For Exhibit Only

David Sparks, County Administrator
Date:

Benton-Franklin Mounted Sheriff's Posse

For Exhibit Only

Phil Clouse, Captain
Date:

Approved as to Form

For Exhibit Only

Deputy Prosecuting Attorney

K

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 2/23/09 Subject: Benton-Franklin Mounted Sheriff's Posse - Play Days Prepared by: dgg Reviewed by: lsk	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Benton-Franklin Mounted Sheriff's Posse to hold their Play Days in the 4-H Arena at the Fairgrounds on September 12, 19, 26 and October 3, 2009.

Capital improvements by the Benton-Franklin Mounted Sheriff's Posse on the Fairgrounds may be credited, in whole or in part, towards the lease agreement fee.

The Deputy County Administrator recommends approval of the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse.

RECOMMENDATION

Move the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse be approved.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE BENTON COUNTY FAIRGROUNDS AND THE BENTON-FRANKLIN MOUNTED SHERIFF'S POSSE

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse will provide the Benton County Fairgrounds $824.00 to hold their Play Days in the 4-H Arena at the Fairgrounds on September 12, 19, 26 and October 3, 2009; and

WHEREAS, the value of capital improvements made by the Benton-Franklin Mounted Sheriff's Posse to the Fairgrounds may be credited, in whole or in part, towards the $824.00 payment; and

WHEREAS, the Benton County Deputy Administrator recommends the Benton-Franklin Mounted Sheriff's Posse Lease Agreement be approved; **NOW THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Benton-Franklin Mounted Sheriff's Posse.

Dated this _____ day of _____ 2009.

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Originals: Fairgrounds; Benton-Franklin Mounted Sheriff's Posse
cc: Auditor, R. Ozuna, File

BENTON COUNTY FAIRGROUNDS

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

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2008**

LEASE AGREEMENT NUMBER: **028.09**

EVENT DATE(S): **September 12, 19, 26 and October 3, 2009**

NUMBER OF DAYS: **4**

BUILDING(S) / AREA: **4-H Arena**

LESSEE: **Benton-Franklin Mounted Sheriff's Posse,**
a Washington Non-Profit Corporation

MAILING ADDRESS: **PO Box 6406, Kennewick, WA 99336**

CONTACT: **Timothy Clouse, Captain**

CELLULAR PHONE: **366-5572**

TIME OF THE EVENT: **8:00 am – 5:00 pm**

TYPE OF EVENT: **Horse Riding Play Days**

ESTIMATED ATTENDANCE: **100**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between **Benton-Franklin Mounted Sheriff's Posse, a Washington Non-Profit Corporation** (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**
   a. HORSE RIDING MEETS ON SEPTEMBER 12, 19, 26 AND OCTOBER 3, 2009 (SEE PAGE 1 FOR DATES) IN THE 4-H ARENA FROM 8:00 AM UNTIL 5:00 PM WITH AN ESTIMATED ATTENDANCE OF 100 PEOPLE, hereafter referred to as the EVENT. EACH EVENT MAY INCLUDE THE FOLLOWING ACTIVITIES, EACH OF WHICH ARE HEREBY AUTHORIZED: BARREL RACING, DRILL TEAM, POLE BENDING, JIM CANA GAMES. ALL OTHER HORSE RIDING ACTIVITIES ARE PROHIBITED ABSENT ADVANCE WRITTEN AUTHORIZATION AND AN AMENDMENT OF THIS CONTRACT.

2. **FACILITIES LEASED FOR THE EVENT**
   a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENTS on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on **n/a**. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**
   a. In consideration for the license to hold the EVENTS, LESSEE agrees to pay LESSOR the FEE of $ **824.00** (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than **September 1, 2009**. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

   b. Until December 31, 2008, LESSEE may earn one or more credits of up to **824.00** towards the annual rental amount otherwise payable for the 2008 rental year, in return for capital improvements made at LESSEE's expense to the Leased Facilities by the LESSEE after the effective date of this agreement. Such credit(s) shall be equal to the estimated cost of such improvement(s) to LESSOR if the improvement(s) had been done by LESSOR or its agents. No credit will be given for any improvement by LESSOR unless a Fairgrounds Leasehold Improvement Agreement, in a form similar to that attached hereto as Exhibit B, is executed by LESSOR and LESSEE prior to the commencement of the particular improvement at issue. It is solely within LESSOR's discretion as to whether any particular proposal for an improvement by LESSEE is in LESSOR's best interest and consequently whether LESSOR will enter into a corresponding Fairgrounds Leaseholder Improvement Agreement. At the completion of each approved improvement project,

LESSEE must promptly submit documentation of the materials used, the type and amount of labor utilized and any other expenses necessary to complete the improvement. LESSOR shall within fifteen (15) days of receipt of all necessary and requested documentation, notify LESSEE in writing whether it accepts the improvement as complete and the determination by the Benton County Deputy Administrator as to the estimated cost of the improvement if made by LESSOR or its agents. Such estimate will be the amount of credit earned by LESSEE. For any improvement not completed by December 31, 2008, or by a prior date of any termination of this Lease, LESSEE will receive credit only for the estimated cost to LESSOR of such improvement in the condition the improvement exists as of the earlier of the date of termination of this Lease or December 31, 2008.

4. CAMPING OVERNIGHT

a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.

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

5. CANCELLATION OF EVENT

a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:

1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.

b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. **CONCESSIONAIRES**

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

7. **NOVELTIES/SOUVENIRS**

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

8. **DAMAGE / CLEANING DEPOSIT**

a. LESSEE must pay a damage/cleaning deposit of **0** at the time LESSEE executes this Agreement. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED. Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

a. LESSEE agrees to purchase, and maintain in force throughout the duration of this Agreement, **general liability insurance with a minimum coverage of one million dollars ($1,000,000) per person with a general aggregate limit of two million dollars ($2,000,000).** Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. The policy required by this paragraph shall be a "horse club and association liability policy" or horse owner's policy which specifically covers the hazards associated with horse riding activities. If horse racing, barrel racing or other type of hazardous activity other than ordinary horse riding is to be undertaken at the event, then the policy shall be specifically written to cover such hazardous activity. In any case, the policy may not exclude any activities reasonably expected to be undertaken, or actually undertaken, at the EVENT.

b. LESSEE agrees to ensure that all participating riders are covered by a horse owner's liability or similar insurance policy either as a primary or additional insured. **Such horse owner's liability policy shall be for no less than one million dollars ($1,000,000) per person, with a general aggregate limit of two million dollars ($2,000,000)**, and shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured, and shall include a provision prohibiting the cancellation of said policy except after thirty (30) days prior written notice to LESSOR. *No uninsured riders shall be permitted to ride in any event covered by this Agreement.*

c. All insurance required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.

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

e. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;

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

10. PERMITS/LAWS

a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.

b. LESSEE shall comply with all Federal, State and local laws, ordinances, rules and regulations. LESSEE acknowledges that all buildings, premises or structures located in or upon the leased premises are considered "public buildings" for purposes of RCW Chapter 70.160 that prohibits smoking in and around public places. LESSEE shall ensure that the security personnel, if any, retained pursuant to section 11 of this agreement are specifically instructed to enforce the provisions of RCW Chapter 70.160.

11. SECURITY

a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety

and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.

b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID. Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

12. SERVING ALCOHOL

a. No alcoholic beverages will be served at this EVENT.

b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.

c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. HORSE STALLS

a. LESSEE shall pay $8.00 per stall per day for every horse stall used during the EVENT. The LESSEE is responsible for collecting all stall fees, which must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE"S damage/cleaning deposit will be forfeited. If the refundable portion of the damage/cleaning deposit is less than the amount of stall fees accrued, LESSEE remains liable for the additional stall fees accrued.

14. TERMINATION OR AMENDMENT

a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or

amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. These indemnification obligations shall specifically include indemnification for any fines, fees, penalties or costs incurred by LESSEE during the course of the event for violations of any law, ordinance or regulation including, but not limited to, Washington's law on Smoking in Public Places, RCW Chapter 70.160. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

b. In any and all claims against the LESSOR, its officers, officials, employees and agents by any employee of the LESSEE, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the LESSEE makes with any subcontractor or agent performing work hereunder.

16. FAIRGROUNDS CONTACT

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

Jeff, Farrin, Jim and/or Denise 543-0060

b. This person(s) may be contacted for the following reasons:
   1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
   2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:
   1. The police department is summoned to the scene for any criminal investigation which takes place on the premises of the Fairgrounds;
   2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
   3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
   4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, **Timothy Clouse, Captain** (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind **Benton-Franklin Mounted Sheriff's Posse** to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

BY: _____
Chairman of the Board

Date: _____

Approved as to form:

BY: _____
Civil Deputy Prosecutor

LESSEE: Benton-Franklin Mounted Sheriff's Posse

BY: Timothy Clouse

Date: 2-4-09

Name: T Clouse

Title: Captain BFMSP

EXHIBIT A
FEES APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES

DAMAGE/CLEANING DEPOSIT
Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: $ 0

BUILDING(S) AND/OR AREA(S) FEES

4-H Arena $ 206.00 X 4 Days = $ 824.00

BUILDING(S)/AREA TOTAL: $ 824.00

EQUIPMENT RENTAL FEES
No equipment needed.

EQUIPMENT RENTAL TOTAL: $ 0

LESSOR FURNISHED INSURANCE FEES
Lessee will provide.

INSURANCE TOTAL: $ 0

SECURITY FEES
Lessee will provide.

SECURITY TOTAL: $ 0

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	1	Included	0

REFUSE TOTAL: $ 0

NAME: Benton-Franklin Mounted Sheriff's Posse

EVENT DATE: September 12, 19, 26 and October 3, 2009

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	$ 0
Building(s)/Area Fees	$ 824.00
Equipment Fees	$ 0
Insurance Fees	$ 0
Security Fees	$ 0
Refuse Disposal Fees	$ 0
Other Fees	$ 0

TOTAL FEE: $ 824.00

EXHIBIT B

LEASEHOLD IMPROVEMENT AGREEMENT
BENTON COUNTY FAIRGROUNDS

WHEREAS, the Benton-Franklin Mounted Sheriff's Posse, a non-profit corporation organized under the laws of the State of Washington, hereinafter "LESSEE," currently contracts to lease a portion of the Benton County Fairgrounds, owned and operated by Benton County, a political subdivision of the State of Washington (hereinafter "LESSOR") for portions of the year for purposes of holding horse riding events therein;

WHEREAS LESSEE has made a request of LESSOR to make an improvement to certain real property located within the Benton County Fairgrounds, hereinafter "FAIRGROUNDS"; and,

WHEREAS, it is in the mutual interest of both parties to pursue improvements to the FAIRGROUNDS that will improve the operation and the quality of horse riding; **NOW THEREFORE,**

IT IS HEREBY MUTUALLY RESOLVED, that the LESSOR and LESSEE agree to the following conditions regarding the proposed improvement.

1. Improvement

(Detailed Description)

2. Timeline

The IMPROVEMENT shall be completed by (DATE) Work shall commence no sooner than (DATE) and during the period of time between commencement of work and (DATE) LESSEE shall have reasonable access to the building in which the work is to be done, but shall have no license to utilize other portions of, or facilities belonging to, LESSOR, unless otherwise authorized by way of a lease or other written document. LESSEE shall utilize all reasonable caution in completing the IMPROVEMENT and shall assume responsibility for all damage done to property belonging to LESSOR in the process of completing the IMPROVEMENT. In completing the IMPROVEMENT, LESSEE hereby agrees to accept the condition of the (NAME OF PROJECT) including any surrounding areas which LESSEE, its employees, volunteers, agents and representatives will need to occupy in order to complete the IMPROVEMENT, in "AS-IS" condition. LESSEE or its representatives shall have the responsibility to inspect the (NAME OF PROJECT) prior to commencing any work and shall notify LESSOR within 3 working days of the commencement date, in writing, of any perceived safety hazard which LESSEE believes will cause danger to anyone working on completing the IMPROVEMENT. If LESSEE does so notify, then LESSOR shall have the option of canceling this agreement upon written notice to LESSEE, with no recourse against either party. LESSEE, its employees, volunteers, representatives and agents, also hereby assume all reasonable risks associated with the completion of the IMPROVEMENT and waive any right to assert claims or a lawsuit against LESSOR for any injury, property damage, death or illness sustained as a result of working on the

IMPROVEMENT. This waiver also applies to any right of subrogation any insurance carrier, or the State of Washington might have as a result of compensating LESSEE, its employees, volunteers, representatives and agents for any injury, property damage, death or illness sustained.

3. Permitting

LESSEE shall obtain and pay for all required permits, engineering, plans drafting, and inspection necessary to comply with any and all building codes. LESSEE shall provide copies of all required permits to LESSOR prior to project commencement. Work may not commence until all required permits are provided to, and acknowledged by, LESSOR.

4. Funding

LESSEE shall be responsible for all labor and materials necessary to complete the IMPROVEMENT. The LESSOR shall not be responsible for any expenses incurred or necessary to complete the proposed leasehold improvement.

5. Labor

LESSEE shall provide all labor and equipment required for the IMPROVEMENT.

6. Credit Towards Lease Payments

The LESSEE shall be granted credit towards its lease payments upon completion of the (DESCRIPTION) as stated in the LESSEE'S Lease Agreement, Paragraph 3 b. The amount of credit will be determined by the County Administrator or his designee, when the IMPROVEMENT is finished, certified for occupancy and approved by LESSOR.

7. Ownership

LESSEE agrees that the (DESCRIPTION) IMPROVEMENT and the structure in which it is located, is solely the property of the LESSOR at all times prior to, during and after completion of the IMPROVEMENT. Nothing in this agreement is intended to, and nothing shall be interpreted as, granting lessee any ownership rights or right of usage outside of any right of usage conferred upon LESSEE via any lease agreement. LESSEE waives any right to file or enforce any mechanic's lien and expressly agrees not to file any such lien, upon the IMPROVEMENT, the structure within which it is housed, or any real property appurtenant to such.

8. Hold Harmless and Indemnification

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

In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the LESSEE, anyone directly or indirectly employed by, or volunteering for, any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the LESSEE under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the LESSEE expressly waives any immunity the LESSEE might have had under such laws. By executing this Contract, the LESSEE acknowledges that the foregoing waiver has been mutually negotiated by the parties.

The LESSEE'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 LESSEE, the LESSEE'S employees, agents or volunteers.

9. Insurance

LESSEE shall ensure that each volunteer or employee who performs any work on the installation, construction, or erection, of the IMPROVEMENT is covered under a workman's compensation policy through the Department of Labor and Industries during all periods of time covered by this agreement. No volunteer or employee of LESSEE who is not so covered shall perform any work related in any way to the installation, construction or erection of the IMPROVEMENT.

Lessee shall obtain, and maintain in force throughout the period of work contemplated by this agreement, commercial general liability insurance in the amount of no less than $1,000,000 per accident or incident with a general aggregate limit of $2,000,000.

a. Additional insurance terms:

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

2). The COUNTY, its officers, officials, employees and agents shall be named as additional insureds with respect to performance of services on all required insurance policies, except for any required automobile liability policy.

3). The LESSEE'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the LESSOR as an additional insured. Specifically, the policies shall not exclude contractual liability pursuant to the indemnification and hold harmless provisions contained in section 7 of this agreement.

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

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

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

7). The LESSEE shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. If the LESSEE'S liability coverage is written as a claims made policy, then the LESSEE must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after completion of the services required under this Contract.

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

1). The LESSEE shall furnish the LESSOR with properly executed and unaltered accord form certificates of insurance or a signed policy endorsement which shall clearly evidence all required insurance no less than ten (10) days prior to the commencement of the work contemplated in this agreement. The certificates will, at a minimum, list limits of liability and coverage. The certificates will provide that the underlying insurance contract will not be canceled or allowed to expire, except on thirty (30) days prior written notice to the LESSOR. Any certificate or endorsement limiting or negating the insurer's obligation to notify the LESSOR of cancellation or changes shall be altered so as not to negate the intent of this provision.

2). The LESSEE shall furnish the LESSOR with evidence that the additional insured provision required above has been met. This proof must be in the form of an insurance certificate as well as the endorsement pages of the policy showing the LESSOR as an additional insured.

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

4). All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the LESSOR at the following address:

Denise Gerry
Benton County Fairgrounds
1500 S Oak Street Building #20
Kennewick, WA 99337

5). The LESSEE or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the LESSOR.

10. Independent Contractor

a. The LESSEE'S services shall be furnished by the LESSEE as an independent contractor and not as an agent, employee or servant of the LESSOR. The LESSEE specifically has the right to direct and control LESSEE'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The LESSEE shall have and maintain complete responsibility and control over all of its volunteers, employees, agents, and representatives. No volunteer, employee, agent, or representative of the LESSEE shall be or deem to be or act or purport to act as an employee, agent, or representative of the LESSOR or of Benton County, and no volunteer, employee, agent or representative of the LESSEE shall claim or otherwise assert rights to any benefits, including, but not limited to, accident insurance, worker's compensation benefits, pay, medical insurance, or fringe benefits, which are actually, or customarily, given to employees, or agents of the LESSOR or Benton County.

11. Enforcement

In the event that LESSEE fails to or refuses to complete the IMPROVEMENT in a timely manner, fails to or refuses to present the IMPROVEMENT to LESSOR in a fashion suitable for occupancy (including procuring an occupancy permit), fails to or refuses to complete the IMPROVEMENT in a workmanlike manner, as determined by LESSOR, or breaches this agreement, then, upon proper written notice to LESSEE, if LESSEE does not correct the problem or take substantial steps toward same within ten (10) days, then LESSOR shall have the right to procure the services of a licensed contractor, or utilize LESSOR'S employees, to remedy the problem, including completion of the IMPROVEMENT, if applicable, at LESSEE'S expense.

BENTON COUNTY

For Exhibit Only

David Sparks, County Administrator
Date:

Benton-Franklin Mounted Sheriff's Posse

For Exhibit Only

Timothy Clouse, Captain
Date:

Approved as to Form

For Exhibit Only

Deputy Prosecuting Attorney

AGENDA ITEM	TYPE OF ACTION NEEDED	
Meeting Date: 2/23/09 Subject: Columbia Basin Pigeon Club Prepared by: dgg Reviewed by: lsk	Execute Contract Pass Resolution X Pass Ordinance Pass Motion Board Direction	Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Workshop

BACKGROUND INFORMATION

Attached for Board review is the Lease Agreement with the Columbia Basin Pigeon Club. The Lease Agreement has been reviewed and approved as to form by the Prosecuting Attorney's office.

The Lease Agreement allows the Columbia Basin Pigeon Club to hold their annual Pigeon Show in Building 3 at the Fairgrounds on October 24-25, 2009.

Compensation potentially represents a greater than 50% discount of the normal rental rate for the facilities being leased.

The Deputy County Administrator recommends approval of the Lease Agreement with the Columbia Basin Pigeon Club.

RECOMMENDATION

Move the Lease Agreement with the Columbia Basin Pigeon Club be approved.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE LEASE AGREEMENT BETWEEN THE BENTON COUNTY FAIRGROUNDS AND THE COLUMBIA BASIN PIGEON CLUB

WHEREAS, the Columbia Basin Pigeon Club will provide the Benton County Fairgrounds $1,177.00 to hold a Pigeon Show in Building 3 at the Fairgrounds on October 24 – 25, 2009; and

WHEREAS, compensation potentially represents a greater then 50% discount of the normal rental rate for the facilities being leased, and per Resolution 07-870, the agreement must be approved by the Board of Benton County Commissioners; and

WHEREAS, the Benton County Deputy Administrator recommends the Columbia Basin Pigeon Club Lease Agreement be approved; **NOW THEREFORE,**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, that the Lease Agreement with the Columbia Basin Pigeon Club shall be granted; and

BE IT FURTHER RESOLVED that the Board authorizes the Chairman of the Board to sign the Lease Agreement with the Columbia Basin Pigeon Club.

Dated this _____ day of _____ 2009.

_____
Chairman of the Board

_____
Member

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Originals: Fairgrounds; Columbia Basin Pigeon Club
cc: Auditor, R. Ozuna, File

BENTON COUNTY FAIRGROUNDS

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

LEASE AGREEMENT

TODAY'S DATE: **December 1, 2008**

LEASE AGREEMENT NUMBER: **020.09**

EVENT DATE(S): **October 24 – 25, 2009**

NUMBER OF DAYS: **2**

BUILDING(S) / AREA: **Building 3**

LESSEE: **Columbia Basin Pigeon Club, a Washington Non-Profit Corporation**

MAILING ADDRESS: **PO Box 911, Benton City, WA 99320**

CONTACT: **Sarah Whitby, Secretary**

CELLULAR PHONE: **528-4123**

TIME OF THE EVENT: **Saturday 7:00 am – 7:00 pm, Sunday 8:00 am – 12:00 pm**

TYPE OF EVENT: **Pigeon Show**

ESTIMATED ATTENDANCE: **100**

SELLING TICKETS: YES NO **X**

THIS LEASE (AGREEMENT) is entered into effective upon the signature of both parties, between **Columbia Basin Pigeon Club, a Washington Non-Profit Corporation** (LESSEE) and BENTON COUNTY, a municipal corporation authorized under the laws of the State of Washington, operating the Benton County Fairgrounds (LESSOR).

1. **EVENT**
   a. PIGEON SHOW IN BUILDING 3 ON OCTOBER 24 – 25, 2009, SATURDAY FROM 7:00 AM UNTIL 7:00 PM AND SUNDAY FROM 9:00 AM UNTIL 2:00 PM WITH AN ESTIMATED ATTENDANCE OF 100 PEOPLE, hereafter referred to as the EVENT.

2. **FACILITIES LEASED FOR THE EVENT**
   a. LESSEE agrees to lease the buildings and grounds, equipment and services specified in Exhibit A (Attached) (collectively the Facilities) to hold EVENT on the date(s) specified on the cover hereto. In addition to said date(s), LESSEE desires and further agrees to lease said Facilities for move-in and/or move-out purposes on **October 23, 2009**. LESSEE WARRANTS THAT SAID FACILITIES WILL BE USED ONLY FOR LAWFUL PURPOSES NECESSARY TO SUPPORT THE EVENT.

3. **PAYMENTS**
   a. In consideration for the license to hold the EVENT, LESSEE agrees to pay LESSOR the FEE of $**1,177.00** (less damage/cleaning deposit if previously paid) for use of the Facilities as detailed in Exhibit A, no later than **October 8, 2009**. If the fee is not made by said date, this Agreement will be null and void unless otherwise agreed to in writing by LESSOR. Upon such termination, LESSEE shall be obligated to pay a cancellation fee as specified in the Benton County Fairgrounds Policies and Procedures, Paragraph #9.

4. **CAMPING OVERNIGHT**
   a. LESSOR does not make any warranties as to suitability of campgrounds for LESSEE'S purposes or compatibility of campground infrastructure to any equipment anticipated to be used by LESSEE or participants in LESSEE'S EVENT. LESSEE is responsible for ensuring that the campgrounds, as they exist, are suitable for LESSEE'S purposes and that campground infrastructure meets the needs of LESSEE and/or participants in LESSEE'S EVENT. LESSEE may request a walk-through of the campground facilities and LESSOR shall take all reasonable steps to accommodate such a request. PROVIDED that all such walk-throughs shall be during regular business hours only, and may be by appointment only.

   b. A $10.00 fee per day per tent/camper applies to units hooked up to water and electricity. A $6.00 per day per tent/camper applies to units that do not hook up to water and electricity. LESSEE is responsible for collecting all camping fees. Camping fees must be turned into the Fairgrounds Administrative Office no later than two (2) business days after the EVENT. If payment is not received by such date, the entire otherwise refundable balance of the LESSEE'S damage/cleaning deposit will be forfeited. IF THE REFUNDABLE PORTION OF THE DAMAGE/CLEANING DEPOSIT IS LESS

THAN THE AMOUNT OF CAMPING FEES DUE, LESSEE REMAINS LIABLE FOR THE BALANCE OF THE CAMPING FEES. (Further details may be included in Exhibit A.)

5. **CANCELLATION OF EVENT**

a. The parties recognize that cancellations made less than 60 days prior to the first event date will potentially cause the BCF to lose lease or rental revenue. The parties further recognize that for a number of reasons outside of the control of the parties, the actual amount of the loss is often difficult to quantify. Therefore, the parties agree to the following schedule of liquidated damages which shall become due and owing if Lessee cancels less than 60 days prior to the first day of the event:

1. If the Cancellation is made less than 60 days prior to the first event date, then Lessee shall pay 25% of the Lease fee as liquidated damages;
2. If the cancellation is made less then 30 days prior to the first event date, then Lessee shall pay 50% of the fee as liquidated damages.

b. The liquidated damages specified in this section may be deducted from cleaning or any other deposits retained by the BCF, and if any further amount is still due after such deduction, the Lessee may recover such amount due in the same manner as if it were seeking to recover any other sum due under this agreement, and may utilize any lawful means to do so.

6. **CONCESSIONAIRES**

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

7. **NOVELTIES/SOUVENIRS**

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

8. **DAMAGE / CLEANING DEPOSIT**

a. LESSEE must pay a damage/cleaning deposit of $____**250.00**____ at the time LESSEE executes this Agreement. THIS AGREEMENT IS NOT EFFECTIVE UNTIL EXECUTED BY LESSOR AND THE DAMAGE/CLEANING DEPOSIT IS RECEIVED. Damages to the Fairgrounds' resulting from the EVENT activities will be charged to the LESSEE at replacement cost plus labor; the cost of labor not exceeding the average cost for such labor in the Tri-Cities area. Charges for repairs will be subtracted from the damage/cleaning deposit, as may any other fees specified as subject to forfeiture of the damage/cleaning deposit elsewhere in this Agreement. The remaining balance, if any, of the damage/cleaning deposit, if any, will be returned to the LESSEE in approximately ten (10) business days after the EVENT date. If the damage/cleaning deposit is less than the amount of damage, LESSEE remains liable for the balance. Neither the Benton County Fairgrounds nor Benton County assume any

liability whatsoever for any loss or injury to the LESSEE or LESSEE'S property while on Benton County Fairgrounds' property.

9. **INSURANCE**

a. LESSEE agrees to purchase, and maintain in force through the duration of this Agreement **commercial general liability insurance with a limit in the sum of not less than one million dollars ($1,000,000) per occurrence for bodily injury or death of any one person and property damage and two million dollars ($2,000,000) in the aggregate for bodily injury to, or death of, any number of persons and property damage. Said policy may not exclude any activities expected to be, or actually, undertaken during the EVENT or setup/takedown.** Said policy shall name Benton County Fairgrounds, Benton County, its officers, directors, its elected officials, agents and employees as additional insured and shall include a provision prohibiting cancellation of said policy except after thirty (30) days prior written notice to LESSOR. A CERTIFICATE OF LIABILITY INSURANCE COVERAGE AS REQUIRED BY THIS SECTION SHALL BE DELIVERED TO THE LESSOR NO LATER THAN THIRTY (30) DAYS PRIOR TO THE FIRST DATE OF THE EVENT.

b. **All insurance policies required by this section shall include move-in and move-out days, as well as the event days and shall indicate these dates on the insurance certificate.**

c. All insurance policies required by this section shall cover losses which occur during the covered period, regardless of when the claim is filed, i.e. cannot be "claims made" policies.

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

e. The limits required by this section are not intended to an indication of liability nor are they to be considered limits on amount of indemnification;

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

10. **PERMITS**

a. All necessary city and/or state permits and/or licenses must be obtained and presented to LESSOR prior to the first day of the EVENT, or the first day of set up if applicable.

11. SECURITY

a. LESSEE takes full responsibility for the safety and well being of participants while they are participating in the EVENT. LESSEE is responsible for inspecting the building and premises and ensuring that they are sufficient to provide for the safety and security of event participants. LESSOR will make all reasonable attempts to honor requests for a walk through of premises and buildings to be leased provided that such walk through will be by appointment only, during regular business hours.

b. LESSEE shall designate a primary and secondary contact person for purposes of the EVENT. These contact persons shall be persons who have authority, during the EVENT, to direct how the EVENT is being operated, including the operations of any vendors (such as music DJs, food concessionaires, etc). **Within ten (10) days following execution of this contract, LESSEE shall furnish LESSOR with these contact persons on a form provided by LESSOR including cellular telephone numbers which will allow these persons to be contacted AT ALL TIMES DURING THE OPERATION OF THE EVENT and copies of their photo ID.** Depending on the size of the event, LESSEE may designate more contact persons at LESSEE'S discretion, but shall do so in writing. If event security or law enforcement officers responding to any incident at the event are unable to contact any designated contact for a period of 15 minutes or longer, then LESSOR shall have the option to terminate the EVENT and LESSEE'S license to use the facility pursuant to this Agreement. If the EVENT is terminated for these reasons, LESSEE forfeits all right to recover any payments paid to date.

12. SERVING ALCOHOL

a. Alcoholic beverages shall not be served at this EVENT.

b. The LESSEE agrees to abide by and enforce within the EVENT the County Policies regarding the presence of alcohol or the use of alcoholic beverages on County leased property.

c. LESSOR'S POLICY IS THAT NO LIQUOR BE CONSUMED BY ANY INDIVIDUAL UNDER TWENTY-ONE (21) YEARS OF AGE. VIOLATION OF THE POLICY SHALL CONSTITUTE A SUBSTANTIAL AND SIGNIFICANT BREACH OF THE AGREEMENT AND IF LESSOR LEARNS OF SUCH VIOLATION, LESSOR SHALL HAVE THE AUTHORITY TO IMMEDIATELY TERMINATE THE EVENT.

13. NOISE CONTROL

a. Noise is considered a nuisance if it exceeds 55 decibels between the hours of 6:00 am and 8:00 pm and 45 decibels between the hours of 8:00 PM and 6:00 AM (Kennewick Municipal Code Title 9 Health Sanitation). Decibel reading will be taken at the intersection of 10th Street and Oak Street.

b. If a reasonable complaint is received alleging excessive noise, the Lessee will be given a warning to reduce the noise level. The volume and bass must be reduced to an

acceptable level and remain there. A second complaint will result in the event being continuously monitored by a BCF representative at Lessee's cost in the amount of $100.00 per hour, which may be deducted from the damage/cleaning deposit. A third complaint will result in the event being shut down and all parties asked to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility. A complaint which results in a citation being issued or arrest being made pursuant to Kennewick code 9.48.010 and 9.48.020, or any other applicable state or local law, shall also result in the event being shut down and all parties required to leave with Lessee forfeiting all lease payments, damage/cleaning deposit and license to use the facility.

14. TERMINATION OR AMENDMENT

a. Unless otherwise specified herein, the LESSOR reserves the right to terminate or amend this agreement at any time by giving the LESSEE thirty (30) days written notice. Notice will be assumed to be received on the day (except Sundays) following the date when it is addressed to Lessee's address and mailed by first class and certified mail.

15. INDEMNIFICATION AND HOLD HARMLESS

a. LESSEE agrees to defend, indemnify and hold harmless LESSOR and its elected and appointed officials employees, agents, licensees and representatives, from and against any and all suits, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries to or death of any and all persons (including subcontractors, agents, licensees or representatives, and any of their employees) or damage to or destruction of any property (including, without limitation, LESSEE or LESSOR'S property or any other activity or omission which results in civil liability of any sort or type) in any manner caused by, resulting from incident to, connected with or arising out of LESSEE'S use of the facilities or performance under this agreement, unless such injury, death or damage is caused by the sole negligence of LESSOR. In the event of litigation between the parties to enforce the rights under this paragraph, LESSOR shall be entitled to attorney's fee and all other costs incurred in establishing its rights. LESSEE'S obligations pursuant to this article include investigating, adjusting and defending any cause of action or claim falling within the parameters as set out in this article.

16. FAIRGROUNDS CONTACT

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

Jeff, Farrin, Jim and/or Denise 543-0060

b. This person(s) may be contacted for the following reasons:
   1. To access locked locations of the Fairgrounds for functions essential to the EVENT;
   2. In the event of malfunction of services or equipment essential to the EVENT.

c. This person(s) SHALL be contacted (any one of them) if any of the following occurs:
   1. The police department is summoned to the scene for any criminal investigation

which takes place on the premises of the Fairgrounds;

2. The fire department or an ambulance is summoned to the scene for an incident involving injury or illness to a person on the premises of the Fairgrounds;
3. LESSEE is unable to ensure that all persons have left the premises of the Fairgrounds at the termination of the EVENT;
4. There is a situation such as a fire, explosion or structural failure, which results in substantial damage to LESSORS' property and/or injury to persons.

17. POLICIES AND PROCEDURES

In signing this Lease Agreement, the LESSEE signifies that said LESSEE has been provided a copy of the Policies and Procedures governing the use of the Benton County Fairgrounds and has had an opportunity to review those policies and procedures. The parties agree that the provisions contained within the Policies and Procedures manual are hereby incorporated into this Agreement and any violation of such provisions shall constitute a breach of this Lease Agreement.

I, **Sarah Whitby, Secretary** (name and job title/position) have read and fully understand this Agreement. I hereby certify that I have the authority to bind **Columbia Basin Pigeon Club** to the terms and conditions set forth herein. In the event I do not have the authority, I acknowledge and agree that I shall be personally liable for any payments due under this Agreement and for any breach that occurs under the Agreement. I agree to abide by the conditions set forth in this Lease Agreement and assume the responsibility for enforcing these policies.

LESSOR: BENTON COUNTY

BY: _____
Chairman of the Board

Date: _____

Approved as to form:

BY: _____
Civil Deputy Prosecutor

LESSEE: Columbia Basin Pigeon Club

BY: _____

Date: 2-4-09

Name: SARA Whitby

Title: Secretary

EXHIBIT A
FEES APPLICABLE TO LESSEE'S LICENSE TO USE THE FACILITIES

DAMAGE/CLEANING DEPOSIT
Refundable in approximately ten (10) business days after the EVENT, only if the building and/or rented area is completely clean, all garbage in dumpster(s), and tables and chairs re-stacked.

DEPOSIT TOTAL: **$ 250.00**

BUILDING(S) AND/OR AREA(S) FEES

Building # 3 X 2 Days = $ 635.00

Included: Move-In Day 10/23/09

BUILDING(S)/AREA TOTAL: **$ 635.00**

EQUIPMENT RENTAL FEES
Included in Building Rate: 55 Tables, 40 Chairs

EQUIPMENT RENTAL TOTAL: **$ 0**

LESSOR FURNISHED INSURANCE FEES

INSURANCE TOTAL: **$ 292.00**

SECURITY FEES
Lessee will provide.

SECURITY TOTAL: **$ 0**

REFUSE DISPOSAL FEES

Bin Size	Number	Cost	Total
4 Yard Bin	1	Included	0

REFUSE TOTAL: **$ 0**

CAMPING FEES

$ 10.00 per day/camper with hookups
$ 6.00 per day/camper without hookups

Camping fees need to be collected by the Lessee and paid to BCF within 2 business days.

NAME: Columbia Basin Pigeon Club

EVENT DATE: October 24 – 25, 2009

SUMMARY OF FEE(S)

Damage/Cleaning Deposit	$ 250.00
Building(s)/Area Fees	$ 635.00
Equipment Fees	$ 0
Insurance Fees	$ 292.00
Security Fees	$ 0
Refuse Disposal Fees	$ 0
Other Fees	$ Camping Fees

TOTAL FEE: $ 1,177.00
Plus Insurance and Camping Fees

m.

AGENDA ITEM: Consent MEETING DATE: B/C 02-23-09 SUBJECT: Line Item Transfer Prepared By: Jennifer Bowe Reviewed By: Sharon Paradis	TYPE OF ACTION NEEDED Executive Contract Pass Resolution xx Pass Ordinance Pass Motion Other	CONSENT AGENDA xx PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER

BACKGROUND INFORMATION

The Benton-Franklin Counties Juvenile Justice Center has received a new Truancy Contempt Prevention grant in accordance with Joint Resolution, Benton Co. No. 08 939 and Franklin County No. 2008 482, dated November 24, 2008. At the time the 2009 budget was approved, Line Item No. 1711 (Counselor II) was approved in Department 173, Fee for Service and intended to fund a new Pasco High School/Juvenile Probation Liaison position which is not anticipated to start until July 1, 2009. Because BFJJC anticipates receiving additional grants over the next six (6) months and in an effort to do supplements at one time we are requesting the boards approval to utilize the Counselor II position (Line Item 1711) in Department 174, Grant Reimbursement for the Truancy Contempt Prevention Grant and come back for a supplement as needed in the next 4 to 6 months.

SUMMARY

This Line Item Transfer allows the Benton-Franklin Counties Juvenile Justice Center to utilize a previously approved and currently unused Counselor II position in association with a new grant received. This would allow the Juvenile Justice Center to consolidate the need for supplements to the Juvenile Justice budget.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Resolution for the line item transfer from Department 173, Fee for Service to Department 174, Grant Reimbursement.

FISCAL IMPACT

This position is 100% funded via the Truancy Contempt Prevention grant. There is no fiscal impact to the county.

MOTION

I move that the Benton County Board of Commissioners sign the resolution approving the line item transfer.

RESOLUTION_____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN JUVENILE FUND NUMBER 0115-101, DEPARTMENT 173, FEE FOR SERVICE AND DEPARTMENT 174, GRANT REIMBURSEMENT, and

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

DATED this 23rd day of February, 2009

_____
Chairman of Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

Originals (3): 1-BC Commissioners, 1-Juvenile, 1-Auditor

EXHIBIT A
LINE ITEM TRANSFERS

Department: Contract - Fee for Service

Department No: 173

Fund Name: Juvenile Justice Center

Fund: 0115-101

TRANSFER FROM:				TRANSFER TO:			
BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
527-400	173-1711	Counselor II	$27,624	527-400	174-1711	Counselor II	$27,624
527-400	173-2102	Social Security	$2,113	527-400	174-2102	Social Security	$2,113
527-400	173-2103	Medical Insurance	$4,326	527-400	174-2103	Medical Insurance	$4,326
527-400	173-2104	Retirement	$2,704	527-400	174-2104	Retirement	$2,704
527-400	173-9908	Accumulated Leave	$483	527-400	174-9908	Accumulated Leave	$483
Totals			**$37,250**	**Total**			**$37,250**

EXPLANATION:

Benton-Franklin Counties Juvenile Justice Center has received a new Truancy Contempt Prevention grant in accordance with Joint Resolution, Benton Co. No. 08 939 and Franklin County No. 2008 482, dated November 24th, 2008. At the time the 2009 budget was approved, Line Item No. 1711 (Counselor II) was approved in Dept. 173 and intended to fund a new Pasco High School/Juvenile Probation Liaison position which is not anticipated to start until July 1, 2009. Because BFJJC anticipates receiving additional grants over the next six (6) months and in an effort to do supplements at one time we are requesting the boards approval to utilize the Counselor II position (Line Item No. 1711) in Department 174, Grant Reimbursement for the Truancy Contempt Prevention grant and come back for supplement as needed in the next 4 to 6 months.

Prepared by Jennifer Bowe, Administrative Services Manager — **Date** 2/6/2009

Authorized by Sharon Paradis, Administrator — **Date** 2/6/2009

Approved ☐ **Denied** ☐

Chairman

Member

Member

Line Item 173 to 174 line Item 1711.xls

n.

AGENDA ITEM: Consent MEETING DATE: B/C 02-23-09 F/C 02-09-09 SUBJECT: Agreement 111993 between WSU and BFJJC for the evaluation of the Models for Change DMC data analysis Prepared By: Kathryn M. Phillips Reviewed By: Sharon Paradis	TYPE OF ACTION NEEDED Executive Contract xx Pass Resolution xx Pass Ordinance Pass Motion Other	CONSENT AGENDA xx PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER	

BACKGROUND INFORMATION

The Benton-Franklin Juvenile Justice Center is one of the model sites for the John T. and Catherine D. MacArthur Foundation's Models for Change Project. As a research and data driven program it requires a neutral third party to research and report progress and outcomes. This Research Agreement allows Washington State University to conduct said research.

SUMMARY

The term of this Agreement is May 16, 2009, through August 15, 2009.

RECOMMENDATION

I recommend that the Boards of County sign the Research Agreement between the BFJJC and Washington State University to conduct and report progress and outcomes related to the Models for Change DMC Network data analysis.

FISCAL IMPACT

The fee for research is $4,951 and is incorporated in the 2009 Juvenile Budget.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be hereby authorized to sign, on behalf of their respective county, the Research Agreement between the Juvenile Justice Center and Washington State University, for the period commencing May 16, 2009 and terminating August 15, 2009.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PROJECT AGREEMENT # 111993 BETWEEN THE JUVENILE JUSTICE CENTER AND WASHINGTON STATE UNIVERSITY, and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Project Agreement # 111993 between Washington State University and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing May 16, 2009 and terminating on August 15, 2009, **NOW, THEREFORE**

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

DATED this 23rd day of February 2009
BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this 9th day of February 2009
FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (4): 1-BC Commissioners, 1-FC Commissioners, 2-WSU, 1-BFJJC

WASHINGTON STATE UNIVERSITY

SPONSORED PROJECT AGREEMENT
OGRD #111993

I. PARTIES

1.1 THIS AGREEMENT is made and entered into by and between Washington State University (WSU), an institution of higher education and an agency of the state of Washington, and 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, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (SPONSOR). In this Agreement, the above entities are jointly referred to as PARTIES.

II. PURPOSE

2.1 This Agreement provides the terms and conditions for a sponsored project that is of mutual interest and benefit to WSU and SPONSOR.

2.2 The performance of such sponsored project is consistent, compatible and beneficial to the academic role and mission of WSU as an institution of higher education.

III. DEFINITIONS

3.1 "Budget" shall mean the Project Budget contained in *Attachment B–Budget*, which is hereby incorporated by reference.

3.2 "Project Director(s)" shall be Nicholas P. Lovrich.

3.3 "Sponsor Liaison" shall be Darryl Banks, a SPONSOR employee designated by SPONSOR to be the primary contact with the Project Director.

3.4 "SCOPE OF WORK" shall mean the sponsored project, under the direction of the Project Director, described in *Attachment A–Scope of Work, Attachment B-Budget* and any other attachments that may provide additional information on the sponsored project to be performed.

3.5 "Confidential Information" shall mean information in written, graphic, oral or other tangible form protected by trade secret or other right of non-disclosure, including without limitation algorithms, formulae, techniques, improvements, technical drawings and data, and computer software.

3.6 "Intellectual Property" shall mean any Invention, Copyright, Trademark and/or Proprietary Information produced under the Scope of Work.

3.7 "Invention" shall mean certain inventions and/or discoveries conceived and/or reduced to practice in performance of the Scope of Work and resulting patents, divisionals, continuations, or substitutions of such applications, all reissues and foreign counterparts thereof, upon which a WSU employee or agent is a named inventor.

3.8 "Invention Disclosure(s)" shall mean a written disclosure of a potentially patentable Invention(s) provided to WSU's Office of Intellectual Property Administration.

3.9 "Copyright" shall mean any work developed under the Scope of Work that is subject to copyright under copyright law.

3.10 "Proprietary Information" means all data, sequences, and any other information obtained or developed during the course of the Scope of Work.

3.11 "Trademark" shall mean any trade or service marks developed under the Scope of Work whether or not registered under either state or federal trademark law.

IV. SCOPE OF WORK

4.1 SPONSOR acknowledges that this Agreement is for the performance of the SCOPE OF WORK, as defined in Article 3.4 of this Agreement, for the "Data Management and Statistical Analysis" project.

4.2 WSU agrees to use its reasonable best efforts to perform the SCOPE OF WORK. WSU does not represent or guarantee that the desired results will be obtained from the research performed under this Agreement.

4.3 Reporting Requirements.

4.3.1 Final Report. A final written report shall be furnished to SPONSOR at the completion of the Contract Term.

V. GENERAL TERMS AND CONDITIONS

In consideration of the mutual premises and covenants contained herein, the PARTIES agree to the following terms and conditions.

5.1 Period of Performance – Contract Term. The specific period of performance for the SCOPE OF WORK shall be May 16, 2009 to August 15, 2009 unless a time extension is mutually agreed upon in writing between the PARTIES in accordance with Article 5.18–Amendments. WSU shall complete all work under this Agreement no later than the end of the contract term.

5.2 Funding. SPONSOR agrees to reimburse WSU for services performed under this Agreement in the amount of up to a maximum of Four Thousand Nine Hundred and Fifty-One Dollars ($4,951.00) total, in accordance with the following payment schedule:

As invoiced

5.3 Project Budget. *Attachment B–Budget* sets forth the Project Budget. Deviations from this Project Budget may be made to and from any expenditure object within the WSU system as long as such deviation is reasonable and necessary in the pursuit of the SCOPE OF WORK. The total amount identified above may not be exceeded without prior written amendment to this Agreement signed by the PARTIES in accordance with Article 5.18--Amendments.

5.4 Invoices. Periodic invoices will be provided, in accordance with Article 5.2, but not more often than monthly, using the standard WSU invoice. Payments are due to WSU within forty-five (45) days from the WSU invoice date. Checks should be made payable to Washington State WSU and sent to: Washington State University, Cashier's Office – SPS, PO Box 641027, Pullman WA 99164-1027.

Invoices should be sent to:

Name/Title: Benton-Franklin Counties Juvenile Justice Center Phone: 509.783.2151
Address: 5606 W Canal PL STE 106 Fax: 509.763.2728
City/State/Zip: Kennewick, WA 99336-1388

5.5 Equipment. WSU shall retain title to any equipment purchased with funds provided by SPONSOR under this Agreement.

5.6 Key Personnel. The Project Director may select and supervise other project staff as needed to perform the SCOPE OF WORK. No other person will be substituted for the Project Director except with SPONSOR's approval. SPONSOR may exercise Termination for Convenience provisions of this Agreement if a satisfactory substitute is not identified.

5.7 Control of Scope of Work. The control of the SCOPE OF WORK rests entirely with WSU. However, the PARTIES agree that WSU, through its Project Director, shall maintain communication with the designated liaison for SPONSOR. WSU's Project Director and SPONSOR's Liaison shall mutually define the frequency and nature of these communications.

5.8 Confidential Information.

5.8.1 To the extent allowed by law, WSU and SPONSOR agree to use reasonable care to avoid unauthorized disclosure of Confidential Information, including without limitation taking measures to prevent creating a premature bar to a United States or foreign patent application. Each party will limit access to Confidential Information received from another party hereto to those persons having a need to know. Each party shall employ the same reasonable safeguards in

receiving, storing, transmitting, and using Confidential Information that prudent organizations normally exercise with respect to their own confidential information of significant value.

5.8.2 Confidential Information shall include written, graphic, or oral communication. Confidential Information shall not be disclosed by the receiving party to a third party for a period of five (5) years from receipt of such information or until a patent is published or the Confidential Information is published by the disclosing party, or unless the disclosing and receiving parties agree otherwise and in writing at the time of disclosure. Third parties shall include all governmental offices.

5.8.3 The terms of confidentiality set forth in this Agreement shall not be construed to limit the parties' right to independently develop products without the use of another party's Confidential Information.

5.8.4 Confidential Information shall not include information that:

- 5.8.4.1 was in the receiving party's possession prior to receipt of the disclosed information;
- 5.8.4.2 is or becomes a matter of public knowledge through no fault of the receiving party;
- 5.8.4.3 is received from a third party without a duty of confidentiality;
- 5.8.4.4 is independently developed by the receiving party;
- 5.8.4.5 is required to be disclosed under operation of law;
- 5.8.4.6 is reasonably ascertained by WSU or SPONSOR to create a risk to a trial subject or to public health and safety.

5.8.5 It is understood that both parties are subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.56 et seq. (http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56). If a Public Disclosure Act request is made to view a party's Confidential Information, and the Public Records Officer for the party receiving the records request either determines that no exemption to disclosure applies or is unable to determine whether an exemption to disclosure applies, the party receiving the records request will notify the other party of the request and the date that such records will be released to the requester unless the other party obtains a court order enjoining that disclosure. If the other party fails to obtain a court order enjoining disclosure, the party receiving the records request will release the requested information on the date specified.

5.9 Publication. WSU reserves the right to publish or permit to be published by WSU employees the results of the SCOPE OF WORK undertaken by WSU employees. To prevent untimely disclosure or exploitation of SPONSOR Confidential Information, WSU shall provide SPONSOR Liaison with a copy of any proposed publication resulting from the SCOPE OF WORK at least thirty (30) days prior to submission for publication. SPONSOR shall have thirty (30) days (the "Pre-publication Review Period") from receipt of the draft to review the proposed publication. If SPONSOR determines that SPONSOR Confidential Information is included in the proposed publication, WSU will at SPONSOR's request remove

such SPONSOR Confidential Information prior to submission for publication. If the proposed draft publication contains SPONSOR Confidential Information, the SPONSOR may request that WSU's submission of the draft for publication be delayed for up to sixty (60) days beyond the end of the Pre-publication Review Period. If SPONSOR seeks to delay publication, SPONSOR shall make such request in writing prior to the expiration of the Pre-publication Review Period together with identification of the information or materials of concern and reasons why delay is warranted. WSU may delay publication by ninety (90) days to allow WSU or SPONSOR, as the case may be, to seek patent protection or a court order.

5.10 Publicity. SPONSOR shall not include the name of Washington State WSU, Washington State WSU Research Foundation or any of either entity's Trademarks in any advertising, sales promotion, or other publicity matter without prior written approval of the President of WSU or his or her designee.

5.11 Termination for Convenience. This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by SPONSOR, SPONSOR shall pay all reasonable costs and non-cancelable obligations incurred by WSU as of the date of termination up to the total maximum amount identified in Article 5.2.

5.12 Termination for Cause. In the event either party shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to remedy such default or breach within sixty (60) days after receipt of written notice thereof, the non-breaching party may, at its option and in addition to any other remedies that it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other party to that effect. Termination shall be effective as of the day of receipt of such notice.

5.13 Termination Obligations. In addition to those obligations set out in Articles 5.11 and 5.12, termination of this Agreement shall not relieve either party of any obligations incurred prior to the date of termination including, but not limited to, any obligation of the SPONSOR to pay the option fee set forth in Article 5.16.

5.14 Dispute Resolution. Except as otherwise provided in this Agreement, when a dispute arises between the PARTIES and it cannot be resolved by direct negotiation, either party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the PARTIES and be sent to all PARTIES. PARTIES must provide a response within thirty (30) days unless the PARTIES mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member. The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. The decision is binding on the PARTIES.

Nothing in this Agreement shall be construed to limit the PARTIES' choice of a mutually acceptable dispute resolution method in addition to or in lieu of the dispute resolution procedure outlined above.

5.15 Disclaimer. WSU MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE SCOPE OF WORK, SPONSORED PROJECT OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED PROJECT, SCOPE OF WORK, OR RESULTING PRODUCT.

5.16 Intellectual Property.

5.16.1 WSU Intellectual Property. WSU shall own all rights and title to Intellectual Property created solely by WSU employees.

5.16.2 SPONSOR Intellectual Property. SPONSOR shall own all rights and title to Intellectual Property created solely by SPONSOR and without use of WSU resources under this Agreement.

5.16.3 Joint Intellectual Property. WSU and SPONSOR shall jointly own all rights and title to Intellectual Property made jointly by WSU and SPONSOR pursuant to this Agreement.

5.16.4 Consistent with WSU policy, WSU may assign Intellectual Property to the Washington State WSU Research Foundation ("WSURF"). For purposes of this Article 5.16, WSU shall mean either WSU or WSURF for Intellectual Property assigned to it.

5.16.5 WSU hereby grants to SPONSOR an option to negotiate a license to WSU Intellectual Property and/or WSU's ownership interest in Joint Intellectual Property (Option Rights). WSU shall notify SPONSOR of such Intellectual Property within thirty (30) days of WSU's Office of Intellectual Property Administration's receipt of WSU Invention Disclosure forms from WSU inventors. SPONSOR shall, within ninety (90) days of receipt of such notification from WSU (the Option Period), indicate to WSU in writing its intent to negotiate a license. Upon receipt, by WSU, of Sponsor's notification of its intent to negotiate a license and as consideration for these Option Rights, SPONSOR shall pay a non-refundable fee of Seven Thousand Five Hundred dollars ($7,500) to WSURF within sixty (60) days of WSURF's submission of an invoice to SPONSOR. In the event that SPONSOR exercises its option, the PARTIES shall negotiate the license terms in good faith. The license shall contain terms standard for agreements between universities and industry including, without limitation, clauses providing for payment of reasonable royalties and other compensation to WSU; reimbursement of WSU for all past, present, and future expenses incurred in the preparation, filing, prosecution, issuance, and maintenance of Intellectual Property rights; and product liability indemnification and insurance requirements that are acceptable to WSU. In the event that WSU and SPONSOR do not execute a written license agreement for the Option Rights within 90 days following

Sponsor's exercise of the option (the "Negotiation Period"), WSU shall be free to negotiate with and to enter into license agreements, including exclusive license agreements, with third parties for the Options Rights.

5.16.6 Invention Disclosures submitted to SPONSOR by WSU are regarded by WSU as confidential. SPONSOR shall not disclose any information contained in Invention Disclosures to any third party without WSU's prior written permission.

5.16.7 If SPONSOR declines to enter into a license with WSU under this Article, SPONSOR agrees for itself, its employees, successors, and assigns to be bound by a secrecy obligation for five (5) years with respect to information contained in the Invention Disclosure.

5.16.8 WSU hereby grants to SPONSOR a royalty-free license to use Copyrights, with the exception of copyrighted software, for its non-commercial use. WSU hereby grants to SPONSOR the right to negotiate a license for commercial use of Copyrights on reasonable terms and conditions, including a reasonable royalty, as the PARTIES hereto agree in a subsequent writing.

5.16.9 SPONSOR understands that WSU must comply with the provisions of US Patent law including the Bayh-Dole Act.

5.17 Indemnity. Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. SPONSOR shall fully indemnify and hold harmless WSU against all claims arising out of SPONSOR's use, commercialization, or distribution of Intellectual Property or products that result in whole or in part from the Scope of Work.

5.18 Amendments. This Agreement may be amended by mutual agreement of the PARTIES. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the PARTIES.

5.19 Assignment.

5.19.1 The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

5.19.2 Notwithstanding the foregoing, and consistent with WSU policy, SPONSOR agrees that WSU may assign any Inventions, Copyrights, or Trademarks developed under this Agreement to the Washington State WSU Research Foundation.

5.20 Notices. Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, postage prepaid and addressed to the party to receive such notice at the address given below or such other address as may hereafter be designated by

notice in writing. Notice given hereunder shall be effective as of the date of receipt of such notice:

WSU:
Name/Title: Dan Nordquist, Director OGRD

Address: 423 Neill Hall
Address: PO Box 643140
City/State/Zip: Pullman, WA 99164-3140

Phone: (509)335-9661
Fax: (509) 335-1676
E-mail: ogrd@wsu.edu

Sponsor:

Name/Title: Darryl Banks, Intervention Services Manager

Address: 5606 W Canal PL STE 106
City/State/Zip: Kennewick, WA 99336-1388

Phone: 509.783.2151
Fax: 509.736.2728
E-mail: darryl.banks@co.benton.wa.us

5.21 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court of Whitman County.

5.22 Compliance with Laws. SPONSOR understands that WSU and SPONSOR are subject to United States laws and federal regulations, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that SPONSOR's and WSU's obligations hereunder are contingent upon compliance with applicable United States laws and regulations, including those for export control. The transfer of certain technical data and commodities may require a license from a cognizant agency of the United States Government and/or a written assurance by SPONSOR that SPONSOR shall not transfer data or commodities to certain foreign countries without prior approval of an appropriate agency of the United States Government. Neither WSU nor SPONSOR represent that a license shall not be required, or that, if required, it will be issued.

5.23 Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

5.24 Order of Precedence. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable statutes and regulations;
2. Terms and Conditions contained in the basic Agreement;
3. *Attachment A–Scope of Work;*
4. *Attachment B–Budget;*
5. Any other attachments; and

6. Any other provisions incorporated by reference or otherwise into this Agreement.

This Agreement contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the PARTIES hereto.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives..

Washington State University

1/21/09

Dan Nordquist **Date**

Director, OGRD

Benton Franklin Counties
Juvenile Justice Center

1/23/09

Sharon A. Paradis **Date**

Juvenile Court Administrator

BENTON COUNTY APPROVAL

Approved as to Form:

2/2/19

Sarah Perry, Deputy Prosecuting Attorney Date

By: _____

Name: Max E. Benitz, JR.

Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Agreed Review Performed by Benton County

Ryan Verhulp, Civil Deputy Prosecuting Attorney Date

By: _____

Name: Rick Miller

Title: Chairman, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

ATTACHMENT A – SCOPE OF WORK
OGRD # 111993
(See Article 3.4 and 5.24)

Description:

Yu-Sheng (Linus) Lin will work with the staff of the Benton-Franklin Counties Juvenile Justice Center to prepare and analyze data in connection with improvement to be made in the process of minimizing the penetration of youth into custodial care and managing the probationary load of employees. In addition, he will work closely with staff who are conducting analyses of in-house data and data brought to them from state sources for evidence of disproportionate minority contact. His expertise in data management and statistical analysis will be called upon in all of these areas of work. Most of this work will occur in Pullman, but periodic travel to the Tri-Cities will be done as needed.

Attachment B – Budget

OGRD #111993
(See Articles 3.1, 3.4, 5.3, 5.24)

Salaries				$	751.00
Wages				$	2400.00
Fringe Benefits				$	454.00
Materials/Supplies/Goods & Services				$	200.00
Domestic Travel				$	500.00
Foreign Travel				$	0.00
Equipment				$	0.00
Other Direct Costs				$	0.00
Total Direct Costs				$	4,305.00
	IDC		IDC		
F&A/Overhead/Indirect Costs	15%	MTDC	4305	$	646.00
Total Costs				$	4,951.00

0.

AGENDA ITEM: Consent MEETING DATE: B/C 02-23-09 F/C 02-18-09 SUBJECT: Agreement between Center for Children's Law & Policy, the Children and Youth Justice and the Benton-Franklin Counties Juvenile Justice Center Prepared By: Kathryn M. Phillips Reviewed By: Sharon Paradis	TYPE OF ACTION NEEDED Executive Contract xx Pass Resolution xx Pass Ordinance Pass Motion Other	CONSENT AGENDA xx PUBLIC HEARING 1ST DISCUSSION 2ND DISCUSSION OTHER

BACKGROUND INFORMATION

The purpose of this agreement, between the Center for Children's Law and Policy (CCLP), the Center for Children and Youth Justice (CCYJ) and the Benton-Franklin Counties Juvenile Justice Center (BFJJC), is to support activities as part of the John D. and Catherine T. MacArthur Foundation Models for Change DMC Action Network.

SUMMARY

Disproportionate Minority Contact (DMC) is one of the Targeted Areas of Improvement (TAI) identified as part of the Models for Change Initiative in Benton-Franklin Counties program. The period of this agreement is from October 1, 2008 through September 30, 2009.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Agreement between the CCLP, CCYU and BFJJC for the period of October 1, 2008 through September 30, 2009.

FISCAL IMPACT

CCLP through CCYJ will compensate BFJJC $30,000.00.

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 Agreement for the term of October 1, 2008 through September 30, 2009.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE CHAIRMAN OF THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE AGREEMENT BETWEEN THE JUVENILE JUSTICE CENTER, THE CENTER FOR CHILDREN'S LAW POLICY, AND THE CENTER FOR CHILDREN & YOUTH JUSTICE and

WHEREAS, Sharon A. Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Agreement between the Center for Children's Law Policy, the Center for Children & Youth Justice and Benton-Franklin Counties Juvenile Justice Center be approved as presented for a term commencing October 1, 2008 and terminating on September 30, 2009, **NOW, THEREFORE**

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

DATED this 23rd day of February 2009
BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this 18th day of February 2009
FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (5): 1-BC Commissioners, 1-FC Commissioners, 1-CCYJ, 1-CCLP, 1-BFJJC

DMC ACTION NETWORK AGREEMENT

1. PARTIES

This Agreement is between the Center for Children's Law and Policy, a nonprofit organization located at 1701 K Street, NW, Suite 1100, Washington, DC 20006, (hereinafter, "CCLP"), Benton and Franklin Counties on behalf of Benton-Franklin Juvenile Justice Center, located at 5606 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter, "BFJJC" or "the site representative"), and the Center for Children & Youth Justice, a non-profit organization located at 615 2nd Avenue, Suite 275, Seattle, WA 98104, (hereinafter, "CCYJ" or "the fiscal agent").

2. PURPOSE

This is an agreement to support activities by BFJJC in Benton and Franklin Counties, Washington and throughout the state as part of the John D. and Catherine T. MacArthur Foundation Models for Change DMC Action Network ("the Network").

3. SCOPE OF WORK

BFJJC will conduct the following activities during the period of this Agreement:

A. **Regular meetings and continued oversight of governing or advisory body for DMC Action Network activities.** BFJJC will designate a governing or advisory body to develop, implement, and monitor DMC Action Network activities under this Agreement. The governing body will continue to meet regularly and will submit minutes of meetings to CCLP. The governing/advisory body will continue to include representatives of key stakeholder agencies and of communities impacted by the juvenile justice system.

B. **Maintain a Site Leader for coordination of Network activities.** BFJJC will continue to maintain one identified representative as Site Leader for project activities. The identified Site Leader coordinates the site's Network activities and submits required reports and other deliverables to CCLP, as set forth in this Agreement.

C. **Collection, analysis, and reporting of DMC data.** BFJJC will:

1. Collect and report quarterly the Burns Institute ("BI") Level One data. The data report must be submitted electronically in the BI Level One data tool provided by CCLP.

2. Report quarterly on DMC Performance Measures that are required of all Network sites, and those that are relevant to the site's implementation of Strategic Innovation(s). The performance measures must be submitted electronically in the report format provided by CCLP. Site representatives will refer to Section 3.I. of this Agreement to identify DMC Performance Measures that are required and relevant to the site's work.

D. **Continued implementation and monitoring of Strategic Innovation(s).** BFJJC will:

1. Complete data system enhancements to ensure quarterly reporting of the BI Level One data through the activities of the DMC workgroup. Data activities will include the following:

   a. Further programming of the BFJJC data system to report the following juvenile justice data:
      i. Referrals to detention by top 10 referral reasons, including most serious charge on new offense, warrant, probation violation, or court order
      ii. Referrals to detention by referral source
      iii. Admissions to detention by top 10 referral reasons, including most serious charge on new offense, warrant, probation violation, or court order
      iv. Admissions to detention by identified geographical boundaries (utilizing US Census tracts or other viable identifier). This data will be provided upon identification and acquisition of necessary software, and the necessary modifications to internal database to integrate the new software.
      v. Percentage comparison of top 10 referral reasons, including most serious charge on new offense, warrant, probation violation, or court order, referred and admitted
      vi. Detention screening and override data upon full implementation of the instrument in 2009;

   b. Under the direction and prioritization of the Benton/Franklin Models for Change DMC Workgroup and the Juvenile Justice Advisory Board, conduct second-level data analyses (i.e., "digging deeper") to increase site knowledge of contributing DMC factors, with specific emphasis on arrests and use of secure detention for youth who violate terms and conditions of probation; and

   c. Under the direction and prioritization of the Benton/Franklin Models for Change DMC Workgroup and the Juvenile Justice Advisory Board, identify and/or develop community-based arrest diversion programs and services for youth charged with misdemeanor offenders, and to serve as alternatives to detention for youth who violate the terms and conditions of probation.

2. Begin full implementation of community engagement strategies in data identified target Hispanic and African-American communities to improve youth and families outcomes and expand the representation of community and families in DMC decision-making in the site. Under the direction and prioritization of the Benton/Franklin Models for Change DMC Workgroup and the Juvenile Justice Advisory Board, activities will include:

   a. Conducting analyses of quantitative and qualitative data to identify target communities, youth and parent populations for outreach and DMC education;
   b. Developing media activities to encourage community understanding of the DMC issue and support of DMC reduction strategies, with language appropriate media materials for the Hispanic community;
   c. Conducting public presentations in target communities regarding the *Models for Change* Initiative and DMC reduction efforts;
   d. Developing and implementing focus groups and targeted outreach for youth of color and their families in select neighborhoods. Selected neighborhoods will be identified via data analysis, focus group input, and juvenile court staff input;
   e. Identifying key community leaders and service providers in target communities to regularly participate in DMC decision-making; and
   f. Convening a youth council to engage current and former probation youth in the development and implementation of DMC reduction strategies.

E. **Statewide Impact of DMC Strategic Innovation(s).** During the period of this Agreement, BFJJC will work with CCLP and the Models for Change Lead Entity in the state to identify methods of promotion and replication of its DMC Strategic Innovations in other local jurisdictions in the state. BFJJC will provide a narrative summary of Statewide Impact activities in the Year Two Final Report.

F. **Attendance and participation at the Network Meeting.** BFJJC will convene a delegation of at least four site representatives to attend Network Meetings upon advance scheduling and notification by CCLP.

G. **Participation in Network Conference Calls.** BFJJC will participate in regular DMC Action Network conference calls scheduled by CCLP and in calls on special topics identified by CCLP or the MacArthur Foundation for DMC Action Network purposes.

H. **Writing e-newsletter article.** BFJJC will provide one article of 100 – 200 words on its DMC Action Network activities for the Network e-newsletter during the period of this Agreement, on a schedule established by CCLP. CCLP will provide substantial advance notice of the due date for the article.

I. **Participation in performance measures for the Models for Change DMC Reduction Model.** BFJJC will gather information and report quarterly on the DMC Performance Measures required of Network sites, which includes the following:

1. Governing Body;
2. Burns Institute Level One Data Activities;
3. Additional Data Collection and Analysis ("Going Deeper"); and
4. Cultural Competence and Responsiveness.

J. **Deliverables:** BFJJC will provide the following during the period of this Agreement:

1. Governing/Advisory Body
   a. Updated list of members (due within 30 days of executing Agreement)
   b. Updated list of meeting dates (due within 30 days of executing Agreement)

2. Minutes of meetings (due with Quarterly and Final Reports)

3. Updated name, title and contact information (mailing address, email address, telephone and fax numbers) for the identified Site Leader for Network activities (due within 30 days of executing Agreement).

4. Data collection and reporting on the following:
   a. Burns Institute Level One DMC data (due Quarterly in electronic format, 30 calendar days after the end of the Quarter)
   b. CCLP DMC Performance Measures (due Quarterly in electronic format, 30 calendar days after the end of the Quarter)

5. Written report on progress, challenges and technical support needs to develop and/or implement Strategic Innovation(s) (due with Quarterly and Final Reports).

6. Written report on statewide impact activities for Year III (due with Quarterly and Final Reports)

7. E-newsletter article (due as scheduled by CCLP)

8. Work plan for activities in the site during Year Two including (a) goals, (b) activities, (c) responsible parties, (d) time line, and (e) outcome measures. (Due within 30 days of executing Agreement).

4. PERIOD OF AGREEMENT

The period of this Agreement is from October 1, 2008 through September 30, 2009. The parties to this Agreement may extend or renew on the same terms or such other terms, as agreed upon in writing. Either party may terminate this Agreement by providing written notice of termination, which shall be effective 14 days from the date of written notice or at such later date as the terminating party may identify. In the event of termination, CCLP shall pay the site representative for expenses incurred up to the date on which termination is effective.

5. FISCAL AGENT

The Models for Change Lead Entity for the Washington State Models for Change Initiative, CCYJ, will serve as fiscal agent for BFJJC for receiving funding for DMC Action Network activities. CCLP will make payments for Network activities in Benton and Franklin Counties directly to CCYJ, which in turn will distribute Network funds to BFJJC. CCYJ and BFJJC both agree to the provisions for and restrictions on the uses of Network funds contained in this Agreement. CCYJ and BFJJC will execute a separate agreement outlining the terms and conditions of CCYJ's role as fiscal agent.

6. COMPENSATION

A. Approved budget. The approved budget for this Agreement is Thirty Thousand Dollars ($30,000.00). The approved budget is attached to this Agreement as Attachment A and is incorporated herein by reference.

B. Payment schedule. CCLP will provide 100% of the approved budget amount upon execution and return of an original copy of this Agreement.

C. Variations from approved budget. The site representative will obtain written approval from CCLP for any changes in any budget item that exceeds 10% of the approved budget for that item.

7. RESTRICTIONS ON USE OF FUNDS

A. Source of funds. The John D. and Catherine T. MacArthur Foundation has provided grant funds to CCLP to coordinate the DMC Action Network and to contract with local sites and states for activities to reduce overrepresentation and racial disparities affecting youth of color. The MacArthur Foundation grant to CCLP includes specific restrictions on the use of grant money. Those restrictions, listed below, also apply to all funds that CCLP provides to sites and states as part of the DMC Action Network.

B. Lobbying The site representative and its agents, contractors, and partners will not use funds paid under this Agreement for any of the following purposes:

1. To carry on propaganda, or otherwise attempt to influence any legislation (within the meaning of Section 4945(d)(1) of the United States Internal Revenue Code);

2. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the United States Internal Revenue Code);

3. To make any grant that does not comply with the requirements of Section 4945(d)(3) or (4) of the United States Internal Revenue Code;

4. To undertake any activity for any purpose other than one specified in Section 170 (c)(2)(B) of the United States Internal Revenue code; or

5. To make a grant to any individual or organization without advance approval in writing signed by the parties to this Agreement.

C. Anti-Terrorism The site representative will use all funds paid under this Agreement in compliance with all applicable anti-terrorist financing and asset control laws, regulations, rules, and executive orders, including but not limited to, the USA Patriot Act of 2001 and Executive Order No. 13224.

8. WRITTEN REPORTS

An appropriate officer of the site representative's organization or agency will sign and forward an original and four copies of the Quarterly and Final Reports to the attention of Carol Benevy, Project Coordinator, Center for Children's Law and Policy, 1701 K Street, NW, Suite 1100, Washington, DC 20006. All reports will contain a project narrative and a financial account of the work accomplished by the expenditure of the grant funds during the period covered by the report. The narrative account should contain a detailed description of project activities and accomplishments, including a description of the progress made toward implementing selected Strategic Innovations specified in this Agreement. The narrative report should also include barriers or challenges encountered during the grant period, and plans for addressing them in the future. The financial account should contain a financial statement of all expenditures of funds under this Agreement during the reporting period.

9. PUBLICATIONS

The site representative will furnish one copy to CCLP of any publications produced or disseminated wholly or in part with these funds. Unless otherwise approved by CCLP, all publications pertaining to activities covered by this Agreement will include the DMC Action Network logo, the Models for Change logo, and acknowledgment of the financial support from the MacArthur Foundation.

10. EVALUATING OPERATIONS

CCLP may monitor and conduct evaluations of the site representative's operations under this grant, which may include one or more visits from CCLP personnel to observe program and activities, discuss the program with personnel, and review financial and other records and materials connected with the activities financed by this Agreement.

11. REPORTS

CCLP may include basic information about the site representative's DMC Action Network activities in periodic public reports and in press releases. CCLP and the site representative will work together to coordinate public announcements or other considerations regarding publicizing the DMC Action Network activities.

12. RIGHT TO DISCONTINUE FUNDING

CCLP reserves the right to discontinue or suspend funding under the following conditions. CCLP will not take such action without notifying the site representative of the deficiency and allowing the site representative thirty days to remedy the deficiency.

A. The site representative does not submit written reports required herein to CCLP on a timely basis and without a written explanation and request to extend the due date specified in this Agreement;

B. The reports do not comply with the terms of this Agreement or fail to contain adequate information to allow CCLP to determine that site representative has used funds for the purposes prescribed herein;

C. The site representative has not used the funds for their intended purposes or has used them in a way that is inconsistent with the terms of this Agreement;

D. The site representative has not made adequate progress on the Strategic Innovations or other activities in this Agreement;

13. ASSIGNMENT

This Agreement is not assignable without prior written approval by CCLP.

14. DISCLOSURE

The site representative will disclose any outside activities or interests that conflict or may conflict with the best interests of CCLP. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to the activities of CCLP.

15. EMPLOYEES

The provisions of this Agreement shall also bind employees, agents, contractors, and partners of the site representative who perform services under this Agreement.

16. INJURIES

The site representative waives any rights to recovery from CCLP for any injuries that it or its employees may sustain while performing services under this Agreement.

17. INDEMNIFICATION

The site representative agrees to indemnify and hold CCLP harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against CCLP that result from the negligent acts or omissions of the site representative and its employees.

18. NOTICES

All notices permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Site representative:

Sharon Paradis, Administrator
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336-1388

Fiscal Agent:

Michael Curtis, Managing Director
Center for Children & Youth Justice
615 2nd Avenue, Suite 275
Seattle, WA 98104

CCLP:

Mark Soler, Executive Director
Lisa Garry, DMC Policy Director
Center for Children's Law and Policy
1701 K Street, NW, Suite 600
Washington, DC 20006

19. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

20. AMENDMENT

Parties to this Agreement may modify or amend its terms by placing the amendment in writing and obtaining the signatures of authorized officials for all parties.

21. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, thus such provision shall be deemed to be written, construed, and enforced as so limited.

22. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

23. **APPLICABLE LAW**

The law of the District of Columbia governs this Agreement.

24. **DUE AUTHORITY**

The person signing this Agreement on behalf of the site representative represents and warrants to CCLP that s/he has requisite legal power and authority to execute this Agreement.

PARTIES:

Benton County

Approved as to Form:

2/3/09

Sarah Perry, Civil Deputy Prosecuting Attorney Date

By:

Name: Max E. Benitz, Jr.
Title: Chairman, Benton Board of County Commissioners

Date: _____

Attest:

Clerk of the Board:

_____

By: Sharon A Paradis
Sharon Paradis, Administrator
Benton-Franklin Juvenile Justice Center

By: _____
Michael Curtis
Center for Children & Youth Justice,
serving as Fiscal Agent

By: Mark Soler
Mark Soler
Center for Children's Law and Policy

Franklin County

Approved as to Form:

Agreed Review Performed by Benton County
Ryan Verhulp, Civil Deputy Prosecuting Attorney

By:

Name: Rick Miller
Title: Chairman, Franklin Board of County Commissioners

Date: _____

Attest:

Clerk of the Board:

_____

Date: 2/6/09

Date: _____

Date: 1-28-09

DMC / Juvenile Justice

ActionNetwork

A Project of ModelsforChange

Agreement Number: 2008-BF-Y2

Site Name	Benton-Franklin Counties
Agency Name	Benton-Franklin Juvenile Justice Center (BFJJC)
Agency Address	5606 W. Canal Place, Suite 106, Kennewick, WA 99336-1388
TAX ID Number	91-6001296
Award Period	**Begins:** October 1, 2008 **Ends:** September 30, 2009

1. PERSONNEL

		Amount
Salaries and Fringe Benefits		$12,145
		$0
		$0
		$0
	Subtotal:	$12,145

2. TRAVEL

Annual Meetings (Lodging and Travel Expenses) *		**$5,000**
* Base amount required of Network site for participation by four-person delegations		$0
		$0
		$0
	Subtotal:	$5,000

3. CONSULTANTS

JTS database and tracking development/software support		$8,000
		$0
		$0
	Subtotal:	$8,000

4. ADMINISTRATION

Equipment/Furniture		$0
Telephone / Fax		$305
Office Supplies		$600
Postage		$250
Printing / Copying		$0
Computer Software		$0
Administrative Costs (Overhead)		$3,700
		$0
	Subtotal:	$4,855

5. OTHER

		$0
	Subtotal:	$0
	TOTAL PROJECT BUDGET	$30,000

Approved: [signature]

Authorized CCLP Official

Effective Date: 1-28-09

P.

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	CONSENT AGENDA xx
MEETING DATE: B/C 02-23-09 F/C 02-18-09	Executive Contract xx	PUBLIC HEARING
SUBJECT: Contract with the City of Kennewick for Graffiti Abatement Program	Pass Resolution xx	1ST DISCUSSION
Prepared By: Kathryn M. Phillips	Pass Ordinance	2ND DISCUSSION
Reviewed By: Sharon Paradis	Pass Motion	OTHER
	Other	

BACKGROUND INFORMATION

The Benton-Franklin Counties Juvenile Justice Center (BFJJC) has been providing the Graffiti Abatement Program (GAP) to the City of Kennewick for a number of years. The purpose of GAP is the removal of graffiti caused by vandalism with juveniles sentenced to work crew.

SUMMARY

The City of Kennewick feels it is in the best interest to continue the GAP through the Benton-Franklin Counties Juvenile Justice Center for the period of January 1, 2009 through December 31, 2010.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County sign the Fee for Services Contract between the City of Kennewick and Benton-Franklin Counties Juvenile Justice Center.

FISCAL IMPACT

The fee for service rate is a maximum of $70,625.00 for the contract period.

MOTION

I move that the Benton County Board of Commissioners and the Franklin County Board of Commissioners approve and sign the Fee for Services Contract between the City of Kennewick and Benton-Franklin Juvenile Justice Center.

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 FEE FOR SERVICES CONTRACT BETWEEN THE JUVENILE JUSTICE CENTER AND THE CITY OF KENNEWICK, TO PROVIDE THE GRAFFITI ABATEMENT PROGRAM (GAP), and

WHEREAS, Sharon Paradis, Administrator of the Juvenile Court, believes it is in the best interest of the Benton-Franklin Counties Juvenile Justice Center that the proposed Fee for Services Contract between the Juvenile Court and City of Kennewick be approved as presented for a term commencing January 1, 2009, and terminating on December 31, 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 and they hereby are authorized to sign, on behalf of their respective county, the Fee For Services Contract.

DATED this 23rd day of February 2009
BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this 18th day of February 2009
FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (4): 1-BC Commissioners, 1-FC Commissioners, 1-City of Kennewick, 1-BFJJC

JUDGES
Hon. Craig J. Matheson
Hon. Vic L. VanderSchoor
Hon. Robert G. Swisher
Hon. Carrie Runge
Hon. Cameron Mitchell
Hon. Bruce Spanner

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

FEE FOR SERVICES RENDERED CONTRACT FOR THE GRAFFITI ABATEMENT PROGRAM TERMS AND CONDITIONS

This Contract is made and entered into by and between Benton County, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 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, a bi-county agency located at 5606 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and the City of Kennewick, with its principal offices at 210 W Sixth AVE, PO Box 6108, Kennewick, WA, 99336-6108, (hereinafter "City").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2009, and shall expire on December 31, 2010, and will renew for successive one-year periods on January 1 of each year unless the Counties notifies the City no later than November 1 that the Counties is not renewing this Contract for the following year. The Counties shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

The Counties agree to provide the following services to the City:

A. The Counties Work Crew Supervisor will coordinate and oversee all Graffiti Abatement Program (GAP) activities in a professional and responsible manner, keeping in mind that his/her actions reflect on both the Counties and City.

B. The City will inform the Counties of the locations that need to be surveyed for graffiti and/or graffiti removal. The Counties will locate the sites, survey for graffiti, schedule the GAP crew to paint over and/or remove graffiti as needed, and complete its work in a timely manner.

C. To the extent possible, in providing services under this Contract, the Counties will use donated materials. If those materials are not satisfactory to the City, the

Counties agree to purchase materials, to the extent there are funds available to do so from the monies it receives from the City under the terms of this Contract.

D. The Counties will ensure that GAP has a sufficient juvenile work force to accomplish the mission of GAP.

E. The Counties shall provide transportation for the GAP work crew.

F. The Counties shall confer with the City from time to time during the progress of the work. The Counties shall prepare work statistics and present status reports and other information that may be pertinent and necessary, or as may be requested by the City.

3. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

A. For CITY: **Bob Hammond, City Manager**
City of Kennewick
PO Box 6108
210 W Sixth AVE
Kennewick WA 99336-6108

B. For COUNTIES: **Sharon Paradis**
Juvenile Court Administrator
5606 W Canal PL STE 106
Kennewick WA 99336

4. COMPENSATION

For the services performed hereunder, the Counties shall be paid as follows:

A. Funding by the City to the Counties in the amount of $70,625.00 for the entire contract period, payable in monthly installments in accordance with Section 4.D of this Contract.

B. The maximum total amount payable by the City to the Counties under this Contract shall not exceed $70,625.00.

C. No payment shall be made for any work performed by the Counties, except for work identified and set forth in this Contract.

D. The Counties will submit invoices to the City once per month during the progress of the work. Invoices shall cover the time Counties performed work for the City during the billing period. The City shall pay the Counties for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

5. AMENDMENTS AND CHANGES IN WORK

No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by authorized representatives of both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the Administrator of Benton-Franklin Juvenile Justice Center and both Benton and Franklin Counties Boards of County Commissioner's Chairperson and shall not be binding until so approved.

6. HOLD HARMLESS AND INDEMNIFICATION

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

7. TERMINATION

A. The Counties may terminate this Contract in whole or in part whenever the Counties determine, in its sole discretion, that such termination is in the best interests of the Counties. The Counties may terminate this Contract upon giving ten (10) days written notice by certified mail to the City.

B. If the Counties breaches any of its obligations hereunder and fails to cure the breach within ten (10) days of written notice to do so by the City, the City may terminate this Contract by providing written notice by certified mail to the Counties.

C. In the event this Contract is terminated by either party prior to end of a calendar month, the City shall pay the Counties on a pro-rated basis for services performed up to the termination date.

8. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

B. The Counties warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for Counties, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

9. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any

provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

10. COMPLIANCE WITH LAWS

Both parties agree to comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

11. NONDISCRIMINATION

Both parties agree that each party, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, the presence of any disability, or based on any other protected status.

12. DISPUTES

Differences between the City and the Counties, arising under and by virtue of this Contract, shall be brought to the attention of the Counties at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the Counties shall be decided by the Counties' Contract Representative or designee. All rulings, orders, instructions and decisions of the Counties' Contract Representative shall be final and conclusive, subject to the City's right to seek judicial relief.

13. CHOICE OF LAW, JURISDICTION AND VENUE

A. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

B. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton and Franklin Counties, Washington.

14. SUCCESSORS AND ASSIGNS

The Counties, to the extent permitted by law, and the City each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

15. SEVERABILITY

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

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

16. ENTIRE AGREEMENT

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

17. NOTICES

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

The parties have caused this Contract to be signed as follows:

City of Kennewick

Robert R Hammond 1-29-09

Bob Hammond, City Manager **Date**

Benton Franklin Counties Juvenile Justice Center

1/23/09

Sharon A. Paradis **Date**

BENTON COUNTY APPROVAL

Approved as to Form:

2/5/09

Sarah Villanueva, Deputy Prosecuting Attorney Date

By: _____
Name: Max E. Benitz, Jr.
Title: Chairman, Board of Commissioners
Date: _____

Attest:

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Agreed Review Performed by Benton County

Ryan Verhulp, Civil Deputy Prosecuting Attorney Date

By: _____
Name: Rick Miller
Title: Chairman, Board of Commissioners
Date: _____

Attest:

Clerk of the Board: _____

8.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH RAYMOND GENE HUI, ATTORNEY AT LAW, TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT.

WHEREAS, the Board of County Commissioners and Raymond Gene Hui, Attorney at Law, both desire to enter into an agreement effective on February 01, 2009 for legal representation of indigent persons in District Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Services Agreement for Legal Representation Of Indigent Individuals In District Court with Raymond Gene Hui, Attorney at Law for the period February 01, 2009 through December 31, 2010. .

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Original: File
Cc: Rosie Sparks; Raymond Hui; Jacki Lahtinen; Rosemary Ozuna

JPaxton

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH OFFENSES IN BENTON COUNTY DISTRICT COURT
Contract #BCDC0910RGH001

THIS AGREEMENT is entered into by and between Raymond Gene Hui, attorney at law admitted to practice law in the state of Washington, Washington State Bar Association #22821, ("Attorney") and Benton County, a political subdivision of the State of Washington (the County) for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with 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 Counties to provide legal services to indigent persons charged with offenses in 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 **February 1, 2009**, 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 993352. 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 Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another 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 County, the Indigent Defense Coordinator and the Benton County Prosecuting Attorney.

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 indigent defendants 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 felony, gross misdemeanor, and misdemeanor criminal defense or criminal prosecution matters; has not been found by a court of competent jurisdiction to have rendered ineffective assistance of counsel to a criminal defendant; has not been censored, 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/grievances filed and pending against him/her.

(i) This Agreement shall be subject to termination pursuant to paragraph 4 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within one (1) business day if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint/grievance is filed against Attorney.

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

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

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff; will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled dockets.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense

services to persons in the Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the District Court, and the Indigent Defense Coordinator to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "District Court Criminal Defense Panel"). The Indigent Defense Coordinator shall have the inherent discretion and authority to monitor and control (and potentially modify/change) such process.

5. **SCOPE OF WORK.** During the term of this Agreement, Attorney shall appear at all regularly scheduled in-custody first appearance hearings for individuals charged with offenses in Benton County District Court. Attorney shall represent individual defendants appearing at these hearings as appropriate on a provisional basis and shall not be considered attorney of record for such defendants at any subsequent hearings or proceedings. During these hearings, Attorney shall, to the extent possible under logistical, resource, communication, legal and ethical constraints, address matters that lend themselves to relatively straight forward resolution at such hearings. Attorney's responsibilities under this Agreement is based on time expended (ie appearance at all District Court in-custody first appearance hearings) and shall not be limited by any maximum number of cases.

Attorney may arrange, with the consent of the Indigent Defense Coordinator, for cross coverage of the work contemplated by this contract, and in that regard, may complete work for other District Court indigent defense contract holders that are outside of the Scope of Work detailed herein. Provided that no additional compensation shall be provided to Attorney for any such cross coverage.

6. **CONTINUED REPRESENTATION – NO PRIVATE ENGAGEMENTS.**

Attorney's representation of individual defendants at in-custody first appearance hearings shall be on a provisional basis only, and Attorney shall have no contractual obligation to continued representation of such defendants at future hearings.

Attorney shall not accept compensation from any defendant whom Attorney provisionally represents at any in-custody arraignment for continued representation in the defendant's pending criminal case(s).

7. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to, and Attorney shall not, absent a duly executed conflict waiver as required and contemplated by the Rules of Professional Conduct ("RPC"), represent any defendant if such representation 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.

8. **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, where possible and appropriate, 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 during in-custody initial appearance proceedings as set out above.

a. Attorney shall compile and maintain appropriate case records or notes for each person whom Attorney is appointed 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 until an incarcerated represented person is released from incarceration, whichever date/event occurs last.

b. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the Indigent Defense Coordinator of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute misconduct under this agreement 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.

9. **MONTHLY COMPENSATION.** 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 $5729.16 per month, payable on the last business day of each month unless and until otherwise agreed among the parties. Compensation is to be paid via warrant made payable to Raymond Gene Hui, attorney at law.

Compensation for subsequent contract years shall be established as follows:

a. January 1, 2010, to December 31, 2010--$5843.75 per month

10. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the Counties 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 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 Indigent Defense Coordinator 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.

11. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and it's 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.

12. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than

$1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 12,; and Attorney shall annually provide the Risk Manager 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).

13. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the District Court 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 person that describes and details the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County and the Indigent Defense Coordinator.

a. Upon receiving such complaint, the Indigent Defense Coordinator, 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, the Indigent Defense Coordinator, and the represented person within five (5) business days). The Indigent Defense Coordinator shall immediately forward copies of the complaint and Attorney's response to the District Court Judges and Court Commissioners ("District Court Bench") for their review and action as they may deem 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 Indigent Defense Coordinator shall follow-up with the District Court Bench within five (5) business days thereafter to confirm that the complaint has been, or is in the process of being, addressed and disposed of.

(i). 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 has the right to periodically ask, without limitation, the District Court Bench and/or the Indigent Defense Coordinator and/or other attorneys and/or persons represented by Attorney to provide the Counties with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, however, such inquiry shall not be made of the person represented, absent a complaint from such person, during the course of representation.

14. **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-Franklin Office of Public Defense 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 District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent

hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton-Franklin Office of Public Defense 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 sixty (60) 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 sixty (60) day notice period.

d. In any event, consistent with the provisions of paragraph 9 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.

15. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the 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, 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 Indigent Defense Coordinator, nor the District Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

16. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 6 and 6 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 District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other 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 Counties for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the Indigent Defense Coordinator on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law during the term of this Agreement and is unable to obtain the assistance of the other 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 County and the Indigent Defense Coordinator) 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) 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 17 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.

17. **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 charged with felonies in Benton County District Court or may consider alternative methods to maintain appropriate service to indigent defendants under the contract.

18. **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.

19. **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 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 Indigent Defense Coordinator's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the Indigent Defense Coordinator'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.

20. **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.

21. **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.

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

23. **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.

24. **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.

25. **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.

26. **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 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. 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 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.

27. **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 Benton County Board of Commissioners or mailed to the Benton County Board of Commissioners via certified U.S. mail, postage prepaid, at the Boards' following respective addresses:

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, Bldg. A
Kennewick, WA 99336

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

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 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 Benton County Board of Commissioners unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

28. **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 policies that no person will be subjected to discrimination by the Counties 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.

29. **PUBLIC INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an Indigent Defense Coordinator ("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 will have the right and discretion to direct and have the acting IDC 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 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: 2/3/09

ATTORNEY

_____
Raymond Hui

r.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH ROBERT J. THOMPSON, ATTORNEY AT LAW, TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH FELONIES IN BENTON COUNTY SUPERIOR COURT

WHEREAS, the Board of County Commissioners and Robert J. Thompson, Attorney at Law, both desire to enter into an agreement effective on February 1, 2009 for legal representation of indigent persons charged with Felonies in Superior Court;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Service Agreement for Legal Representation of Indigent Persons Charged with Felonies in Superior Court with Robert J. Thompson, Attorney at Law, for the period February 01, 2009 through December 31, 2010.

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: .....
Clerk of the Board

Judy Paxton

Original: File
Cc: Rosie Sparks; Robert Thompson; Pat Austin; Rosemary Ozuna

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT CONTRACTS #BCSC0910RJT001

THIS AGREEMENT is entered into by and between ROBERT J. THOMPSON attorney at law, Washington State Bar Association # 13003 ("Attorney"), dba Robert J. Thompson, Attorney at Law, 504 W Margaret St, Pasco, WA 99301 and **BENTON COUNTY** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony 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 felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in the Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **February 1, 2009** 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 504 W Margaret St, Pasco, WA 99301. Attorney's current local office telephone and fax numbers are (509) 547-4011 and (509) 547-0076, respectively; and Attorney's current office/work e-mail address is rthompson@clearwire.net.

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-Franklin Counties Superior Court Administrator ("Superior 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 Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony 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 felony criminal defense or criminal prosecution matters; has not been subject to a termination proceeding involving a previous Benton and/or Franklin County 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. These requirements may be reviewed with the IDC by written request.

(i) This Agreement may be subject to review pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney.

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

receiving a non-complying or otherwise unsatisfactory criminal history background check report.

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

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the IDC with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the IDC with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding month, the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified,

Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.**

a. On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County Superior Court, the Superior 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 Superior Court Criminal Defense Panel"). The Superior 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 Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County Superior Court.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.
- Any case or matter returned to the Benton County Superior Court from any higher court.
- Any other type of Benton County Superior Court case or matter in which another Superior Court Criminal Defense Panel member and/or a and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a non-homicide crime after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a homicide or Persistent Offender matter after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is specified in paragraph 13 below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County Superior Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

(i) Any civil-based matter;

(ii) Any matter involving a represented person for whom a warrant has been issued;

(iii) Special Sex Offender Sentencing Alternative Revocation hearings;

(iv) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. If the Agreement is to end upon its stated termination date without renewal, there are to be no new case appointments for thirty (30) days prior to the termination date,

provided that notice of non-renewal is provided sixty (60) days prior to the termination date. If notice is not provided sixty days prior to the termination date, appointment of new cases shall cease thirty (30) days after notice is received.

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 Superior Court up to a maximum of **one hundred fifty (150) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

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

- A felony appointment shall be counted as one (1) case equivalent except Class A felonies, which shall be counted as two (2) case equivalents.

- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one-half (1/2) of a case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County Superior Court shall count as one half (1/2) of a case equivalent.

- An appointment on a felony matter filed in Benton County Superior Court following a declination hearing in Juvenile Court shall count as one (1) case equivalent not withstanding any prior case credit granted in Juvenile Court.

- An appointment to a case or matter returned to Benton County Superior 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 credit.

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 Superior Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a 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. Further provided, however, that the IDC may in his discretion adjust the case equivalent total after consultation.

d. Throughout the term of this Agreement, the IDC shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The IDC shall provide copies of such records to the County and Attorney on a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the IDC in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County Superior Court of such possibility for purposes of the Superior 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 Superior 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 Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior 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 Superior Court aware of such development for purposes of the Superior Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a

particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

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

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

(i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

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

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder during calendar year 2008, Attorney's monthly compensation hereunder shall be **$6250 per month** (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$75,000**.

b. During calendar year 2009, Attorney's monthly compensation hereunder shall be **$6506.25 per month**, an added 4.1 percent (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$78,075**.

c. During calendar year 2010, Attorney's monthly compensation hereunder shall be **$6707.94 per month**, an added 3.1 percent (proratable for any partial month), payable on the last business day of the month, an annualized compensation of **$80,495.32.**

d. In addition to the stated monthly compensation, commencing in calendar year 2008, Attorney shall receive $300 per day for each full day of trial and $150 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 trial proceedings going beyond 2 p.m. each day. Commencing in calendar year 2009 and continuing through calendar year 2010, Attorney shall receive $400 per day for each full day of trial and $200 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 as well as any amounts accruing and owing to Attorney under paragraph 13 below for post-termination continued representation in homicide and Persistent Offender cases. 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) as well as any amounts accruing and owing to Attorney under paragraph 13 below for post-termination continued representation in homicide or Persistent Offender cases.

f. Attorney acknowledges and agrees that the above-stated compensation to Attorney (exclusive of the below-described additional compensation Attorney would be entitled to receive for homicide or Persistent Offender cases) shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total of 150 case equivalents.

13. **HOMICIDE/PERSISTENT OFFENDER CASE COMPENSATION.** Homicide and Persistent Offender cases are appointed to the Benton County Criminal Defense Panel members on a rotational basis and shall not count against caseload limitations. Attorney shall receive additional compensation for appointments to homicide and Persistent Offender cases in any degree at the rate of **$75.00 per hour** up to a maximum aggregate amount of **$10,000.00** per case (or such greater maximum aggregated amount as may be specifically approved and ordered by the court or its designee in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity).

a. Payment of any such additional compensation is based on time expended on the case by Attorney only. Time expended by other persons (including, without limitation, Attorney's support staff, law partners, or associate attorneys) on such cases at Attorney's request or direction shall be part of Attorney's office overhead and shall not be billable to the County.

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide or Persistent Offender case, Attorney shall be required to submit a vendor warrant payment voucher to the Superior Court Administrator that descriptively sets forth and details the total number of hours (documented and stated in

one-tenth (1/10th) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (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). Attorney's administrative time expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, 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. **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 Superior 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 Superior 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.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in the Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the Benton County Superior Court or its designee appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter within the scope of this paragraph that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents 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.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.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.

(iii) For calendar year 2008 only, the County shall provide as cost reimbursement and not as compensation for professional services rendered the sum of $2,000 to Attorney to defray costs of professional liability insurance. Such cost reimbursement shall be distributed no later than February 1, 2008.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 17.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Benton County Superior Court or the IDC receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney, the employee/representative receiving such communication shall promptly request and obtain a written, dated, and signed statement from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County, the 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, who shall provide the represented person with a copy of the response within five (5) business days). 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 Superior Court within five (5) business days thereafter to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. This stated procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the court.

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

19. **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 Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

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

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

period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

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

d. In any event, consistent with the provisions of paragraph 12.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. Should the County decide to provide indigent defense representation in the Benton County Superior Court through a county agency such as an Office of Public Defense or a similar entity that will affect the scope and number of indigent defense contracts available, the County hereby agrees to make its intentions known as soon as reasonably possible so that both the County and the Attorney can plan an appropriate transition for both sides. Upon receipt of such notice, Attorney may request transfer from contract status to employee status with no interruption in and/or transfer of existing caseload in accordance with then-existing County personnel policies.

20. **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 Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's IDC, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.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 Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the IDC on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County 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 Superior Court Administrator and the IDC) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 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 notice as soon as

practically possible so that appropriate substitution for coverage of Attorney's contract can be obtained and approved. Compensation for Attorney's PSA shall be suspended during the time of active military duty and for reasonable transition time that may be requested by Attorney after return from active service. Attorney shall be entitled to resume contract duties with full compensation upon written request to the IDC within a reasonable time after return from active service.

22. **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 Superior Court.

23. **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.

24. **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 Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the IDC's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the IDC's sole and absolute discretion. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

25. **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.

26. **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.

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

28. **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.

29. **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.

30. **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.

31. **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.

32. **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:

Patricia J. Austin
Benton-Franklin Counties Superior 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 2 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.

33. **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.

34. **INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an IDC ("IDC") to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under 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: 2-5-09

ATTORNEY

Robert Thompson

5.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH RYAN MICHAEL SWINBURNSON ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH FELONIES IN BENTON COUNTY DISTRICT COURT; REPLACING AND RESCINDING PREVIOUS PROFESSIONAL SERVICES AGREEMENT

WHEREAS, the Board of County Commissioners previously entered into a Professional Services Agreement with Ryan Michael Swinburnson for legal representation of indigent individuals charged with felonies in District Court, Resolution 07-724 and 07-780 ;

WHEREAS, the Board of County Commissioners and Ryan Michael Swinburnson both desire to replace and rescind that Professional Services Agreement, Resolution 07-724 and 07-780 and enter into a new agreement effective November 01, 2007;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Services Agreement for Legal Representation of Indigent Individuals charged with Felonies in District Court with Ryan Michael Swinburnson, Attorney at Law for the period November 01, 2007 through December 31, 2010.

BE IT FURTHER RESOLVED that the Professional Services Agreement, Resolution 07-724 and 07-780 between Benton County and Ryan Michael Swinburnson, previously entered into be and hereby is replaced and rescinded effective December 31, 2007.

Dated this _____day of _____, 2009

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

Original: Benton Franklin Office of Public Defense
Cc: Ryan Swinburnson; Jacki Lahtinen; Rosie Sparks; Rosemary Ozuna

J Paxton

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH FELONIES IN BENTON COUNTY DISTRICT COURT
Contract #BCDC0710RMS002

THIS AGREEMENT is entered into by and between Ryan Michael Swinburnson, attorney at law admitted to practice law in the state of Washington, Washington State Bar Association # 30227, DBA Swinburnson & Associates, PLLC ("Attorney") and Benton County, a political subdivision of the State of Washington (the County) for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with 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 Counties to provide legal services to indigent persons charged with felony crimes in Benton County District court and subject to bind-over to the Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **November 1, 2007**, 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 415 N Morain St Ste D Kennewick, WA 99336 Washington. Attorney's current local office telephone and fax numbers are (509) 737-8308 and (509) 737-8352 respectively; and Attorney's current office/work e-mail address is r_swinburnson@verizon.net_

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 Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another 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 County, the Indigent Defense Coordinator and the Benton County Prosecuting Attorney.

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 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 indigent defendants 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 felony, gross misdemeanor, and misdemeanor criminal defense or criminal prosecution matters; has not been found by a court of competent jurisdiction to have rendered ineffective assistance of counsel to a criminal defendant; has not been censored, 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/grievances filed and pending against him/her.

(i) This Agreement shall be subject to termination pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the

event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within one (1) business day if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint/grievance is filed against Attorney.

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

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

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and

Attorney's office resources, equipment, and support staff; will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the Indigent Defense Coordinator 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, the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the reasonably approximate percentage of time spent by Attorney during the preceding month providing legal services in private practice cases versus and in relation to time spent by Attorney during the preceding month providing legal services in appointed cases under this Agreement. 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 upon written notice from the Counties 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.** On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons in the Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the District Court, and the Indigent Defense Coordinator to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "District Court Criminal Defense Panel"). The Indigent Defense Coordinator shall have the inherent

discretion and authority to monitor and control (and potentially 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 Benton County 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 felony matter filed or otherwise pending in Benton County District Court.

- Providing 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 (attorney will receive written notification of appointments on appeals and shall not, in the absence of such written notification, commence any work on an appeal case.)

6. **CONTINUED REPRESENTATION.**

a. 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 dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). 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 that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded during the term of this Agreement, and Attorney's obligation to fully complete all cases encompassed by this Agreement following its termination date shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a non-homicide crime after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a homicide after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is specified in paragraph 13 below unless otherwise agreed among the parties.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in District Court shall be limited to the sixty (60) day period following the termination date

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent indigent persons charged with felony crimes in Benton County District Court on a case-by-case basis **two hundred seventy-five (275) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

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

- Any appointment of a felony matter in Benton County District Court shall count as one-half (1/2) case equivalent provided that an appointment in Benton County District Court for a probation violation or non-compliance issue shall count as one-third (1/3) case equivalent.

- An appointment to a felony matter in Benton County Superior Court bound over from Benton County District Court shall be an additional one-half (1/2) case equivalent.

- Appointment to all other matters in Benton County Superior Court in cases initiated in Benton County District Court, (with the exception of RALJ appeals) including but not limited to cases involving violation of a sentencing condition and material witness matters shall count as one-third (1/3) case equivalent.

- RALJ appeals shall be counted as two (2) case equivalents.

- For purposes of this section, the date on which the matter is filed, rather than the final date of disposition, shall be used to determine the month in which the case equivalent is to be counted.

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 District Court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial, 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.

d. Throughout the term of this Agreement, the Attorney shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Indigent Defense Coordinator shall provide copies of such records to the County and Attorney on a monthly basis. Upon receipt of such record, Attorney shall, within ten (10) business days, either: a) certify them as correct; or b) state that Attorney disagrees with the caseload volume numbers contained therein, and shall promptly return a signed copy of the record to the IDC. The record provided to Attorney shall, on its face, provide a space for Attorney's certification or disagreement. If Attorney disagrees with the caseload volume numbers contained in the record provided, then Attorney shall bear the burden of proof in showing what caseload volume numbers are in fact correct and the IDC may adjust reports of caseload volume numbers as.

9. **CLIENT ELIGIBILITY.** The 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 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 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 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 District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the 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 District Court and the Indigent Defense Coordinator aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

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

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

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make sooner 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 sooner 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 (except for miscellaneous attorney-of-the-week matters, including, but not limited to probation violations, contempt, and review hearings). Attorney shall retain such case records in their entirety (or a complete and legible copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concludedor until an incarcerated represented person is released from incarceration, whichever date/event occurs last.

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

(i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

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

12. **MONTHLY COMPENSATION.** As compensation for Attorney's performance and rendering of independent professional legal services hereunder beginning on November 1, 2007 and during the remaining months of 2007, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of $4963.97 per month, payable on the last business day of each month unless and until otherwise agreed among the parties. Compensation is to be paid to via warrant made payable to the law firm of Swinburnson and Associates, PLLC.

Compensation for subsequent contract years shall be established as follows:

a. January 1, 2008 to December 31, 2008--$5614.58 per month

b. January 1, 2009, to December 31, 2009--$5729.16 per month

c. January 1, 2010, to December 31, 2010--$5843.75 per month

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the Counties 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 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 Indigent Defense Coordinator 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. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and it's elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers,

employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive

months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the Counties; and shall provide for waiver of subrogation rights as to the Counties.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the Counties with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its respective then-designated Risk Managers with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk 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).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the District Court 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 person that describes and details the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County and the Indigent Defense Coordinator.

a. Upon receiving such complaint, the Indigent Defense Coordinator, 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, the Indigent Defense Coordinator, and the represented person within five (5) business days). The Indigent Defense Coordinator shall immediately forward copies of the complaint and Attorney's response to the District Court Judges and Court Commissioners ("District Court Bench") for their review and action as they may deem 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 Indigent Defense Coordinator shall follow-up with the District Court Bench within five (5) business days thereafter to confirm that the complaint has been, or is in the process of being, addressed and disposed of.

(i). 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 has the right to periodically ask, without limitation, the District Court Bench and/or the Indigent Defense Coordinator and/or other attorneys and/or persons represented by Attorney to provide the Counties with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, however, such inquiry shall not be made of the 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-Franklin Office of Public Defense 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 District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton-Franklin Office of Public Defense 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 sixty (60) 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 sixty (60) day notice period.

d. In any event, consistent with the provisions of paragraph 12.c. 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.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the 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, 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 Indigent Defense Coordinator, nor the 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 District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other 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 Counties for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the Indigent Defense Coordinator on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the practice of law during the term of this Agreement and is unable to obtain the assistance of the other 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 County and the Indigent Defense Coordinator) 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) 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 17 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 of termination, dissolution or other restructuring of the law firm as an entity, each attorney may retain their contract if they move to a successor entity or retain in their own right the agreement and all right and responsibilities attached thereto, provided that there shall not be an interruption of service to the clients being served under the contract. Further provided that the County and the Indigent Defense Coordinator be advised of the pending dissolution no later than forty-five (45) days in advance of the transfer and approve of the transfer in writing prior to the transfer.

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 charged with felonies in Benton County District Court or may consider alternative methods to maintain appropriate service to indigent defendants under the contract.

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.

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 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 Indigent Defense Coordinator's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the Indigent Defense Coordinator'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.

22. **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.

23. **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.

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

25. **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.

26. **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.

27. **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.

28. **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 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. 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 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.

29. **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 Benton County Board of Commissioners or mailed to the Benton County Board of Commissioners via certified U.S. mail, postage prepaid, at the Boards' following respective addresses:

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, Bldg. A
Kennewick, WA 99336

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

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

Commissioners unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

30. **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 policies that no person will be subjected to discrimination by the Counties 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.

31. **PUBLIC INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an Indigent Defense Coordinator ("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 will have the right and discretion to direct and have the acting IDC 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 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: 2-3-09

ATTORNEY

_____

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RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF A PROFESSIONAL SERVICES AGREEMENT WITH CATHERINE ELIZABETH HARKINS ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH FELONIES IN BENTON COUNTY DISTRICT COURT; REPLACING AND RESCINDING PREVIOUS PROFESSIONAL SERVICES AGREEMENT

WHEREAS, the Board of County Commissioners previously entered into a Professional Services Agreement with Catherine Elizabeth Harkins for legal representation of indigent individuals charged with Felonies in District Court, Resolution 07-723 and 07-779;

WHEREAS, the Board of County Commissioners and Catherine Elizabeth Harkins both desire to replace and rescind that Professional Services Agreement, Resolution 07-723 and 07-779 and enter into a new agreement effective November 01, 2007;

NOW, THEREFORE,

BE IT RESOLVED that the Board of Benton County Commissioners hereby approves the attached Professional Services Agreement for Legal Representation of Indigent Individuals charged with Felonies in District Court with Catherine Elizabeth Harkins, Attorney at Law for the period November 01, 2007 through December 31, 2010.

BE IT FURTHER RESOLVED that the Professional Services Agreement, Resolution 07-723 and 07-779 between Benton County and Catherine Elizabeth Harkins, previously entered into be and hereby is replaced and rescinded.

Dated this _____day of _____, 2009

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

Original: Benton Franklin Office of Public Defense
Cc: Catherine Harkins; Jacki Lahtinen; Rosie Sparks; Rosemary Ozuna

J Paxton

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH FELONIES IN BENTON COUNTY DISTRICT COURT
Contract #BCDC0710CEH002

THIS AGREEMENT is entered into by and between Catherine Elizabeth Harkins, attorney at law admitted to practice law in the state of Washington, Washington State Bar Association # 38113, DBA Harkins Law, PLLC ("Attorney") and Benton County, a political subdivision of the State of Washington (the County) for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with 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 Counties to provide legal services to indigent persons charged with felony crimes in Benton County District court and subject to bind-over to the Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **November 1, 2007**, 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 415 N Morain St Ste D Kennewick, WA 99336 Washington. Attorney's current local office telephone and fax numbers are (509) 737-8308 and (509) 737-8352 respectively; and Attorney's current office/work e-mail address is c_harkins@verizon.net_

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 Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another 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 County, the Indigent Defense Coordinator and the Benton County Prosecuting Attorney.

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 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 indigent defendants 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 felony, gross misdemeanor, and misdemeanor criminal defense or criminal prosecution matters; has not been found by a court of competent jurisdiction to have rendered ineffective assistance of counsel to a criminal defendant; has not been censored, 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/grievances filed and pending against him/her.

(i) This Agreement shall be subject to termination pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the

event that Attorney is censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within one (1) business day if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint/grievance is filed against Attorney.

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

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

d. During each calendar year of the term of this Agreement, beginning in calendar year 2008, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the Indigent Defense Coordinator with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and

Attorney's office resources, equipment, and support staff; will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and efficiently perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than by the 15th day of each month during the term of this Agreement, Attorney shall provide the Indigent Defense Coordinator 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, the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month, and the reasonably approximate percentage of time spent by Attorney during the preceding month providing legal services in private practice cases versus and in relation to time spent by Attorney during the preceding month providing legal services in appointed cases under this Agreement. 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 upon written notice from the Counties 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.** On or about the date of this Agreement, the County contemplates entering into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons in the Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the District Court, and the Indigent Defense Coordinator to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "District Court Criminal Defense Panel"). The Indigent Defense Coordinator shall have the inherent

discretion and authority to monitor and control (and potentially 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 Benton County 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 felony matter filed or otherwise pending in Benton County District Court.

- Providing 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 (attorney will receive written notification of appointments on appeals and shall not, in the absence of such written notification, commence any work on an appeal case.)

6. **CONTINUED REPRESENTATION.**

a. 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 dismissal of all charges, a change of plea and entering of a sentencing, or a disposition of the case with an alternative that places the case on an a track separate from other criminal cases pending trial, that has the intended potential to permanently resolve the case (including, but not limited to, deferred prosecution agreements and stipulated orders of continuance). 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 that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded during the term of this Agreement, and Attorney's obligation to fully complete all cases encompassed by this Agreement following its termination date shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a non-homicide crime after the termination date of this Agreement, Attorney shall

not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a homicide after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is specified in paragraph 13 below unless otherwise agreed among the parties.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in District Court shall be limited to the sixty (60) day period following the termination date

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent indigent persons charged with felony crimes in Benton County District Court on a case-by-case basis **two hundred seventy-five (275) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

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

- Any appointment of a felony matter in Benton County District Court shall count as one-half (1/2) case equivalent provided that an appointment in Benton County District Court for a probation violation or non-compliance issue shall count as one-third (1/3) case equivalent.

- An appointment to a felony matter in Benton County Superior Court bound over from Benton County District Court shall be an additional one-half (1/2) case equivalent.

- Appointment to all other matters in Benton County Superior Court in cases initiated in Benton County District Court, (with the exception of RALJ appeals) including but not limited to cases involving violation of a sentencing condition and material witness matters shall count as one-third (1/3) case equivalent.

- RALJ appeals shall be counted as two (2) case equivalents.

- For purposes of this section, the date on which the matter is filed, rather than the final date of disposition, shall be used to determine the month in which the case equivalent is to be counted.

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 District Court and Attorney continues representing the same person in such matter (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial, 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.

d. Throughout the term of this Agreement, the Attorney shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The Indigent Defense Coordinator shall provide copies of such records to the County and Attorney on a monthly basis. Upon receipt of such record, Attorney shall, within ten (10) business days, either: a) certify them as correct; or b) state that Attorney disagrees with the caseload volume numbers contained therein, and shall promptly return a signed copy of the record to the IDC. The record provided to Attorney shall, on its face, provide a space for Attorney's certification or disagreement. If Attorney disagrees with the caseload volume numbers contained in the record provided, then Attorney shall bear the burden of proof in showing what caseload volume numbers are in fact correct and the IDC may adjust reports of caseload volume numbers as appropriate.

9. **CLIENT ELIGIBILITY.** The 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 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 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 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 District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the 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 District Court and the Indigent Defense Coordinator aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

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

proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's duty to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney shall use best efforts to meet face-to-face within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make sooner 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 sooner 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 (except for miscellaneous attorney-of-the-week matters, including, but not limited to probation violations, contempt, and review hearings). Attorney shall retain such case records in their entirety (or a complete and legible copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concludedor until an incarcerated represented person is released from incarceration, whichever date/event occurs last.

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

(i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

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

12. **MONTHLY COMPENSATION.** As compensation for Attorney's performance and rendering of independent professional legal services hereunder beginning on November 1, 2007 and during the remaining months of 2007, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of $4963.97 per month, payable on the last business day of each month unless and until otherwise agreed among the parties. Compensation is to be paid to via warrant made payable to Harkins Law, PLLC.

Compensation for subsequent contract years shall be established as follows:

a. January 1, 2008 to December 31, 2008--$5614.58 per month

b. January 1, 2009, to December 31, 2009--$5729.16 per month

c. January 1, 2010, to December 31, 2010--$5843.75 per month

13. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the Counties 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 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 Indigent Defense Coordinator 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. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and it's elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

a. Attorney shall obtain and maintain,, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 15.a throughout the entire

term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the District Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the Counties; and shall provide for waiver of subrogation rights as to the Counties.

(ii) The insurance policies required by this paragraph 15.b shall require that the insurance company provide the Counties with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 15.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 15.b until January 1, 2009, at which time such coverage must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and its respective then-designated Risk Managers with copies or certificates of the insurance policies and coverage

(including any endorsements) required under this paragraph 15, and Attorney shall annually provide the Risk 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).

16. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the District Court 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 person that describes and details the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall promptly be provided to the County and the Indigent Defense Coordinator.

a. Upon receiving such complaint, the Indigent Defense Coordinator, 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, the Indigent Defense Coordinator, and the represented person within five (5) business days). The Indigent Defense Coordinator shall immediately forward copies of the complaint and Attorney's response to the District Court Judges and Court Commissioners ("District Court Bench") for their review and action as they may deem 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 Indigent Defense Coordinator shall follow-up with the District Court Bench within five (5) business days thereafter to confirm that the complaint has been, or is in the process of being, addressed and disposed of.

(i). 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 has the right to periodically ask, without limitation, the District Court Bench and/or the Indigent Defense Coordinator and/or other attorneys and/or persons represented by Attorney to provide the Counties with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, however, such inquiry shall not be made of the 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-Franklin Office of Public Defense 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 District Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton-Franklin Office of Public Defense 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 sixty (60) 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 sixty (60) day notice period.

d. In any event, consistent with the provisions of paragraph 12.c. 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.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the 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, 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 Indigent Defense Coordinator, nor the 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 District Court Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other 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 Counties for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the Indigent Defense Coordinator on a case-by-case basis, in his/her sole and absolute discretion) leave of absence from the

practice of law during the term of this Agreement and is unable to obtain the assistance of the other 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 County and the Indigent Defense Coordinator) 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) 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 17 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 of termination, dissolution or other restructuring of the law firm as an entity, each attorney may retain their contract if they move to a successor entity or retain in their own right the agreement and all right and responsibilities attached thereto, provided that there shall not be an interruption of service to the clients being served under the contract. Further provided that the County and the Indigent Defense Coordinator be advised of the pending dissolution no later than forty-five (45) days in advance of the transfer and approve of the transfer in writing prior to the transfer.

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 charged with felonies in Benton County District

Court or may consider alternative methods to maintain appropriate service to indigent defendants under the contract.

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.

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 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 Indigent Defense Coordinator's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the Indigent Defense Coordinator'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.

22. **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.

23. **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.

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

25. **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.

26. **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.

27. **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.

28. **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 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. 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 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.

29. **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 Benton County Board of Commissioners or mailed to the Benton County Board of Commissioners via certified U.S. mail, postage prepaid, at the Boards' following respective addresses:

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, Bldg. A
Kennewick, WA 99336

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

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be personally delivered to Attorney or mailed to Attorney via certified U.S. mail, postage prepaid, at Attorney's office address specified and set forth in paragraph 2 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 Benton County Board of Commissioners unless this Agreement expressly mandates that such information or notice also be provided to some other person/entity.

30. **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 policies that no person will be subjected to discrimination by the Counties 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.

31. **PUBLIC INDIGENT DEFENSE COORDINATOR.** Attorney acknowledges that the County has employed an Indigent Defense Coordinator ("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 will have the right and discretion to direct and have the acting IDC 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 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: 2/3/09

ATTORNEY

_____

u.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF TERMINATING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN BENTON COUNTY AND RICHARD JOHNSTON, ATTORNEY AT LAW, FOR LEGAL REPRESENTATION OF INDIGENT INDIVIDUALS CHARGED WITH FELONIES IN BENTON COUNTY SUPERIOR COURT; RESCINDING RESOLUTION 07-879

WHEREAS, the Board of County Commissioners and Richard Johnston, Attorney at Law, entered into a Professional Services Agreement effective on January 01, 2008 for legal representation of indigent individuals charged with Felonies in Superior Court; Resolution 07-879.

WHEREAS, the Board of County Commissioners and Richard Johnston both desire to terminate that Professional Services Agreement, Resolution 07-879;

NOW, THEREFORE,

BE IT HEREBY RESOLVED, that the Professional Services Agreement, Resolution 07-879 between Benton County and Richard Johnston, previously entered into be and hereby is terminated effective March 1, 2009.

BE IT HEREBY RESOLVED, that Resolution number 07-0879 is rescinded.

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

Chairman of the Board

Chairman Pro-Tem

Member

Attest: .....
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: File
Cc: Rosie Sparks; Richard Johnston; Pat Austin; Rosemary Ozuna

Judy Paxton

Richard F. Johnston

509-545-4263
Fax: 509-547-8553

2020 W. Sylvester, Suite C
Pasco, WA 99301

COPY

Monday, December 01, 2008

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

Subject: Termination of contract to provide indigent defense services
Reference: Professional Services Agreement Section 19 paragraph c.

Due to medical necessity I must terminate my services in indigent defense. Please accept this letter as 90 day advance notice, as of the date of this letter, of my termination of services in providing indigent criminal defense for Benton County.

I would like to assist you in making a smooth transition. Please feel free to contact me regarding turning over the contract to another.

Regards,

R. F. Johnston

Copies hand delivered to

Patricia Austin, Benton-Franklin Counties Superior Court Administrator
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336

Indigent Defense Coordinator
Benton-Franklin Office of Public Defense
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336

V.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROAD PURCHASES RE: E. R. & R. PURCHASE OF REFINED PETROLEUM PRODUCTS - BULK DIESEL FUEL FOR 2009

WHEREAS, it is the intention of the Board of County Commissioners to purchase for the County Road Department Refined Petroleum Products - Bulk Diesel Fuel; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is hereby authorized to schedule and advertise a bid date for the purchase of Refined Petroleum Products - Bulk Diesel Fuel.

Dated this 23rd day of February, 2009.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

W.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS, RE: E. R. & R. PURCHASE METAL TRAFFIC SIGNS

WHEREAS, it is the intention of the Board of County Commissioners to purchase metal traffic signs for the E. R. & R. Fund; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is authorized to schedule and advertise a Request for Bids for E. R. & R. Purchase Metal Traffic Signs.

Dated this 23rd day of February 2009.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

RBD:NWC:dlh

X.

R E S O L U T I O N

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROAD PURCHASES RE: E. R. & R. PURCHASE ONE (1) NEW PICKUP MOUNTED TOOL TRAY DESIGNED TO SECURELY STORE SURVEY EQUIPMENT

WHEREAS, it is the intention of the Board of County Commissioners to purchase for the County Road Department One (1) New Pickup Mounted Tool Tray designed to securely store survey equipment and materials for use in field assignments by the Benton County survey crew; NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is hereby authorized to schedule and advertise a bid date for the purchase of One (1) New Pickup Mounted Tool Tray Designed to Securely Store Survey Equipment.

Dated this 23rd day of February, 2009.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

Y.

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 RE: CARD LOCK SERVICE FOR GASOLINE AND DIESEL FUEL

WHEREAS, it is the intention of the Board of County Commissioners to purchase Card Lock Service for Gasoline and Diesel fuel for Benton County Departments' use: NOW, THEREFORE,

BE IT RESOLVED that the County Engineer is hereby authorized to schedule and advertise a bid date for said purchase.

Dated this 23rd day of February, 2009.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Attest: _____
Clerk of the Board

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

RBD:LJM:dlh

2.

Return to: Benton County Commissioners
P.O. Box 190
Prosser, WA 99350-0954

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS IMPROVEMENT DISTRICT (C.R.I.D.) #15, COTTONWOOD DRIVE, PROPERTY SEGREGATION

WHEREAS, the amended final assessment roll for C.R.I.D. #15, Cottonwood Drive was approved by Resolution Number 05-750 on November 28, 2005, and

WHEREAS, Parcel Number 1-1088-400-0015-000, defined as: The Southeast ¼ of the West 879.85 feet of the East 1,759.70 feet of the North 1,006.06 feet of the South 2,012.12 feet of the Southeast ¼ of Section 10, Township 8 North, Range 28 East, W.M.

Containing 5.09 acres more or less

had an original assessment of $4,723.10 and now has an outstanding assessment of $3,789.05 and has been subdivided into two parcels identified as Assessor's Parcel Numbers 1-1088-401-3169-001 and 1-1088-401-3169-004, and

WHEREAS, Parcel Number 1-1088-400-0016-000, defined as: The Southwest ¼ of the West 879.85 feet of the East 1,759.70 feet of the North 1,006.06 feet of the South 2,012.12 feet of the Southeast ¼ of Section 10, Township 8 North, Range 28 East, W.M.

Containing 5.08 acres more or less

had an original assessment of $4,713.82 and now has an outstanding assessment of $3,780.73 and has been subdivided into two parcels identified as Assessor's Parcel Numbers 1-1088-401-3169-002 and 1-1088-401-3169-003, NOW, THEREFORE

BE IT RESOLVED that the final assessment roll be amended and that each parcel and assessment is defined as follows:

Old Number	New Number	New Assessment
1-1088-400-0015-000	1-1088-401-3169-001	$1,894.53
	1-1088-401-3169-004	$1,894.52
1-1088-400-0016-000	1-1088-401-3169-002	$1,890.36
	1-1088-401-3169-003	$1,890.37

Dated this 23rd day of February 2009.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

aa.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING AMMUNITION PURCHASES FROM SAN DIEGO POLICE EQUIPMENT CO., INC. FOR THE BENTON COUNTY SHERIFF'S OFFICE, KENNEWICK, WASHINGTON

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, Benton County Sheriff's Office solicited the following companies to provide a quote for different types of ammunition used by the Sheriff's Office; and

San Diego Police Equipment Co., Inc., San Diego, CA
Larsen Firearms, Pasco, WA
Dooley Enterprises, Inc. Anaheim, CA

WHEREAS, San Diego Police Equipment Co., Inc. is the lowest bidder; and

WHEREAS, the Patrol Captain has reviewed the quotes for completeness and recommends purchasing ammunition for the Sheriff's Office from San Diego Police Equipment Co., Inc. for the calendar year of 2009; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County Washington, concurs with the Patrol Captain's recommendation and hereby authorizes ammunition purchases from San Diego Police Equipment Co., Inc. for the calendar year of 2009.

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, R. Ozuna

Prepared by: K Mercer

FEDERAL PREMIUM LAW ENFORCEMENT

speer LE

SAN DIEGO POLICE EQUIPMENT CO., INC.

8205-A RONSON ROAD
SAN DIEGO, CA 92111
Phone: (800) 367-8989 Fax: (858) 974-8530
sales@sandiegopoliceequipment.com

SIMUNITION

P.A.C.A. PROTECTION BODY ARMOR

RECEIVED
FEB 03 2009
BENTON COUNTY SHERIFF'S DEPT

FAXED 02/03/09 @ 1:54PM

QUOTATION

Date: 2/3/2009 Good Until: 3/2/2009 Terms: Net 30

To: LT CLAY VANNOY Agency: BENTON COUNTY SHERIFF - WA Quoted By: LESLIE

Phone: 509-735-6555 Fax: 509-783-5852 Email:

Quantity	Unit	Product Code	Description	Unit Price	Extended Price
15	CS/1000	CCI-53652**	SPEER LAWMAN .40CAL 180GR TMJ (ETA = 30-60 DAYS)	$233.45	$3,501.75
17	CS/900	FED-XM193AF**	FEDERAL 5.56MM 55GR FMJ ON STRIPPER CLIPS (ETA = 30-45 DAYS)	$335.52	$5,703.84
1	CS/1000	CCI-53650**	SPEER LAWMAN 9MM 115GR TMJ (ETA = 30-60 DAYS)	$168.43	$168.43
1	CS/1000	SIM-5300432**	SIMUNITION 9MM FX MARKING CARTRIDGES - RED (ETA = IN STOCK)	$522.00	$522.00
				$0.00	$0.00
			** PRICING PER WASHINGTON STATE CONTRACT # 10903	$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00
				$0.00	$0.00

NOTES: FOR DEPARTMENT PURCHASE ONLY

SUBTOTAL:	$9,896.02
TAX %:	Applicable
FREIGHT:	$0.00
TOTAL:	

LARSEN FIREARMS
Law Enforcement and Tactical Supplies
Class 3 Dealer

P.O. BOX 3457 PASCO, WA 99301

Estimate

Date	Estimate #
2/2/2009	320

Name / Address
BENTON CO. SHERIFF 7122 W. OKANOGAN PLACE, BLDG. A KENNEWICK,WA. 99336

CLAY VANNOY

Terms	Rep	FOB
Net 15	LL	

Item	Description	Qty	Cost	Total
CCI	Speer lawman 180gr.FMJ .40 S&W #53652 (1000rds)	15	237.44	3,561.60T
CCI	Speer Lawman 115gr. FMJ 9mm #53650 (1000rds)	15	171.17	2,567.55T
Shipping		1	300.00	300.00T
	ETA app. 6 weeks.			

Subtotal	$6,429.15
Sales Tax (8.3%)	$533.62
Total	$6,962.77

Phone #	Fax #	E-mail	Web Site
(509) 545-0346	(509) 545-3161	SALES@LARSENFIREARMS.C...	www.Larsenfirearms.com

Price Quote

QUOTE #: 2296
DE #: 001547 B 0050
QUOTE DATE: 02/05/2009

From:

dooley enterprises, inc.
Customer Service
1198 N. Grove St. #A
Anaheim, CA 92806
Phone: (714) 630-6436 FAX: (714) 630-3910

To: BENTON CO. SHERIFF OFFICE
ATTN:LT. CLAY VANNOY
7122 W. OKANOGAN PL. BOX B
KENNEWICK, WA 99336

PHONE #: (509) 735-6555 FAX #: (509) 783-5852

Here are the prices you requested:

QUANTITY	SYMBOL	DESCRIPTION	PRICE	EXTENSION
15.00	Q4238	40 S&W 180gr. Full Metal Jacket	260.00	3900.00
15.00	Q3131	5.56mm 55 gr. FMJ	440.00	6600.00
1.00	Q4172	9mm 115gr. Full Metal Jacket	205.00	205.00

NOTES:
CLAY,
Heres your quote on Winchester Ammo. We can deliver this for you with 2-5 days. Let me know if you'd like to order.
Thanks,
Barbara S.

SUBTOTAL $10,705.00
TAX 0.00% TAX AMOUNT $0.00
SHIPPING $0.00
TOTAL $10,705.00

FOR DROP SHIPMENTS, THESE PRICES INCLUDE FREIGHT

IF YOU ARE IN CALIFORNIA, WE INCLUDE SALES TAX

******MINIMUM ORDER 5 FULL CASES******

bb.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF EIGHT (8) NORIX MAX-MASTER EIGHT SEAT TABLE 60" DIAMETER FROM NORIX GROUP INC. FOR THE BENTON COUNTY JAIL FACILITY, KENNEWICK, WASHINGTON

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 table and chairs used inside the Jail are wearing out and need to be replaced; and

WHEREAS, Benton County Sheriff's Office solicited the following companies to provide a quote for eight (8) Norix Max-Master Eight Seat Table 60" diameter; and

Norix Group Inc, West Chicago, IL ($10,357.12 excluding WSST, but includes Shipping)
Rocky Mountain Consultants, Murray, UT ($10,725.12 excluding WSST, but includes Shipping)
Kanche and Associates, Sandia Park, NM ($10,884 excluding WSST, but includes Shipping)

WHEREAS, Norix Group Inc. is the lowest bidder; and

WHEREAS, the Jail Captain has reviewed the quotes for completeness and recommends purchasing the eight (8) Norix Max-Master Eight Seat Table 60" diameter from Norix Group Inc, West Chicago, IL; **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 eight (8) Norix Max-Master Eight Seat Table 60" diameter from Norix Group Inc, West Chicago, IL in the amount of $10,357.12 excluding WSST, but includes shipping.

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, R. Ozuna

Prepared by: K Mercer

AGENDA ITEM ==========	TYPE OF ACTION NEEDED ==========	
Meeting Date: February 16, 2009 Subject: Purchase 8 table/chairs Prepared By: Keith Mercer Reviewed By: Loretta 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

In the 2009 budget, the jail was approved $20,000 in order to put the POD chairs and tables on a replacement schedule due to damage and wear. After researching different types of table and chairs, the Jail Captain has decided to go with the Norix Max-Master Eight Seat Table-60" Diameter. The jail plans to outfit one POD with the Norix table/chairs and then monitor the durability and functionality of these tables for six to eight months before outfitting another POD. The goal is to replace the table and chairs in two PODs each year or to replace as many table and chairs that $20,000 can buy. The Jail solicited the following companies to provide a quote for eight (8) Norix Max-Master Eight Seat Table 60" diameter:

Norix Group Inc, West Chicago, IL ($10,357.12 excluding WSST, but includes Shipping)
Rocky Mountain Consultants, Murray, UT ($10,725.12 excluding WSST, but includes Shipping)
Kanche and Associates, Sandia Park, NM ($10,884 excluding WSST, but includes Shipping)

The Jail Captain has reviewed the quotes for completeness and recommends purchasing the eight (8) Norix Max-Master Eight Seat Table 60" diameter from Norix Group Inc, West Chicago, IL.

FISCAL IMPACT

9,317.12 Table/Chairs
1,040.00 Shipping & Handling
773.32 WSST
$11,130.44 to be paid out of 120's Operating Supplies

MOTION

NORIX®
Norix Group, Inc
1000 Atlantic Drive - West Chicago, IL 60185-5101 -
Phone: 630-231-1331 - Fax: 630-231-4343 - Email: furniture@norix.com

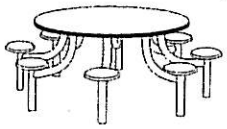
QUOTE

Date	Quote #
01/15/09	WA010609-2

To: Benton County Sheriff's
Sharon Felton
Phone: (509)783-1451
Fax: (509)736-3054
Email: sharon_felton@ co.benton.wa.us
Re: Max-Master Tables for your facility.
REVISED

Terms	Quoted By:	Ship Via
NET 30 Upon Approval	Jessica Hare	Common

Qty	Description	Unit Net Price	Ext. Price
8	Norix Max-Master Eight Seat Table - 60" Diameter Laminate Top-Black Slammer Stone Edge 8 Legs: 3" Dia, Black, Glide 8 Seats: Super Slammer Stone - Black Model: MX6000-8PT	$1,164.64	$9,317.12 773.32



Factory authorized installation available - please inquire for quotation.

Leasing options available - please inquire for details.

FREIGHT: Dock Delivery: West Chicago, IL to Kennewick, WA. Shipping & Handling $1,040.00

Attention: Freight includes Shipping & Handling charges for common carrier with standard dock delivery and requires the use of your personnel and equipment for unloading. If you require 24 hour notification, exact day delivery, unloading assistance, inside delivery, or special assistance, please contact Norix before the scheduled shipment date as there will be additional charges.

Does not include applicable taxes or installation Total $10,357.12

$11,130.44 total

ROCKY MOUNTAIN CONSULTANTS

731 E. Majestic Pine Drive
Murray, Utah 84107
(801) 924-6052 Office
(801)924-6053 Fax
Email: bradleyjohn001@iveracity.com

QUOTE

Date January 14th 2009

Quote #RMCWA011409

To: Benton County Sheriff's
Sharon Felton
Phone: (509)783-1451
Fax: (509)736-3054
Email: sharon_felton@co.benton.wa.us

Re: Max-Master Tables for your facility.

Qty Description	Unit Price	Ext..Price
Model: MX6000-8PT Norix Max-Master Eight Seat Table - 60" Diameter Laminate Top-Black Slammer Stone Edge 8 Legs: 3" Dia, Black, Glide 8 Seats: Super Slammer Stone – Black	**$1,210.64**	**$9,685.12** + 803.86 tax
FREIGHT: Dock Delivery: West Chicago, IL to Kennewick, WA. Shipping & Handling		**$1,040.00**
Does not include applicable taxes or installation	**Total**	~~$10,725.12~~ + 11,528.9 total

Factory authorized installation available please inquire for quotation. Leasing options available - please inquire for details.

Attention: Freight includes Shipping & Handling charges for common carrier with standard dock delivery and requires the use of your personnel and equipment for unloading. If you require 24 hour notification, exact day delivery, unloading assistance, inside delivery, or special assistance, please contact RMC before the scheduled shipment date as there will be additional charges.

Delivery: 8-10 weeks after receipt of order, or sooner.

This Quotation is valid for 30 days.

Thank you for allowing RMC the privilege of quoting your requirements.

Ship To: Accepted By:

Address: P.O. Number

Tax Exempt? (Please circle) Yes or No

Contact: Tax Exempt #:

Phone:

Requested Delivery Date:

Bill To (if different from above):
Address:
Contact:
Phone:

Thank you for considering this quote.

John Bradley

QUOTE

KANCHE AND ASSOCIATES
Corrections and Detention Specialists
44 Paa Ko Drive, Sandia Park, NM 87047
Phone 505-286-0165 Fax 505-286-0154
kancheassociates@aol.com

INVOICE # 011709
Date: January 17, 2009

eXPIRATION dATE 2/17/09

To Sharon Felton
Benton County Sheriff's Dept.
509-783-1451
Fax 509-736-3054
Sharon_felton@co.benton.wa.us

salesperson	job	shipping method	shipping terms	delivery date	payment terms	due date
Kanche		Most economical			Due on receipt	

qty	item #	description	unit price	discount	line total
8	MX6000-8pt	Norix Max Master eight seat table—60" round, laminate top, black slammer stone edge, 8 seats: Slammer stone, Black; 8 legs, 3" diameter, glides	$1223.00		$9784.00 812.07
		Freight to Kennewick, WA	$1100.00		$1100.00
			Total discount		
				Subtotal	$10,884.00
				Sales Tax	
				Total	~~$10,884.00~~

$11,696.07 total

Quotation prepared by: Peggy Kanche

To accept this quotation, sign here and return:

Thank you for your business!

cc.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE FEDERAL EQUITABLE SHARINING AGREEMENT AND CERTIFICATION INCLUDING THE 2008 ANNUAL CERTIFICATION REPORT

WHEREAS, the Benton County Sheriff's Office participates in the Federal Equitable Sharing Agreement with the federal government for the use of federally forfeited cash, property proceeds, and any interest earned thereon, which are equitably-shared with participating law enforcement agencies. Pursuant to this agreement the Benton County Sheriff's Office is required to submit yearly the Federal Annual Certification Report.

WHEREAS, the yearly Federal Annual Certification Report must be signed by the Benton County Sheriff and the Benton County Commissioner, **NOW THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners that the Chairman of the Board of Benton County Commissioners is authorized to sign, on behalf of the Board, the Federal Equitable Sharing Agreement and Certification including the 2008 Annual Certification Report.

Dated this _____ day of February, 2009.

_____
Chairman of the Board

_____
Member

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

Attest: _____

J. Thompson

CC: Sheriff's Office, Auditors Office

OMB Number 1123-0011
Expires 7-31-2011

Equitable Sharing Agreement and Certification

◯ **Police Department** ◉ **Sheriff's Office** ◯ **Task Force (Complete Table A, page2)**
◯ **Prosecutor's Office** ◯ **Other (specify)** _____

Agency Name: Benton County Sheriff's Office

NCIC/ORI/Tracking Number: W A 0 0 3 0 0 0 0

Street Address: 7122 W. Okanogan Place Bldg. A

City: Kennewick **State:** WA **Zip:** 99336

Contact: Title: Administrative Ass First: Julie Last: Thompson

Contact Phone: (509) 735-6555 ext. 3273 **Contact Fax:** (509) 736-3895

Contact e-mail: julie.thompson@co.benton.wa.us

Last Fiscal Year End (mm/dd/yyyy): 12/31/2008

◯ **New Participant:** Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5)

◉ **Existing Participant:** Complete the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5)

◯ **Change in Administration:** Select to report change to Agency or Governing Body head DURING the current fiscal year. Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5).

◯ **Amended Form:** Revise the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).

Annual Certification Report

	Summary of Equitable Sharing Activity	Justice Funds	Treasury Funds
1	Beginning Equitable Sharing Fund Balance (must match Ending Equitable Sharing Fund Balance from prior FY)		
2	Federal Sharing Funds Received		
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page 2)		
4	Other Income		
5	Interest Income Accrued ☐ Check box if non-interest-bearing account.		
6	Total Equitable Sharing Funds (total of lines 1 - 5)	$0.00	$0.00
7	Federal Sharing Funds Spent (total of lines a - n below)	$0.00	$0.00
8	Ending Balance (subtract line 7 from line 6)	$0.00	$0.00

	Summary of Shared Monies Spent	Justice Funds	Treasury Funds
a	Total spent on salaries for new, temporary, not-to-exceed one year, employees		
b	Total spent on overtime		
c	Total spent on informant and "buy money"		
d	Total spent on travel and training		
e	Total spent on communications and computers		
f	Total spent on firearms and weapons		
g	Total spent on body armor and protective gear		
h	Total spent on electronic surveillance equipment		
i	Total spent on building and improvements		
j	Total spent on other law enforcement expenses (complete Table C, page 3)		
k	Total transfers to other state and local law enforcement agencies (complete Table D, page 3)		
l	Total 15% Expenditures in Support of Community-based Programs (complete Table E, page 3)		
m	Total 25% Windfall Transfers to Other Government Agencies (complete Table F, page 3)		
n	Total spent on matching grants (complete Table G, page 3)		
	Total	$0.00	$0.00

	Miscellaneous Data		
o	Agency's budget for current fiscal year		$25,820,676.00
p	Jurisdiction's budget for current fiscal year		$147,412,415.00
q	Appraised Value of Other Assets Received		

Table A: Members of Task Force

Agency Name	Address

Table B: Equitable Sharing Funds Received from other Agencies

Transferring Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table C: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table D: Equitable Sharing Funds Transferred to Other Agencies

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name		
Agency Address		

Table E: 15% Expenditures in Support of Community-based Programs

Recipient	Justice Funds	

Table F: 25% Windfall Transfers to Other Government Agencies

Recipient	Justice Funds	Treasury Funds

able G: Matching Grants

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Civil Rights Cases

	Name of Case	Type of Discrimination Alleged				Status
		☐ Race	☐ Color	☐ National Origin	☐ Gender	◯ Settled
		☐ Disability	☐ Age	☐ Other _____		◯ Pending

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Unit, 1400 New York Avenue, N.W., Second Floor, Washington, DC 20005.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

1. **Submission.** This Document must be submitted to aca.submit@usdoj.gov within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page 5) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

2. **Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

3. **Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal equitable sharing program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide).*

4. **Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal equitable sharing program participant and has a current Equitable Sharing Agreement and Certification on file.

5. **Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide.*

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice* or *Treasury Guides,* depending on the source of the funds/property.

6. **Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

Affidavit

Under penalty of perjury, the undersigned officials certify that **they have read and understand their obligations under the Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice and/or Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity.

During the past fiscal year, has the Agency been part of any proceedings alleging discrimination by the Agency? ○ **Yes** ◉ **No**

If you answered yes, complete Table H. Please disclose (1) all proceedings pending before any court or administrative agency, (2) any nondiscrimination laws the Agency has been found in violation of, and (3) any settlement agreements the Agency has entered into during the last fiscal year.

Agency Head		**Governing Body Head**	
Signature:	Larry D. Taylor	Signature:	
Name:	Larry D. Taylor	Name:	Max Benitz, Jr.
Title:	Benton County Sheriff	Title:	Benton County Comissioner
Date:	02/18/2009	Date:	02/23/2009

Final Instructions:

Step 1: Click button to save in PDF format for your records
Step 2: Click button to save in XML format
Step 3: E-mail the XML file as attachment to aca.submit@usdoj.gov
Step 4: Fax a signed copy of THIS PAGE ONLY to (202) 616-1344

Note: The Agency will not be in compliance until the e-mail and the fax of this page are received.

FOR AGENCY USE ONLY
Entered by _____

Entered on _____

FY End: 12/31/2008

NCIC: WA0030000 Agency: Benton County Sheriff's Office Phone: (509) 735-6555 ext. 3273

State: WA Contact: Julie Thompson E-mail: julie.thompson@co.benton.wa.us

dd.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF BENTON COUNTY SOLID WASTE MANAGEMENT RE: ACCEPTANCE OF THE BENTON COUNTY COORDINATED PREVENTION GRANT (OFF-SET CYCLE) OFFER

WHEREAS, the Washington State Department of Ecology has developed a Coordinated Prevention Grant to further Organic Management and Solid Waste Programs; and

WHEREAS, the Benton County Solid Waste Manager recommends acceptance of the Grant offer, which includes participation from the cities within Benton County; NOW, THEREFORE,

BE IT RESOLVED that the Chairman of the Board of County Commissioners is hereby authorized to sign said Grant offer and the Procurement Certification Form on behalf of Benton County.

Dated this 23rd day of February 2009.

_____
Chairman.

_____
Chairman Pro-Tem.

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

Attest:_____
Clerk of the Board

RBD:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

February 10, 2009

RECEIVED
FEB 11 2009
BENTON COUNTY
PUBLIC WORKS

Keith Martin
Benton County
PO Box 1001
Prosser, WA 989350-0954

RE: Coordinated Prevention Grant Offer No. G0900169

Dear Keith:

Congratulations on competing successfully for CPG Offset Cycle funds. Based on the merits of your application, the Department of Ecology will provide up to $50,000 in matching funds.

Because each project competed individually, movement of money between projects within the grant is prohibited. These projects have been combined in one grant simply to facilitate grant management. However, you may combine reimbursement requests and progress reporting for all projects. In other words, it is not necessary to submit a separate request and report for each project. Be sure to label each project with its appropriate number on the B2 and C2 forms. If you have any questions about reporting and reimbursement, please give me a call.

If you find the enclosed grant agreement satisfactory, please have BOTH copies signed by the appropriate authorized official and return to this office within 45 days of receipt. Laurie Davies, Manager of the Solid Waste and Financial Assistance Program, will also sign both documents. An executed grant agreement will then be returned to you for your records.

Also enclosed for signature and return is a "Procurement Certification Form" which documents the procurement procedures that will be used for grant-related projects.

The Department of Ecology may withdraw this grant offer if the signed agreement is not returned within 45 days of receipt. Please contact me at 509-575-2782 or by e-mail at maum461@ecy.wa.gov, if you have any questions.

Sincerely,

Maureen McCormick

Maureen M. McCormick
Regional Grant Officer
Solid Waste & Financial Assistance Program
Enclosures

PROCUREMENT CERTIFICATION FORM

Recipient: _____

Grant Name: _____

Grant No.: _____

The undersigned, on behalf of the Recipient, certifies that the Recipient:

(check and complete one of the following)

___ **will follow Recipient's own adopted procurement procedures and applicable state law in procuring grant-related public works contracts, professional and personal services contracts, and purchase agreements. The procurement procedures were adopted _____(*date*) by _____ (*adopting authority*) and are recorded in _____ (*document name*).**

___ **having no applicable, adopted procurement procedures, will follow the Standards for Competitive Solicitation found in the Administrative Requirements for Ecology Grants and Loans, WDOE 91-18 (Revised October 2005) (the "Yellow Book"), and applicable state laws in procuring grant-related public works contracts, professional and personal services contracts, and purchase agreements.**

_____

AUTHORIZED SIGNATURE **DATE**

_____

TITLE

Kathel B. Galiota 02/18/09

LEGAL COUNSEL SIGNATURE **DATE**

Deputy Prosecuting Attorney

TITLE

GRANT AGREEMENT BETWEEN THE

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

BENTON COUNTY

Grant No: G0900169, Coordinated Prevention Grant Offset Cycle Agreement.

This is a binding agreement entered into by and between the State of Washington Department of Ecology, referred to as ECOLOGY, and Benton County, referred to as the RECIPIENT, to carry out the tasks described herein..

JURISDICTION:	Benton County
MAILING ADDRESS:	P.O. Box 1001
CITY, STATE, ZIP:	Prosser, WA 99350-0954
RECIPIENT GRANT COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us
RECIPIENT BILLING/INVOICE COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us
ECOLOGY GRANT OFFICER:	Maureen McCormick
TELEPHONE:	509-575-2782
FAX:	509-575-2809
E-MAIL:	maum461@ecy.wa.gov
FUNDING SOURCE	Local Toxics Control Account
MAXIMUM ELIGIBLE COST	$ 50,000
STATE GRANT SHARE	$ 37,500
LOCAL SHARE	$ 12,500
STATE MAXIMUM GRANT PERCENT	75 %
FEDERAL TAX IDENTIFICATION NO.	91-6001296

For the purpose of this agreement, the RECIPIENT will be allowed to match the state grant share with cash in accordance with the defined budget table.

This agreement is effective on **January 1, 2009**. Any work performed prior to the effective date of this agreement without prior written authorization or that was not specified in the Scope of Work will be at the sole expense and risk of the RECIPIENT. This agreement shall expire no later than **December 31, 2010**.

MULTI-PHASE OFFSET CYCLE SCOPE OF WORK

The task(s) set forth below summarize the RECIPIENT's budget(s) tracked by task goals and expected outcomes, activities with timeline, method of evaluation, and estimated task cost.* The estimated total task cost is for grant officer information only—it will not be used for budget tracking purposes.

A multi-phase grant will be written with a project's full scope of work and a partial budget. Phase One consists of work performed with the budget approved at the time of grant execution. Phase Two funds are contingent on the availability of unspent 2008-2009 Regular Cycle funds. Phase Two work is not authorized for reimbursement until a formal amendment to increase the budget is approved. RECIPIENTs are not obligated to complete Phase Two work until a formal amendment to increase the budget is approved.

RECIPIENT Responsibilities: The RECIPIENT is responsible for implementing activities identified in the local Comprehensive Solid and/or Hazardous Waste Management Plan.

PHASE ONE

CATEGORY: Organics

MAXIMUM ELIGIBLE CATEGORY COST CPG-OFFSET: $ 50,000

1. **TASK TITLE:** Feasibility Study for Organic Waste Processing Facility

   Maximum Eligible Task Cost: $50,000

   Summary: The RECIPIENT will conduct a Feasibility Study to determine and evaluate feedstock geography, character, volume, and season of availability of organic waste. Benton County residents and businesses generate over 240,000 tons of organic waste per year and 95% of that organic waste is land-filled. Residents and businesses need low-cost alternatives that maximize recycling and reuse of organic waste.

   Goal Statement: Conduct a Feasibility Study that evaluates organic feedstocks in Benton County. Information from the study will be used to develop a strategic implementation plan for developing an Organic Waste Processing Facility.

   Outcome Statement: Data from the Feasibility Study will provide the information needed to determine the scope, feasibility, sustainability, economics and environmental impact of an OWPF. The RECIPIENT will use the information and recommendations to gain support and approval for creating a OWPE from the Solid Waste Advisory Committee, School Districts, General Public, Inter-Local Cities, Ports, Universities and Commissions. The RECIPIENT's ultimate goal is to remove over 240,000 tons of organic waste per year from landfill disposal.

Work Plan and Activities with Timeline:

Activity	Timeline
1. RFQ Contract	Nov 2008 to December 2008
2. OWPF Feasibility Study with review comments	January 2009 to April 2009
3. SWAC Presentation	March 2009
4. Search for Partnerships	November 2008 to July 2009

Method of Evaluation: The Solid Waste Advisory Committee will evaluate the information and recommendations in the Feasibility Study to determine if an OWPF would be sustainable; processing over 240,000 tons of organic material, while offering low cost organic material recovery.

*** Estimated (total) Task Cost:** $ 50,000

PHASE ONE BUDGET CPG-OFFSET (174/I17): $ 50,000

PHASE TWO

TASK TITLE: Operation Plan for Organic Waste Processing Facility

Maximum Eligible Task Cost: $50,000

Summary: An Implementation Plan for a full scale Organic Waste Processing Facility (OWPF) for Benton County will be created. The facility will be designed to process a minimum of 240,000 tons of organic waste per year with the capacity to handle projected organic wastes over the next 20 years. The recommendation will include the fee structure needed to sustain operations based on private and public management systems, and on the potential to address municipal bio-solids as compost.

The Implementation Plan will be based on recommendations from the Feasibility Study (Phase I) and approval from the Benton County Solid Waste Advisory Committee. The Implementation Plan will be a "turn key design" that describes how Benton County can offer organic waste services that are efficient, convenient and inexpensive for residents and businesses, and are environmentally protective. The RECIPIENT will determine the scope, feasibility, sustainability, economics and environmental impact of an OWPF. The RECIPIENT will use the collected information for presentation to: Solid Waste Advisory Committee, School Districts, Public, Inter-Local Cities, Ports, Universities and Commissions to gain support and approval for future decisions, direction and financing.

Goal Statement: Develop an Organic Waste Processing Facility (OWPF) for Benton County that serves all county residents, municipalities, and businesses with convenient and inexpensive organic disposal. The organic materials will be processed into useful commodities for resale. Information from

the Feasibility Study will be used to develop the Implementation Plan that will recommend the type and schedule of activities required to develop a full scale OWPF facility.

Outcome Statement: Data from the Implementation Plan will provide the information needed to build a well-planned OWPF that can sustainably processes over 240,000 tons of organic waste per year. into a useful commodity. An Implementation plan for developing an Organic Waste Processing Facility includes identifying potential locations, targeted feedstocks, type of process to be used (composting or something else), mechanics for transporting materials, etc. The RECIPIENT's ultimate goal is to remove over 240,000 tons of organic waste per year from landfill disposal.

Work Plan and Activities with Timeline:

Activity	Timeline
5. Operation Plan OWPF Prelim. Design with SEPA	January 2010 to April 2010
6. Preliminary Design -SWAC Presentation	April 2010
7. Secure Partnerships and Financing	May 2010 to July 2010
8. Final Design Review	July 2010
9. Procure Land for OWPF	July 2010
10. Obtain SWAC and Inter-Local Approval To Build	August 2010
11. Present OWPF Design to County Commissioner's	August 2010

Method of Evaluation: Solid Waste Advisory Committee will use Implementation Plan to determine the type and design of OWPF will be sustainable for processing over 240,000 tons of organic material andoffering low cost organic material recovery.

*** Estimated (total) Task Cost:** $ 50,000

PHASE TWO BUDGET CPG-OFFSET (174/XX):	**$ 50,000**

COMMUNICATION

ECOLOGY's regional grant officer will contact the RECIPIENT grant coordinator as needed to monitor progress toward task goals and check consistency with task work plans and timelines. It is the responsibility of the RECIPIENT to contact his or her grant officer with any other questions or concerns regarding the grant. Grant officers are available to provide technical assistance at any time during the grant cycle.

BILLING AND REPORTING

A reimbursement request consists of Forms A-19, B2, C2 and a progress report. Unless stated otherwise in this agreement, the RECIPIENT must submit a request (with a progress report) at least quarterly, but no more often

than once per month.. The RECIPIENT must budget by task and therefore shall itemize by task on the B2 and C2 forms and as laid out in the CPG Budget Table.

The Office of Financial Management is developing an on-line grants management system that all state departments are required to use. The RECIPIENT agrees to use the on-line system when it becomes available. The RECIPIENT also agrees to participate in Ecology offered trainings related to the fiscal and administrative management of the grant covered by this agreement.

The RECIPIENT has elected to submit only the Ecology requested supporting documentation with each request. The RECIPIENT agrees to be subject to a biennial visit by its Ecology grant officer to verify the required records are available, and are kept in accordance with the requirements outlined in the most recent version of the Administrative Requirements for Recipients of Ecology Grants and Loans. The Coordinated Prevention Grant Guidelines also explain the requirements and provide a list of the "*Required Contents*" for in-office grant files. The RECIPIENT understands that it is a requirement that these documents will be consolidated in a common file available to ECOLOGY staff upon request and for the biennial visit.

The RECIPIENT must also complete a Final Performance Analysis (FPA) form on-line through the Information Clearinghouse. The FPA must be submitted before ECOLOGY can process your final reimbursement request. The final request and the FPA are due no later than **February 15, 2011** for this grant.

MULTI-PHASE OFFSET CYCLE CPG BUDGET

TASK– TOTAL TASK COST	TOTAL TASK COST: CPG OFFSET PHASE 1 (174/I17)	TOTAL TASK COST: CPG OFFSET PHASE 2
Organics		
1. Feasibility Study and Operations Plan	$ 50,000	$ 00,000
TOTAL MAXIMUM ELIGIBLE COST	$ 50,000	$ 00,000

PHASE ONE FUND SOURCE: CPG OFFSET (174/I17)

PHASE ONE MAXIMUM ELIGIBLE COST:		$ 50,000
FUND	**GRANT PERCENT (%)**	**STATE GRANT SHARE**
Local Toxics Control Account (LTCA)	75 %	$ 37,500
MATCH REQUIREMENT	**MATCH PERCENT (%)**	**LOCAL SHARE**
Cash Match	25 %	$ 12,500

ADDITIONAL BUDGET CONDITIONS

1. Offset cycle funds were awarded from a competitive process. Budget redistribution between tasks is conditional. For consideration the RECIPIENT must submit a request in writing for a change in scope or

budget redistribution, which will be evaluated by ECOLOGY. This request shall include completion of the Formal Amendment Request Form. If the request is approved then a formal amendment is required.

2. Overhead is eligible at a rate of 25 percent of salaries and benefits for time actually devoted to tasks outlined in this agreement.

3. The RECIPIENT contact for billing and invoice questions is:

RECIPIENT BILLING/INVOICE COORDINATOR:	Keith Martin
TELEPHONE:	509-539-5432
FAX:	509-786-3438
E-MAIL:	keith.martin@co.benton.wa.us

4. Grant payments should be made payable to: Benton County Treasurer

5. Grant payments should be mailed to this address:

JURISDICTION:	Benton County
ATTN:	Benton County Treasurer
MAILING ADDRESS:	P.O. Box 110
CITY, STATE, ZIP:	Prosser, WA 99350-0110

SPECIAL TERMS AND CONDITIONS

A. INTERLOCAL AGREEMENTS

If parties other than the RECIPIENT are contributing to the local share of task costs, memoranda of understanding or other written agreements confirming the contribution must be negotiated. These agreements must specify the exact work to be accomplished and be signed by all parties contributing to the local match of this task. Copies of these agreements shall be submitted to ECOLOGY.

B. PROCUREMENT AND CONTRACTS

1. The RECIPIENT shall follow their standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must comply with the "Standards for Competitive Solicitation", found in the most recent revision of Administrative Requirements for Recipients of Ecology Grants and Loans.

2. Following execution, at the request of ECOLOGY, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to ECOLOGY.

3. The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall notify ECOLOGY if it used contracts entered into prior to the execution of the grant agreement for performance of grant funded activities.

C. PROPERTY MANAGEMENT AND DISPOSITION OF PROPERTY

The RECIPIENT must develop a control system, including physical inventory, to minimize the use of loss, theft or damage of the property, and will investigate any loss, theft or damage. The RECIPIENT will follow manufacturer recommended maintenance procedures to keep the property in good operating condition.

In addition to the above, the RECIPIENT must also list any real property or equipment purchased under the agreement with an acquisition cost of at least $5,000.

For equipment, the RECIPIENT will maintain records that include:

- A description of the equipment.
- A serial number or other identifying number.
- The source of the equipment (vendor).
- The name of the title holder.
- The purchase date and price.
- The percentage of the acquisition price paid by Ecology.
- The location and use of the equipment.
- Condition and maintenance records.
- Final disposition data, including date and sale price.

When replacing tangible, nonexpendable, personal property having a useful life of more than one year and an individual value of less than $5,000, the RECIPIENT may dispose of this property being replaced by using it as a trade-in or by selling it and using the proceeds to offset the cost of the replacement.

When the agreement expires, or when the property is no longer needed for the originally authorized purpose (whichever comes first), the RECIPIENT will dispose of any property purchased with task funds as follows:

- **Tools.** The RECIPIENT may retain, sell, or otherwise dispose of with no further obligation to Ecology.
- **Equipment.** The grant officer will review the list and determine the property's disposition.

D. SEPA COMPLIANCE

To ensure that environmental values are considered by the state and local government officials when making decisions, the RECIPIENT shall comply with the provisions of the State Environmental Policy Act (SEPA), Chapter 41.23C RCW, and the SEPA Rules, Chapter 197-11 WAC. Copies of the SEPA documents shall be sent to:

ECOLOGY's Environmental Review and Transportation Section
P.O. Box 47703
Olympia, WA 98504-7703

E. WETLANDS PROTECTION

To comply with the directive of Executive Order 90-04, Protection of Wetlands, all local governments are requested and encouraged to make all of their actions consistent with the intent of this executive order; specifically, (1) to avoid, to the extent possible, adverse impacts associated with the destruction or modification of wetlands, and (2) to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

F. FAILURE TO COMMENCE WORK

ECOLOGY reserves that right to terminate this agreement in the event the RECIPIENT fails to commence work on any of the tasks funded herein within six (6) months after the effective date.

G. TASK INCOME

Any income directly generated as a result of the activities funded by this grant shall be reported as a credit against the expenses of that activity, as required by ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans.

H. GRANT REPORTING

1. The RECIPIENT, in conjunction with submission of payment requests, or at the request of the grant officer, shall prepare Progress Reports and submit them to ECOLOGY. The RECIPIENT must also complete and submit a Final Performance Analysis (FPA).
2. The RECIPIENT must submit all backup documentation paperwork along with each payment request or maintain all backup documentation in an accessible location and be subject to biennial documentation check visits by Ecology grant officers.

I. PROMOTIONAL AND EDUCATIONAL MATERIALS

A copy of all promotional and educational materials developed as part of this agreement shall be submitted to your ECOLOGY grant officer concurrent with public distribution or with the next progress report. ECOLOGY shall have the right to use any printed materials developed as part of this agreement in any manner ECOLOGY deems appropriate. The Washington State Department of Ecology will be acknowledged for providing funding in all published material and oral presentations that result from this agreement.

When a RECIPIENT produces reports, technical documents, publications, brochures, and other materials using funding from ECOLOGY, the RECIPIENT is required to acknowledge in those materials, ECOLOGYs support. ECOLOGYs logo should not be used however, unless the project is developed in conjunction with or for ECOLOGY, or if ECOLOGY has agreed to co-distribute the material.

J. AMENDMENTS AND MODIFICATIONS

No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made part of this agreement; *except* a letter of amendment will suffice to redistribute the budget without increasing the total maximum eligible cost or to change ECOLOGY's grant officer or the RECIPIENT's grant coordinator or to extend the period of performance as set forth in this grant agreement.

K. MINORITY AND WOMEN'S BUSINESS PARTICIPATION *(It is not mandatory for the RECIPIENT to abide by Part K of the Special Terms and Conditions; however, it is highly encouraged.)*

The RECIPIENT agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the RECIPIENT and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on forms provided by the DEPARTMENT, payments made to qualified firms. Please include the following information:

- Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- The total dollar amount paid to qualified firms under this invoice.

L. ALL WRITINGS CONTAINED HEREIN

This agreement, the attached General Terms and Conditions, the Coordinated Prevention Grant Program Guidelines, and ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans contains the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference in this agreement.

IN WITNESS WHEREOF, the parties sign this Grant Agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Laurie G. Davies
Program Manager
Solid Waste and Financial Assistance

Date

APPROVED AS TO FORM ONLY

BENTON COUNTY

Authorized Official

Date

Print Name of Authorized Official

Assistant Attorney General

Title

PH 9:05

AGENDA ITEM	TYPE OF ACTION NEEDED	
MTG. DATE: February 23, 2009 SUBJECT: 2008 Comp Plan Amendments MEMO DATE: February 18, 2009 Prepared By: Susan M. Walker Reviewed By: Michael Shuttleworth	Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other	Consent Agenda Public Hearing X 1st Discussion 2nd Discussion Other

BACKGROUND INFORMATION

Washington State planning law requires continuing review and evaluation of comprehensive plans pursuant to RCW 36.70A.130(1) with revisions and amendments to the Comprehensive Plan considered by the county no more frequently than once every year (RCW 36.70A.130(2)(a)). The 2008 amendment process also included the five-year review of the cities Urban Growth Areas (UGA's). The Board of County Commissioners held a workshop to review the Planning Commission findings and information regarding these amendments on October 20, 2008. Board of County Commissioners held hearings on the proposals on November 10th, 2008, and a continued hearing January 26, 2009. A hearing has been scheduled for February 23, 2009 at 9:05 am in the Commissioners Hearing room in Prosser to take final action on the 2008 applications for comprehensive plan amendments. The final decision for CPA 07-02 was not completed at the January 26, 2009 meeting.

The 2008 Amendment Proposals are as follows:

- **CPA 07-02**

SUMMARY

A proposal by John Sullins to change the land use designation from Rural Lands Five (5) to Rural Lands One (1) on approximately 1,120 acres southwest of the I-82 Interchange and Badger Road. The parcels are located in T.8N., Range 28E, W.M., in Sections 11 & 14 lying northwest of the BNSF railroad right of way, and that portion of Section 15 north of the railroad right of way, the east half of Section 10 south of I-82, and the southwest quarter of Section 10.

A motion to approve CPA 07-02 was made during the hearing of January 26th, and failed due to the lack of a majority vote. The hearing was closed to further public testimony. The Board may discuss this issue and take action on the proposal.

RECOMMENDATION

The Planning Commission did not recommend approval of a one-acre density because it was unable to find it rural in character. The Planning Commission did recommend approval

of CPA 07-02 to the extent of modifying the land use designation from Rural Lands Five (5) to Rural Lands Two and a Half (RL-2.5) (an alternative to the one acre density requested) except for the federally owned property located North and West of the KID Canal within Section 10, Township 8 North, Range 28 East, W.M.

MOTION

The board has two options regarding CPA 07-02. The Planning Department recommends Option #1.

#1 To deny the proposal to change the land use designation from Rural Lands Five (RL-5) acres to Rural Lands One (RL-1) acre land use designation, adopt the recommendation of Planning staff as provided in the Staff report dated July 7th, 2008, and direct staff to prepare Findings of Fact and a resolution that adopts those findings to deny CPA 07-02 for the Board's signature.

#2 To approve the proposal requesting to change the land use designation from Rural Lands Five (RL-5) acres to Rural Lands One (RL-1) Acre land use designation and adopt findings that support the approval and demonstrate compliance with the GMA. Identify a Board member to work with Planning staff to prepare a resolution that reflects those findings and submit them and a Board resolution that approves CPA 07-02 to the Board for signature.

- If the Board has interest in re-inserting a RL 2.5 designation, it should direct Planning staff to workshop the issue with the Board for the Board to consider the issue in the next amendment cycle.

- If the Board approves the proposal to change the land use designation to Rural Lands one (RL-1) they should direct staff to prepare a Comprehensive Plan amendment for the 2010 annual cycle that includes the use of the RL-1 designation in other areas in addition to Limited areas of more intense rural development (LAMIRDs) and infill.

• CPA 08-01

SUMMARY

A proposal by Wayne Penttila, for an area known as Hover Industrial Park, to change the existing land use designation of Heavy Industrial (HI) to the designation of Rural Lands 5 (RL-5) acre, on seven parcels totaling approximately 200 acres located in Sections 5, 6, 7 & 8, Township 7 North, Range 31 East, W.M., in South Finley, was approved by the Board of Commissioners on January 26, 2009.

RECOMMENDATION

On January 26, 2009 the Board of County Commissioners voted to approve CPA 08-01 and directed staff to work with the Chairman of the Board of County Commissioners to prepare a resolution for the Board of County Commissioners signatures that would approve

Comprehensive Plan Amendment application CPA –08-01.

MOTION
To approve and sign the attached resolution that approves Comprehensive Plan Amendment application CPA 08-01 (Exhibit A).

- **CPA 08-02**

SUMMARY
A proposal by The City of West Richland to include an additional 747 acres of land into its Urban Growth Area (UGA) boundary was approved by the Board of Commissioners on January 26, 2009.

RECOMMENDATION
On January 26, 2009 the Board of County Commissioners voted to approve CPA 08-02 and directed staff to work with the Chairman of the Board of County Commissioners to prepare a resolution for the Board of County Commissioners signatures that would approve Comprehensive Plan Amendment application CPA 08-02.

MOTION
To approve and sign the attached resolution that approves Comprehensive Plan Amendment application CPA 08-02 (Exhibit B).

- **CPA 08-4**

SUMMARY
Amendment proposal CPA 08-04 submitted by David Sparks, County Administrator, contains additions and changes to Tables 9.0 and 9.1 of Chapter Nine, the Capital Facilities Element of the Benton County Comprehensive Plan.

RECOMMENDATION
On January 26, 2009 the Board of County Commissioners voted to approve CPA 08-04 and directed staff to work with the Chairman of the Board of County Commissioners to prepare a resolution for the Board of County Commissioners signatures that would approve Comprehensive Plan Amendment application CPA 08-04.

MOTION
To approve and sign the attached resolution that approves Comprehensive Plan Amendment application CPA –08-04 (Exhibit C).

- **CPA 08-5**

SUMMARY

Amendment proposal CPA 08-05 includes Staff edits to update text in Chapter One, Introduction, Chapter Three; Goals, Policies and Actions; and Chapter 9; Capital Facilities Element.

RECOMMENDATION

On January 26, 2009 the Board of County Commissioners voted to approve CPA 08-05 and directed staff to work with the Chairman of the Board of County Commissioners to prepare a resolution for the Board of County Commissioners signatures that would approve Comprehensive Plan Amendment application CPA 08-05.

MOTION

To approve and sign the attached resolution that approves Comprehensive Plan Amendment application CPA 08-05 (Exhibit D).

FISCAL IMPACT

No fiscal impacts have been identified regarding these planning proposals.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: AMENDMENT TO THE BENTON COUNTY COMPREHENSIVE PLAN. FILE NO. CPA 08-01, APPLICANT: WAYNE PENTTILA, COUNTY RESIDENT.

WHEREAS, on June 22, 1998, the Benton County Board of Commissioners adopted the Benton County Comprehensive Plan; and,

WHEREAS, Washington State Planning law requires continuing review and evaluation of the Comprehensive Plan pursuant to RCW 36.70A.130(2)(a); and,

WHEREAS, Benton County provides for annual Comprehensive Plan Amendments in BCC 16.14; and,

WHEREAS, the Benton County Planning Commission did conduct public hearings on July 15, 2008, August 19, 2008, and September 16, 2008, at 7:00 p.m., in the Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350, to review the proposed Comprehensive Plan amendment (CPA 08-01) to change the land use designation on Land Use Maps 4.0 and 4.6 in Chapter Four of the Comprehensive Plan from Heavy Industrial to Rural Lands Five Acre (RL-5), on seven parcels totaling approximately 200 acres located in Sections 5, 6, 7 & 8, Township 7 North, Range 31 East, W.M., in South Finley; and,

WHEREAS, the Benton County Planning Commission at the conclusion of its public hearing on CPA 08-01 forwarded their recommendation on the amendment proposal to the Board of Commissioners on November 3, 2008, and the legal notification was published on October 30, 2008; and copies mailed to those interested parties as noted in the file maintained in the Planning Department and,

WHEREAS, the Board of County Commissioners did conduct their own public hearings on November 10, 2008 and a continued public hearing on January 26, 2009, at 9:05 a.m. in the Commissioner's Meeting Room, Third Floor, Courthouse, Prosser WA 99350; and,

WHEREAS, the proposal has been reviewed under the requirements of RCW 43.21C (SEPA) and a determination of non-significance was issued on April 17, 2008; and,

WHEREAS, the Board finds that proper legal notification, public hearing and review have been made; and,

WHEREAS, after consideration of the above mentioned request and after reviewing the Planning Commission record, staff analysis and memos, and all written and oral comments received at the public hearings, the Board of County Commissioners finds

that the application by Wayne Penttila is in compliance with the goals of the Growth Management Act and is consistent with the Benton County Comprehensive Plan, and,

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby amends the Land Use Maps 4.0 and 4.6 in Chapter Four of the Comprehensive Plan from Heavy Industrial to Rural Lands Five (RL-5) as set forth in Exhibit I.

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

Michael Shuttleworth/smw
cc: Prosecuting Attorney's Office

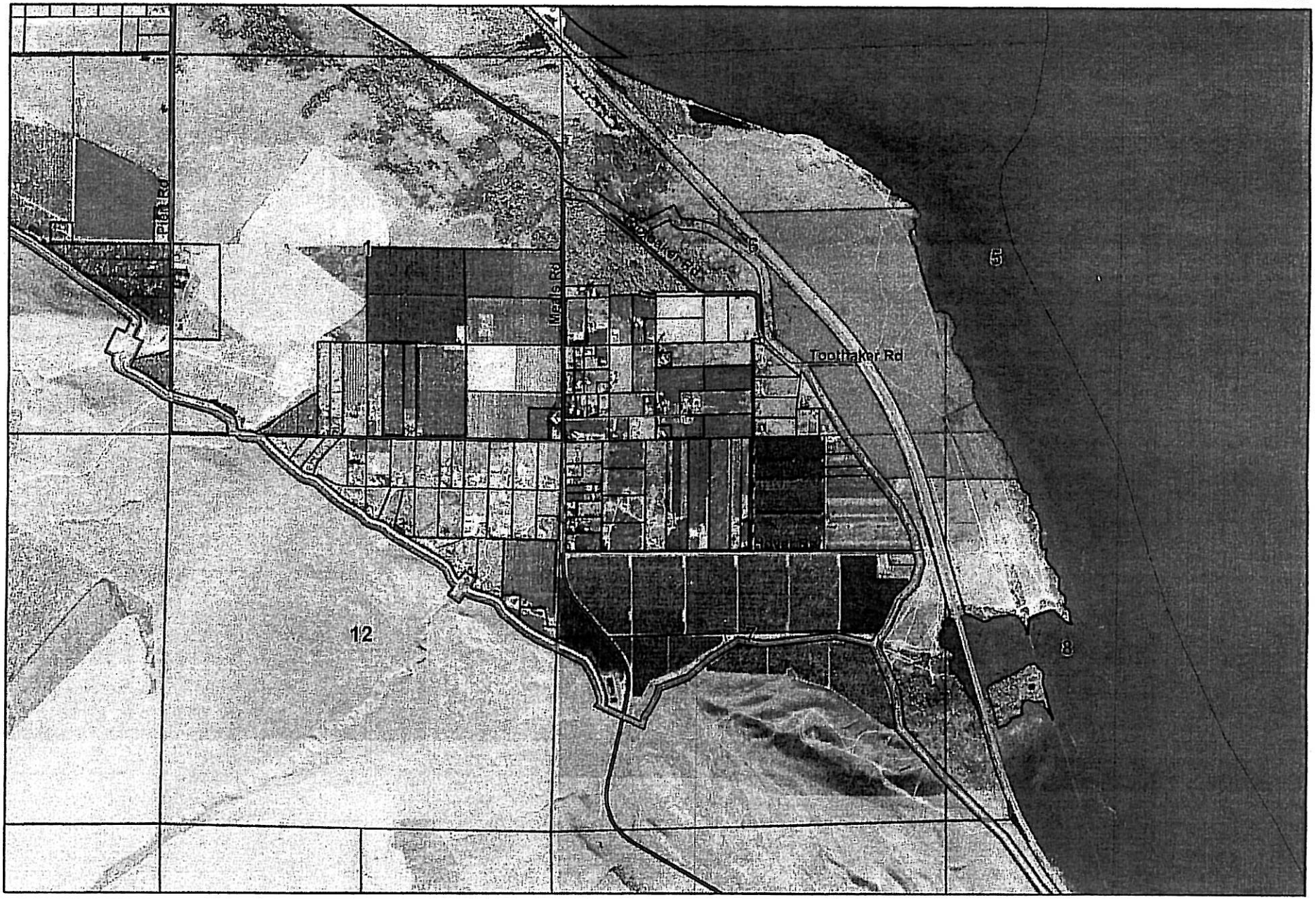
File No. CPA 08-01
Date 1-9
Staff Exhibit No. E
Pro. Exhibit No.
Opp. Exhibit No. Legend
Received by dfh

BENTON COUNTY
PLANNING DEPARTMENT

COMPREHENSIVE PLAN AMENDMENT
CPA 08-01
PENTILLA
Printed 1/14/09

Revised area proposed for Comprehensive Plan Amendment

Benton County does not warrant, guarantee, or accept any liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warranties, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown herein is a preliminary product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.



RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: AMENDMENT TO THE BENTON COUNTY COMPREHENSIVE PLAN, URBAN GROWTH AREA, FILE NO. CPA 08-02, APPLICANT: CITY OF WEST RICHLAND.

WHEREAS, on June 22, 1998, the Benton County Board of Commissioners adopted the Benton County Comprehensive Plan; and,

WHEREAS, Washington State Planning law requires continuing review and evaluation of the Comprehensive Plan pursuant to RCW 36.70A.130(2)(a); and,

WHEREAS, the Benton County Code in chapter 16.14 provides that review and processing of Urban Growth Areas (UGA's) is to occur every five years; and,

WHEREAS, the Benton County Planning Commission did conduct public hearings on July 15, 2008, and continued the hearing to August 19, 2008, at 7:00 p.m., in the Planning Annex, 1002 Dudley Avenue, Prosser, WA 99350, to receive written and oral testimony with reference to the application by the City of West Richland (CPA 08-02) to amend the Land use maps 4.0 and 4.5 of the Benton County Comprehensive Plan to include an additional 747 additional acres into it's Urban Growth Boundary (UGA); and,

WHEREAS, the Benton County Planning Commission at the conclusion of its public hearings on CPA 08-02 forwarded their recommendation on the amendment proposal to the Board of Commissioners on November 3, 2008, and the legal notification was published on October 30, 2008; and copies mailed to those interested parties as noted in the file maintained in the Planning Department and,

WHEREAS, the Board of County Commissioners did conduct their own public hearings on November 10, 2008 and a continued public hearing on January 26, 2009, at 9:05 a.m. in the Commissioner's Meeting Room, Third Floor, Courthouse, Prosser WA 99350; and,

WHEREAS, the proposal has been reviewed under the requirements of RCW 43.21C (SEPA) and a determination of non-significance was issued on March 26, 2008; and,

WHEREAS, the Board finds that proper legal notification, public hearing and review have been made; and,

WHEREAS, after consideration of the above mentioned request and after reviewing the Planning Commission record, staff analysis and memos, all written and oral comments received at the public hearings, the Board of County Commissioners finds that the application by the City of West Richland is in compliance with the goals of the Growth Management Act identified in RCW 36.70A.020 (5) and Benton Countywide Policies (20)

that require that Comprehensive Plans shall jointly and individually support the county and region's economic prosperity in order to promote employment and economic opportunity for all citizens; and,

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby amends the Land Use Maps 4.0 and 4.5 in Chapter Four of the Comprehensive Plan to include an additional 747 acres of land into the City of West Richland's Urban Growth Boundary as set forth in Exhibit 4.

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

Michael Shuttleworth/smw
cc: Prosecuting Attorney's Office

BENTON COUNTY

PLANNING DEPARTMENT

LAND USE MAP EXHIBIT 4

COMPREHENSIVE PLAN AMENDMENT -
UGA EXPANSION CPA 08-02
WEST RICHLAND
Scale: N/A
Date Printed: 7/1/08

7-8-08 djh

Benton County does not warrant, guarantee, or accept any liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warranties, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown hereon is a preliminary product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.

Legend

- Proposed location of Red Mtn Interchange
- Proposed UGA Addition
- Existing City Limits

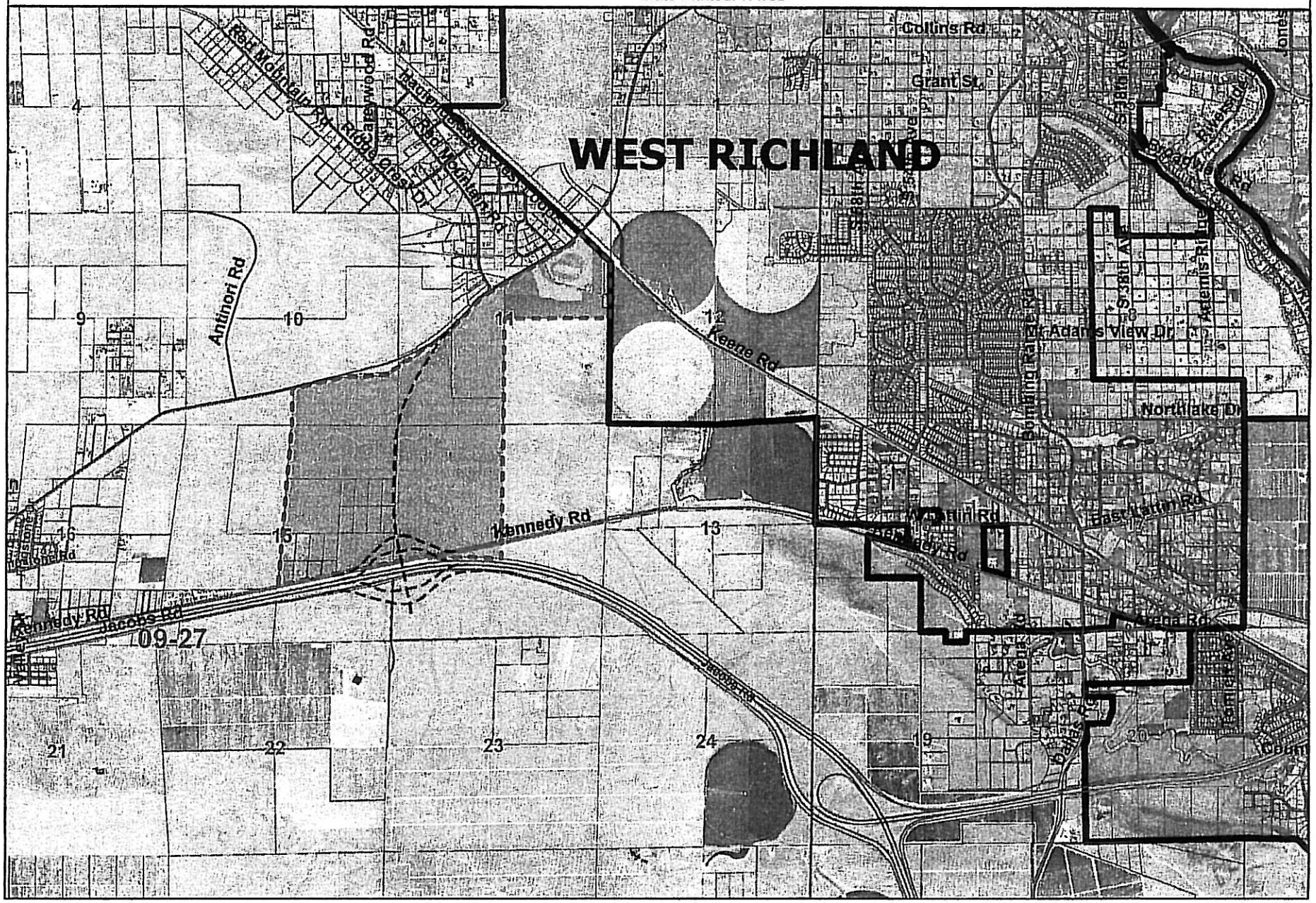


EXHIBIT C

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: AMENDMENT TO THE BENTON COUNTY COMPREHENSIVE PLAN. FILE NO. CPA 08-04, APPLICANT: DAVID SPARKS, COUNTY ADMINISTRATOR.

WHEREAS, on June 22, 1998, the Benton County Board of Commissioners adopted the Benton County Comprehensive Plan; and,

WHEREAS, Washington State Planning law requires continuing review and evaluation of the Comprehensive Plan pursuant to RCW 36.70A.130(2)(a); and,

WHEREAS, Benton County provides for annual Comprehensive Plan Amendments in BCC 16.14; and,

WHEREAS, the Benton County Planning Commission did conduct a public hearing on July 15, 2008, to review the proposed Comprehensive Plan amendment (CPA 08-04), to add specific capital projects to Tables 9.0 and 9.1 of the Capital Facilities Element of the Benton County Comprehensive Plan.

WHEREAS, the Benton County Planning Commission at the conclusion of its public hearing on CPA 08-04 forwarded a recommendation of approval of the amendments to the Board of Commissioners. The Planning Commission record was forwarded to the Board of County Commissioners on November 3, 2008 and the legal notification was published on October 30, 2008; and copies mailed to those interested parties as noted in the file maintained in the Planning Department and,

WHEREAS, the Board of County Commissioners did conduct their own public hearing on November 10, 2008 and January 26, 2009, at 9:05 a.m. in the Commissioner's Meeting Room, Third Floor, Courthouse, Prosser WA 99350; and,

WHEREAS, the proposal has been reviewed under the requirements of RCW 43.21C (SEPA) and a determination of non-significance was issued on 2008; and,

WHEREAS, the Board finds that proper legal notification, public hearing and review have been made; and,

WHEREAS, after consideration of the above mentioned request and after reviewing the Planning Commission record, staff analysis and memos, and all written and oral comments received at the public hearings, the Board of County Commissioners finds the application by David Sparks, County Administrator to be in compliance with the Growth Management Act and consistent with the Benton County Comprehensive Plan; and,

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby amend the Comprehensive Plan adding capital projects to Tables 9.0 and 9.1 of the Capital Facilities Element, as set forth in Exhibit 3 corrected.

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

Michael Shuttleworth/smw
cc: Prosecuting Attorney's Office

File No. CPA 08-04
Date 7-8-08
Exhibit No. 3
Received by dyn

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
Horn Rapids Park	Benton Co. on the Yakima River 5 mi. down stream of Benton Cty	owned	784/20	informal rec. model airplane field	boat launch ramp & parking area, well, electric service, restrooms, caretakers housing, RV camping spaces Event Area Extend elec to aircraft Facility	none	yes	yes	Greenway trail & interpretive signs	2006-8	100K	County Tapteal[1]
									Trail from Col. Point to the Park in phases: - from "Horn Rapids Res. Community to Park; -from Co. Pt. to Park	2006-8 2005-10		Tapteal IAC, Co. Richland Tapteal
									All user facilities in Master Plan	2008	400K	County, IAC grant
									Greenway Equest. Trails	2015	406K	Benton County IAC Back Co. Hrsemen
									Riverside Trail interlock with Green way	2005	2.5K	Park Dev Fund
									Kiosk Revisions	2006	5K	Park Dev Fund
									Cov. Picnic Areas	2005/06	44.25K	Park Dev Fund
									Self-Pay Kiosk	2005	2.75K	Park Dev Fund
									Flag Pole	2005-10	12.5K	Park Dev Fund

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
Horn Rapids Park Cont'									Interpretive signs WWII Camp Col.	2005	6.5K	Park Dev Fund
									Plant poplar Orchard	2007/89/10	25K	Park Dev Fund
									Landscape/ Hydoseed	2005	5K	Park Dev Fund
									Convert arroyo to functional wetland	2007/8/089	10K	Park Dev Fund
									Midden redevelop	2007	20K	Park Dev Fund
									Horse Camp regrade	2007	20K	Park Dev Fund
									Trail Signage, barriers Surf amend	2007/2012	6K	Park Dev Fund
									Centenial Row botan Speciman garden	2007/2012	9K	Park Dev Fund
									Fencing, surfacing, shed/shelter Expansion	2009	55K	"
									Meacham Rstrm	2008	41.5K	"
									Plant native trees in Yak rvr raparian	2008	30K	"/Grants
Rattle-snake Mtn Public	6 mi. N. of Benton Cty, N	450 ac.of BLM &	1100/ 600	target range	well shooting		yes					

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
Shooting Facility	side of SR225, across from Horn Rapids Park	650ac. of WDW, all used under a lease administered by BLM			range coverd shooting platform Electricity pistol bay Sport clays 1000 yd range							
Two Rivers Park Two Rivers Park Cont'	Finley Area 2 Mi. E of Kennewick on the Col.River	Leased from the Corps	210/17	Picnic Swim Boating Fishing Birding/ nature	-boat ramp launch -dock -parking -restroom -pump hse -storage shed -mb home *(Care-taker Residence)* -Day Park Area		Yes	Yes	Revetment to protect dock Enlarge boat launch parking Bike/hike trail16,500' from Kenn to the Park Covered. Picnic area New Caretkr Residence Water Rights Resolution ~~Boat Launch Upgrade lighting/ prkg area restrm~~ Pave Drvwy Prkg area upgd to modular restroom	TBD 2008 2008 2005/06 2005 20~~07~~8 ~~2005~~ 2008	200K 80K 530K 44.25K 136.5K ~~50~~128K ~~136.5K~~ 170K	County. Corps, IAC & GA Fund " Corps County Kenn. Park Dev Fund Park Dev Fund Park Dev Fund ~~Park Dev Fund~~ Park Dev Fund

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
									Restroom Boat-launch	2008	20K	Park Dev Fund
									Kennewick Trail Interlock (levee)	2014~~2~~	10K	Park Dev Fund
									Boat Launch Damage Remedies	2005-09	104.5K	Park Dev Fund
									Replace Main Restroom All-season	~~2005-06~~ 2008	1~~47~~00K	Park Dev Fund
									Install Flag Pole	2005-06	12.5K	Park Dev Fund
Hover Park	S. Finley on Col. River	leased from Corps, access needed	145/0	picnic swim fishing	none	none	no	none	NA	NA	NA	NA
Wallula Gap Preserve	S. of Finley on slope above Lake Wallula	owned, (easement needed over private prop. for land access)	163/0	viewing boat land fall	none	none	no	none	investigate gaining land side access	TBD	N/A	County
									purchase access easement	TBD	N/A	County
									construct access	TBD	N/A	County
Vista Park	in an unincor-porated "island" of Kenn. *aka* Tri-Cty Heights	owned	0.5/100	neighbor -hood prk	play equip.	none	no	none	none	NA	NA	NA
Horse Heaven Vista	SR221 3 mi. S.E. of Prosser	owned	2.3	Overlook	picnic shelter-interpretive sign		no	Yes	Re-grade driveway prkg area,	2005	14K	Park Dev Fund

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
									renovate: covered picnic area			
									Restore native vegetation			
									Main. Sign			
									Add: trash receptical/ Interpretive Sign	2008	28.5K	"
									Vault Rstrm	2008	100K	Grants
									Imprv Sign., waste recpt, landscape, pvmnt/prkg			
Badger Mountain Preserve	Slopes & Upper ridge line of Badger Mountain	Owned	574 Ac.	Walking Trails	none	none	yes	Yes	Purchase	NA	25K4	Park Dev Fund
									Trail constn and maint	2007/08	5K	Grants
									4-6 benches interpt signs	20078/089	10K	~~Park Dev Fund~~ Grants
									2nd Park access Dallas Rd.	2007	50K	Park Dev Fund
									Westcliffe Park Improv	2007	120K	Park Dev Fund
									Vault-style Restroom	2009	20K	Grants

~~1.~~

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
Benton County Fairgrd Facility	1500 S Oak St Kennewick	owned	180	Fairgrds	5shwbldgs 8livestk pavillion horse arena horse barns rodeo arena grandstnds 3 plazas rv sites parking lots restrms bldg	41.9K 47.4K 38.4K 400stls 53.2K 3K seat various 230hks various	No	none	Maint shop/ pole storage bldg Replace horsebarns[3] Office Bldg 2K sq ft	2005 6/04 2008	180K 50K 250K	Fair IMP Fund County County/ BentonCo FairAssoc
									Replace: Forklift Tractor W. Truck Mower Equipment Needs Equipment Improve Floor bldg 3&5 Kiosk, Irrig. & Build 1-4 improvemts Leasehold Improvemts. Emergency Sound sytm	2005 2008 2005 2007 2008 2008	40K 50K 48K 64K 75K 60K	Fair IMP Fund Fair IMP Fund " " " "
Fairgrd Maint. Projects Approved in Annual Budget	"	owned	NA	Fairgrds	Various	NA	NA	See CFP Maint. File	See CFP Maint. File	Current YR CFP Maint. File	See CFP Maint. File	REET
Trails	Prosser to Yakima co.	Owned	4 mi.	Bike & walking	Paved asphalt	NA	Yes	None	None	11/97		

TABLE 9.0 CAPITAL FACILITIES: RECREATION - INVENTORY, PROJECTS AND PROJECT SCHEDULES (10 Yr)

Park Facility	location	owned or leased	Size ac/dev.	Current Uses	Existing Facilities	bldg. sq. ft.	Park Plan	Current Projects	Scheduled Projects	Project Complete (date)	Est.$ (mil)	Funding Source
	line			path								
County-wide	All	All	NA	All	All	NA	NA	Yes	Parks System Master Plan & Needs Assessment	20078	50K	Park Develop Fund
					"				Programmatic Element signage	2008	20K	"
					Horn Rapids Badger Mt. HH Vista Two Rivers				Reclamation Projects to combat weeds & restore native habitat	2008	20K	"

1. Tapteal's participation as a funding source is always contingent upon the approval of the Tapteal Board of Directors for any specific project. Tapteal is shown as a possible resource only within the geographic area covered by the Tapteal Greenway.
2. TBD to be determined.
3. Existing horsebarns to be demolished and replaced with 108 new stalls in 3 barns.
4. Purchased with public, private and state funds.

Date 7-8-08
Exhibit No. 3
Received by dph

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
1	Justice Center Campus	7320 W. Quinault, Kenn.	owned	-Courts Admin -P.A.s Office -Sheriff Dept -Co. jail	fixed prkng	97033/2	20.92/75	yes, new Admin space Maint/Supply Bldg	2000/ 2002 2004	41 238K	new	GO Bond Cnty const. fund
					fixed	2,400sf		Coroner/ Morgue	2004	884K	new	County cap projects fund
					fixed	3,397sf		Artistic Art Improv.	2005	5K	NA	Construction Fund
					none			Food Service Provision	2005	15K	NA	Capital Proj Funds
								New Chiller HVAC 1984 Bldg	2005	950K	NA	Capital Proj Fund
								Add 32 New Courtrooms	2008	~~600K~~ 4,249,890	na	~~Unknown~~ Capital Proj. Fund
								Relocate Annex Bld to Campus	2008	2	yes, uses at #s 4,5,6 will be moved here	Unknown
				JC Complex Expansion	Fixed			Office Bldg	~~2009/10~~ 2010/11	~~7.666~~ 8,047,843	yes	Capital Projects Fund
				Benton-Franklin Health Dept.	Fixed			Medical Office Bldg	2007/08	~~9.6~~ 3,114,522	yes	~~Benton Health Bldg Fund/~~ Cap Project Fund/Bonds
				JC Complex				PA's Expansion	2007	30K	NA	Unknown Funding Source
				"				North & South Pkg striping	2008	6.5K	NA	Unknown
				"				Landscape Young St. Driveway	2007~~8~~	~~27.5~~30K	NA	Unknown Funding Source

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
1	Justice Center Campus Cont'd			"				South Sher.Office Empl Door	2008	20K	N/A	"
				"				New Nortel Communtcation System	2007	203K	N/A	Jail Depreciation Reserve
								Updrade HVAC System METASYS	20078	4095K	N/A	Capital Project Fund
								Clerks Office Lobby Expan	2007	78.878K	NA	Clerks Collection Fund
				County Jail	Fixed			Clean HVAC System Old Courtrm/Jail	2008	81.4K	NA	Unknown funding Source
								Kitchen EQ Upgrade	2008	50K	NA	Jail Depreciation Reserve
								Fire Alarm System	2008	60K	NA	"
						7-12.5 k		Records Storage	2009	1	Yes	Capital Project Fund
								Shower Venting	2007	49K	NA	Jail Depreciation Reserve
								Rplc locks and Sliders	2007	93K	NA	Jail Depreciation Reserve
								UPS battery replacmt	2008	25K	N/A	"
								Cell lighting	2008	35K	NA	"
								OPT022 Control & Maxxess	2008	125K	NA	"

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
								System New Offices 2 /Booking Area	2008	22K	Yes	"
2		Same	Owned	-vacant		None		Parking	2005	1	yes, current prkng at #1 will be moved here	GO Bond
3	**Co. Annex Building**	5606 W. Canal Dr. Kenn.	bldg owned: 72% BC, 28% FC prop. BC	Juvenile Justice Cntr w/detention classrooms kitchen	fixed prkng	102000	9.85/100					
				Juv. Courtrooms	fixed	NA	NA	Yes	2008	1.5	yes	County
				-Bldg Dept. -Treasurer Office -Assessor -Auditor -Coop Ext.		990		will go to Justice Cntr for use	2008	5	yes	County
								Juvenile Justice expanding to Annx Bldg	2008	600K	yes	Unknown
4		5600 W. Canal Dr.	owned		fixed prkg			Resurf & revise Prkg lot flow	2005	10K	Yes	Unknown
								South Prkg Lot	20089	~~169.4K~~ 177,870K	NA	Unknown
5	**Human Services**	2624 W. Kennewick Ave, Kenn	owned	-office	fixed prkng	3240	0.36ac.	no	NA	NA	NA	NA
6	**Detox Center**	1020 S. 7th, Pasco	bldg. owned 50/50 w/Fr.Co. which owns the land	-detox ctr.	fixed	1500	100%	no	NA	NA	NA	NA

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
7	Auditor (Richland)	101 Wellsian Way Ste-E	leased	satellite office	fixed	1198	NA	no	6/04	NA	NA	NA
8	Prosser Courthouse	620 Market Prosser	owned	-BOCC offices & hearing room -court room -Treasurer Off. -Assessor's Off. -Auditor's Off. -Cntrl Services -a P.A.s office -Pub. Works -Personnel Dept. - a sheriff Off. -Mail room -Court Clerk	fixed bldg	32700/3	1.43 ac. /23%	yes, Co. Admin Offices	2006	6.63	yes, uses in #s 12,13 Dist Crt & Clerk Sheriffs Dpt Health Dst	-PILT Capital Aquisition Fund
								Design for remodel & expansion	2005	307K	yes	Capital Projects Fund
								Replace Ballot Tabulation System	2005	1	NA	Capital Projects Fund
								Safety & code Renovations	20~~07~~8	~~1.645K~~ 3.5K	NA	Capital Projects Fund
9	Courthouse Annex bldg	1120 Prosser Ave. Prosser	Owned	Courthouse Storage	fixed bldg	5780 sf on 2 flrs		yes, demolish current bldg., build new addition to Courthouse	2006	incl. In Above	yes, uses #8	Same as Above
10	Courthouse Parking (Prosser)	703 Main 608 Main 704 Market	owned " "	Parking " "	prkng " "	8625 sf. 9000 sf. 6375 sf.	8625 sf. 9000 sf. 6375 sf.	no no no	95/96 01/02 01/02			
11	Planning Annex	1002 Dudley, Prosser	owned	Current & Long Range Planning offices & Hrg. rm	fixed prkng	3776 sf.	0.29 ac.					
12	Plng Annex parking	lots 20,21, w 9' of 19,	owned	planning & courthouse parking	prkng	NA	0.18 ac.	no	NA	NA	NA	NA

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
13	**Co-op Extension**	1121 Dudley, Prosser	owned	-storage for elections dept. -auditor office -voting place -WSU Ag. Extension Off.	fixed	1950/1	0.09 ac.	no	NA	NA	see #10	NA
14	**Public Works Yrd (Kenn.)**	Ely St. Kennewick (lot 46 Highlands plat C.)	owned	-repair shop -equip strg. -fuel station asphalt storage	fixed	19000sf	2.98/15	no	NA	NA	NA	NA
15	**Maint. shop prkng**	(lot 29, Highlands plat C)	owned	parking	prkng	prkng	0.86 ac.	no	NA	NA	NA	NA
16	**Public Works Shop Prosser**			-Maint. shop -sign dept. -truckbarn -fuel station	fixed, " " open c.pad	20,461 7,560 3,326	10 Ac.		2002/ 2003	1.64	NA	NA
17	**Public Works Shop Kennewick**	Kennewick area				+ or - 24379sf		-proposed Kenn Main shop	2005	2.6	yes	REET Funds PWTF
18	**Commun-ications**	Chandler Butte, 28, 9, 26E	owned	radio repeater station	Block	100sf.	100%	no	NA	NA	NA	NA
19	**Sheriffs Satellite Office**	46404 Prior Ave. Paterson	owned	sheriffs office boat storage	fixed steel	1800 sf	26000sf	No	NA	NA	NA	NA

TABLE 9.1 CAPITAL FACILITIES: ADMIN OFFICE & SUPPORT - INVENTORY, PROJECTS - PROJECT SCHEDULES (10 Yr.)

#	County *(or other)* Facility/ Function	location	owned/ leased	Co. Use (current)	Bldg type	Sq. ft./ floors	Size ac/%dev	Planned Project? yes/no future use	Date begin/ end	Est.$ (mil)	Will the "project" Consolidate space?	Funding Source
20	**800 MHz Expansion**	1 base & 5 remote	own 1/3 assets	911 Public Safety Communications	NA	NA	NA	~~No~~ Upgrade the Emergency Serv. System	~~NA~~2009	~~600K~~ 2 Million	NA	~~County~~ Unknown
21	**Capital Facilities Plan Roads**	County-wide Prosser	NA	Roads PWks. Gravel Pit Environ. Cleanup	NA N/A	NA N/A	NA N/A	See CFP "	CUR CFP 2007	CUR CFP 110K	NA N/A	Capital Projects Fund Current Expense
22	**Capital** Facilities Plan **Other**	County-wide	NA	Various Project Contingency	NA	NA	NA	See CFP Line item	CUR CFP 2007/12	CUR CFP 93K	NA N/A	Unknown Capital Projects Fund

Corrected by Board of County Commissioners during the Hearing Process

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING RE: AMENDMENT TO THE BENTON COUNTY COMPREHENSIVE PLAN. FILE NO. CPA 08-05, APPLICANT: BENTON COUNTY PLANNING STAFF.

WHEREAS, on June 22, 1998, the Benton County Board of Commissioners adopted the Benton County Comprehensive Plan; and,

WHEREAS, Washington State Planning law requires continuing review and evaluation of the Comprehensive Plan pursuant to RCW 36.70A.130(2)(a); and,

WHEREAS, Benton County provides for annual Comprehensive Plan Amendments in BCC 16.14; and,

WHEREAS, the Benton County Planning Commission did conduct a public hearing on July 15, 2008, to review the proposed comprehensive plan amendment to amend text within Chapters One (Introduction) Chapter Three (Plan Goals and Policies) Chapter Six (Parks and Recreation Element) and in Chapter Nine (Capital Facilities Element); and,

WHEREAS the purpose of the amending text in Chapter One is to update the quoted RCW that refers to the "Frequency of Amendments" as revised by the state and add reference to the Comprehensive Plan Amendment Ordinance; Chapter Three, edit the cycle of major review to every seven years counting from the State mandated 2006 Compliance Review as mandated by the GMA; in Chapter Six, change references to the Interagency Committee for Outdoor Recreation (IAC) to its new name Recreation and Conservation Office (RCO), and in Chapter Nine revise descriptive text to accurately reflect current conditions in the Parks and Recreation section; and,

WHEREAS, the Benton County Planning Commission at the conclusion of its public hearing on CPA 08-05 forwarded a recommendation of approval of the amendments to the Board of Commissioners. The Planning Commission record was forwarded to the Board of County Commissioners on November 3, 2008 and the legal notification was published on October 30, 2008; and copies mailed to those interested parties as noted in the file maintained in the Planning Department and,

WHEREAS, the Board of County Commissioners did conduct their own public hearing on November 10, 2008, and January 26, 2009, at 9:05 a.m. in the Commissioner's Meeting Room, Third Floor, Courthouse, Prosser WA 99350; and,

WHEREAS, the "housekeeping edit" nature of the proposal does not require review under RCW 43.21C (SEPA); and,

WHEREAS, the Board finds that proper legal notification, public hearing and review have been made; and,

WHEREAS, after consideration of the above mentioned request and reviewing the Planning Commission record, staff analysis and memos, and all written and oral comments received at the public hearings, the Board of County Commissioners finds the staff's application to amend text within Chapters One (Introduction); Chapter Three (Plan Goals and Policies); Chapter Six (Parks and Recreation Element); and in Chapter Nine (Capital Facilities Element), to be in compliance with the Growth Management Act and consistent with the Benton County Comprehensive Plan; and,

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners hereby amends the Comprehensive Plan to include housekeeping edits to Chapter One, Chapter Three, Chapter Six and Chapter Nine, as set forth in Exhibits 1, 2, 3 , & 4 of the CPA 08-05 Record.

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

Michael Shuttleworth/smw
cc: Prosecuting Attorney's Office

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

File No. CPA 08-05
Date 7-8-08
Exhibit No. 1.
Received by dyh

STAFF REVIEW AND RECOMMENDATION
July 7, 2008

CONSISTENCY OF A PROPOSED COMPREHENSIVE PLAN AMENDEMENT WITH THE ADOPTED COMPREHENSIVE PLAN AMENDMENT CRITERIA

Comprehensive Plan Amendment # 2008-05 (CPA 08-05)

Proposed Amendment: Staff housekeeping items.

Purpose of the Plan Amendment: Housekeeping items are changes proposed by staff that improve the accuracy, or update the text in the Comprehensive Plan to reflect current conditions.

Section of the Comprehensive Plan to be Amended:

- Chapter One –*Introduction*, The RCW quoted on page 1-9 has been revised by the state as shown and a reference to the Comprehensive Plan Amendment Ordinance is added on new page 1-11. The revisions made to update text are shown in Exhibit 2.

- Chapter Three -*Goals Policies and Actions*, the following is an edit to text on page 3-1:

  Goal 3, Policy B.
  B. That the Comprehensive Plan shall undergo a major review every ~~five~~ seven years commencing the ~~fifth~~ seventh year after the State mandated 2006 Compliance Review and Update adoption.

- Chapter Six - *Parks and Recreation*, change agency name from Interagency Committee for Outdoor Recreation or IAC to its new name Recreation and Conservation Office, Exhibit 3.

- Chapter Nine -*Capital Facilities*, Revisions made to update text in the Parks and Recreation section are shown in Exhibit 4.

Staff Recommendation

Staff recommends that the Planning Commission forward the proposed housekeeping amendments to the Board of County Commissioners with a recommendation of approval. Based upon the information available, staff believes that the proposed amendment #2008-5 meets or is not inconsistent with the Comprehensive Plan goals and policies.

Consistency of the Proposed Amendment with Adopted Comprehensive Plan Amendment Criteria:

Amendments are consistent with the Plan when:

a. An amendment is necessary to resolve inconsistencies within the County Comprehensive Plan, or with other city plans or ordinances with which the county has no objection;

The proposed housekeeping amendments to the text in the Comprehensive Plan are made to improve the accuracy of the information or current conditions call for revisions to bring the Plan up to date.

b. Conditions have so changed since the adoption of the county plan or ordinances that the existing adopted provision is inappropriate;

Comprehensive Plan provisions are unaffected by the corrections.

c. The proposed amendment is consistent with the overall intent of the goals, map, and Rural Element of the county plan.

It is consistent

d. The proposed amendment is consistent with Chapter 36.70A RCW, the County-wide Planning Policies, and Plan policies;

It is consistent.

e. For an amendment to the Comprehensive Plan Map, the proposed designation is adjacent to property having a similar and compatible designation, or the subject property is of sufficient size, or other conditions are present, to locate development or otherwise mitigate potential incompatibilities to insignificant levels;

Not applicable.

f. Environmental impacts have been disclosed and measures imposed to either avoid or mitigate said impacts;

Not applicable.

g. Potential ramifications of the proposed amendment to other Comprehensive Plan Elements and supporting documents have been considered and addressed;

Not applicable.

h. As appropriate, where an amendment of the Comprehensive Plan is approved by the Board of Commissioners, and a subsequent rezone or amendment to development regulations is required, the planning commission may consider them and make recommendations to the Board for consideration concurrent with the final approval of the comprehensive plan amendment.

Not applicable.

EXHIBITS

Exhibit 1 Staff Report dated July 7, 2008
Exhibit 2 Comprehensive Plan Chapter 1, page 1-9 through page 1-11
Exhibit 3 Comprehensive Plan Chapter 6, page 6-2
Exhibit 4 Comprehensive Plan Chapter 9, page 9-5 through 9-7

- the exclusion of lands previously designated Agriculture from the designation because of urban encroachments and parcelization which has occurred within the past 10 years;
- an increase in the number of acres designated industrial;
- a greater emphasis on recreational trails, paths and other amenities.
- a detailed Economic Element integrated with an Economic Development Improvement Program (EDIP) which is not a part of the Comprehensive Plan.
- a Park and Recreation Element.

AMENDMENTS TO THIS COMPREHENSIVE PLAN

Comprehensive Plans are not written in stone for all time. They are a living document designed to be at once rigid enough to hold a chosen course over an extended period of new growth and development, yet flexible enough to accommodate a wide spectrum of both anticipated and unforeseen market conditions. A fundamentally good plan can do this for a relatively short period of time (5-10 years), during which monitoring and data gathering and analysis for the purposes of "fine tuning" and improving the plan by amendment should be an ongoing program. ~~At the end of this period (it is recommended every 5-7 years) a major reassessment of the plan should occur.~~ State law requires review and update of Comprehensive Plans every seven (7) years.

Frequency of Amendments

RCW 36.70A.130 requires that:

(1) (a)"Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. ~~Not later than September 1, 2002, and at least every five years thereafter~~Except as otherwise provided, a county or city shall take action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter according to the time periods specified in subsection (4) of this section. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. Any amendment or revision to a comprehensive land use plan shall conform to this chapter, and any change to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identif~~ying~~ies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise if needed,

according to subsection (1) of this section, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsections (5) and (8) of this section. ~~except that a~~Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW; ~~and,~~

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget.

*(iv) Until June 30, 2006, the designation of recreational lands under *RCW 36.70A.1701. A county amending its comprehensive plan pursuant to this subsection (2)(a)(iv) may not do so more frequently than every eighteen months; and*

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. (b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection

may be combined with the review and evaluation required by RCW 36.70A.215.~~" [1997 c 429§ 10; 1995 c 347§ 106; 1990 1st ex.s. c 17 §13.]"~~

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. Except as provided in subsections (5) and (8) of this section, the schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(c) On or before December 1, 2006, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties;

Procedures For Accomplishing Plan Amendments

In July of each calendar year proposed amendments to the Benton County Plan shall be brought to the Benton County Planning Commission for hearing and recommendation to the Board of Commissioners. In order for this to occur, proposals must be submitted to the Benton County Planning Department no later than December 1st of each year, so that the proposals can be packaged, analyzed for effect, and scheduled for hearings, etc.

Detailed procedures for amending the Benton County Comprehensive Plan are contained in Appendix 1, ITEM 1-2, *and are adopted by ordinance in Title 16 of the Benton County Code (BCC).*

HISTORY OF COMPREHENSIVE PLANNING IN BENTON COUNTY

1985 Comprehensive Plan

In 1985 the Benton County Board of Commissioners, after a several years long planning process adopted the 1985 Comprehensive Plan. Implementing Ordinances for the Plan were drafted through a public participation process, however the ordinances were never adopted due to changing economic and staffing circumstances in the early and middle 1980s. (See Appendix 1, item 1-3 for chronology of the 1985 Comprehensive Planning process as well the process engaged in under GMA to amend, or update the 1985 Comprehensive Plan).

The advice of the Benton County Prosecuting Attorney's office to the Planning Director in the mid-1980's was that without adopted implementing ordinances the land use map and policies of the 1985 Comprehensive Plan could not be used as a standard for land use decisions. The Planning Director was advised to continue using the county's zoning district map and related zoning districts (ordinances) which predated the 1985 Comprehensive Plan. Actions taken by the Board of Commissioners to implement GMA will amend or replace these controls per current state planning law.

a significant new focus on the county's role as a regional park facilities provider, the goals, policies, and textual substance within this Element, are essentially those which were adopted in the 1990 update of the 1982 Comprehensive Parks and Recreation Plan.

Responsibility For Implementing The Provisions Of This Element

Unlike other Plan Elements in this document, this Element contains goals, objectives, and actions outside of those in Chapter 3, which is where all the Goals and Policies for other Plan Elements reside. The reason for this is that the responsibility for policy making, and decisions relating to the implementation of this Element, once it is adopted by the Board of County Commissioners as a part of the Comprehensive Plan, lies principally with the Benton County Park Board rather than the Board of County Commissioners.

The Park Board's public process and knowledge is the origin of the goals and objectives within this Element. Therefore, it is appropriate that goals and objectives specific to recreational facilities identified in this Element be separate from those in Chapter 3, which are the sole province of the Board of County Commissioners.

Park Planning, Management and Maintenance

Park maintenance is the responsibility of the County Facilities and Parks Department. Park planning, capital facilities, and operations and maintenance are overseen by the Director of the Facilities and Park Department, who provides administrative support to the seven member Benton County Parks and Recreation Board which advises the Benton County Board of Commissioners.

After coordination with appropriate county departments, the Park Board submits its planning and capital projects to the County Board of Commissioners for adoption. Park budgets are the province of the Board of Commissioners.

State Requirements for Recreation Planning

In 1964 the Marine Recreation Land act (R.C.W. 43.99) created the Washington State Interagency Committee for Outdoor Recreation (I.A.C.). This act designated the I.A.C. as the administering agency for a grant-in-aid program made available to state and local agencies. The name of the Agency was changed to the Recreation and Conservation Office (RCO) in 2007.

Eligibility for attaining funds requested through the ~~I.A.C.~~ R.C.O. is contingent upon the requesting agency's completion and adoption of a comprehensive parks and recreation plan. This plan must contain a minimum of the required elements and be filed with the ~~I.A.C.~~ R.C.O. in Olympia. Once an agency has complied with the requirements set by the ~~I.A.C.~~ R.C.O. for parks and recreation comprehensive plans, that agency becomes eligible to apply for funding assistance from the state for a five-year period.

Goals, Objectives, Actions

Following are *Goals, Objectives,* and *Actions* to guide implementation of this Element. Where an "*action*" is shown, if capital expenditures are necessary to carry it out, the expenditure will be shown in Table 9.0 of Capital Facilities Element, Chapter 9. Where county resources for other than capital expenditures are necessary to forward an action, the resources must be

File No. CPA 08-05
Date 7-8-08
Exhibit No. 4
Received by djh

PARKS& RECREATIONAL FACILITIES
Existing Conditions

Proposed Capital Improvements For County Park lands

Table **9.0** at the end of this chapter indicates planned capital improvements; project funding sources and schedules for county parklands within the next ten years. The improvements shown are consistent with, and carry out in part, aspects of the recreational facilities improvement program identified in the County's "Capital Facilities Plan", which is updated annually; and in the County's "Parks Comprehensive Plan", which looks at a twenty-year planning horizon for recreational needs of the public. Using these two documents, the Park Board continually works together with elected officials, staff and the public, to assess needs that may not be adequately met and identify those opportunities for new facilities and partnerships. ~~below. The improvements are numbered in their order of priority relative to the anticipated availability of funds within the ten-year period, i.e., if funding for all were available, they would all be priority #1.~~

~~The order of priority shown below represents two principal objectives:~~

~~i)meet current user demands at Two Rivers Park, and,~~

~~ii) provide new facilities to accommodate regional recreational demands at park sites which have the potential to leverage increased public and private interest in additional recreational opportunities both within and outside the park site.~~

- ~~Starting with basic support facilities, develop Horn Rapids Park, per Phase I of the Park Master Plan, and as the central activity center on the Tapteal Greenway between Benton City and Columbia Point.~~
- ~~Renovate and upgrade Two Rivers Park, including the construction of a protective barrier for the boat launch and dock facility.~~
- ~~Develop a non-motorized trail/path for equestrian, bicycle, and hiking which connects Columbia Point to Horn Rapids Park.~~
- ~~Develop marked bikeways along designated county roads.~~
- ~~Gain access to, complete a master plan for, and develop Hover Park.~~
- ~~Acquisition of access to Wallula Gap Overlook, develop the park with overnight camping.~~
- ~~Develop a linear non-motorized, multi-modal trails and path system following the Yakima River from Prosser to its confluence with the Columbia River (an on-going project with elements shown in higher priority projects).~~

Financing of Capital Improvements On Park Lands

Improvements to State and Federal Lands

Financial resources from the county will only be used on county owned or leased park lands,~~.~~ or on projects or

programs specifically determined to have a direct beneficial impact on County park lands. Recreational lands which are owned and managed by federal or state agencies must be improved with funds from other than county revenues, though the county is amenable to applying jointly and cooperatively with state or federal agencies for grant funds to improve state or federal lands used for recreation by county residents. The county will consider providing "in kind services."

Improvements To County Owned or leased Park lands

There are numerous sources of capital improvement funds for constructing recreational facilities.

Funding packages for recreational facilities are usually comprised of different sources. For example, a project could be funded by monies from grants or loans from federal and state agencies, with local "matching" funds from "general" or "dedicated" funds, with "in kind services" from local agencies, and private donations. If the project were to cross jurisdictional boundaries (e.g., a trail), the funding sources increase per the number of jurisdictions.

Existing and potential sources of funding currently available to the county include the following:

~~IAC~~ ***RCO Funds*** (Washington State ~~Interagency Committee for Outdoor Recreation~~ Recreation and Conservation Office) are annually available as grants for a broad range of recreational facilities;

County General funds may be budgeted by the Board of Commissioners to specific projects;

County Park Development Fund. As a matter of current policy the Board of Commissioners ~~budgets~~ annually budgets monies ~~50,000 dollars~~ to the Park Development Fund for expenditures at the discretion of the County Park Board;

Other grants and loans and donations may be obtained from federal and state agencies, and from other community partners such as non-profit organizations or project-specific public funding sources ~~from federal and state agencies such as the Washington State Dept. of Natural Resources (DNR), or the National Parks Service (NPS)~~;

Gas tax funds for trails. The County Public Works Department receives annually a 1/10th of 1% gas tax refund from the state for trails development;

ISTEA, this federal (Intermodal Surface Transportation Efficiency Act) annually allocates 10% of its total transportation budget as grant funds for transportation "enhancement" projects. Such projects are surface transportation related (e.g., trails, bike-racks, and multi-modal transportation support facilities);

Private donations, non-profit public interest organizations such as the Tapteal Greenway ~~Foundation~~ Association can partner with both the

private sector and local governments to involve the private sector in facilities development;

Economic development grants and loans from state and federal agencies that fund recreational improvements which enhance and expand economic activity;

Real Estate Excise Tax, under GMA, a real-estate excise tax of 1/2 of 1% may be levied for construction of capital facilities which are proposed in the Capital Facilities Element of the Comprehensive Plan;

PILT, Federal (Payments In Lieu of Taxes) for lands within the Hanford Site. Such payments are annual.

~~***Army Corps of Engineers***, 1135 projects are large-scale projects undertaken in partnership with the Army Corp of engineers. They are primarily restoration-oriented projects but can have a recreational overlay. The projects require a 25% local match.~~

BENTON COUNTY FAIRGROUNDS

Existing Conditions

In addition to its role as the home for the annual weeklong Benton-Franklin Fair and Rodeo, the Benton County Fairgrounds provides a wide variety of patron and event activities throughout the year. The Fairgrounds offer indoor and outdoor facilities of varying sizes that can accommodate many uses. Table 9.0, at the end of this chapter indicates planned capital improvements, funding sources and schedules for the fairgrounds within the next ten years.

Current Trends

Upgrades and renovation are being made to a number of the buildings on the Fairground campus in an effort to enhance the family " fair" experience and to help attract new customers to the facility during the off season. The Fairgrounds are being marketed to groups that hold events requiring large indoor and/or outdoor spaces, plentiful parking, or are otherwise seeking a unique type of venue other than hotels, convention centers, community halls, or municipal parks offer.

Future Considerations

As population growth in the region continues, use will increase along with the demand for services Future planning initiated by County management and the various user groups regarding fairground needs and capital projects is essential to keep the fairgrounds economically viable and responsive to the needs of the fairground patrons and fair-goers.

COUNTY ADMINISTRATION AND SUPPORT FACILITIES

Existing Conditions

Capital Facilities Study

In January of 1991, a capital facilities study for Benton County described the county as "a complex 'Corporation' with public safety, business, justice and corrections service activities in six separate county owned buildings in 36 separate department components housing approximately 350 office employees."

The above numbers did not include

BENTON COUNTY FACILITIES

9:35

February 10, 2009

David Sparks
County Administrator
Benton County, Washington

Roy T. Rogers
Facilities Manager
Benton County, Washington

Sub: Remodel Assessor old space at Annex

Sir:

As requested, the following is an estimate to remodel the old space the Assessor occupied at the Canal Street Annex.

The Base Estimate is-----$35,000.00
Plans and Permits--------- 4,000.00
No FF&E Included----------0.00

Estimated Total Cost-----($39,000.00)

A brief summary of the work is as follows:

(1) Replace all ceiling tiles with new tiles.
(2) Remove old carpet and replace with VCT tile.
(3) Demolish designated interior walls.
(4) Remove designated existing counters.
(5) Move existing designated door to new location.
(6) Patch and repair all areas of demolition and other areas as needed.
(7) Totally repaint entire area.
(8) Electrical work as needed.
(9) Mechanical work as needed.

I feel that this is a very realistic good estimate.

Sincerely

Roy T. Rogers

7122 W. OKANOGAN PLACE, BUILDING A • KENNEWICK, WA • 99336
PHONE: (509) 736-3082 • FAX: (509) 736-2708

9:50

WORKSHOP UPDATE RE: FINLEY TRUCK SIGNS

VERBAL UPDATE ONLY – NO BACKUP

9:55

WASHINGTON STATE UNIVERSITY
BENTON COUNTY EXTENSION

Memorandum

Date: February 18, 2009

To: Benton County Board of Commissioners

Marianne C. Ophardt

From: Marianne C. Ophardt
Director of WSU Extension of Benton County

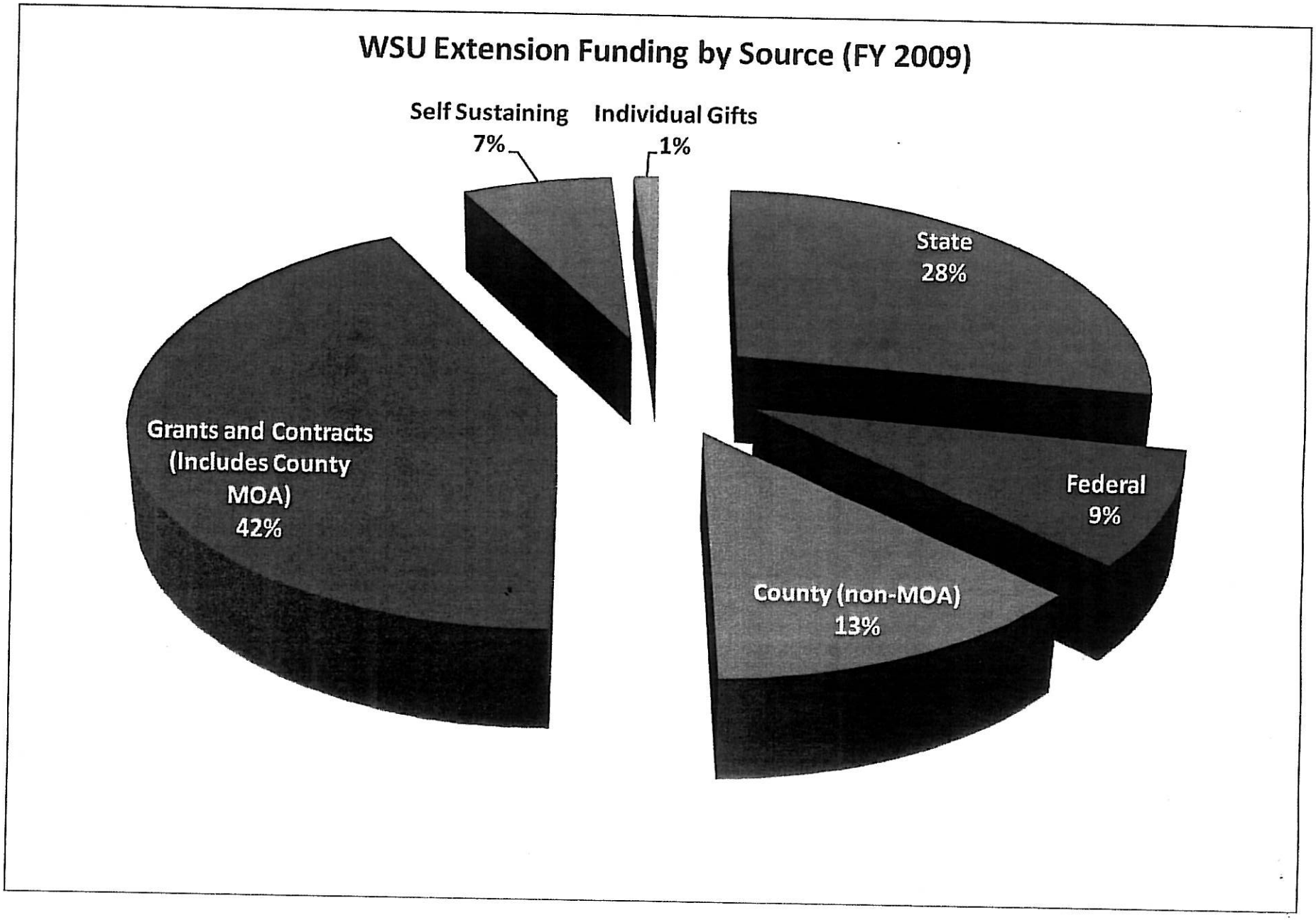
Re: WSU Extension Proposed Budget Cuts

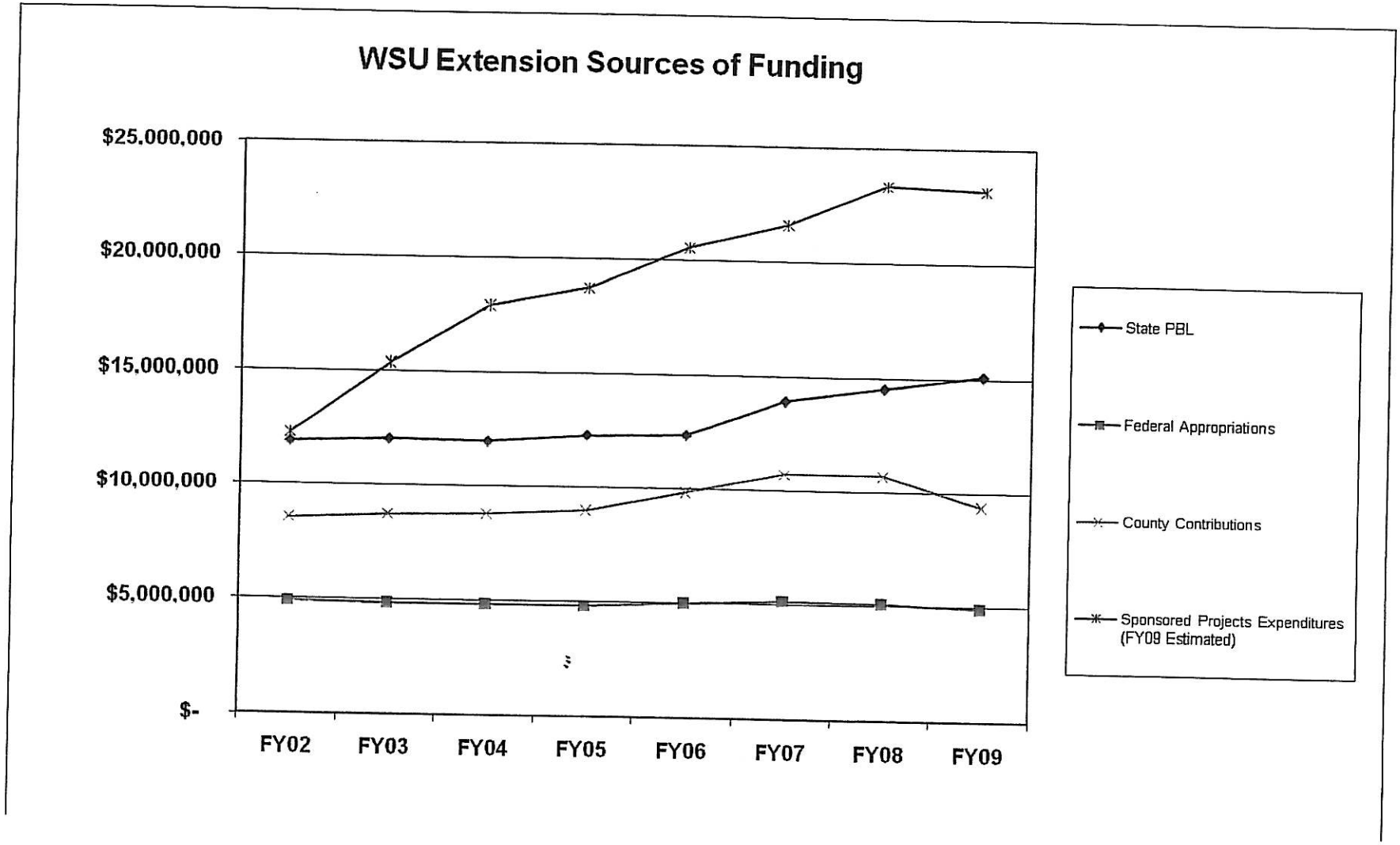
You may have already heard that on February 10th WSU Provost Warwick Bayly addressed the Washington State Senate Higher Education Committee and provided scenarios for reducing the WSU budget by 12 and 18 percent. In these scenarios Provost Bayly indicated dramatic and disproportionate cuts to the WSU "public service programs" which includes WSU Extension. In the 12 percent scenario WSU Extension would be cut by 49 percent and in the 18 percent scenario by 75 percent.

WSU Extension administration has urged us to communicate to you the magnitude of these cuts and their impact. If Extension is faced with a 49% cut in state funding 78 faculty FTE's (full time equivalents) will be lost and 104 staff FTE's will also be lost. A 75% cut will mean a loss of 120 faculty FTE's and 160 staff FTE's. These losses are all associated only with state funded positions. These numbers do not take in to account the losses of jobs associated with grants and contracts lead by our personnel that will be lost if a faculty member's position is eliminated.

These cuts are not reality yet. These are proposed scenarios, but we feel it important to inform you, the Benton County Board of Commissioners, as well as Benton County stakeholders, clientele, and other decision-makers of the impacts of these proposed cuts that will be decided upon within the next few weeks. Both scenarios will mean a devastating loss of programs, closure of facilities and WSU Learning Centers, and the loss of the capacity for WSU to fulfill its Land-Grant mission across the state.

With the current state of the Washington State economy, it's reasonable to expect manageable and proportionate cuts. However, the disproportionate level of reductions as presented by the Provost on behalf of the WSU President will have broad and deep impacts and will effect WA residents in every part of the state in every one of our applied research and extension educational programs.


WSU Extension Funding by Source (FY 2009)
Self Sustaining
7%
Individual Gifts
1%
State
28%
Federal
9%
County (non-MOA)
13%
Grants and Contracts
(Includes County
MOA)
42%


WSU Extension Sources of Funding
$25,000,000
$20,000,000
$15,000,000
$10,000,000
$5,000,000
$-
FY02
FY03
FY04
FY05
FY06
FY07
FY08
FY09
State PBL
Federal Appropriations
County Contributions
Sponsored Projects Expenditures (FY09 Estimated)

WASHINGTON STATE UNIVERSITY
EXTENSION
Office of the Associate Vice President and Dean

Facts about WSU Extension

For every $1 of state PBL invested in Extension, an additional $3 is leveraged in externally funded grants and sponsored projects. In some program areas, such as the Energy Program, that investment is $11 for every $1 invested.

At the close of fiscal year, we again ended the year in excess of $23 million in grant and contract expenditures; second highest unit in university in extramural funding. This amount does not include grants accounted for through the county. The level of extramural funding per Extension faculty FTE was $145,000 in FY08.

WSU Extension grants returned $2 Mil in overhead (Facilities & Administration) directly to the university last year. Additional F&A was returned to the departments and the Research & Extension Centers.

Annually each Extension faculty member makes nearly 7,000 educational contacts providing knowledge that enhances the environment, strengthens the economy, or improves their quality of life.

Nearly 13,300 volunteers contribute their time and talents to WA State facilitated by WSU Extension. On average, each Extension educator has 120 volunteers who magnify their work to the tune of $26 Mil annual contribution of time and talents.

Currently, all of Washington's residents have access through partnership with all 39 counties to WSU's finest programs including Distance Degrees facilitated by the nine (9) Learning Centers.

Funding for WSU Extension includes federal formula funds appropriated by Congress and administered through the U.S. Department of Agriculture, Cooperative State Research, Education, and Extension Service (CSREES) under authority of the Smith-Lever Act.

In addition to county MOA with approximately $3.2 Mil in salaries for WSU employees, counties provide funding that support offices, local staffing, internet, vehicles, travel allocations, and other operations including facilities. The additional county contribution is $6.6 Mil. Budget figures confirmed on February 13th indicate only **a 7% reduction in total county contributions to WSU for CY09** (FY 08 $10,676,624 mil; FY09 $9,945,422 mil) = ($731,202l).

Reduction in state funding will place other funding sources at risk.

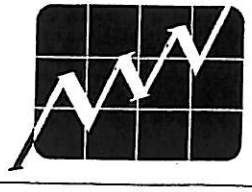
- County funding is predicated upon our ability to provide faculty and staff
- Most grants require some form of cost share – generally provided by PBL. Therefore, PBL reductions will be associated with a loss of extramural funding and F&A returns.
- Federal Smith-Lever funding requires a dollar per dollar match

February 16, 2009

P.O. Box 646248, Pullman, WA 99164-6248
509-335-2837 • Fax: 509-335-2926 • TDD 1-800-833-6388

Cooperating agencies: Washington State University, U.S. Department of Agriculture, and Washington counties. Extension programs and employment are

A Pacific Northwest Financial Services Company



Martin Nelson & Company

10:10

Discussion on Benton County's Consolidated Road Improvement District project
February 5, 2009 2:00 PM

I. CRID Details:

1. What is the estimated average assessment per parcel?
2. What is the average property value per parcel?
3. What is the estimated market value of the properties before the CRID improvements?
4. What is the assessed value of the CRID area?
5. What percentage of the CRID is raw land/dirt?

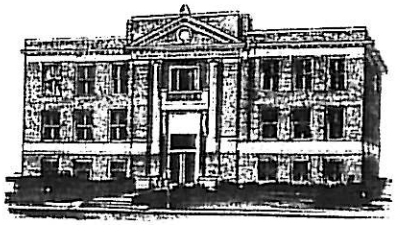
II. Property Owner Details:

1. List of the property owners?
2. Background on any property owner that has previously filed for bankruptcy [redacted]

III. Financing Options:

1. Traditional CRID Bond financed for 15 years or less, (fund a 10% Guaranty Fund)
2. CRID Bond, which is secured 90% by a "Contingent Liability Fund" (which means that the County will set aside an investment amount, while the CRID Bonds are outstanding, to be available in the event of payment default by the property owners in the CRID).
3. Private Placement to sophisticated investors
4. County issues Limited Tax General Obligation Bonds (and collects the assessments)
5. County issues the CRID debt in the form of an "interfund loan"

1500 Westlake Avenue North • Suite 200 • Seattle, WA 98109-3031 • Phone: 206-682-2763
Email: JimNelson@MartinNelsonCo.com



DUANE A. DAVIDSON, CPA
Benton County Treasurer

PO Box 630, Prosser, WA 99350
Prosser 509-786-2255 Fax 786-5628
509-736-3087
Kennewick 509-735-8505 Fax 736-2705
www.co.benton.wa.us/html/treasurer

February 23, 2009

Notes and discussion points from the February 5, 2009, meeting with Jim Nelson of Martin Nelson & Company. This February 5, 2009 meeting was attended by David Sparks, County Administrator; Duane Davidson, County Treasurer; Steve Becken, Assistant Director/ Assistant Engineer; and Larry Moser, Financial Administrator/ Benton County Public Works. The notes correspond to the five financing options provided by Jim Nelson in his White Paper on the Benton County Road Improvement District dated February 5, 2009 (please find attached).

Financing Options:

1. **Traditional CRID Bond financed for 15 years or less, (fund a 10% Guaranty Fund**

   Not really on option to consider. The high percentage of ownership of land in this proposed district by one individual does not lend itself to this form of conventional municipal financing. Current market conditions also will be a restraining factor to issuing bonds.

2. **CRID Bond, which is secured 90% by a "Contingent Liability Fund" (which means that the County will set aside an investment amount, while the CRID Bonds are outstanding, to be available in the event of payment default by the property owners in the CRID)**

   This has greater appeal to investors because of the complete guarantee by the county but begs the question of why the county would forgo the opportunity to earn the interest rates this type of financing could achieve. The county could not, with current interest rates make as much interest revenue from monies held in the Contingent Liability Fund as the interest rates the CRID bond would pay.

3. **Private Placement to sophisticated investors**

   Current status of the delinquent taxes and assessments owed on properties in the proposed CRID make this option very unlikely. "Sophisticated investors" would not make this investment with the associated risks.

4. **County issues Limited Tax Obligation Bonds (collected the assessments)**

   Expensive issuance costs and chance this issuance could compromise the county's bond rating exists with this option.

5. **County issues the CRID debt in the form of an "interfund loan"**

   Either by Interfund loan or registered warrants this is the easiest financing with the lowest issuance costs. There still is the problem that exists in #4 above about potential impacts on the county's bond rating. In addition, the unresolved issues about the interest rate for registered warrants and the cap on total funds allocated for registered warrants still exist. These issues were brought to the Board's attention in a previous Board meeting this year.